

**MEETING OF THE NORTH CAROLINA
ENVIRONMENTAL MANAGEMENT COMMISSION**

**Raleigh, North Carolina
July 11, 2013
Minutes**

The North Carolina Environmental Management Commission met in the Ground Floor Hearing Room of the Archdale Building, 512 North Salisbury Street, Raleigh, North Carolina. Chairman, Stephen T. Smith presided. The following persons attended for all or part of the meeting.

COMMISSION MEMBERS:

Yvonne C. Bailey	Benne C. Hutson	Mayor Darryl D. Moss	Clyde "Butch" Smith, Jr
Marvin S. Cavanaugh	Steve P. Keen	Dr. Charles H. Peterson	Stephen Smith
Marion Deerhake	Kevin Martin	Dickson Phillips III	Steve W. Tedder
Tom Ellis	Jeff Morse	Amy E. Pickle	
William L. Hall			

DIVISION OF WATER QUALITY:

Ted Bush	Richard Gannon	Jeff Manning	Jay Sauber
Kevin Bowden	Karen Higgins	Susan Massengale	Kathy Stecker
Janice Bownes	Cyndi Karoly	Matt Matthews	Lois Thomas
Connie Brower	Elizabeth Kountis	Cam McNutt	
Amy Chapman	Gary Kreiser	Diane Reid	

ATTORNEY GENERAL'S OFFICE:

Frank Crawley

DIVISION OF AIR QUALITY:

Sheila Holman
Joelle Burleson
Patrick Knowlson
Michael Pjetraj
Angela Terry

DIVISION OF WATER RESOURCES:

Tom Reeder
Tom Fransen
Sarah Young

GOVERNOR'S OFFICE – BOARDS & COMMISSIONS:

Thomas Evins

I. Preliminary Matters

Chairman Hutson called to order the July 11, 2013 meeting of the North Carolina Environmental Management Commission at 9:00 a.m. As Chairman the General Statute 138-15 mandates that I inquire as to whether any members know of any known conflict of interest or the appearance of a conflict of interest with respect to the matters before the Commission today, if any member knows of a conflict or appearance of conflict, please so state at this time.

Mayor Moss: I am going to recuse myself from item 6, 13-21 Model Programs for Jordan and Falls Lake. My municipality falls within the Falls Lake watershed so it's probably appropriate for me to not be part of that discussion.

Ms. Deerhake: Yesterday I mentioned this as well in the discussion of what is today item 13-20 on our agenda. It's a discussion of arsenic. I'd like to participate in the discussion. My employer does support EPA's Office of Air Quality Planning standards with air toxics work, but I do not participate in those projects and have been advised that I can participate without conflict.

Chairman Hutson: Thank you. Of course if matters come up if it appears a conflict arises during the course of that, please let us know and we can take care of it at that time. The minutes from our May 9 meeting were circulated prior to the meeting. Are there any additions or corrections to those minutes? If not, if I could have a motion and a second to approve them?

(A motion by Mr. Tedder and seconded by Commissioner Cavanaugh. The motion passed unanimously.)

Before we get into the agenda items there have been obviously some changes that have occurred since the last meeting. First of all, I wanted to let you know that Dr. Peden apologizes. He couldn't be here. He had some work conflicts today. The Governor has appointed someone to Dr. Peden's seat who's going through the ethics and qualifications procedure right now so we don't get a chance, unless Dr. Peden comes back to a future meeting, to say good-bye to him face to face. The same is true for Dr. Larkin. Also, Dr. Larkin's mother passed away the end of last week so I hope you will keep him and his family in your thoughts and prayers going forward. As with Dr. Peden, Dr. Larkin's successor has been chosen and is going through the procedure. When they complete that those announcements will be made. Also, everybody is in new seats because Chris Ayers has gone to a new career with the Utilities Commission and he has submitted his resignation. I know everybody congratulates him on his new position. We do thank him for his service. There's probably some other changes with the Governor appointments going on that will also occur before the September meeting. So I plan to, at the September meeting we will have an agenda item to formulate and adopt some resolutions of appreciation of service for the people who have come off the Commission. Also, Thomas Evins is here from the Governor's Office. He works on Boards and Commissions. He has asked for a few moments to talk to us about that process.

Thomas Evins: I want to talk briefly and I won't take up much of your time. But I wanted to address the change in chair position. Pursuant to General Statute the Chair position for the EMC is pleasure of the Governor. Governor McCrory has chosen to elect Mr. Hutson as the new Chair. He would like to also extend his gratitude to Mr. Smith for a great job in these past couple of years. He would like to wish Mr. Hutson the best of luck. Good work. Thank you.

Chairman Hutson: Thank you Mr. Evins. I will take the prerogative of the Chair just a second to personally, myself and others who have already joined in, to Commissioner Smith, Steve, thank you for your service as Chair over the last several years. The one thing when we sent out, I consciously decided to be the one to send out the email to the other Commissioners because Steve would not have said anything nice about himself. One of the great things since I have come on here is the level of collegiality and respect that the Commissioners have had for one another despite our differences of opinions. We still get along quite well and do not take things personally. That, I've learned from being in other organizations only occurs because the Chair makes sure that is a priority, and despite all the other policy issues and other things that is most important to me; and obviously, was the most important to Steve. We thank you, for even when we had disagreements it is still fun to be on this Commission most of the time. So Steve I hope others will join me in thanking you for your service as Chair.

One thing I didn't realize until I sat down at this chair, there's a red button here that shuts off microphones which Steve never used and I don't plan on using it either.

Let's move into the formal agenda items. The first is agenda item 13-16. Toya Ogallo from the Division of Water Resources is here to make that presentation. This was heard yesterday at the Water Allocation Committee and following that presentation I defer to the Chairman of that committee, Commissioner Moss, for his comments as well.

II. Action Items

13-16 Request to Hold a Public Hearing to Receive Comment on Brunswick County Public Utilities' Petition for an Interbasin Transfer Certificate

Summary (Toya Ogallo): Brunswick County Public Utilities provides water service to the entirety of Brunswick County. They serve 30,000 retail customers through bulk sales to 11 wholesale customers. They operate two water treatment plants in the county. One is a 211 plant that is a groundwater treatment plant that treats water from the Castle Hayne Aquifer and they also have a Northwest Water Treatment Plant that treats surface water from the Cape Fear River. That surface raw water is actually purchased from the lower Cape Fear Water and Sewer Authority that operates intake just upstream of locking Dam One. Lower Cape Fear WASAS sells water to Brunswick County, Pender County, Wilmington and also some industries as well. Also, again Brunswick County purchases raw water and then treats it at their Northwest Water Treatment Plant. At this time Brunswick County is considering expanding that water treatment plant from 24 to 36 MGD. The additional water use from that expansion to serve customers in the Shallotte River Basin and the Waccamaw River Basin would increase their interbasin transfer. They currently have a grandfathered capacity to transfer 10.5 MGD from the Cape Fear. They are requesting the ability to transfer up to 18.3 MGD. So that's an increase of about 7.5 MGD from the Cape Fear. Actually all of this increase would go into the Shallotte Basin. They're not sending any additional IBT water to the Waccamaw. Rather the future needs of the Waccamaw Basin will be served through a purchase agreement with the Little River of a corporation in South Carolina, the Little River Water and Sewage Company in South Carolina. So the existing customers in Waccamaw will continue to receive service with IBT water but then future customers would not receive IBT water. The IBT statutes that regulate Brunswick County's petition have changed several times since the county submitted its NOI in 2009. In

2009 this petition was subject to NC General Statute 143-215.22L which is the most recent IBT statute that was developed in 2007. In accordance with that statute the county again submitted a Notice of Intent and held four public scoping meetings throughout the source and receiving basins to collect public comment on the scope of issues that need to be addressed, in an environmental assessment. In 2010, session law 2010-155 made Brunswick County's petition subject to GS 143-215.22I which was the previous IBT statute. Therefore the applicant developed an environmental assessment in accordance with that statute and removed growth in the Waccamaw Basin from its future service area in accordance with that. The reason they had to do that is because that session law identifies certain isolated basins that were allowed to follow the .22I statute and the Waccamaw Wasau isolated basin. Therefore Brunswick County decided to serve customers there with non-IBT water with non-transferred water. Currently SB 341 has been proposed and it will make the petition subject to some revised procedures for coastal counties under .22L. That process very closely follows the 22I statute but there are some minor differences with respect to the petition and environmental assessment requirements. That bill has been approved by the Senate and is currently moving through the House. This table compares the differences in the statutory requirements for the development of an environmental assessment. On the left on .22I has the language, an environmental assessment as defined by G.S. 113A-9(1) which is the SEPA regulation statement environmental policy requirement shall be prepared for any petition and .22L has that same statement but then it also goes on to list three things that specifically must be evaluated; (1) is an analysis of impacts, (2) is an evaluation of alternatives and (3) is a description of mitigation measures. The environmental assessment developed by Brunswick County does meet the requirements of both their current requirements under .22I and the proposed requirements under .22L. The preferred alternative identified in the environmental assessment is for the county to use a combination of water sources to limit their interbasin transfer. The first is the expansion of the Northwest Water Treatment Plant as I discussed from 24 to 36 MGD. The second is a strong conservation and reuse program. They actually, in the county have four water treatment plants that are currently permitted for reuse. They have, in particular a 6 MGD reclamation plan that sends water to four golf courses. They are currently also, within the past month, I'm told, began a study to look at the potential of residential reuse within the county.

Yesterday, I got a question about whether any volumes had been identified to quantify how much water might be saved with their reuse and I said that there hadn't been in the EA and that was incorrect. Actually with this study they've identified that the residential reuse may save up to 1.3 MGD and that is an environmental assessment. As I said there's a purchase agreement for customers in the Waccamaw basin from the Little River Company in South Carolina, so those future customers would not be served in the basin transfer water. They are also pursuing a study of aquifer storage and recovery, the technical viability of that technology. The environmental assessment evaluated both direct impacts and secondary and cumulative impacts. The Brunswick County Public Utilities evaluated direct impacts of their increased withdrawal by using the Division of Water Resources Cape Fear hydrologic model. They used that to quantify the effect of their increased discharge and also the cumulative effect of future discharges from public water systems in the entire basin, to ensure that future water needs would continue to be met. One point I want to make is, as I discussed earlier, the intake on the Cape Fear River is actually just above the Lock and Dam so it's not a free flowing river. You wouldn't necessarily expect to see a big difference; you wouldn't expect the withdrawal of additional water behind the Lock and Dam would have a significant effect on flows below the Lock. That is, in fact, what

the hydrologic model indicated. The difference in flows between the current scenario and the future scenario is less than one percent. It was a fraction of a percent. The Brunswick County Public Utilities also used the Division of Water Quality's water quality model of the Lower Cape Fear River Estuary to look at impacts on dissolved oxygen and other water quality parameters to ensure that the decreased flow would not impact water quality and they were able to determine, as it's discussed in the environmental assessment, that those impacts would be insignificant. With respect to secondary cumulative impacts, the environmental assessment discusses mitigation. Due to the fact that Brunswick County falls under the Coastal Area Management Act, there are numerous state and local regulatory measures in place to mitigate the effects of growth. One is a requirement that they develop a CAMA Land Use Plan in Areas of Environmental Concern. They're subject to the 20 Coastal Counties Stormwater Law, and they are subject to NPDES Phase II stormwater rules. The EA received a FONSI in April 2013. This slide discusses the statutory requirement for the development of a petition. IBT statute requires that once the applicant has finished the environmental process they develop a petition and present the petition to the Commission for determination as a formal request of getting the certificate. The .22I statute, the petition requirements are listed here and for the .22L they're the same requirements with the addition of there being some emphasis on demonstrating there won't be impacts to water quality; demonstrating that future needs of public water systems in the basin will continue to be met. As I discussed previously in the environmental assessment they were able to demonstrate those things by using the hydrologic model and the water quality model taking into account all the future demands in the basin, 220-15. The IBT statutes also require that the Environmental Management Commission hold a public hearing to receive comments on the applicant's petition for an Inter-basin Transfer Certificate before considering the request. Therefore, the Division of Water Resources asks that the EMC accept the Water Allocation Committee's recommendation to move forward and hold a public hearing to receive comments on this petition. Thank you.

Chairman Hutson: Thank you Ms. Ogallo. Before we go to any questions, Commissioner Moss, you want to report as to what the Water Allocation Committee's consideration was at this meeting yesterday?

Mayor Moss: Thank you Mr. Chair. I was simply going to say that the Water Allocation Committee did discuss this matter on yesterday, and we are recommending that we grant the request for the public hearing.

Chairman Hutson: Any questions of Ms. Ogallo regarding this matter?

Mr. Keen: I'm just going to make a motion that we move to accept the recommendation.

Chairman Hutson: Motion by Commissioner Keen. Is there a second?

Mr. Cavanaugh: Second.

Chairman Hutson: Second by Commissioner Cavanaugh. Any discussion?

Dr. Peterson: This is likely premature and may come out later if it's relevant. But it strikes that from my driving through Brunswick County and various places that represents a viable place to think of recycling brown water, used water, what not, for golf course irrigation. The golf courses might account there for a fairly substantial fraction of the demand. I guess I would ask at the public hearing but I'm sure others will too, whether that has been contemplated and taken advantage of in any way in the conservation part of what you spoke to us about.

Toya Ogallo: They do currently, the 6 MGD plan that they have the largest recollection plant they have does currently provide water to four golf courses. They've also discussed in the EA that their number of wastewater plants are not owned by the county and many of them also do provide reuse water. They have not quantified that amount but you are correct, it is something that there's great potential to take advantage of. They've been doing that.

Mr. Phillips: Just for clarification. This water purchase agreement they have with the Little River in South Carolina, would they be buying treated water or untreated water?

Toya Ogallo: Yes they would be buying treated water. They would provide it directly.

Chairman Hutson: Other questions? Ms. Ogallo maybe you could go over as we did at the committee yesterday so the full Commission can hear what the schedule is likely after the public hearing or after this action today.

Toya Ogallo: Ok. Well as you know we're required to provide at least 30 days' notice of a hearing. So after getting the logistics together we need a location and hearing officers. The soonest that we could probably hold a hearing would likely be early September, maybe just after Labor Day. Frequently, the hearing officers choose to hold the record open for another 30 days after the hearing. So that would put us until **(audio problem)**

So mid to late October before the record closed. Your last meeting of the year is in November. So it is possible that staff could get a hearing officer report and recommendation, work with the hearing officer recommendations by the November meeting but that would be an ambitious schedule. It's probably more likely that it would be the January meeting this would come back to you. But it's possible it could happen in November.

