Name : Corey Cavalier
Organization :
Mailing Address : 7033 Sandringham Court
Email Address : cavalier@alumni.utexas.net
Select Methodology (Refer to the 2014 North Carolina Draft Assessment Methodology link above) : Other Describe Proposed Change(s) to Assessment Methodology (Include in description the proposed method for determining impairment as well as method for determining a water body is not impaired). :
Provide Rationale for Proposed Change (Provide the justification for changing the existing assessment methodology to the proposed methodology. Include references where applicable). :
Other Comments on the Assessment Methodology :

The EMC should have no role in reviewing technical methods for water quality assessment. Instead, it would be wise to appoint a board of professional experts similar to NC State Water Infrastructure Commission (SWIC) in order to review such proposals.

Charlotte-Mecklenburg STORM WATER Services

600 E. Fourth Street
Charlotte, NC 28202
Fax 704.336.6586

October 19, 2012

Ms. Kathy Stecker, Modeling and TMDL Unit Supervisor
Division of Water Quality
NC Department of Environment and Natural Resources
1617 Mail Service Center
Raleigh, NC 27699-1617

Dear Ms. Stecker:

Thank you for the opportunity to comment on the Environmental Management Commission's (EMC) role in setting water quality assessment methodologies. The City of Charlotte respectfully submits the following comments.

EMC's Role

Yes, the City of Charlotte believes that there is a valuable role for the EMC to play in overseeing assessment methodologies for developing the state's list of impaired waters pursuant to the Clean Water Act. The consequences of listing a water body as impaired can be dramatic, as the federal Clean Water Act requires development of a Total Maximum Daily Load (TMDL) in response to the listing. A TMDL then is implemented through MS4 NPDES permits. As holders of NPDES MS4 stormwater permits, we must adhere to TMDL-related permit conditions. We must also ensure we have the necessary financing to address the added permit terms, a process which takes time and planning in consultation with our governing boards. At this time there are shortcomings with the DWQ assessment methodology that can result in huge consequences placed on local municipalities.

Transparent Assessment Methodologies

We believe that the EMC should be active in providing more programmatic guidance and active in setting parameters regarding the development of the 303d list. However, we also believe that once programmatic guidance and parameters are put into place, the EMC should not be involved in decisions on individual listings or passages, or what is included or excluded from the listing. We ask that the EMC exercise its right to review the current methodologies used to develop the 303(d) list, work with DWQ and the water community to revise the process and methodologies and then continue to serve as an impartial, transparent forum for future discussions surrounding the methodologies.

Science-based Methodologies

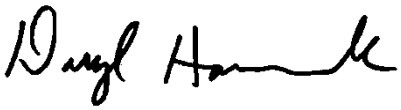
It is vital that the methodologies used to determine the 303(d) list are based in sound science, vetted in a transparent matter and stand up to reasonable scrutiny. In particular, we ask that EMC address DWQ methodology inconsistencies. We suggest that EMC convene hearings to give the regulated communities opportunities for meaningful comment and presentation of data. We also advocate that the EMC insist that any methodologies employed by DWQ are rooted in strong scientific principles and are open for comment with enough time for the comments to be reviewed and incorporated.

TMDL Process and Involvement

We further suggest that the EMC work with DWQ to establish more explicit information and more meaningful stakeholder involvement with regard to TMDL priority ranking, model development, and TMDL drafts, and that a public comment period also is used to review the TMDL process. An explicit priority ranking, open to public comment, will allow affected municipalities an opportunity to collect supplemental data that will help facilitate a more effective TMDL process.

We would be happy to serve on any committee dedicated to this process and we are ready to engage in meaningful conversation towards a solution. Please let us know if you have any questions.

Sincerely,



Daryl Hammock, PE
Water Quality & Environmental Permitting Manager
City of Charlotte, Storm Water Services Division
600 East Fourth Street Charlotte, NC 28202
704-336-2167 dhammock@charlottenc.gov

Kyle Hall, Storm Water Services
Jennifer Frost, Storm Water Services
Office of the Charlotte City Engineer

Duke Energy Corporation
P. O. Box 1551
Raleigh, NC 27602

October 22, 2012

Sent Via E-mail (kathy.stecker@ncdenr.gov)
Ms. Kathy Stecker
North Carolina Division of Water Quality
1617 Mail Service Center
Raleigh, NC 27699-1617

Re: Environmental Management Commission's Role in the Development of Use Assessment Methodologies

Dear Ms. Stecker:

Carolina Power & Light Company, doing business as Progress Energy Carolinas, Inc., and Duke Energy Carolinas (hereafter referred to as the Companies) are regulated electric utilities operating in North Carolina and South Carolina that serve approximately 3.9 million homes, businesses and industries. The Companies are subsidiaries of Duke Energy Business Services LLC, which is the largest electric holding company in the United States, supplying and delivering energy to approximately 7.1 million electric customers located in six states in the Southeast and Midwest. It owns a diverse mix of approximately 58,200 megawatts of electric generating capacity in the U.S. that includes coal, nuclear, natural gas, oil, and renewable resources.

