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ATTACHMENT B

November 26, 2012

Mr. Stephen T. Smith, Chairman  
N.C. Environmental Management Commission  
1617 Mail Service Center  
Raleigh, NC 27699-1617

Re: Request for Declaratory Ruling on the Interpretation of 15A NCAC §2L.0106(c) with Respect to Coal Ash Lagoons, Cape Fear River Watch et al., Petitioners

Dear Chairman Smith:

The NC League of Municipalities is submitting the following statement in opposition to the suggested interpretation set forth in the Request for Declaratory Ruling of 15A NCAC §2L.0106(c) with Respect to Coal Ash Lagoons (the "Request") filed by Cape Fear River Watch, Sierra Club, Waterkeeper Alliance, and Western North Carolina Alliance ("Petitioners") on or about October 10, 2012. The League opposes the Petitioners' interpretation of the rule, and supports the interpretation currently implemented by the N.C. Division of Water Quality (DWQ).

The NC League of Municipalities is a membership organization of over 540 municipalities and affiliate organizations, many of which dispose of biosolids, a byproduct of wastewater treatment, through land application. Both the U.S. Environmental Protection Agency and N.C. Department of Environment and Natural Resources encourage land application of biosolids as their preferred disposal method for this byproduct. Alternate disposal methods such as landfilling or incineration drive up the costs of municipal wastewater treatment; these costs are ultimately borne by the public and ratepayers. The practice of land application of biosolids is safely regulated by these two agencies, but could be adversely affected if the N.C. Environmental Management Commission (EMC) grants the interpretation requested in this declaratory ruling.

If the regulation is interpreted as requested by the Petitioners, the EMC will issue a declaratory ruling requiring that facilities holding permits issued before December 30, 1983 do the following:

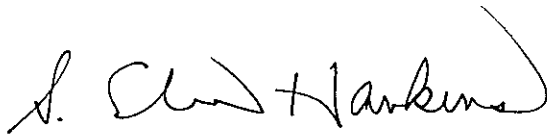
1. Initiate corrective measures pursuant to 15A NCAC 2L.0106(c) when the activity at issue results in an increase in the concentration of substance in excess of the groundwater standards, whether or not groundwater quality standards have been exceeded at or beyond a compliance boundary around the facility;

2. Take immediate action to eliminate source of the contamination that causes a concentration of a substance in excess of groundwater quality standards, even before the initiation of corrective measures; and
3. For closed or inactive facilities, implement corrective action as described above when they cause an increase in the concentration of substance in excess of the groundwater standards, again whether or not groundwater quality standards have been exceeded at or beyond a compliance boundary around the lagoon.

Although the Request specifically asks for a determination of the application of 15A NCAC 2L.0106(c) to coal ash lagoons, the interpretation of the rules as requested by the Petitioners would not be limited to these facilities. League members also own and operate facilities that could be adversely affected if the rule is interpreted as requested, and this approach is not consistent with the way in which our members' facilities have historically been regulated. As requested, the interpretation would require changes in the actions that must be taken to address exceedances of groundwater standards within a compliance boundary if a site was permitted by the agency prior to December 30, 1983.

The League supports the long-standing interpretation of the rule as applied by DWQ staff and urges the EMC to uphold the historical interpretation of the rules on which regulated entities around the state have relied. If the EMC believes the current approach is inadequate, any changes to the rule should be accomplished by undertaking rulemaking procedures.

Respectfully submitted,



Ellis Hankins  
Executive Director

CC: Charles D. Case, Attorney, Hunton & Williams  
Erin L. Wynia, Legislative & Regulatory Issues Manager, NCLM