Chairman Hutson: Thank you. We had problems with the sound system on yesterday so just bear with us as the crackling goes on we will refrain from talking until somebody throws the right switch.

Other questions or discussion on this motion? (Hearing none the motion carried unanimously.) Thank you Ms. Ogallo.

Next we move to action item 13-17. I served as the hearing officer. I'll just give you a brief introduction.

The real issue here is a legal one with regard to the PM2.5, what they call significance levels. EPA promulgated those levels some time in 2009 or so. I can't remember exactly when. It took effect in 2010. The problem is that two court decisions by the Federal District Court for the District of Columbia have struck down those rules and vacated them. So one of the things in the rules is that we have to establish a baseline for PM2.5. We have in the rule, you're about to hear, I've chosen to go with the 2008 baseline. EPA is taking the position that it should be the 2010

baseline even though the Court has vacated the rule and, I checked last night, EPA has not appealed that decision and according to staff EPA has pulled back its guidance on a lot of that rule. So EPA is acting as if the rule is not there anymore and they're going to rework it. So we're in a situation where we're going to include something that EPA has told us, "We think it should be 2010." Hearing officer's recommendation is that, and staff is doing this, as 2008 because that's the law right now. The 2010 does not exist on the books and it may be that EPA doesn't like that when we submit it. But we have to take some action because having this in the rules is a requirement for our SIP approval. So that's why we're proposing it today. There is uncertainty but it is uncertainty not of our making. That's the best way I can describe it. So Ms. Burleson.

13-17 Hearing Officer's Report on Revisions to New Source Review and Prevention of Significant Deterioration (PSD) Nitrogen Oxides (NOx) Significance Level for PM_{2.5} (512) and PM_{2.5} Increment (516)

Summary (Joelle Burleson): I'll just give a brief review of the background on this. As Mr. Hutson just described we did hold a public hearing. He was our hearing officer where the hearing was held January 15 in Kannapolis to take comments on two rules relevant to this issue, 15A NCAC .02D 0530 and 0531. As you may recall the EMC admitted its new source review and prevention of significant deterioration permitting rules back in 2010 to establish the significance level for nitrogen oxides, NOx for fine particulate matter in North Carolina at alternative level relevant to the federal level. That level was 140 tons per year and the basis for establishing that alternative level was data from both monitoring and modeling that NOx is actually a lesser contributor to the formation of PM_{2.5} than other precursors such as sulfur dioxide. When we submitted those amendments to EPA, they commented back to us for approval into our SIP that while approval gave them authority to determine that NOx was insignificant, it did not allow them to establish an alternative threshold of significance for NOx. So that was the first part of our initial rulemaking, the first attempt to try and satisfy requirements for the SIP. So EPA instructed us to adjust to the federal level and that was the first part of what we were trying to do in this particular rulemaking. We've adjusted back to the 40 tons per year significance level that was in the EPA PM_{2.5} implementation rule. In 2010 EPA took subsequent action on implementation and added what are called the PM_{2.5} required particulate increments under the program. An increment is basically the maximum allowable increase in ambient pollutant concentration that an area can absorb. The federal increments were established for 24-hour and annual averaging periods in Class I, II and III areas. The adoption of these federal increments is required in order for the state, any state, to have an approvable SIP. The current date of incorporation in the state rule as Mr. Hutson described was proposed to be updated to reflect the PM_{2.5} increments for the current and annual 24 hour NAAQS established by EPA. So in .2D 530 we were changing both of the significant levels from 140 tons to back to the 40 ton per year default under the federal rules and we were also updating our cross reference to reflect the increments that EPA established in its 2010 rulemaking. Ok. Let's try again. With respect to 2D .0531 sources in nonattainment areas the only change there was for us to incorporate the significant level from 140 tons back to the 40 tons federal default. That's all that was applicable for nonattainment area. During the public comment period, as Mr. Hutson said, there were two court decisions issued on implementation of PM_{2.5} regulations. The first decision from the U.S. District Court Columbia Circuit was on January 4 in the case of Sierra Club vs.

EPA. The petitioners there had challenged EPA's decision to promulgate its PM_{2.5} implementation rules under Subpart 1 of Part D of Title I of the Clean Air Act which contains the general implementation provisions for nonattainment areas in general, rather than under Subpart 4 of Part D of Title I which actually contains more specific provisions for PM₁₀. The court decision remanded the two implementation rules to EPA to re-promulgate them pursuant to Subpart 4 of Part D of Title I of the Clean Air Act. So it didn't actually vacate those. It remanded them to EPA for rework. The rationale for that was that EPA for the court's ruling was that PM_{2.5} is indeed a subset of PM₁₀ and not a new pollutant. That was what they specifically cited in their ruling.

The second court decision was on January 22 and again it was National Resources Defense Council and Sierra Club vs. EPA. In that case the court reviewed the PM_{2.5} increments, the Significant Impact Levels or SILs and Significant Monitoring Concentration (SMC) that were part of the October 20, 2010 rule. The SILs set a de minimis ambient impacts where a source's impact below that level will not be required to conduct more extensive modeling to demonstrate that its emission will contribute to a violation of the NAAQS. The SMC sets a de minimis concentration where a source below that level can show through modeling that its impacts are less and therefore not have to collect additional monitoring data. The court decision in this case vacated and remanded the SILs for further consideration by EPA and also vacated the parts of the 2010 rule establishing the significant monitoring concentrations noting that they felt EPA had exceeded their authority thereby establishing those as defaults for exemption. One person commented. We had a total of two commenters in this public hearing process. One person commented that DAQ or the EMC should delay or revise the October 20, 2010 incorporation by reference date in the proposed rule. One person requested that DAQ not continue rulemaking on adding the significant impact levels and significant monitoring concentration provisions to the North Carolina PSD provisions. The proposed rule was amended to remove the incorporation by reference date of October 20, 2010 and keep the prehearing date, the date that's in our current existing rules of May 16, 2008 from incorporation by reference. To meet the requirements to incorporate minimum elements, we also included in the rules before you explicitly the PM_{2.5} and PM₁₀ increments as indicated to particulate matter in paragraph (v) of Rule .02D 0530 since the increments are a required minimum elements for an approvable SIP and in and of themselves have not been vacated as of yet.

There was one person who asked DAQ or the Commission to clarify that particulate emission in the definition of regulated NSR pollutant does not capture EPA's October 25, 2012 final rule amending the definition of regulated NSR pollutant. We had not picked that up; therefore we did not need to make the change relevant to that or current definition is correct. One person also commented that the proposed rule does not include another change that EPA made May 18, 2011 which was the PM_{2.5} grandfathering provision repeal. That does not reference or the EMC in its rules. The grandfathering provisions interchange where needed in that case at this time. The fiscal impact of the SILs and SMC provisions in EPA's rules had been accounted for in the fiscal note and there was no change necessary as a result of the changes and responses to the comment. In addition, I would note that we received additional comments which were in your attachment to the EMC agenda from EPA. Post close of the comment period we were able to incorporate the minor cross reference changes that they indicated back in March as we had planned to come forward with this hearing record at that time, however, I think it was the day before the committee meeting that we received another set of comments which was where the 2010 baseline issue that was referenced came up. In that instance we didn't feel there was adequate time for us

or the Commission to thoroughly digest that issue and come forward in March. That's why this hearing record was withdrawn at that time. Since that time we have pursued clarification from EPA regarding what the legally correct baseline date should be. We've consulted with the department, General Counsel as well as the Attorney General's Office, the hearing officer and the department's current interpretation is that there's room for interpretation different from EPA's relative to that particular baseline and what is appropriate there. Because the court ruling came out during the comment period and it's now said that EPA was incorrect in treating PM_{2.5} as a new pollutant. It appears to be a bit illogical to treat it as a new pollutant in one instance of the implementation rule and not the other. I think that's probably the best bottom line, simple interpretation that I can give you at the moment and I'd be happy to take any questions at this time.

Chairman Hutson: Commissioner Deerhake do you want to report on what the Air Quality Committee did with this matter yesterday before we get into discussion?

Ms. Deerhake: We heard basically the same presentation and had some discussion about it. I think that at least for me individually there's a bit of uncertainty about the state's position on 2008 vs. 2010. Ideally it would be better if these were two separate motions; one for the NOx level and one for the remainder of it. But it's the hearing officer's privilege and if he prefers one motion, that's fine. I will support the motion and I believe the committee will support the motion as well.

Chairman Hutson: Discussion and questions for Ms. Burleson?

Dr. Peterson: If that was a motion I second it.

Ms. Deerhake: No. It's up to the hearing officer. We've discussed this.

Chairman Hutson: As the hearing officer I will move for adoption of my report for the adoption of the revisions to the regulations as presented by Ms. Burleson.

Ms. Deerhake: I'll second that.

Chairman Hutson: Seconded by Commissioner Deerhake. Discussion or questions? (Hearing none the motion passed unanimously.) Thank you Ms. Burleson.

The next item on the agenda is 13-18. Steve Schliesser from the Division of Air Quality will make the presentation. For the Commissioners benefit this will require two motions. One is a motion to waive our 30-day requirement and that is in Article 7 Section II of the by-laws which provides that except that as provided for this or other sections of the by-laws the Commission shall take no actions on rulemaking issues that have not been acted on by the appropriate committee at a scheduled meeting of the committee which is held prior to a previous Commission meeting. The Commission may suspend this rule by the affirmative vote of at least a two-thirds majority of those present and voting. So there will be a motion for that and if that is approved, a motion on the substance of what is being presented here today.

13-18 Request for 30-day Waiver and to Proceed to Hearing on Inspection/Maintenance (IM) Rules Revision (517)

Summary (Steve Schliesser): The Environmental Management Commission is requested as Mr. Hutson just indicated to approve a waiver of a 30-day rule in one or more public hearings to consider amendments to the exemption of certain motor vehicles from emission inspections. The new statute, Session Law 2012-199 will amend the current rule's exclusion of the current model year for emission inspection to exclude vehicles of the three most recent model years with less than 70,000 miles. This change involves amending four rules: 02D .1002 applicability, 02D .1003 definitions, 02D .1005 on board diagnostic standards, and 02D .1006 sale and service of analyzers. These four rules establish and define which vehicles are subject to the Motor Vehicle Emission Control Standard and which analyzers are suitable for conducting the emission inspections. In addition, this change involves minor housekeeping amendments and repealing another rule, 02D .1009 entitled Model Year 2008 and Subsequent Model Year Heavy-Duty Diesel Vehicle Requirements. Just to clarify the four rules that we're talking about are for light duty vehicles so they're all gasoline powered and not diesel powered. The .1009 rule establishes heavy duty diesel vehicle requirements referencing California regulations as a backstop to potential weakening or delay of the federal standards pending in 2004 when that rule was established. However, the equivalent federal standards were not weakened or delayed and were put in place. As a result, the state rule, .1009 is duplicative and no longer necessary.

DAQ identified the need for the above rule amendments in order to comply with the new Session Law statute that reduces the regulatory burden on many vehicle owners while still meeting federal air quality standards. DAQ in coordination with the Department of Motor Vehicles evaluated the potential impacts of exempting these motor vehicles on emission levels and air quality and determined that the exemption would not have a negative effect on air quality or on EPA accepting the SIP provision. A higher compliance rate than in previous modeling was used because recent data shows a higher rate has been achieved since the 2008 statute started the electronic authorization program, otherwise known as e-sticker.

There would be substantial economic impacts from the revised statute, but the rule itself has no impact beyond that created by the statute since its purpose is solely to align the related rules with the new statute. All we're doing is just following the direction of the General Assembly. Although future estimates show revenue losses to state government, DAQ as well as DMV expect to be able to absorb these losses, primarily as a result of offsetting these losses through the expected growth in the number of vehicles subject to emission inspections. The proposed rule changes conform to the principles of Executive Order 70 by reducing potential burden on the regulated community and making the rule language easier to understand. A waiver of the 30-day rule is requested to allow the opportunity for the rule to become state effective under the Administrative Procedure Act by January 1, 2014 which is the earliest effective date for the implementation specified in the statute.

So our Director recommends that the Commission approve the waiver, proposed rule amendments and the fiscal note along with authorizing a public hearing on these items, and that the Chairman appoint a member of the Commission to serve as a hearing authority. To help put this in context, half of the states in the country already have a program such as this. Several of them have exempt vehicles up to six years old. What's being proposed is changing our one year to.....(audio problem)

But we don't have some management approval from OSBM yet. We sent it over about a month ago and because of other matters they're still yet to approve it. They haven't disapproved it but they just haven't approved it. So we're asking approval to proceed, contingent on OSBM management approval of the fiscal note. One final comment as pointed out yesterday, there's a very small typo in attachment B, page two, line nineteen. (audio problem)

Chairman Hutson: Thank you Mr. Schliesser. Ms. Deerhake as this was considered at the Air Quality Committee meeting yesterday, if you could report on their consideration and recommendation?

Ms. Deerhake: Thank you. The committee did review this, not only the substance of the rule but also the 30-day question. We also discussed the fact that there was not the final management approval of the economic assessment. However, the committee decided to go ahead and refer it to the full Commission today, not only for the 30-day waiver but for the vote contingent upon the management of OSBM. Assuming that the management does not make any substantial changes to the economic analysis, we decided that it would be the decision of the EMC as to whether or not they choose to vote on it today prior to management of OSBM's approval.

Chairman Hutson: Thank you. Any questions of Mr. Schliesser on the substance of the proposal? Well I will entertain discussion or a motion with regard to the 30- day waiver.

Dr. Peterson: I move that we waive the 30 day waiver on this matter so as to move forward by will of the General Assembly in a timely way and the light of the public interest in doing so. (Second by Commissioner Martin.)

Chairman Hutson: Any discussion?

Dr. Peterson: I have a question for Marion. I find it a little bit strange, the logic that this has no economic impact. The General Assembly identified the changes that we should make in this program. But those, as I understand it, aren't changes until we make them and replace the old rule with the new rule. Yet the economic impact was judged as zero because we were just picking that guidance and implementing it rather than going through an assessment of what our implementation would result in, in the way of benefits, if you will of not doing the car inspections as regularly. Because the economic part of it is the one that is still hanging, did we anticipate any potential for reinterpretation in this direction that I'm going in that and pass two motions; one that has this economic assessment and one that anticipates changing that and not accepting that the General Assembly was the cause of the economic gain as opposed to the Commission's rules.