The Companies received electronic mail via a LISTSERV (denr.dwq.TMDL303d mailing list) dated September 21, 2012 announcing that the North Carolina Division of Water Quality (DWQ) was accepting public comment on whether the Environmental Management Commission (EMC) should be more involved in setting future assessment methodologies for developing the state's list of impaired waters pursuant to the Clean Water Act, and if so, to what extent. As you know, the Companies own and operate several major electric generating facilities in NC. Many of those facilities have obtained, and must comply with, National Pollutant Discharge Elimination System (NPDES) permits. These NPDES permits contain limits and conditions necessary to protect water quality. Consequently, a determination that a water body is impaired can have a profound impact on facility permit limits and the cost of compliance. The Companies have significant interest in the assessment methodologies used to make impairment decisions and offer the following the comments:

All future Use Assessment Methodologies (UAM) should be reviewed and approved by the EMC's Water Quality Committee and the full EMC consistent with NC General Statute 143B-282(c).

The most recent UAM published by DWQ contains several assessment approaches that reflect important policy decisions as opposed to pure scientific or mathematical principles. Given the number and implications of these policy decisions, the Companies strongly recommend that the UAM be reviewed and approved by the EMC before it is used to make impairment decisions. For example, the Fish Consumption Assessment Methodology in the 2012 UAM essentially depends on ad hoc targets or action levels developed by the NC Department of Health and Human Services (NCDHHS). The use of these ad hoc targets/action levels developed by the NCDHHS effectively circumvents the standards-setting and review process established in §303(c) of the Clean Water Act and the NC Administrative Procedures Act. The Companies believe that impairment decisions should be based solely on duly promulgated water quality criteria. The use of NCDHHS's action levels and fish consumption advisories as a basis for determining which water bodies are impaired is a major policy decision with significant implications.

In reviewing and approving future UAMs, the EMC should provide a meaningful opportunity for public review and solicit public comment.

The Companies recommend that the public be notified when a draft UAM is available. A public meeting should be held and opportunity for public comment should be provided. A process very similar to the one used for permanent rulemaking should be followed regarding notices, comments and associated timelines.

The Companies suggest that EMC members serve as "meeting officers" along with appropriate staff as necessary. Further, a summary of the proceedings, including comments received, should be prepared along with recommendations from the "meeting officers."

The summary and recommendations should be presented to the EMC's Water Quality Committee and then to the full EMC for its use in deciding whether or not to approve the UAM. Only after the UAM is approved by the EMC, may NCDWQ begin using the UAM to make impairment decisions and prepare the state's list of impaired waters for EPA's 303(d) and 305(b) reports. By adopting such a process, the regulated community can be sure the EMC understands the basis for, and full impact of, the impaired waters list submitted to EPA every two years.

The Companies appreciate the opportunity to provide comments on this important matter. Please do not hesitate to contact me at 919-564-5438 if you have any questions.

Sincerely,

Mick Greeson

Mick Greeson
Director, Environmental Affairs – North Carolina

DURHAM
1869
CITY OF MEDICINE

CITY OF DURHAM
Department of Public Works
Stormwater &GIS Services
101 City Hall Plaza | Durham, NC 27701
919.560.4326 | F 919.560.4316

www.durhamnc.gov

October 22, 2012

Ms. Kathy Stecker
NC Division of Water Quality, Modeling Unit
1601 Mail Service Center
Raleigh, NC 27699-1601

Dear Ms Stecker:

The City of Durham Stormwater & GIS Services is pleased to provide these comments to the NC Division of Water Quality (DWQ) Request for Public Comment on the questions of

(1) Whether the Environmental Management Commission (EMC) should be more involved in setting future assessment methodologies for developing the state's list of impaired waters pursuant to the Clean Water Act, and if so
(2) To what extent.

