

Summary of comments received on the questions of

- (1) Whether the EMC Should be More Involved in Setting Future Assessment Methodologies for Developing the State's List of Impaired Waters Pursuant to the Clean Water Act, and if so
- (2) To What Extent

Comment period: September 21-October 22, 2012. Fourteen comments received (1 individual, 13 organizations)

Overview of responses to (1) above:

NO

- *(individual)* No, EMC should not be more involved, but they should convene a Board of professionals to review the methodology.
- *(Land Trust for the Little Tennessee)* No, DWQ should determine assessment methodology.
- *(Nicholas Institute, Duke University)* No, DWQ has the technical expertise; keep science separate from policy.
- *(National Committee for the New River)* No, EMC role should not be expanded.
- *(Waterkeepers Carolina)* No, DWQ has the scientific expertise and sufficient resources to set assessment methodology.

MIXED

- *(NC Conservation Network/Western North Carolina Alliance)* EMC should either delegate to DWQ or provide expertise-based oversight (ask questions, contribute special knowledge).

YES

- *(City of Raleigh)* Yes, EMC should actively participate in 303(d) list and TMDL development.
- *(NC Water Quality Association)* Yes, EMC should review and approve assessment methodology, and review controversial and significant TMDLs.
- *(City of Charlotte)* Yes, EMC should be more active in setting guidance for 303(d) lists and in TMDL priority ranking, but not involved in individual listings.
- *(NC Farm Bureau Federation)* Yes, EMC should have greater role in determining assessment methodology.
- *(Duke Energy/Progress Energy)* Yes, EMC should review and approve assessment methodology.
- *(City of Durham Stormwater Services)* Yes, EMC should adopt assessment methodology, and increase role in review and approval of TMDLs.
- *(NC League of Municipalities **and** Municipal professionals (15 central NC cities/towns))* Yes, EMC should approve assessment methodology and prioritize TMDL development.

Summary of specific comments

Individual

- Appoint a board of professional experts to review assessment methodology.

Land Trust for the Little Tennessee

- DWQ, in consultation with other water quality and bioassessment experts, should be the primary entity responsible for determining assessment methodologies.

Nicholas Institute for Environmental Policy Solutions, Duke University

- The commenters encourage the EMC to continue to allow the technical expertise of the staff at DENR to be the primary authority on the assessment methodology process.
- The scientists, engineers, and planners at DWQ have both the expertise and experience needed to develop and implement robust assessment methods.
- DWQ's methods and assessments have credibility with university scientists, the public, and EPA.
- In the commenters' many years of experience working in the environmental policy field, they have found it is critical to keep scientific issues separate from policy issues.
- Developing and refining policies, and collaborating with stakeholders to address issues and opportunities identified in river basin plans already require tremendous effort by the EMC.
- The EMC will have to step up efforts to address water supply and allocation issues in the future.

National Committee for the New River

- The assessment methodology is technical, complex, and requires a high degree of analysis.
- The scientists, engineers, and planners at DWQ have both the expertise and experience needed to develop and implement robust assessment methods.
- DWQ's methods and assessments have credibility with university scientists, the public, and EPA.
- EMC adds value to technical process through questions based on their diverse backgrounds.
- The EMC should take great care to preserve the scientific integrity of the methodology.
- Expanding role of policy makers in developing scientific methodologies could risk credibility.

Waterkeepers Carolina

- Determining impairment must be carried out by those with resources and scientific expertise.
- The EMC's longtime unofficial delegation has been a wise choice given the technical expertise of the DWQ staff, and the fact that setting a valid methodology is time and resource intensive.
- Few EMC members possess the technical expertise for setting assessment methodology, and any that do are outside the accountability built into the chain of authority in DENR.
- If individual commissioners become too involved in decision making on such a technical issue as the assessment methodology, the EMC's actions could become arbitrary and capricious.
- The EMC already has a full agenda, given that the Commission is not only responsible for water quality decisions, but for air quality, land resources and water resources decisions as well.
- If the EMC allows DWQ to set the assessment methodology but then picks and chooses aspects to rewrite, the revisions are likely to upset the intricate and interdependent technical choices embodied in the methodology, and potentially harm its effectiveness.
- The commenters would like to see the EMC in a role of oversight, bringing to the table those specializations that each member carries; however, such oversight must be in conjunction with a general deference to the expertise of DWQ staff on highly technical water quality issues.