Ms. Deerhake: I do not know how staff's opinion of OSBM vs. management opinion could vary on this and whether there is a risk that the content will change in terms of the economic benefits. I'm sure that staff could much more inform you on this than I can. In looking at the economic assessment there are dollar values in there for benefits to the driving public. I think it's about sixty dollar savings per year. There's also discussion of the impact on the business sector that provides inspection as well. But I believe the staff reported that they estimate that it will be offset by the population increase and the increase in demand for additional cars getting

inspected. So it all balances out, if I understand correctly in terms of the impact to the inspection sector. But I will let them speak about that.

Mr. Schliesser: We're expecting that to be six or seven million dollars a year. (audio problem)

Ms. Deerhake: (audio problem) in line for implementation if we held off voting until we receive the OSBM management approval.

Joelle Burleson: Simply under the timing allowed under the APA we wouldn't be able to make the January 1 date, which is the ideal earliest implementation day within the rule. At this point we're trying our best to continue further action in the department to get us as close to that as we can, at least with the state effective rule. There are other components of approval that have to occur before this actually gets implemented. But that's been accounted for in the fiscal note application.

Chairman Hutson: Other questions of staff regarding this? We have a motion and a second first on the 30-day waiver. Any discussion or questions regarding that motion? (Hearing none the motion passed unanimously.)

Now I will entertain a motion with regard to the actual proceeding to hearing rules revision of the IM rules.

Ms. Deerhake: On behalf of the Air Quality Committee and their review yesterday, I move that the proposed rule proceed to public hearing contingent upon OSBM management approval that has no substantial change to the current package.

(Second by Mr. Hall.)

Chairman Hutson: Questions or discussion regarding that? Ms. Deerhake had consultation with counsel what if you would agree, if the second would agree to proceed to public hearing and approval of the fiscal note subject to no substantial changes to the fiscal note by OSMB.

Ms. Deerhake: Thank you for that additional comment. Yes I agree.

Ms. Bailey: I have a question about how that works procedurally. Does that mean before it goes to public hearing and we'll be waiting for the answer from OSBM?

Frank Crawley: One of the requirements before the proposed rule can be published in the Register is that there be an approved fiscal note. So the thing that's tripping up immediately going and publishing the text of the ruling and commence rulemaking is getting OSBM to approve the fiscal note.

Chairman Hutson: We are pushing this now because today is the publication deadline for the next North Carolina Register. We're not going to meet that. The next one is July 25 which will allow us to get enough time for the rule to be published, hearing to be scheduled sometime in September and all likelihood here in Raleigh. For the September hearing to take place we're

going to have to meet that July 25 date, and that means we need OSBM approval by the 25th. If I misstated that staff, please correct me.

Further questions or discussion on the motion? Hearing none the vote was unanimous.

Thank you.

The next is item 13-19 which is once again a request for a 30 day waiver and to proceed to hearing.

13-19 Request for 30-day Waiver and to Proceed to Hearing on Air Toxic Rule Revisions (519) and Asbestos Acceptable Ambient (AAL) Correction (518)

Summary (Patrick Knowlson): First, I'm here to request a 30-day waiver to the air toxics rule changes pursuant to Session Law 2012-91. The reason we're asking for this 30-day waiver is that part of the session law outlines the efficient use of division resources and many of the changes that are recommendations in this rule package help the efficient use of the division. This whole process had been on for approximately ten months. We had a stakeholder process to discuss recommendations that the staff came up with and also to seek input from interested parties, both industry and environmental, on any additional recommendations they would like to see. Those were put together in a report to the Environmental Review Commission and presented on December 1 of last year. Then from there we took the recommendations, drafted the rules and presented it again to stakeholder groups in March 20 of this year. From that process we again took comments, made a few rule changes to the draft and then we are here today to present those draft rules to go to public hearing if you grant the waiver to the EMC rules.

In this presentation I've used a number of acronyms and you can refer back to them if you recall what they are. The summary of the Session Law 2012-91, Section 1 exempts sources subject to certain federal regulations. It also codifies the director's call provision. Section 2 requires the rule amendments to implement the Section 1 changes and also any recommendations from Section 3. Section 3 requires the Division to review the rules and their implementation. Section 4 requires the division then to report back to the ERC in December of 2012, 2013 and 2014. Section 1 exempts sources from the following federal regulations: the national emission standards for hazardous air pollutants (NESHAPs) in 40 CFR Part 61, the MACT standards in 40 CFR Part 63, the GACT standards in 40 CFR Part 63, and sources subject to a case-by-case MACT 112(j) of the Clean Air Act. The statute also requires that when the Division receives a permit application for a new or modified source that results in a net increase in toxic air pollutants, that it determine an unacceptable risk determination to human health. If it does determine there is an unacceptable risk, the Director makes a written finding and requires a permit application to eliminate the unacceptable risk. For all practical purposes this is the existing Director's call that is in the rules today. Section 3 requires the Division to review our rules and their implementation to reduce unnecessary regulatory burden, increase the efficient use of division resources while maintaining protection of public health. We did, as mentioned earlier do a review of those, of our rules and we presented through stakeholder process and the report was given to the ERC of last year. The recommendations that came out of default stakeholder process, was to develop an additional set of emission thresholds for pollutants coming from unobstructed burden stacks, exempt natural gas and propane fired boilers, exempt emergency engines, eliminate the SIC call, clarify the use of actual rate emissions and remove the term unadulterated from the rules. The first recommendation is to develop additional toxic permitting thresholds or TPERs. When we did that and did the analysis, we found that the new

TPERS were approximately 1.3 to 4.8 times higher than the current thresholds that are in the rules for the stacks that are horizontal or obstructed. The health based standards remained the same between the two sets of TPERs we have in our rules, because they're all based on the ambient air level which are health based standards. This is just the equation that you use to develop the TPERs that were in the table in the rule. These are the parameters used in a certain model, come up with these TPERs. The TPER calculations are a screening tool to allow a source to not have to do complex modeling. They are not required to submit a permit application if below the TPERs.

Our experience as a Division has shown that when a source is above the TPER, it is still many times below our ambient air levels which are the standard that protects public health. Recommendation 2 is exempt natural gas and propane fired combustion sources. Earlier, I said that boilers, what this is during the March stakeholder process, we received a comment to expand from boilers that are lower to combustion sources. In our combustion source definition, space heaters and process heaters are what we would be adding to the list of exempt sources. US EPA exempted certain gas fired combustion units from the federal air toxics rules. Process heaters are exempt from the boiler GACT. Another federal rule also prescribed work practice standards on affected units. Those would be boilers under the boiler GACT. We have found that toxic air emissions from these sources are well below the TPERs in our rule. When we reviewed the combustion sources, we reviewed all the TAPs from these sources, and we found that benzene was the controlling pollutant. We used the spread sheet by calculating the heat input to determine what would be required to exceed the TPER table. That is 450 Million BTU/hr. Recommendation 3 is to exempt emergency engines. These engines are subject to federal subpart and, it's Subpart 4Z. These emergency engines are used temporarily in emergency situations, and they're often small and a few hours of operation. Peak shaving engines are not considered emergency engines. Again, as with the combustion sources, we reviewed all the toxic air pollutants that come from these engines from using diesel fuel. On emission spreadsheets we calculated the size needed to exceed existing TPER. The compound that was controlling was formaldehyde for hourly emissions, 4,843 horsepower is required to exceed that TPER. Recommendation 4 was eliminate the SIC call. This rule allows the Director to call in all facilities under this same SIC code and submit an application to comply with their toxics. The existing Director's call in another rule and session law provides adequate authority to address any unacceptable health risks from any facility. This rule here is just redundant to the Director's call. Recommendation 5 is to clarify the use of actual rate of emissions. Our rule for the TPER rule in that paragraph, there is a term that says permitting is actual emissions or permitted emissions. We are striking the term permitted. All the other rules in the chapter are on actual rate of emissions. The hearing record from when the rule was adopted was clear about this. Actual emissions should be used in making TPER calculations. We're going to clarify the rule and that is what the Division is going to use. Recommendation 6 is to remove the term unadulterated wood from the rules. When the various combustion MACT was developed, the boiler MACT and the waste incinerator rule, defined what is fuel vs. what is solid waste. In our rules, this would conflict with the federal rules. We're going to remove this confusion from our rules so we're going to remove this term from the definition. We identified additional rule changes as we drafted the rules. The 15A NCAC 02Q .0705, the existing facilities rule are not required anymore due to elimination of MACT/GACT provision due to the session law. We're also going to repeal the 02Q .0714 wastewater treatment systems at pulp and paper mills rule due to obsolete requirements and implementation schedules. All those dates are past. The rule is no

longer needed. Also part of this thing for efficiency purposes, the concept for asbestos changes the AAL and TPER was presented as a concept at a different meeting. Calculation error was discovered by the Scientific Advisory Board of our AAL that was in our current rules. We recalculated the numbers presented here on the screen, new AAL and our new TPER table, new TPER, and our 2Q .700 rules. We did not discover any impact due to this change because looking back ten years, we did not find any emissions of asbestos in the state. It was determined no facilities had any impact. A fiscal note was prepared for this rule package. I looked back at the applications that we received in the last ten years, and on an average we received 94 applications to emit air toxics on annual basis. When we looked at the impact of Section 1, part of the statute, we found 34 facilities which have some sort of reduced burden. When we look at the three recommendations made by staff and interested parties, we found that there are 16 facilities with Recommendation 1, 20 for Recommendation 2 and 15 for Recommendation 3 that may have some reduced burden due to our rules. Those recommendations help the efficient use of Division resources to allow us to use our time more efficiently looking at higher more critical activities.

The fiscal impacts mentioned for the facilities reduced their modeling cost, if they would need to run the model themselves, but the statute shifted that burden to the division. We would still need that data to run the model. It also reduces the facility data collection cost. Those savings to the regulated community amounted to \$147,000 per year. The rules also, the statute increased the staff time due to these unacceptable risk determinations. There's a \$6,400 opportunity cost calculated. That's just time that the Division needs to do these risk determinations where they could be using it for activity. Many of the further opportunity costs, most of it was due to the Section 1 which is not discretionary and all the recommendations which were discretionary, and what produces that opportunity cost to this value. I'm here today to ask for the 30-day waiver, approval of the rules and the fiscal note. I mentioned before if you do that, approve the rules we found one error in our rules and that would be in Appendix B on page 8, line 15, and paragraph 25. This is a list of our exemptions and the rule right now reads (when it was submitted to the EMC) "natural gas and propane fire boilers which was our original recommendation, but we developed a whole fiscal note on natural gas and propane fired combustion sources. So we want to substitute combustion sources for boiler.

Chairman Hutson: Mr. Knowlson just so I'm clear. It's to approve the fiscal note and proceed to public hearing. We're not adopting the rules today.

Patrick Knowlson: We're not adopting rules, it is to proceed to public hearing. The fiscal note was approved by OSBM on June 28 of last month.

Chairman Hutson: Commissioner Deerhake this was considered yesterday at the Air Quality Committee meeting. Could you report on what their consideration and recommendation was?

Ms. Deerhake: Thank you. This action is in response to Session Law 2012-91 and it is a significant revision of the air quality standards for air toxics. The committee considered it and had a thorough discussion about the 30 day waiver as well. In the end it's the committee's recommendation to the full EMC to proceed to public hearing along with the 30-day waiver on this package. So on behalf of the Air Quality Committee I make a motion for the 30-day waiver.

(Seconded by Commissioner Cavanaugh.)

Chairman Hutson: I'll open it up for discussion on the motion which is the 30 day waiver.

Ms. Bailey: As part of our discussion about a 30 day waiver is that we didn't want to do this lately, that we felt under the circumstances here there was discussion about on the Legislature that was in place since 2012 that there's a long process to get to this point. Those concepts were what made us feel like we should go ahead and recommend this waiver.

Chairman Hutson: Other discussion or comments on 30 day waiver? Hearing none the motion passed unanimously.

Commissioner Deerhake I'll turn to you now for a second motion.

Ms. Deerhake: I will agree with Ms. Bailey and I acknowledge the extensive work of the department, the division, stakeholders and arriving at this package following the original bill that was introduced for the air toxics revisions. I acknowledge their efforts and thank them for that. I will, on behalf of the Air Quality Committee move that we proceed to public hearing with this package.

(Seconded by Commissioner Bailey)

Chairman Hutson: Discussion on moving to public hearing on these rules and approves the fiscal note?

Ms. Deerhake: And approve the fiscal note.

Mr. Phillips: I have a question. Could you clarify or elaborate on the implications or recommendations for eliminating the SIC call? Practically what was being done that would no longer be done?

Patrick Knowlson: What SIC call does is that it allows the director to group all one, a whole group of facilities. What she can do now with the director's call is call sources that are of concern and not all of them in the same classification code.

Mr. Phillips: But was the previous process set up to identify what facilities may be of concern?

Director Holman: It's my understanding, sort of that the original SIC call is there so if a particular class, standard industrial category needed to be called it could be done in one action. Historically, we have not used that. We have always gone to the director's call and we believe that there's ample authority to call in any facility where we believe there's a problem under the director's call. So we thought this was almost a duplication and this was a way to further simplify the rules.

Mr. Phillips: Ok.

Ms. Deerhake: Just to follow up. Was the Trinity Foam a director's call and not an SIC call?

Director Holman: It is my understanding that was under director's call but I will certainly confirm that.

Chairman Hutson: Other questions or discussion? Hearing none the motion passed unanimously.

Chairman Hutson: The next item is receipt and action on the hearing officers' report on the proposed revision of arsenic acceptable ambient level and Mr. Redmond is here to make that presentation. Mr. Redmond was one of two hearing officers on this. The other was Mr. Ayers. Mr. Ayers has decided to abandon Mr. Redmond for the Utilities Commission so he's on his own.

13-20 Hearing Officer's Report on Revision of Arsenic Acceptable Ambient Level (AAL) (514)

Chairman Hutson: Donnie Redmond is here to make this presentation. Donnie Redmond was one of two hearing officers on this. The other was Mr. Ayers and Mr. Ayers has decided to abandon Donnie Redmond for the Utilities Commission. So he's on his own.