The City of Durham considers itself a leader in stormwater management in the State of North Carolina. Our stormwater program has responded to Total Maximum Daily Loads with comprehensive Water Quality Recovery Plans, proactively adopted new development land management criteria in advance of both the Falls and Jordan Lake requirements, and is currently cooperating with DWQ on the development of a comprehensive water quality model for Northeast Creek. Stormwater & GIS Services has developed conceptual plans for a large constructed wetland to treat a portion of the downtown area and for the development of a feasibility study to evaluate new nutrient harvesting technology heretofore used only in Florida. The City stays engaged in the impaired waters process because of the impact on our programs. As such, we regularly prepare and submit comments on the 303(d) list prepared by the state on a biennial basis.

The North Carolina General Assembly provided the EMC with the legal authority to identify and prioritize impaired waters and develop appropriate total maximum daily loads of pollutants for those impaired waters in the 1997 Clean Water Responsibility Act. (Session Law 1997- and NC General Statutes §143B-282(c)). We believe that the EMC did exercise this authority, to some extent, when the 303(d) lists were developed as part of the five-year basinwide planning process. The previous basinwide planning process allowed for extensive public comment on the assessment methodology, provided a clear pathway to how each decision of impairment was derived, and allowed for dialogue with the affected local governments and environmental community. This process was slow and cumbersome, with some actions taking up to seven years to culminate in a decision of impairment and placement on the state 303(d) list. Similarly,

this lengthy process was also followed to remove waters from the 303(d) list.

Stormwater & GIS Services supports improving the process of making decisions of impairment and placement on the state 303(d) list in a more timely fashion, as long as the vital communication between the citizens, environmental community, local governments and DWQ remains intact. Unfortunately, communication has been lost between all of the affected parties. In some cases this has resulted in assessments and impairment decisions that are undocumented, assessment methodologies for which scientific justification has not been provided, and very little public comment or input. Because of this, local buy-in to plans to restore water quality is lost and waterbody restoration is hindered. The attached specific comments from Stormwater & GIS Services addresses these unfortunate consequences and provides suggestions for improvement.

Total Maximum Daily Loads(TMDLs) are required for each waterbody and pollutant combination that appears on the 303(d) list. In the past, the EMC has received regular reports regarding nutrient TMDLs for large reservoirs or estuaries (e.g., the Tar-Pamlico Estuary, the Neuse River Estuary, Jordan Lake, and Falls Lake). Nutrient TMDLs for large reservoirs or estuaries are typically multi-year processes involving planning, data collection, modeling, model interpretation, and development of TMDL targets. This level of communication should be continued for all nutrient TMDLs for large reservoirs or estuaries, or any other regional TMDL, that has the potential for as much economic impact as these nutrient TMDLs. However, several smaller TMDLs should have been brought to the EMC since they can set a costly precedent. The attached specific comments include a suggestion to address this gap in EMC involvement.

The EMC must take a more proactive role not only in the development of the impaired waters/303(d) list, but also in the development of Total Maximum Daily Loads. Stormwater & GIS Services appreciates the opportunity to provide these comments to DWQ as they explore the role of the EMC in the water quality assessment methodology and 303(d) list development. If you have any questions regarding these comments, please contact Michelle Woolfolk at (919) 560-4326 extension 30219 or John Cox at extension 30212.

Sincerely,

Paul Wiebke

Paul Wiebke, P.E.
Assistant Director, Stormwater & GIS Services

c: Don O'Toole, Senior Assistant City Attorney
Vicki Westbrook, Department of Water Management

Stormwater & GIS Services believes EMC oversight in the development and application of the assessment methodology and TMDL approval processes would advance the goals of restoring public confidence in the water quality assessment and TMDL processes. Specific comments regarding four ways to begin to restore that confidence are provided below:

The EMC should ensure enhanced public and EMC review of waterbody assessment methodologies and waterbody assessments. With the disconnection of waterbody assessments from both basinwide management plans and basinwide assessment documents, there are no longer clear lines of evidence supporting a waterbody use designation. When attempting to determine the rationale behind a designation, particularly an impaired designation, the public must contact DWQ directly because there is no longer any documentation of waterbody use designation. The EMC should approve a biennial (i.e., every two years) public comment period for the assessment methodology at least six months prior to performing assessments. Following the public comment period, the EMC should adopt the assessment methodology. The EMC should also request that the assessments are made public with the 303(d)/impaired waters list so that interested parties can complete a comprehensive review and provide meaningful comments.