NC Conservation Network & Western North Carolina Alliance

- The EMC lacks the expertise or time to establish the assessment methodology itself; it will have to delegate much of the work.
- One option is complete delegation. The assessment methodology is highly technical.
- A second option is rubber stamping DWQ's recommendation. This approach makes review pointless, so it is hard to see this as optimal.
- A third option, cherry picking issues, seems likely to invite legal challenges.
- A fourth option, expertise-based oversight, would allow Commissioners to add value to this highly technical process, by asking questions and contributing special knowledge.
- The EMC should show restraint in overturning DWQ staff technical judgments, since staff is in the best position to know how to satisfy EPA and make sense of the state's available data.
- The assessment methodology is not a rule. Given the length of the rulemaking process, it would be impossible for an assessment methodology to ever be completed in time to be applied.

City of Raleigh

- The EMC's efforts in managing the State's river basins will only be enhanced by its active participation in 303(d) listings and the development of responding TMDLs.
- The EMC's legislatively established member composition is designed to make it a body with the appropriate expertise for these decisions.

NC Water Quality Association

- The EMC should review and approve the assessment methodology for North Carolina's biennial list of impaired waters under section 303(d) of the Clean Water Act.
- The EMC will be better able to objectively assess its reasonableness and legality than the DWQ staff that prepared the methodology.
- The assessment methodology should be put out for public notice with each draft 303(d) list. In addition to being able to comment on the draft list for the year in question, the public should be able to offer comments on the listing methodology that will be used to develop the subsequent list. The best time to get meaningful input on the methodology is when the public's attention is focused on a proposed list of impaired waters.
- The EMC should routinely review controversial and otherwise significant (regional/statewide) TMDLs.

City of Charlotte

- EMC should provide more programmatic guidance, but not be involved in decisions on individual listings.
- EMC should convene hearings to give the regulated communities opportunities for meaningful comment and presentation of data.
- EMC should insist that any methodologies employed by DWQ are open for comment with enough time for the comments to be reviewed and incorporated.
- EMC should work with DWQ to establish more meaningful stakeholder involvement with regard to TMDL priority ranking, model development, and TMDL drafts.
- Commenters volunteered to serve on a committee dedicated to this process.

NC Farm Bureau Federation

- Future assessment methodologies should be reviewed by the Water Quality Committee and approved by the full EMC.
- There should be a public meeting moderated by at least two EMC members.
- A summary of proceedings, including comments received, should be prepared along with recommendations.
- The Water Quality Committee should review the report and make a recommendation to the full EMC for final approval of the assessment methodology.
- After the assessment methodology is approved by the EMC DWQ may begin using the methodology for CWA Sections 303(d) and 305(b).

Duke/Progress Energy

- All future assessment methodologies should be reviewed and approved by the Water Quality Committee and the full EMC.
- A process very similar to the one used permanent rulemaking should be followed regarding notices, comments, and associated timelines.
- EMC members should serve as “meeting officers.”
- A summary of proceedings, including comments received, should be prepared along with recommendations from the “meeting officers.”
- The summary and recommendations should be presented to the Water Quality Committee and the full EMC for its use in deciding whether or not to approve the assessment methodology.
- Only after the assessment methodology is approved by the EMC may DWQ begin using the methodology for CWA Sections 303(d) and 305(b).

City of Durham Stormwater and GIS Services

- There should be a public comment period for the assessment methodology every two years, at least six months prior to performing assessments.
- Following the public comment period, the EMC should adopt the assessment methodology.
- The EMC should request that assessments be made public with the 303(d) list.
- The EMC should approve all TMDLs that are ready to be submitted to EPA.
- The EMC’s TMDL approval should extend to any technical reports and the public comment response summary.
- The EMC should also oversee any TMDLs that involve four or more jurisdictions, and any TMDLs that involve nutrients.

NC League of Municipalities and Municipal professionals (15 central NC cities/towns)

- The EMC should prioritize waters for TMDL development.
- There should be a public comment period for the assessment methodology, months prior to its use.
- There should be a public comment period on proposed TMDL priorities at the same time.
- EMC members or DWQ staff would serve as hearing officers and a summary of comments would be presented to the Water Quality Committee.
- The Committee and the full EMC would incorporate comments and approve the assessment methodology and TMDL priorities.
- The EMC, as part of its oversight, would provide routine review of data guidelines and other decisions used to list waters.