Summary (Donnie Redmond): I'm the Ambient Monitoring Section Chief with the Division of Air Quality and as noted was the sole hearing officer for this hearing. This hearing was to address two specific rule changes. One is 2D 1104 which would revise North Carolina's acceptable ambient level for arsenic and inorganic arsenic compounds from the current annual value of 2.3×10^{-7} milligrams per cubic meter to 2.1×10^{-6} milligrams per cubic meter. The second rule was 2Q 0711 which was to revise the corresponding emission rate requiring permit for arsenic and inorganic arsenic compounds from the current value of 0.016 pounds per year to 0.053 pounds per year. First I wanted to note that normally when the Division of Air Quality comes to you to revise air quality standards we're coming and we're bringing a smaller number than we had before. In ozone we're going from 80 to 75 parts per billion or for fine particles, we're going from 15 to 12 micrograms per cubic meter in order to better protect public health. With toxics and this rule particularly it's a little bit different. The standard is more of a, if a person were to stand and breathe air at the property line for a year, what level of arsenic would cause more than a one in a million increased chance of getting cancer. We're not talking about changing that standard, that one in a million chances. We're not lessening that. What we're looking at is reaffirming what is the concentration of arsenic that would give you that level of protection, that one-in-a-million protection. So it's a little bit different. We're not simply revising the rule. We're just reaffirming what is the concentration that gives us that existing level of protection. I want to relay a few numbers from the Science Advisory Board's risk assessment. Eighty-eight percent of arsenic in ambient air within North Carolina is from background. Of the emissions that are from North Carolina 92% are from point sources. The vast majority of them are from electrical power generation at about 74% with the next largest contribution by pulp and paper mills. By fuel type 96% of the arsenic is burning coal. These numbers may be a little bit dated because they're from the 2008 inventory. They wouldn't change drastically. I'd also like to note that in the Science Advisory Board's risk assessment, they've noted that arsenic levels in North Carolina are decreasing steadily. There are 450 facilities that are subject to current rule. Under the revised rules 313 would still be subject, so about a quarter of the facilities would no longer be subject to this rule.

A little bit of background on how we got here today. The arsenic AAL was set in 1990. It was based on health data that is now about 30 years old. More recently, in the past 10 years or so, the Division has done more monitoring for arsenic, more ambient monitoring for arsenic, and we noted that for most of the monitoring sites, the ambient concentration arsenic was higher than the AAL. That's a problem when your background is higher than your standard. Either there's a health problem or the AAL is inappropriate. So about three years ago the Division Director asked the Science Advisory Board to review the arsenic AAL to see if it was set appropriately or not. Throughout 2011 the SAB met a number of times to review the more current health data and such. It's been 25 or 30 years since the standard was set so there's a lot more data to evaluate. By October of 2011 they had developed a recommendation and voted unanimously to send the recommendation out to public comment. They met twice more after the public comment period to discuss the public comments that were received, and in January 2012 they voted unanimously to forward their recommendation to the EMC. In March of 2012, the recommendation was received by the AQC. This past January the AQC received a draft rule and the economic assessment. In March they requested to proceed to public hearing. It was brought to the AQC and the EMC. The hearing was held on May 14th. My approach in conducting this hearing wasn't to second guess the expertise of the SAB. My approach was to take public comment and review whether or not public comments had been considered during the SAB's review to see if there was any new data that should be further reviewed. At the public hearing there was one speaker. He was an attorney who represented a couple of facilities that were subject to the rules. They subsequently provided written comments. We received written comments from five groups. Three were industry groups, Jackson Paper Manufacturing Company, Evergreen Packaging Company and the North Carolina Manufacturers Alliance. They all agreed with the rule. Their reasons for agreeing with the rule revision included; it was based on more robust data than the original rule. This low AAL could give a wrong impression about the actual air quality in North Carolina. They also noted that this revised rule was consistent with the recent toxics program legislation. We also received comments from two environmental groups, the Southern Environmental Law Center and Blue Ridge Environmental Defense League. They both disagreed with the rule. Several of their comments included; they questioned the studies and the models that were used by the SAB. I went back and reviewed what the SAB had done before, and these comments had previously been addressed in the public hearing that was held a year and a half ago. The SAB had met twice after the public review to discuss those comments and they decided that their methods and models were appropriate for what they were doing. There were also comments that the SAB had failed to consider ingestion of arsenic when they did the review. But in the minutes from the SAB meetings they had twice talked about ingestion, once early in the process and again after the public review about ingestion whether they should have considered it. Some of the things they looked at were the primary way to ingest arsenic was through drinking water and the primary way the arsenic gets into drinking water was the natural process of the groundwater flowing through rocks; also, pesticides that may end up being in well water. That the concentration of arsenic was much higher in groundwater than in surface waters. So the SAB had considered whether they should study ingestion. They decided that they did not need to do that. There were also comments from the environmental groups about we shouldn't undertake this change while the state toxics program was being changed through the recent legislation. The staff within DAQ who would be working on both of these processes did not think that it was going to be a problem to do them concurrently. Some comments from the environmental groups also were that we should consider

background or the SAB should have considered background levels when they were reviewing the arsenic AAL. That would be beyond the scope of this rule change, and in fact, it's probably beyond the scope of the toxics program. It probably would require regulatory or legislative change to incorporate any background levels in arsenic or in any toxics review. There was one item that gave me some pause and this was an item that was brought up by numerous groups. This is the fact that EPA is starting its own review of arsenic and they're early in the process. Environmental groups suggested that we should wait for EPA to finish their review. Industry groups suggested that we should not wait. EPA is early in this process and they're looking to finish it by 2016. So I considered what might be the different outcomes of EPA's review. Worst case depends on your perspective. But it could be that EPA's reviewing a lot of the same data that the SAB did, may come to similar results and conclusions. It could be that EPA's review gets delayed. It's not uncommon for EPA to be late or to miss deadline. Sometimes technical work takes longer than they expect. Sometimes there's a legal challenge that derails the process and sometimes there's funding issues, and resources get shifted around to higher priorities or whatever. I believe EPA will pursue this in good faith but that doesn't mean that there's any certainty that we would have a review by EPA in 2016. If we moved ahead now and EPA did come up with something significantly different, then we could adjust later. If we wait, if we say we're going to wait until EPA does their process, it could be that 2016 could come and go and there's no sight of when this process is going to be done; so there's that risk.

I recommend approving the revisions based on a number of factors. One is it's not a relaxation of health standards. By definition the new rules are equally protective of public health. Arsenic concentrations are trending down in North Carolina. The largest sources of arsenic in North Carolina are still subject to this rule. If needed, we could revisit the process when EPA finishes their review of arsenic. That completes my remarks.

Chairman Hutson: Thank you Donnie Redmond. Commissioner Deerhake, this was considered yesterday at the Air Quality Committee; if you could report on that recommendation.

Ms. Deerhake: This was not an action item. It was a summary of the hearing officers' report so we did not, as a body take action. I personally have comments but will wait for your open invitation for that.

Chairman Hutson: I'm going to open it for questions of Donnie Redmond or other discussion, or any motions that may want to be made. I'll open the floor.

Mr. Smith: I have one question of Donnie Redmond, and it's related to the ingestion point. Do I understand you to say that there's no atmospheric deposition of arsenic like we see with mercury in the surface waters, I mean?

Donnie Redmond: From what I read from the SAB minutes was the groundwater concentrations were much higher than the surface water.

Mr. Smith: I understand that. My question is a different one than that and that relates to the atmospheric deposition.

Donnie Redmond: I don't know. That's beyond my expertise.

Mr. Phillips: That was related to my question whether the SAB had looked at any studies of atmospheric deposition to reach the conclusion. Evidently that was not a significant concern. Is it fair to say that they reach the conclusion that atmospheric deposition would not be a significant concern, and in terms of increasing the individual exposure?

Donnie Redmond: I don't recall all the reports that they reviewed. But they did discuss whether they should review ingestion and they decided that they did not need to. I don't know the exact process and discussions but they got to that point.

Mr. Phillips: So is it fair to say that...what I know about arsenic comes from Agatha Christie mainly, what I read these last couple of days. But is it correct, or your understanding that the primary source of taking in arsenic is ingestion?

Donnie Redmond: Yes sir, through drinking water.

Mr. Phillips: Ok. The studies on which the SAB reached its conclusions considered only inhalation?

Donnie Redmond: I believe so. Yes sir.

Mr. Phillips: Ok. And they did not look at any studies of the rates of atmospheric deposition and migration from atmospheric deposition in take groundwater?

Donnie Redmond: I don't know if they did or not. I just read that they concluded it's not something that they needed to look at for this rule. I don't know all the details of how they came to that conclusion.

Mr. Phillips: Right. Well I guess those factors, then create a good bit of concern on my part about whether it would be adequately considering the potential, if you're increasing the ambient level of arsenic by the factor nine which I've read, but I don't know if that's accurate. I think it's something like nine, ten or eleven. Therefore, you would have some greater amount of atmospheric deposition but that is not been considered, and the conclusion that this does not actually increase the risk of exposure.

Donnie Redmond: I think their goal was just to reaffirm that one in a million for inhalation, what was the appropriate air concentration for that.

Mr. Phillips: But I would think we would be concerned about ensuring that we're not increasing the risk over one in a million. If we're not looking at atmospheric deposition and increased exposure through ingestion, that we really can't be sure we're not increasing the risk of one in a million.

Donnie Redmond: I wasn't going to second guess their methods. I read that they did consider it. They're the experts in this, their expertise. They did not think they needed to consider that. At public comments period the issue was brought up. When I went back and reviewed the SAB

had discussed it. It wasn't like, we forgot about that. They had discussed it and decided it wasn't something they needed to pursue.

Ms. Bailey: There were a couple of things that you were saying and I was looking at the summary. I understand that this is part of the permitting program with how you look at facility emissions in the air plus the absent point sources. That's part of what we're looking at in here, right?

Donnie Redmond: Yes ma'am. If their emissions are over the TPER, this level, then they have to demonstrate that they do not violate the AAL, typically through the modeling or whatever.

Ms. Bailey: Right. And so you said a few different things. So there's one part of it is that you said you remembered the ambient air quality in the monitors throughout the state, arsenic is below that level?

Donnie Redmond: The concern is that at our ambient monitors the arsenic has been above the AAL. So that was the reason for looking at this in the first place. This AAL has been around since 1990; it's only been the last ten years or so that we've done more extensive monitoring and it was discovered that the arsenic in the air was higher than that AAL. That was is it a health problem or is it a problem with the AAL? That's when the director asked the Science Advisory Board to use their expertise and tell us if this AAL was appropriately set. They reviewed the health studies. They recommended a different AAL that would be equally protective of public health.

Ms. Bailey: Ok. Then it says here DAQ is determined that there aren't any facilities?

Donnie Redmond: Well for arsenic there are 450.

Ms. Bailey: That's what I was looking at. So there's a quarter of them that aren't going to be or going to be taken now.

Donnie Redmond: Right.

Ms. Bailey: But what kinds of facilities are they that are not going to be subject to the review.

Donnie Redmond: The largest facilities are still going to be in, the power plants and a lot of those. I'm thinking some of the concrete plants and asphalt plants that would drop out because of their emissions would be below that threshold. So they wouldn't have to do the modeling any more. Because their emissions are below the TPERS from the previous model, the standard is based on if your emissions are this rate, below this rate, then you are not going to exceed that concentration at your property line. So if emissions are low then the assumption is it would also be low concentration. I'm not sure if that's clear or not.

Chairman Hutson: Ms. Burleson do you have something to add to the questions that are pending?

Joelle Burleson: If I may, I think that there are a couple of key points that I might be able to provide a better clarification on relative to the program, not necessarily specific to the question that Ms. Bailey just asked, but to some of the previous points. If you're satisfied with the answer I would be happy to do that.

Ms. Bailey: I am satisfied with the answer, but actually I feel like I can't vote on this based on the sources that would be exempt because you mentioned concrete and asphalt. Those are my company's interests.

Chairman Hutson: If you can make the choice to recuse yourself, that's your decision.

Ms. Bailey: I think I will have to recuse myself. I didn't realize that until just now.

Chairman Hutson: No problem.

Ms. Burleson: The two fundamental points regarding the program is that when the SAB is developing an AAL they are setting an inhalation risk and acceptable risk for inhalation from ambient exposure, and it's an incremental value. So they typically are not looking at deposition and impacts from other sources. They may use studies based on ingestion if inhalation values are not readily available in the data to develop an inhalation value that would represent a one in a million risk typically for carcinogen. But they're not looking at a multimedia standard when they're setting that. I think another key point is that the AALs are not the same as national ambient air quality standards. They are incremental values that individual facilities through the permitting process have to demonstrate that they can meet when they come through to make changes, or when the Division looks at them as a whole facility wide for that pollutant. So I don't know if that helps any or clarifies things, but I just thought those were key points that might bring a little clarity to some of the questions that have been asked.

Ms. Deerhake: I have two or three points but just to respond to the atmospheric deposition. I do want to point out that in the article that was cited by the hearing officer in the report. It's not in the record but it's my understanding we can discuss this article, peer review article. There is a statement that many of the epidemiology studies have reported as significant those response relationships between arsenic concentration in water and incidents of lung cancer, and other cancers. So there is that inhalation link and that lung cancer is the end point for this. I just wanted to raise that real quick. My remarks are reflecting multiple questions, interests and concerns about this. When the committee decided to proceed to public hearing or hear the requests to the Commission to public hearing, around that time we also received information that EPA was about to embark on a review of inhalation risks. So I notified the staff and the staff did put the announcement as part of the hearing officers' announcement at the public hearing, so that the public was aware. The fact that EPA is beginning an inhalation risk review and I'm saying this is secondary information that they may be moving toward a standard that probably will go in the opposite direction of North Carolina's action today. It does give us pause. It's told the hearing officer, he himself gave himself pause about this. But I do believe that this is going in the wrong direction for today. We should wait and see what EPA's actions are. Its two and a half years. We need to weigh the expense of having relief for the industry vs. the public health. That leads me to the comment about the fact that there is a high background level of arsenic in

the state and the fact that because there is a high level and there have been no health effects shown, that we shouldn't be concerned about that. I think that's not a scientifically based statement. It's a subjective statement. There has not been a formal state study of the ambient exposures and the health effects. We do not know whether the public is suffering from these higher levels or not. While setting arsenic AAL and the TPER is higher the AAL is still calculated to represent the same risk increment and the same level of health protection as before. That was a statement from the hearing officer. I disagree, in that, the method that was used to calculate the health effect or the one in a million goal is strictly a method, a statistical method. There really, in my understanding and I did read this article that was cited and it was peer reviewed afterwards. But this article was co-authored by the consultants who came for the SAB and introduced this new method of calculating. Both they, Texas co-author are using the same basic health effects studies that date back to the thirties and forties, the epidemiological studies. It's actually not new subjects being exposed to this pollutant. It's actually a new method of calculating the risks from their exposure, and it's the methodology that was peer reviewed. The co-author, as I said was a member of the Texas Commission on Environmental Quality. They used Texas incidents of lung cancer to help build and input data to this calculation. The SAB used North Carolina incidents of lung cancer as input to the calculation of the same methodology. Again, it's a methodology that was proposed. It's not new epidemiological studies. It's the methodology that's in question here today that we are being asked to support a new methodology that, in turn leaves 25% based distinctly of the regulated industry from the reporting and permitting obligations. So I ask that the Commission consider that. It's the methodology that's being decided upon today, not the evidence of new health effects data. There was also a statement that the AAL was overdue for review. I agree and have proposed a proponent of periodic review of AALs, that they do need routine review. However, in this case as I said I don't believe there is a new health data. I respect the agency and the SAB's review of this, but I do agree that there should be at the introduction and consideration of atmospheric deposition, and its cumulative effect on lung cancer and incidents. I believe I will stop there. I will say, though one more thing is that Texas appears to be the only state that has used this new methodology. There are other states that have air toxics regulations. I would be interested to know if they are moving toward doing that too. Again, we will be one of two states that have tried this new methodology. Thank you.