If assessment methodologies based on narrative standards are to be utilized, the EMC should ensure that such methodologies are subjected to an extensive vetting process prior to implementation. Numeric water quality standards (.02B .0211 through .0222) undergo an extensive public comment period prior to adoption by the EMC. These standards have typically been vetted through multiple levels, including reviews of the science behind the proposed standard, the impact of the proposed standard on regulatory requirements, and the costs of those regulatory requirements. Moreover, the numeric water quality standards provide the regulated community with a clear, unbiased and measureable target to achieve in ambient waters. Since numeric targets are based on chemistry, confounding conditions can be readily identified and addressed. Assessment methodologies not based on numeric water quality standards have not been vetted as extensively, if at all. In order to provide a similar level of review, these methodologies should be adopted by the EMC after a sufficient public comment period. Examples of this are the use of biological criteria for benthic macroinvertebrates and fish communities or the use of the NC Department of Health and Human Services fish consumption advisories. Each of these is discussed below.

> Example 1. The science behind using benthic macroinvertebrate and fish communities to assess water quality is extensive. In general, the regulated community has accepted these measures as a means to determine problematic waters, as well as waters that should be protected. However, when these measures became the end point of a TMDL that used impervious cover as the surrogate, the regulated community objected. There are numerous confounding issues that may affect the health of benthic macroinvertebrate and fish communities, none of which are identified in the current assessments. Additionally, there are no established DWQ methods to determine confounding issues. Currently, there is spurious evidence that benthic macroinvertebrate community measures are a reasonable or achievable target in urban waters. This is one instance where EMC and public oversight and review could have modified the assessment methods and/or the use of the benthic macroinvertebrates as a target for TMDLs.

Example 2. It is commonly accepted that a fish consumption advisory indicates a water quality problem. The Department of Health and Human Services has issued such advice due to elevated mercury concentrations in piscivorous fish for over 10 years. However, DWQ recognized in previous years that statewide or region-wide fish consumption advice did not translate easily into the water quality assessment methodology or 303(d) lists. This is because the fish tissue data that Health and Human Services relies upon does not originate from all waters within a statewide or region-wide area. Only a subset of waters are monitored for fish tissue information. In the 2005 Cape Fear River Basinwide Plan, the assessment methodology distinguishes between waters that are monitored (i.e., fish tissue data were available) or evaluated (i.e., fish tissue data were not available). Only those waters that were monitored and were included in a fish consumption advisory were designated impaired for the 303(d) list. This limited the need for costly mercury minimization plans where there was no evidence of a problem. The assessment methodology was subsequently modified to designate all waters as impaired because of a state-wide fish consumption advisory. This change was made without significant public notice or input. Had this modification gone through public comment prior to a designation on the 303(d) list, an alternate decision may have been made.

The EMC should increase their role in reviewing and approving Total Maximum Daily Loads. Although not specifically requested, we also suggest the EMC become more involved in the development of TMDLs. The EMC should increase their role in TMDLs by approving TMDLs that have undergone all federal requirements and are ready to be submitted to the EPA. The approval should extend to any technical reports supporting the TMDL, the TMDL document itself, and the comment responsiveness summary. While not all TMDLs require EMC review and/or oversight, several types of TMDLs should be highlighted for EMC review. For example, any TMDL that involves four or more jurisdictions should be reviewed by the EMC, regardless of the pollutant addressed by the TMDL. Further, any TMDL that involves nutrients, TMDLs that by their nature include an entire watershed or drainage area, should be brought to the attention of the EMC.

NORTH CAROLINA FARM BUREAU FEDERATION, INC.

PO Box 27766, Raleigh, NC 27611 Phone: 919-782-1705 Fax: 919-783-3593 www.ncfb.org

October 18, 2012

Ms. Kathy Stecker
NC Division of Water Quality
1601 Mail Service Center
Raleigh, NC 27699-1601

via email: kathy.stecker@ncdenr.gov

Dear Ms. Stecker:

The North Carolina Farm Bureau Federation is the State's largest general farm organization, representing the interests of farm and rural people. This letter is in response to the request for comments regarding (1) whether the EMC should be more involved in setting future assessment methodologies for developing the state's list of impaired waters pursuant to the Clean Water Act, and if so, (2) to what extent.

The State submits Integrated Reports to the US Environmental Protection Agency (EPA) every two years to satisfy the reporting requirements under Clean Water Act Sections 303(d), 305(b), and 314. These reports have significant impact on the citizens of the State, most particularly the 303(d) list showing Category 5 impaired waters that require a TMDL. The list serves to indicate which waters need priority to return those waters to their specified uses. It serves as a factor in directing state and federal funds to water quality improvement projects, including those in agricultural watersheds. The 303(d) list is also an indication of which waters have been removed from the list when compared to the previous lists.