Ms. Pickle: Commissioner Deerhake answered many of my questions including whether any other states in the country were using the methodology that North Carolina is proposing. As I understand we would like confirmation from staff that the only other state in the country utilizing this methodology to get to a higher AAL which would result in increased arsenic conditions or allow increased arsenic conditions within the state is Texas. Is that true to your knowledge?

Donnie Redmond: That's my understanding. Yes.

Ms. Pickle: It says in the hearing officers' report the SAB conducted a risk assessment. Did they conduct an actual risk assessment of arsenic within the state? Or did they simply review exposure levels and data related to health effects from arsenic?

Donnie Redmond: I wasn't involved in the process. I'm not sure what they did. As I cited and my purpose wasn't to second guess what they were doing but to look to see if there were things that should have been included that weren't.

Ms. Pickle: I think we've covered multiple questions but we will just reiterate I don't see any evidence that all exposure pathways were evaluated for a likely increase in arsenic emissions within the state and considering within the hearing record itself on page 454, when it looks at populations with potentially high exposures. It talks about exposure pathways from all environmental media including soil, water and air. Because of the likelihood of high exposure for general population near sites where arsenic is produced or used or disposed of, it's hard to imagine without an adequate risk assessment or an exposure pathway evaluation that we have adequate understanding of the likely or possible risks to the general population.

Dr. Peterson: I've got two questions. The first is a process one. Are the conclusions and recommendations of the SAB subjected to peer review in the final process of their presenting that to our Commission and other similar bodies?

Donnie Redmond: It went to public comment. I don't know if it's peer reviewed or not.

Dr. Peterson: Well public comment is a lot different. I'm thinking of people like Linda Birnbaum. She may be on the SAB. She's one with the EPA Environmental Health Division who has helped us before with not heavy metals, as I recall, but with organic toxic compounds. So that's a little bit of a concern. It's certainly something that we could do if we felt that we were making a major change in methodology on our own and solicit that sort of peer review with independent agents. The other question I have is the following. I think I know the answer because of what you said that this was looking at the inhalation and that was the major issue that was guiding this. You also said that surface waters have lower concentrations of arsenic than groundwater. I always flip back to our obligation for protecting human health by protecting fish tissue. My question is since arsenic and mercury have a lot of similarities in the general table of elements and in their behavior and they both have a toxic affect, I wonder whether there's any interaction between arsenic levels and mercury levels such that if arsenic goes up in fish and mercury stays the same, is there still more net toxicity if having increased arsenic ingestion by fish that shows up in the tissues that are eaten by people? And I don't know that. I'm not trying to be, you know proposing gasterly? things but it seems like a reasonable question based on the chemistry and biology of this situation.

Donnie Redmond: Is that a question for me?

Dr. Peterson: It is.

Donnie Redmond: I don't know.

Dr. Peterson: I would offer that it would be useful given the changes that will occur, especially if it's high as nine fold to tenfold and as Dickson was suggesting, that's something that we ought to look at it before we make it even more difficult for municipalities to discharge because they

would have to lower mercury even further if that were the outcome. As I said I don't mean to put a scare in this, but it seems to me the topic of appropriate consideration.

Ms. Deerhake: I would just respond to both of the last two comments by Commissioners. I compare the text of the peer review oracle to the SAB report and it appears that there's a lot of very similar text in conclusions drawn. So my speculation, I should say speculation is that the SAB relied heavily on the same input that the people who proposed the new methodology to the SAB used to build their report. The basic difference is that the SAB used North Carolina lung cancer incidents data as opposed to in this report. They used Texas incidents data.

Mr. Smith: I decided yesterday at the Air Quality Committee that I was going to say something and today, since it wasn't an action item on the Air Quality Committee. I don't say this by way of trying to persuade anybody to a position, but mostly to try and explain myself for having been silent on this question all along its process and now deciding to speak. As this has worked its way through the Air Quality Committee and went out to public hearing, and so forth, I paid some attention to it, but not detailed attention to it. I now realize or realized yesterday that I was assuming that this was another one of those examples in which the science had gotten better and that we needed to change our regulations to comport with improved science. It began to dawn on me yesterday at the Air Quality Committee that's not the case here. This is something different. I listened carefully to Mr. Redmond's presentation yesterday and realized that I needed to do some homework that I should have been doing earlier, but I didn't. But the one thing that I walked away from, there's two things I walked away from yesterday satisfied about. One was not convinced by Mr. Redmond's good layout of reasons why we should not stand aside and see what EPA does and this very same process, rather than charge ahead like we're considering doing. The other thing I came away convinced was that I needed to do some study; so I did that, a fair amount yesterday and some last night and this morning. My conclusion, and then I'll give you my reasons is I can't support either of these motions. I don't see any reason for the waiver of the 30 day rule. I think it's not called for.

Commissioner Hutson: Commissioner, excuse me. There is no waiver on this one. This one is for just whether or not to accept the hearing officers' report and adopt the rule.

Mr. Smith: Great. I feel a little better. Secondly, I don't think we need to be taking the action that we're doing. The SAB, as I understand it is an advisory group for us, not a decision making group for us. I trust them because they're scientists as you all very well know. I'm not. But I'm not in a position to say the SAB got this one wrong. But I'm certainly not convinced that they got it right at this point. It's not because the science got better. It's because they changed the methodology and I'm troubled. I tried to ready about that methodology in the last 24 hours. None of that leads me to the conclusion that I should be satisfied with that change in methodology. If we didn't change the methodology I don't think we'd be talking about changing this standard, even though it's 30 years old. So that's one thing. I'm not satisfied that the SAB got it right but I'm emphasizing that I'm not saying that they got it wrong because I don't want Reggie on me about that quite yet. Secondly, I think its way premature for us to do this. I think we should see what the EPA does. Third, I'm not at all satisfied that the lack of consideration of the question about atmospheric deposition and the question of ingestion should have been put aside. I'm not at all satisfied that's the case. So for all those reasons I can't support this.

Mr. Tedder: I have some similar concerns listening to some of the discussions yesterday. I think Donnie did a great job trying to get us the information. I do trust the SAB evaluation but I do have a few questions. I think what I would probably prefer myself was that we table this if possible. I'd like to do some more evaluation to get some more answers before we actually vote on this one way or the other. So I'm actually making a motion to table.

(Mr. Morse seconded.)

Chairman Hutson: Motion by Commissioner Tedder, seconded by Commissioner Morse to table consideration of this matter until the September meeting. We would postpone consideration of this matter until the September meeting. So it's a motion to postpone further consideration of matter until the September meeting. It's been moved and seconded.

Mr. Morse: Would it be appropriate during this period of time for the Commission to ask our Water Quality Division, our Water Resources Division to step in to this discussion and give us their recommendations and their thoughts as to this type, what impacted the arsenic levels would have and their understanding of water quality? Would that be appropriate?

Chairman Hutson: Don't know if appropriate if the right word or not. I don't think it would be prohibited for us to do that, would it?

Frank Crawley: Well this is a rulemaking quasi legislative process that you're getting indulged in and certainly information gathering is primary consideration at this Commission before it makes a judgment decision.

Chairman Hutson: I just asked counsel. We could continue to collect information and make that part of the record that would support if we decided to adopt the rule.

Frank Crawley: Think you can do that.

Mr. Tedder: Just as a follow up I think just the fact that Mr. Morse mentioned the question, that's obviously information that we could try to gather and also staff be advised that this is what we ask at the next discussion concerning water quality.

Mr. Morse: My understanding of this discussion is we've had it. That's one of the concerns that I take on about the ingestion issue, especially with water quality and I'd like to know what our Water Resources Group thinks. I'd also, maybe would it be important for us at the next meeting in September to invite the Chairman of the advisory group to come speak to some of these questions that need, but not have the answers to but maybe they could shed additional light on to whether or not they actually did look at this issue, that they didn't think it was an issue. Could we get somebody from that Commission here?

Chairman Hutson: Director Holman, could you respond to that question, please?

Sheila Holman: Yes. Thank you. Chairman Hutson that was one recommendation I was going to make. I think it would be helpful to have Dr. Thomas Starr here to help with answering some of these questions. I apologize that we didn't think of that before today and obviously didn't anticipate the level and scope of questions that came up. But I think that deferring the decision and having Dr. Starr here as well as gathering additional information is a good path.

Ms. Pickle: I'm curious as to how we're going to proceed to gather additional information. We had asked the Science Advisory Board and their review of the AAL to do that. It's truly just a process question. Where are they going? Are we giving them the direction to look for additional information and to come back? Or is the motion more for us to review the record more than we have in front of us? What are the sources of potential additional information and are they prepared to get us that information in advance of the September meeting? I have a concern about whether or not the additional time is going to turn, what rocks are we overturning? What rocks are we turning over in the upcoming two months that would provide additional information?

Chairman Hutson: Mr. Tedder you made the motion. Are you going to respond or Commissioner Morse? Either one of you.

Mr. Tedder: My intent is that I want to find more information myself, actually go back and review some of the information that the SAB evaluated and their findings. I think it's great to have someone from the SAB here to explain some of the requests that we had today, what was reviewed, what was not reviewed and make our decisions from that as opposed to asking the SAB to do additional work at this time.

Mr. Morse: It was not my intent to ask the SAB to do additional research. I'm curious as to the questions that we asked the director this morning as to whether or not they looked into this information and we don't know. My basic questions would be repeating those questions and seeing what the response is. Did they look at ingestion and if they decided that it was an issue, why did they decide it was not an issue or did they do studies on it? Did they do any comparisons? Were they any studies inside that they used, not to create new information?

Chairman Hutson: Other comments or questions?

Dr. Peterson: If it's not to create new information on which we make a decision I don't know why we're delaying. Secondly, it certainly doesn't address the issue of what's the urgency and why don't we wait until 2016 and have the EPA process in hand. Admittedly, we can't count on it being done by that time, so that's a concern. I'm not sure; please explain it a little bit more. I've never attended an SAB meeting. Are they constituted to have the expertise to examine ingestion of materials such as having metals through diet and through water uses? I had thought they were largely focused on air issues but I'm ignorant.

Donnie Redmond: I haven't attended one of their meetings either but they do have a charter that defines the qualifications, PhDs. in this, PhDs in that, medical doctors. I don't know specifically about that.

Dr. Peterson: It's possible that we're asking them a question that goes beyond what they typically analyze and address. If that's true or even if it's not true it strikes me that there'd be additional information we'd be hoping to get by their attendance or by something...

Mr. Morse: I'm not suggesting that can't lead into that request. But I think initially we're asking questions of an organization that's not here to represent themselves, and that has a lot of importance to me as to how I'm going to vote on this decision.

Sheila Holman: Thank you Chairman Hutson. I can provide some specifics from the Science Advisory Board charter relative to the membership. "There needs to be minimum of one doctoral level epidemiologist or public health scientist with strong background in bio-statistics and then one doctoral level toxicologist or public health scientist in the private sector who has at least five years of experience in the study of risk assessment. A minimum of one doctoral level toxicologist or epidemiologist employed by either the state or federal government who has at least five years of experience in risk assessment. A minimum of one doctoral level scientist having a minimum of five years of experience in exposure assessment to toxic air pollutants and a minimum of one licensed medical doctor whose current practice is in the field of occupational or environmental health or pediatric medicine." There are a total of eight members.

Chairman Hutson: Other questions? I have one question that while I'll support the tabling motion is when EPA goes through its re-evaluation, will they be looking at ingestion pathways through groundwater, surface water and the like. The reason I raise that question is that federal EPA does not set groundwater quality standards and I want to know what is within the scoping of what EPA would do because we may be waiting in a couple of years for a standard to come out that still doesn't address the serious concerns that were raised by people today of multimedia exposure? So that is one area outside of my expertise and I agree with Commissioner Smith. The last time this was presented EPA had already said a number should go higher based on the science when we did the 1-1 DCE groundwater standard. They had done an IRIS updated toxicological evaluation. My question is if we wait and get answers; get a number that answers the concerns and questions that were raised today.

Mr. Smith: I don't have a response to what you just asked but what Dr. Peterson asked I have this additional information. The SAB's former name is the Secretary Science Advisory Board on Toxic Air Pollutants and it is chartered the Board's primary responsibility is to assist potential human health effects associated with the North Carolina Toxic Air Pollutants and recommend a range of AALs likely to safeguard against adverse health effects. So it appears that its air focused in its charter.

Ms. Deerhake: I will add that in recent years they've also been asked to support evaluation of groundwater standards from the toxicology standpoint. And then I'll just add at EPA they're charged typically with integrated risks information system and the panels of the SAB that lead to data that's put into that system. They typically divide their work into developing an inhalation unit risk factor and oral or ingestion unit risk factor. They're not charged with developing emission standards. It's just the basic risk factor.

Chairman Hutson: Which leads some other questions I have. What is EPA doing? Because what was described was the development of EPA evaluating the AAL as opposed to what you just described as an IRIS type toxicological evaluation.

Ms. Deerhake: They evaluate the risk factors on which the emission numbers are based.

Dr. Peterson: This might be a question for Marion because she's so well informed or Steve also. Did this group contribute or create our risk numbers associated with mercury ingestion in fish by pregnant women and other sensitive groups in the population? In other words, all that information that we've had, it seems technically sound and I just wondered if this is the group that created that?

Ms. Deerhake: The North Carolina SAB?

Dr. Peterson: Yes.

Ms. Deerhake: I don't think so.

Mr. Phillips: Yea, I was wondering who did that. I was going to observe to really evaluate this we need to get evaluation from that angle as well, because it's not only talking about the water. We're talking about the food chain.

Chairman Hutson: Other questions or comments? If not, I'll call the question on the motion. The motion is to postpone consideration in this matter further until the September meeting subject to providing more information and having at the September meeting representative of the Science Advisory Board to address questions that we have. All those in favor of the motion signify by saying "I". Opposed? The motion passed. The matter for further consideration is postponed until the September meeting. There was one opposed.

Donnie Redmond: Thank you.

Chairman Hutson: For the September meeting I would encourage Commission members to forward to me or Director Holman questions or other information in addition to what was identified today that you would like to see addressed in this matter. I prefer we do that sooner rather than later because it will take some effort to respond to some of the questions that are out there. So if you can get those questions, now that this has been us by a week from tomorrow, the 19th, it would be preferred. I'm not going to preclude them after the 19th. But the sooner we can get them in, the better.

Ms. Bailey: I just wanted to let the record show that I recused myself.

Commissioner Hutson: The record should reflect on this matter that Commissioner Bailey recused herself in, I take it, that recusal will be going forward on further consideration of this matter?

Ms. Bailey: Yes.

Chairman Hutson: Ok.

Mr. Morse: Part of my recommendation or one of my requests is that we go ahead and get Division of Water Resources involved and have them also give us their opinion to the questions that have been raised today, their thoughts on inhalation.

Chairman Hutson: Ok. Between Director Holman and me we'll make sure that gets to Director Reeder.

Dr. Peterson: I'm not convinced it's in Water Resources purview what you asked. I think it's in Water Quality purview, so I want to make sure. Mr. Reeder doesn't seem to be here and I don't know. I saw Dianne but nobody is sitting up at the table for Water Quality. I thought that I ought to speak to make sure this gets passed to Water Quality.

Mr. Morse: Do we still have a Division of Water Quality? I thought that it was all combined. That's why I referred to Water Resources but I'm basically talking Water Quality. But I wanted to be correct in the nomenclature.

13-21 Model Programs for Jordan and Falls Existing Development Stormwater

Chairman Hutson: The next matter is item 6 on the agenda, matter 13-21, which is a presentation on the model programs for Jordan and Falls existing development stormwater. This is John Huisman. Let me just have a little explanation of what why this is before us. What is before us is not a rulemaking. This is a plan called Guidance Document. But under the statute with regard to Jordan the agency is required to present this plan to us by July of this year. We are then under the statute either to approve it now or return it with comments to be further addressed. The statute, though, does provide that by the end of this year we have to take action on the Jordan plan as John will explain. There are not the same requirements for the Falls plan. But what we'll hear today is our action to be taken is either to approve or to return with comments on the plan and have the agency bring it back for further action on that. So with that predicative of this is and the context to consider I'll turn it over to Mr. Huisman.

Summary (John Huisman): As pointed out I'm here today to present to you the existing development stormwater model programs for both the Falls Lake and Jordan Lake watersheds. What I'll do today is I'll quickly give an overview of the existing development rule requirements for both watersheds, provide an overview of the model program document and the supporting information for the affected parties. I'll also discuss the ongoing initiatives to both expand the tool box of available nutrient reducing measures and complete elements of the model program. I'll then conclude with staff's recommendations and entertain any questions that you may have. I also wanted to point out that Mr. Forrest Westall, the Executive Director of the Upper Neuse River Basin Association, is here today in the audience and I understand that he has already spoken to you all about speaking at the end to give some perspective from the local government's perspective from this process and help answer any questions from their perspective as well.

As you know with nutrient management strategies in place in both the Jordan and Falls Lake watershed and as a part of those management strategies there's a rule that calls for local

governments in state and federal entities to achieve reductions from their existing developed lands, by implementing low reducing measures on those lands. There are staged implementation approaches in place for both Falls and Jordan. They vary slightly. I will just kind of highlight the differences here. In Falls they're broken up into two stages. The first stage of the existing development rule is achieving reductions back to the 2006 baseline levels by 2020; so essentially offsetting any new loads from development that happened since 2006 and before they implemented their new development stormwater rules. In Stage Two that's where the overall percent reductions need to be achieved, the 40% nitrogen and 77% phosphorus and they're to be achieved by 2036. In Falls the implementation is triggered by the EMC's approval of the model program. Once approved local governments have six months to develop their own local programs, submit them and begin implementing nutrient reducing measures at the same time. Things are handled differently in Jordan where Stage One has already been completed and that was mainly administrative and programmatic measures like developing illicit discharge detection, mapping of stormwater systems and identifying BMP retrofits. In Stage Two there're called to achieve an eight percent reduction in nitrogen and five percent in phosphorus, that isn't triggered until, there's ongoing monitoring that's going on right now in the lake. Under the session law and the rules there's monitoring triggers that if the lake isn't meeting standards by 2014 in one watershed and 2017 in the other two parts, that triggers them having to develop their local programs and submit them to DWQ for approval, and then begin implementing measures. So their implementation of load reducing measures is further off in the future. One thing I didn't mention yesterday and I'd be remiss not to talk about today is that there is a bill floating around over at the General Assembly right now that's maybe being assessed today in committee that could potentially delay Jordan further in the future. So it's kind of a fluid process and we'll just have to wait for the outcome of that before we can make any future revisions to the model program. But I did want to make you aware that there's that potential for additional delay in Jordan for implementation. With that being said, we have to move forward. What the rules call for today and in both Falls and in Jordan the rules call for model programs to come to the July 2013 EMC. As was pointed out by Chairman Hutson in Jordan the rule also calls for the model program to be approved by December of 2013. There is no such requirement in Falls. It doesn't specify any exact date of when it needs to be approved by.

The model program document is, as pointed out, a guide document to help local governments meet their rule implementation requirements. It's a guidance document to help them develop their local programs showing how they're going to achieve reductions required under the rule. The document itself is broken out into two parts. The first part is the model program itself that outlines the structure and the elements the affected parties have to include in those local programs for the submittal for approval. This is essentially laying out all the information they're going to have to provide for EMC approval. The second part is a companion document that provides supporting information and guidance, technical guidance for them to help them implement those programs. I'll discuss these in a little bit more detail now. So that first part, the model program is really the meat of the document. That provides this local program template that lays out an outline and information detailing what's required of the local governments and state and federal entities to provide in their local programs for EMC approval. It's essentially these two parts. One is the results of a feasibility analysis of the available nutrient reducing measures where they look at the cost effectiveness and available opportunity of the measures to try and figure out what they can implement to get reductions. The second part is an implementation plan based on that feasibility analysis that identifies the types of BMPs and

practices they're going to implement to get reductions, the anticipated reductions they expect to get from those measures and the types of lands that will be impacted by those measures. It also requires them to lay out their implementation schedule in the implementation plan. Along with that the model program includes the methods to quantify the load reduction needs, establishing the reductions that have to be achieved by each of the entities. In Jordan they're using a watershed model. They just established those jurisdictional loads. In Falls we're using the nutrient stormwater accounting tool to establish the reduction needs. That's just a reflection of the different requirements in the two watersheds for Stage One and Stage Two. Also included in the model program is methods for accounting for failing septic systems that's discharging, sand filters, and we also provide a list of available nutrient credits that are currently approved DWQ approved nutrient reducing credit. The second part of the document is that companion document. This is where we provide supporting information and technical guidance to the local governments and affected parties. Things like terms and concepts that are provided in the rules and session law, like what is police power? What is a baseline BMP? Just explaining some of those concepts. We also lay out basic descriptions of the key rule requirements and non-rule language to make it more clear what the requirements are. We describe the process for adjusting allocations and reduction needs moving forward in the event that a municipality or county annexes, additional land within their jurisdiction will have to go through this process to adjust their reduction needs. We also lay out a general description of the process to add additional nutrient measures to that BMP toolbox of nutrient reducing measures they can use to get reduction credit, providing guidance on a trading framework to allow for trading between sources so they can identify cost effective ways to get reductions, and also guidance on program implementation like going out and verifying BMPs are in place, ongoing operation and maintenance of those BMPs, as well as any of the annual reporting requirements that they submit to the division each year to show their ongoing compliance. Also included are appendices that have the rules and session laws applicable to both watersheds and Appendix B is that DWQ proposed process for approving additional load reducing measures. We recognize that moving forward there is going to be additional measures that come up that people want to get credit for and we lay out this pathway for how those measures can get approval from DWQ so they can be added to the BMP toolbox. As I pointed out earlier there is some ongoing work with the model programs. We have been engaging with the stakeholders, both the local governments and the state and federal entities, as we've been developing this document, and a couple of key areas have come up that they have desired to see more increased focus on before the document itself is completed. The most important is expanding the toolbox of creditable measures. The model today contains all the measures DWQ has approved for credit, but the affected parties have identified the strong need to have more measures included in that toolbox that gives them more flexibility as they design their local programs to find the most cost effective ways to get the reductions they're going to be called on to get. Along with that there's a strong desire to have a robust trading framework outlined in the model program. Although we already have trading in place for the other management strategies, it's going to be really important to capture a lot of different nuances for existing development because it's going to be potential trading between point and non-point sources, on-site, agriculture and just identifying and clearing up a lot of questions of who owns credit and how we're going to properly track those credits and make sure it's not double counting. So there's additional work with the stakeholders we have to do on that. There's ongoing work to refine the accounting method for onsite systems. That's long been an interest for these groups and we've engaged different experts in that area, and we have additional

work to do to refine those accounting methods. We continue to engage with the stakeholders on these items and it is going to require additional time to complete these and where to finalize the model program. As I mentioned that expanding the toolbox of measures is really one of the most important of those three. The reason that this is so important to the affected parties is because the more measures that are in the toolbox the more flexibility they have in identifying cost effective means of getting the reductions that they're called upon. They really want to have the most measures possible as they develop those local programs. As a result DWQ and the Upper Neuse River Basin Association have been collaborating by providing joint funding for a project to determine reduction credit for additional measures. DWQ has found some additional money, the local governments in the UNRBA have brought forward money and they've put out an RFQ and are currently considering a contractor to do this work to do the study to establish credit for additional measures to add to the toolbox. At this point the predicted time for completing this work is 24 months and we do anticipate the results of this work going through that DWQ process for approving reduction credit. It's a pretty robust process whereas its research oriented and then going for that DWQ process where there'll be an expert panel reviewing the outcomes of this project as well as doing a public noticing after 60 days of public comment on the crediting of these measures. It's not about rushing things through these measures but making sure we have scientifically, defensible credit for these additional measures adding to the toolbox. In addition to the collaboration that we've been having with the Upper Neuse River Basin Association, we've been meeting with other affected parties. Back in June we had two meetings, one in Falls and one in Jordan with all the affected parties, both local governments and state and federal entities, where DWQ staff presented a draft model program to the group, and received oral feedback at the meeting and provided them additional time to provide written comments to us that we could incorporate in the most recent draft of the document. Along with that we've had ongoing meetings every month with the Nutrient Scientific Advisory Board and this group has provided ongoing technical and policy input on the different measures, accounting in the model program. This group is also working on the development of the watershed model for Jordan Lake that is going to be used for developing the jurisdictional loads for existing development, not watershed. This group is also involved in administering this 205j funded project along with the Piedmont Triad Regional Counsel of Governments and this is a small scale project with some small funds from 205j that is being used with a contractor to establish credit for about five to six additional measures. So this will be an addition to the other collaboration that we have going on with the Upper Neuse River Basin Association to which we're hoping to add several dozen measures as well. The next steps at this point is to continue the initiative with these groups to expand the measures toolbox, continue engaging the stakeholders, establishing a trading framework, refining the onsite accounting methods and again, working with the stakeholders in this development. As was pointed out earlier from a program standpoint, the Jordan Lake rules and session laws do require approval of the model program by December 2013. That may change based on legislation being considered, but that's my understanding as of today. So we're planning to come back by November with a model program for Jordan. At yesterday's meeting we're pressing to come back in September with an update on developing that to let people know how it's going. Then finally with Falls we plan to come back with the final model program in an update to Jordan within 24 months so it can contain all of those BMPs from that UNRBA/DWQ collaboration in the BMP toolbox.

With that the staff's recommendation is to recommend the EMC return the model program to the division for additional revisions while staff continues to collaborate with the affected parties

to complete these ongoing initiatives to both expand the list of available nutrient use and measures and the other aspects about the trading framework of onsite accounting that I mentioned earlier. With that I am happy to take questions and as I mentioned Mr. Westall requested to speak as well if that pleases you all.

Chairman Hutson: Because this is not a rulemaking so there really has been no true public hearing noticing comments, but there has been a substantial stakeholder process. Yesterday we were approached, Mr. Reeder and I, to get some input from the stakeholder groups so that when we send this back we can have the list of requested changes. That includes everything that we can consider at this point and time. So I'd like to ask Forrest Westall who is the Chair of the Upper Neuse River Basin Association who has been involved on behalf of those stakeholders to just take a couple of minutes to present the stakeholders side.

Forrest Westall: Mr. Chairman, I appreciate that. Thanks for the consideration and Members of the Commission, this is a very important issue to the Upper Neuse River Basin Association and just to give you a little bit of a background, I want you to kind of understand where we're coming from. The Upper Neuse River Basin Association is 14 local jurisdictions in the watershed that have been around since about '95 and that organization has shifted a lot of its focus in 2011 and 2012 to the issue of implementation of the Falls Lake rules. The Falls Lake rules, the numbers that John put up there and I want to say John has been extremely helpful. He's been extremely available and he's been in the watershed a number of times to meet with our organization and others to go over the model program. So he has been excellent to work with. But the process that the UNRBA has been going through is looking at impact of the Falls Lake rules and trying to determine the steps necessary within the rules to accomplish a re-evaluation or re-examination of Stage Two. As John pointed out there's two stages in the Falls. Stage One is basically to bring the levels of nutrient loading back to the baseline year of 2006. That means essentially that all of the development that occurred between 2006 and 2012 has to be addressed and that increase in nutrients has to be offset or use of practice and BMPs to reduce to that level. What I would say from my perspective is I've been extremely impressed with the membership of the UNRBA. They have been very proactive and have been very accommodating, I think. In some regards to use a biblical term, they've been long suffering toward the rules that they're facing. To give you some perspective and I know John put those numbers up there, but I want you to think about these. The Jordan requirements are 8% nitrogen, 5% phosphorus. The Falls requirements for Stage Two are 40% nitrogen, 77% phosphorus. They are unprecedented in this state and probably unprecedented in this country in terms of the level of reduction that's required. As a result and because of the interest of the communities there, before the rules were passed and before the Falls legislation was developed, a group of the folks in the watershed, the jurisdictions agreed on what was called the consensus principles. Those consensus principles said that the jurisdictions worked hard in meeting and would agree to meet the Stage One requirements which is to achieve compliance with chlorophyll-a standard and the lower portion of the lake. But on Stage Two they wanted the opportunity or the ability to re-examine those rules, and to look at alternative ways to achieve the Stage Two levels. The UNRBA's dues when I came as executive director, this year those dues have increased by 500%. We are looking at spending half a million dollars this year on monitoring in the lake to support the re-examination process. We're looking at a four year program at about \$800,000 per year to monitor. We're looking at funding this project, the state is providing the \$50,000 worth. We're

looking at approximately \$300,000 from the jurisdictions to develop these ordinance or to develop these credits for the nutrient practices that could be used. What I would say is that I think it's commendable of UNRBA to be working inside the framework of the rules. We talked about different ways to approach this. We knew that the state wasn't ready for the model program. John and the group there have done a great job, but there's a lot of missing pieces. We knew the local governments weren't ready to adopt a local program. So we looked at different ways to address it and within the rules and within the statute we saw this provision of a delay or a return of the rules back to the staff that would give the opportunity for us to develop these additional credits. As a result the UNRBA has been working with the department, working with the Division of Water Quality to come up with a plan to allow us to develop more productive implementation of Stage One existing development. I would point out to you that many of the jurisdictions are moving ahead with doing reduction programs and they've agreed to report to the state on what they've accomplished and what they do. We're also not proposing to change the compliance date. The compliance date is 2020 to meet the Stage One requirements. We are only proposing that we develop a more robust plan, a model plan so that the local plans can be more productive. Right now there's only a limited number of practices that can be used to meet nutrient reductions. We have identified with the UNRBA funding a small scoping study. We've identified over sixty potential BMP practices that we would consider. We're not going to obviously look at all of those but we would like to develop those because that gives the local jurisdictions a lot more to look at in terms of being able to achieve the Stage One requirements. It also lays a foundation for whatever Stage 2 will be in the future on providing those credits. So I would say from the UNRBA's perspective we would respectfully ask the Commission to consider returning this to the division for additional work over this period of time. The twenty-four months is an estimate. We're still in the process of selecting the contractor. Rich Gannon with the Planning Section is working with that group on determining which contractor to choose. John is involved in that. We haven't laid that out yet. We have a funding group that's meeting with the UNRBA to come up with the additional funding for that. That has not been decided yet and so we have some steps to do before we can actually begin the process. We also have the scientific level that we need to go through. We have to develop a tool that will allow us to calculate delivery factors within the watershed of when a practice is done, say in Roxboro, what that actually delivers to the lake. We've got a lot of work to do and then the division has a lot of work too in reviewing those credits so that they can approve them so they can be incorporated into the model program. At this point the jurisdictional loads, the loads that are set aside for each jurisdiction to meet the Stage One back to the 2006 levels have not been set yet. Those jurisdictional loads will be critical in the local jurisdictions finding specific projects that will allow them to achieve those levels. So I present that to you as some background. The UNRBA is committed, I think, to working cooperatively with the state to improve the water quality in Falls Lake and to address these issues. We're hoping and we're aiming at a fair, equitable, reasonable and economically viable plan that will finally come out for Stage Two that will allow improvement, but will not cripple the folks that are in the watershed with the cost associated with it. Thank you.

Chairman Hutson: Thank you Mr. Westall. Let me just turn to Commissioner Peterson since this was considered at the Water Quality Committee Meeting yesterday to see if he has anything to add before we begin discussion or entertain any motions on this.

Dr. Peterson: The only thing I have to add is an appeal to you. I hope for the actual wording of what we want the Commission to do. That's because it's a sort of an odd deal where yesterday the Water Quality Committee approved bringing this before the full Commission. It's not rulemaking so we don't have a 30-day waiver issue. But what staff asks is that it is for us to give it back to them to complete additional work before bringing it before this Commission for full approval which will happen in September. The wording of that was something we talked about because it's not really deferring approval.

Chairman Hutson: The statute says with regard to Jordan that we either approve at the July meeting or return to the staff with requested changes with ultimate approval for Jordan having to be achieved by December of this year.

Dr. Peterson: So I beg that articulation be part of the motion that we consider and hopefully vote on or modify accordingly.

Chairman Hutson: Discussion? Was that a motion?

Dr. Peterson: Yes. Presenting that as a motion with potential need to get back to get the words exactly right, but they sounded perfectly.

Mr. Smith: Could I hear the motion repeated?

Chairman Hutson: Mr. Tedder had actually approached me beforehand. You want to try your wording on us all. What we're trying to do in the wording is to track the language of the statute. So it's not a deferral, it's upon what the statute says: "return with requested changes."

Mr. Tedder: I would like to make a motion that I move to re-refer this item to staff for incorporation of changes including but not limited to expanding the toolbox for creditable measures for developing a training framework and refining the on-site accounting methods. I think that would be appropriate. I think that meets the intent of the statute and as you all discussed yesterday to have some inclusion within the document that this is not rulemaking; that it is a guidance document. Then at the appropriate time bring this back to the Water Quality Committee.

Chairman Hutson: Was there a motion on the table? You want to withdraw your motion, Dr. Peterson?

Dr. Peterson: I'd be happy to.

Chairman Hutson: Ok, and the second is acceptable to you, Commissioner Phillips?

Dr. Phillips: Yes.

Chairman Hutson: Now we have Mr. Tedder's motion on the table. Was there a second to that motion?

Dr. Peterson: Can we clarify, Steve, the verb right up front? What I wanted to avoid was defer.

Mr. Tedder: I said refer, may refer, refer back to staff.

Chairman Hutson: Commissioner Tedder would you be willing to rephrase that as return?

Mr. Tedder: Ok.

Dr. Peterson: Thank you.

Chairman Hutson: We have a motion by Commissioner Tedder, seconded by Commissioner Martin. We will open it up for questions and discussion.

Ms. Deerhake: Mr. Chairman I think for this particular vote I'm going to recuse myself. I need to seek advice from Counsel on something.

Chairman Hutson: Alright. So at this point Commissioner Moss has already recused himself and Commissioner Deerhake has recused herself.

Mr. Morse: Is this motion also incorporating Forrest's request that they get enough time to implement these changes? I heard reference to the timeframe. Does this allow the state and the association to have the necessary timeframe that they need?

Chairman Hutson: What we are tasked with under the statute, is approval of this plan for the Jordan by no later than December of this year. There is no time limit on approval of the plan for Falls. With regard to other deadlines, whether it's stretching out the deadline for compliance with the various goals in either the Jordan or Falls; that is not before the Commission at this time. We're only acting upon the model plan for Jordan and Falls, specifically with time limits on the Jordan approval. Other questions or comments or discussion?

Dr. Peterson: I had one that I raised and it's been answered in part by Forrest and what the Upper Neuse River Basin Association is planning, and by the department. My concern is this. We've got a time table set up, including this process is something to celebrate which is creative, thoughtful ways proposed by the affected parties to try to create new BMPs that will enable us more efficiently and with less cost to meet the nutrient reductions goals that are set. My concern is that, as Mr. Huisman told us, we've had a handful of these BMPs in the past and there's as many as sixty that might be considered. If it was all that easy to have the science to confirm that each of those sixty performed as we think, I would submit to you we would have had a bunch more of them before. So I see there being a need of confirmation of what sort of reduction is achieved by these before we can be comfortable to think that we're meeting those nutrient reduction time tables with each of them. So I had simply raised the issue that there's science to be done in this, in a confirmation sense, and I didn't at the time refer to Jennings's work, who did some interesting science about nutrient applications to crops of different types, and how much the crops removed and what then flowed off the field and into the water body. That was a kind of confirmation that we used in looking at agronomic rates and what sort of leakage there was

from a variety of crops. Anyway that doesn't affect this motion but it just raises that issue that we need to consider that in the process.

Chairman Hutson: Other questions or comments? Motion on the table. (The vote passed unanimously.) In Commissioner Tedder's motion saying, "included but not limited to" means if you do review over this and there are any other changes, please pass them along to myself and to John. Thank you.

The next item on the agenda is 13-22 and John Hennessey is going to make this presentation.

13-22 Request to Confirm Recommendation to Appoint and Re-appointment of Two Members to the Water Pollution Control System Operators Certification Commission

John Hennessey: I am standing in for a staff member who was supposed to present this. I will be brief and answer your questions as best as I can if you have any. What you have in front of you are the three appointments to the Water Pollution Control Systems Operator's Certification Commission. The way the general statute is set up is the Secretary appoints them and the EMC approves the appointments. What you have is a new appointment to the Chairman who will be replacing Paul Rawls who has been the long standing Chairman for that Commission, Mr. Corey Basinger. He is our supervisor in the Winston Salem Regional Office and has been with the Division of Water Quality for 20 years. He is an exemplary employee and will do an excellent job as a Chairman. You have a second appointment for Gregory Young. He serves the position in being a manager for a municipality with greater than 10,000 population. He's a reappointment and will serve three years. The third individual is Steven Waters. He serves the position of being an operator and would also be a three year appointment and is also a reappointment. With that, that's pretty much all I've got. If you have any questions I would be happy to answer them.

Chairman Hutson: I know Mr. Basinger was here. I don't know if the other two are. We thank you for coming. Raise your hand Mr. Basinger. Thank you for your willingness to serve here. What I'll need is a motion and a second to either confirm or not confirm these appointments.

Mr. Morse: I'll make a motion.

Chairman Hutson: Motion by Commissioner Morse and second by Commissioner Keen. Any discussion? The motion passed unanimously. Thank you, Mr. Hennesey. Thank you for being willing to serve Mr. Basinger. Appreciate it.

Chairman Hutson: We will now move to the information items on the agenda. Item 13-08 has been removed from the agenda.

II. Information Items

13-09 Update on the City of Raleigh's Request to Modify their Existing Residuals Management Permit to Apply Residuals on Previously Impacted Fields

Summary (Rick Bolich): Thank you Mr. Chairman and Members of the Commission. This is kind of an unusual situation. I just want to go through this real briefly with you all. This is about the City of Raleigh's non-discharge permit for application residuals. I'm going to tag team with Chonticha here. We both work in the Aquifer Protection Section, Division of Water Quality. The City of Raleigh Public Utilities Department Neuse River Wastewater Treatment Plan is one of the largest in the state. It handles just about 35-40 dry tons of residuals a day and it also has over a thousand acres of fields that are adjacent to the plant that are designated for disposal of wastewater treatment plant residuals. Over-application of the residuals in the past had led to groundwater contamination throughout the facility from nitrate. The contamination spread beyond the compliance boundaries and in addition some residential wells were also impacted. The Division of Water Quality modified their permit in response to this in 2002 and required them to cease application of biosolids onto these city owned fields. They were also fined about \$74,000 for the over-application at that same time. The CORPUD was also required to do a comprehensive site assessment and a corrective action plan in accordance with the rules of 2L .0106 to clean up, assess the extent of the groundwater contamination and to revise the plan for cleanup of the groundwater under the existing rules. When we looked at what was involved in doing that under the existing rules, the size and the cost, about \$81M, would have been necessary for active remediation. So as a result the City of Raleigh submitted a variance application to us that would allow the use of natural attenuation in lieu of active groundwater treatment. The city also provided free municipal water to all nearby residents who had been impacted or were predicted that could have been impacted. Also, active groundwater containment was implemented in certain portions of the site. In other words, portions of the site that were adjacent to private water supply wells that could have been impacted. Also there were artificial wetlands that were constructed in the vicinity of surface water streams where nitrate was discharging in order to try to remove nitrate before it got further downstream. The division modified the permit, the NPDES permit, the discharge permit for the city to account for the nitrogen load that was coming into the river from the contaminated groundwater. By doing this what we did, they constructed a groundwater model that predicted the nitrogen load into the Neuse River. What we did was we took that predicted load from groundwater discharge and we subtracted that from the existing NPDES permit, so therefore the net gain to the river system is therefore offset by that same amount.

This is just a graph; it's obviously very busy and very small, but I just want you to see the line that's just showing that the model predicts that over time natural attenuation will occur. This is nitrogen over time starting out in 2005. Currently we're at 2013. So we're still seeing a gradual decline. But, of course, when we look at this we know nature doesn't work perfectly like this but this is what the model's predicting. We should see this general trend occurring with the groundwater nitrate levels entering in to the Neuse River.

The Environmental Management Commission granted the CORPUD variance from the requirements of 2L .0106(c) to allow for the use of natural attenuation in November of 2009. Beginning in January 2014 and every five years after, as a condition of the variance the city is required to do evaluation of the overall effectiveness of the overall remediation strategy. They're also required to review the model results and match that against the observed data that we have. In addition they're going to collect any additional data and information that's required to improve the model calibration. That's a little bit of the background. I'm going to give this to Chonticha and she's going to explain a little bit more about what the current request is about.

Chonticha McDaniel: The division received an application for modification to the existing permit on May 10, 2012. The proposed modification includes the resumption of residuals application activity on selected areas of the site which is approximately 354 acres out of the 968 of the available land at the site. The proposed re-application areas were identified as those that demonstrate a low potential to further impact groundwater at the site's compliance boundary. Using predictive hydrological modeling which also predicted that resumption of residuals application will have no impact on the time it will take for the site to comply with groundwater standard for nitrate at the site's compliance boundary and that is the amount of nitrogen discharge into the Neuse River when we made under the allowable credits.

This map shows the overview on the area of Neuse River Wastewater Treatment Plant and the surrounding land application views. The areas highlighted in yellow are proposed for the application of residuals and the field outlines in red are the existing field not proposed for the application. The draft permit authorized the resumption of the residuals land application on the proposed areas. In addition the permit is updated to meet the most current administrative code 15A NCAC 02T .1100 rules which was adopted in September 2006. With this modified permit the city will be required to apply residuals at or below agronomic rates, install and operate three Vadose zone monitoring stations which are intended to detect NO₃-N passing through the plant root zone. They will continue to monitor 16 groundwater monitoring wells and continue to meet all the requirements that are incorporated in the variance and the most recent NPDES permit which includes an additional 50 groundwater monitoring wells and 29 surface water monitoring locations. The permit was drafted on May 16 of this year and the division published a public notice on the News & Observer newspaper on May 22 and held a public hearing on June 13. The public comment period closed on June 21. Just to give you a brief summary of what happened at the hearing was there were 12 attendees, four which spoke at the hearing and we received no public comments from the notice. So right now we are pending on the hearing officer recommendation. Thank you.

Chairman Hutson: Any questions of Mr. Bolich and Ms. McDaniel regarding this matter or any discussion with it among the Commission?

Ms. Bailey: You showed us the model predictions for groundwater but what about the actual groundwater data? How does that fit from 2005 – 2014?

Rick Bolich: Part of their evaluation that they're required to do in 2014 is to compare those two to see how well that model is matching the actual data that we're going to see.

Ms. Bailey: Have you received, say yearly reports yet on it? Or are you waiting for the 2014 report?

Rich Bolich: Well we receive yearly reports, and of course it's also part of their compliance monitoring that we see that. At this point it's pretty premature to say whether or not it's actually performing in accordance with the model but we haven't done a thorough analysis to see whether or not that trend is typical of what we're seeing. It's going to require more than just a judgment call. It will take probably some statistical analysis with that.

Mr. Ellis: I remember this very well; Steve Levitas presented for the City of Raleigh. Those that were here may remember that the dollar amount that it was going to take for active remediation was a huge percent of the utilities' budget. It was such a large number we basically agreed that they would be able to handle it within their existing allowed discharge from their wastewater treatment plants, which also made us wonder how you could have that much surplus within an NPDES permit to allow huge volumes (you saw the chart there) poundage coming from a disposal site just slide into that permit. Part of the problem was decades of over application of materials. What we were basically told at that time was, "let us off the hook, we will not be applying anymore and over the next forty years, basically this will come down naturally to where it's not a problem." Coming back to us now and saying, "Oh well we're still going to just let it naturally attenuate, but we're going to add more of these materials to the site," even though they say it's at agronomic rates. You're still getting a huge amount of material nitrate coming off of the site. I just have a problem with the process of opening back up while they are still losing that much nitrogen from previous misapplications and that over time.

Mr. Smith: May we see that chart with that model curve? So we see there this is 2013, how much nitrogen load there is going into the river from this site that Mr. Ellis described as having been accidentally grossly over applied over a number of years? And I remember this case very well. It was hotly contested and we heard a lot about it. We granted this variance but I, like Mr. Ellis, remember real clearly, at least I think I remember there being a pretty strong commitment that there wasn't going to be any application for a long time. Here we are four years back. That's the first thing I'll say. The second thing I'll say is I'm not a scientist on proper agronomic rates and applications and so forth, but it defies common sense to me to think that additional application is not going to slow down, at least this natural attenuation process. I just have a hard time making that fit. So I'm concerned about this request as well and state that concern. The third thing I'll say generally is I appreciate this being brought to us. This is a good example of our requests from some time ago that all of the divisions bring us significant permit applications along the way, and I commend Chairman Hutson for continuing that process. It's very helpful to us to hear these updates, but I'm concerned about this.

Mayor Moss: Mr. Ellis, if this is what I remember this was early on in my tenure here on this board, we got a nice CD presentation. I think that was the one that I recall correctly. I, too share your concerns along with Mr. Smith as well. We got very strong assurances that we wouldn't be having this conversation. That is my recollection. Thank you.

Ms. Pickle: I was not serving on the EMC at the time you came in front so I can't speak to the concerns that were noted by the other three Commissioners. I will say that it is disturbing that a variance request is coming in prior to the evaluation of the remediation process that was identified and required in the variance request. So at the very least to not have sufficient information about whether or not the remediation is proceeding as anticipated and modeled, and then to grant something that is sure to, at the very least will add additional load, I have a hard time imagining how it would not affect the overall remediation rate is a concern to me.

Chairman Hutson: Just so I am clear Commissioner Pickle, we do not have a variance request in front of us. This is a previous variance request that you are referring to?

Ms. Pickle: The variance that was granted had a re-evaluation provision at a five year mark and that to allow additional application to a field without understanding whether or not the effectiveness of the remediation that was proposed is actually..... Is it effective, is it efficient and is it working is a concern.

Mr. Morse: A comment was made during your presentation that I want to make sure I understood that taking as an aggregate the amount of poundage that is under their permits allowed to discharge as part of that Neuse Basin agreement including what's being discharged at the site, are they still under their allocated permit?

Rick Bolich: It's my understanding that they are under the NPDES permit.

Mr. Morse: Again, I'm assuming based my experience that as a manager dealing and working with my wastewater treatment plant operator, if the city is doing other things as well to reduce the amount of nitrogen going into the Neuse maybe there could be some consideration as a result of these other activities that correspond with the overall loading that they're doing practices to continue to reduce nitrogen, by allowing them to reconsider and going back to the field and taking its overall aggregate as how much the permit poundage is allowed. I wasn't here during the time when this was discussed but the fact that over a period of time they are below their permitted discharge I think they've show a tremendous, and I know they spent millions and millions of dollars in their point source process controls, that could be given some credit I think unto the overall request. That's just my layman's opinion on that.

Mr. Martin: I just had a question. Did staff review the variance and what the conditions of the variance were and if it precluded an application like the one you're addressing?

Rick Bolich: I'll have to check on that. But in my understanding is that it did not preclude that. I'll have to check the specific language in the variance.

Mr. Martin: I'll make that as a suggestion or request, however you want to take it.

Chairman Hutson: Other questions or comments?

Mr. Bolich I would ask in light of Mr. Martin's question because the variance was granted by the Commission that we get some understanding how this is allowed or not prohibited by the terms of the variance. That we have that not only for this site but as other variance matters might come up, that is a consideration that we can take into account. Thank you.

That concludes the information items portion of the agenda and we now move to the committee reports. Dr. Peterson had to leave for another meeting so Commissioner Pickle will do the Water Quality Committee when we get to that.

III. Status Reports

A. Water Allocation Committee Mayor Darryl Moss, Chairman

The Water Allocation Committee did meet yesterday. We had one action item this Commission has already acted on granting the public hearing for the Brunswick County Utilities petition for the IBT certificate. We did have one informational item that was an update on the Central Coastal Plains Capacity Use Area Assessment. I will make one note on that just for the future the committee wanted to see included in the presentation a detailed explanation on how the plan does not equal rulemaking. I think Chairman Hutson, Ms. Pickle and Ms. Bailey wanted that included. If I got that wrong just tell me but that was how I recorded it. That is the report from the Water Allocation Committee.

(The Steering Committee did not meet)

B. Air Quality Committee Ms. Marion Deerhake, Chairman

Thank you Mr. Chairman. All of the agenda items were addressed today with both the draft rules as well as the hearing officers' reports. Then we had seven or eight different information items provided by our Director, Sheila Holman from the Division of Air Quality. Just to hit highlights she talked about the sulfur dioxide designation status in the Wilmington area, the status of the Cross State Air Pollution regulation rule and how it has been vacated in the courts at this moment, and that EPA's continuing to work on a revised approach. Would you like to clarify?

Director Holman: You're correct Chair Deerhake. They are working on an updated technical analysis while they wait to see the ultimate outcome. The Supreme Court has granted EPA's petition to hear the decision on the vacature of the Cross State Air Pollution Rule. So that case will be heard, I believe this fall. But in the meantime, the agency continues to look at revising the technical analysis to basically have some technical work done in the event that the Supreme Court agrees with the original vacature.

Ms. Deerhake: The Metrolina Ozone Redesignation to Maintenance is now in place or about to become effective.

Director Holman: In about two months.

Ms. Deerhake: We had an update on the Shale Gas Monitoring Plan that is being developed for Lee County for air quality and we passed around the President's or the White House Climate Action Plan and hit highlights of that for the long term planning which includes the reproposal of new facilities, new source performance standards for electric generating utilities for carbon dioxide emission controls as well as the action plan which the President calls for development of a proposed rule within the next year for existing electric generating units and their carbon dioxide emissions.

Chairman Hutson: Thank you Commissioner Deerhake.

(The Groundwater and NPDES committees did not meet.)

C. Water Quality Committee

Ms. Amy Pickle, Acting Chairman

The Water Quality Committee did meet yesterday. We had two action items. The first was an after-the-fact variance request for a house that had been built in the Neuse River Basin that would have been subject or is subject to the Neuse buffer rules. We had heard that matter at the previous Water Quality Committee meeting and had asked the division and the applicant to improve their overall stormwater management proposal. That came back in front of us yesterday and the committee voted to approve that variance. There were a number of comments related to our overall variance procedure and the criteria by which we make decisions on variances. I will simply say that we have been improving how we address variances by actually getting as a committee the findings of facts from the division that are required by our rules for us to determine whether or not a variance should be granted. There continues to be some debate and concern about those criteria. We had some more of that discussion yesterday. The second agenda item was heard by the full Commission today and it was the model program for Jordan and Falls Lake. We acted as a full Commission on returning that item to staff.

D. Renewable Energy Committee

Dickson Phillips, Chairman

We heard a report from staff on the wind energy permitting legislation that was passed in the last couple of months that had picked up on the elements of the bill that we had drafted several years ago and recommended. This was not passed several years ago, but was taken back up this year under concerns raised by the military and conflicts with military flight plans. We discussed what that bill did and what it didn't do, and the fact that it does apply state-wide. There is rule making authority granted in the bill to the EMC for passage of any adoption of any necessary rules. We asked staff to come back to us in September to address questions about what standards they're going to be using to apply, standards of methodology and resources that they'll be using to apply some of the standards in the act for granting or denying of permits.

Chairman Hutson: Do you have any further comments from the Division of Air Quality?

IV. Concluding Remarks

Director Holman: Just a quick update on upcoming hearings for permits. In April the division received an application from Titan for the Portland Cement Facility. They want to build in New Hanover County. You will recall that we issued an air quality permit back in February of 2012. However, under our current Prevention of Significant Deterioration regulations the company has to begin construction within 18 months and they don't anticipate doing so. So they needed to come in for a reapplication. In addition to that there were changes at the federal level to the Portland Cement maximum achievable control technology standards. So the draft permit addresses those changes. We will be having a public hearing on August 5 in New Hanover County. In addition we have a couple of additional applications in for using poultry litter as a fuel. Those applications are not to the point of making them ready for public comment so we don't have public hearings scheduled at this time. But we anticipate a couple later this year probably in the September-October timeframe.

Chairman Hutson: I see our new Director of the Division of Water Resources/Division of Water Quality. Mr. Reeder welcome and congratulations on your new post. Do you have anything to tell us?

Director Reeder: The reason I wasn't here this morning is because I was over at a House Committee meeting where Senate Bill 515 was being discussed. What happened is the department has been working hard with the Governor's Office, the House and the Senate leadership to craft a compromise to the original Senate Bill 515 which is, you probably know would completely repeal all the Jordan Lake rules wholesale. The compromise passed out at the committee today voted twelve to nine. What the compromise would do is it leaves in place any rules that have been implemented to date. It will hold off implementing any new rules for three years and move those implementation dates back to a minimum of three years past July 1, 2016. In that interim period we'll do a pilot test of some new technologies in Jordan Lake to see if they'll be effective in alleviating the algae problem. Based on the results of that pilot test we'll issue a report to the ERC of the General Assembly concerning whether we need to modify the rules to incorporate this new technology, and maybe alleviate some of the burden on the regulated community in the future. So that's where I was and that's what happened. You'll probably be seeing more about that bill in the media, I expect.

Chairman Hutson: Thank you. We will check to see if that bill becomes law and if it has any impact on our previous action here today regarding the plans and to predict sensitive deadlines for the Jordan Model Plan to make sure we're on time for that. Any concluding remarks from any of our Commission members?

Mayor Moss: I thought Mr. Reeder might speak to it. But I learned yesterday that we're losing definitely a key member for the Water Allocation Committee. That staff person, Toya Ogallo is moving on to an opportunity in the private sector, and I just wanted to publicly thank her and her colleagues in water quality for her support. Thank you sir.

Director Reeder: The thing about that Mr. Chairman is that Toya has managed the IBT program for us for the last three or four years. Probably most people don't know she's a graduate of Columbia in New York. So I always tell people the IBT program is so complex we had to hire an Ivy League graduate to run it for the department. Now we're losing her to Duke. So on for another Ivy League graduate, I guess.

Mr. Phillips: I had planned to observe that this may well be Pete Peterson's last meeting, and unfortunately he left early because I wanted us to commend him when he was here. Just to observe that this Commission will not be the same and I believe it will not be as good as a Commission without Pete's voice here. Certainly the fishes, mussels and oysters will not have as eloquent a voice. Anyway I personally will miss Pete's participation here.

Mr. Keen: I congratulated you for being our new Chairman by email, but I failed to send an email to Steve Smith. But I do want to thank, under his leadership for two years I have learned a lot. I was appointed in 2010 so he's the only Chairman I have sat under and with that I've learned a lot. I appreciate how sensitive he was with my questioning on yesterday. I can get off on a wild goose chase and he can bring me back in and he did that several times. I appreciate you bringing me in and mentoring me and showing me the things that I've learned for the last two years. I appreciate that very much. Thank you.

Frank Crawley: Some of you will remember with the Quality Built Homes case that you upheld the decision to require those folks to implement stormwater controls. It was a density calculation issue and the Commission prevailed at the Court of Appeals. They upheld your decision and Quality Built didn't petition the Supreme Court for review. So that case is closed with your decision affirmed. The PCS Phosphate 401 certification case, that's on judicial review here in Wake County and we went and presented our oral arguments in front of Judge Stevens toward the end of May. Then about the 21st of June each side submitted to Judge Stevens a proposed decision. Ours is in favor of the EMC decision and the Tar Pamlico folks in favor of overturning your decision, so it's under advisement from Judge Stevens. We haven't had any new lawsuits or cases presented to the Commission since you last met. So you're looking good.

Chairman Hutson: I see Mr. Smith from PCS. Do you have an update on that?

Ross Smith: To follow up on Mr. Crawley's report I did get a notification this morning that Judge Stevens did rule in favor of DENR and PCS's position. In fact he signed the order that was proposed to him.

Chairman Hutson: Any other matters before the Board? If not I will declare this meeting adjourned. (With no further comments the meeting adjourned at 2:00 p.m.)

(NOTE: Attachments are on file in the Division of Water Quality with the Official Minutes.)

Lois C. Thomas 9/12/13

Lois C. Thomas, Recording Clerk

By Commission Members
By Directors
By Counsel
By Chairman

Adjournment AG07-11-13