The 303(d) list is prepared using a combination of state water quality standards and water quality data. These are interpreted using Use Assessment Methodologies to determine if waters are impaired. Because of the importance of the impaired waters designations, we support the NC Environmental Management Commission (EMC) having more of a role in determining these methodologies. We feel the EMC's Water Quality Committee should review, and the full EMC should approve, all future Use Assessment Methodologies consistent with NC G.S. 143B-282(c).

We recommend that the development of future Use Assessment Methodologies include public notice and opportunity for public comment at a public meeting moderated by at least two members of the EMC with appropriate DWQ staff attending. A summary of the proceedings and comments along with recommendations should be prepared. The Water Quality Committee of the EMC should review the report and make a recommendation to the full EMC for final approval of the Use Assessment Methodology. Upon approval by the EMC, DWQ could then use the approved Methodologies to prepare the State's 303(d) list and Integrated Reports.

We feel that the time of the EMC's Water Quality Committee and the full EMC would be well spent reviewing and approving these methodologies that are so important to the determination of impaired waters in the State. We appreciate the opportunity to comment on EMC involvement in the preparation and approval of Use Assessment Methodologies.

Sincerely,

Larry B. Wooten

Larry Wooten
President

LBW:afc

NC LEAGUE OF MUNICIPALITIES

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Post Office Box 3069 | 27602-3069
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October 22, 2012

Ms. Kathy Stecker, Modeling and TMDL Unit Supervisor
Division of Water Quality
NC Department of Environment and Natural Resources
1617 Mail Service Center
Raleigh, NC 27699-1617

Dear Ms. Stecker,

The NC League of Municipalities is a membership organization of over 550 municipalities and affiliate organizations, many of which are impacted by decisions made throughout the process of developing the state's impaired waters list, or 303(d) list. The League's member cities, towns, and affiliates therefore appreciate the opportunity to comment on whether the N.C. Environmental Management Commission (EMC) should be more involved in setting future assessment methodologies for developing the state's list of impaired waters, and if so, to what extent. The "use assessment methodology" employed by the state determines the processes used to evaluate and list waters on the state's 303(d) list.

The League members support the involvement of the EMC in these processes because it would implement a robust public process for development of the list and total maximum daily loads (TMDLs) and it would publicly affirm the data guidelines and other decisions used to list waters. As an additional, logical extension of this oversight, League members support the EMC prioritizing the TMDL development schedule.

Municipal water quality professionals work diligently and cooperatively with the state to address water body impairments in North Carolina. League members hope that future EMC involvement in the significant regulatory decisions inherent in the 303(d) listing process will ensure that future regulations target our state's top-priority watersheds, with scientifically and legally defensible strategies that will improve our state's waters. The League looks forward to working with the EMC going forward to share the best available information.

Respectfully submitted,

Erin L. Wynia

Erin L. Wynia
Legislative & Regulatory Issues Manager
ewynia@nclm.org
(919) 715-4126

League members have a prime responsibility for implementing the requirements of the federal Clean Water Act (CWA). As a result, they understand first-hand the significance of decisions made in listing waters on the 303(d) list, because many cities and towns have operations with wastewater and stormwater discharges to these "listed," impaired waters.

The consequences of listing a water body as impaired can be dramatic, as the CWA requires development of a TMDL in response to the listing. A TMDL is then implemented through discharge permits issued in accordance with the National Pollutant Discharge Elimination System (NPDES) program. Because all municipalities that offer wastewater treatment or manage a municipal separate storm sewer system hold NPDES permits, they must adhere to any additional, TMDL-related permit conditions. Those cities and towns must also ensure they have the necessary financing to address the added permit terms, a process which takes time and planning in consultation with the city or town's governing board.

In this context, cities and towns make the day-to-day program management decisions about where to best allocate resources to meet the expectations in their NPDES permits. Informed by that experience, League members believe there is a valuable role for the EMC to play in overseeing development of the 303(d) list. Further, they believe the EMC should prioritize waters for TMDL development. N.C. law already allows the EMC to assume both roles.[1] Therefore, the EMC may move quickly to address the 2014 303(d) list. League members urge the EMC to do so.

Broadly, the League believes EMC oversight in both the use assessment methodology and TMDL prioritization processes would advance these important goals: (1) a robust public process for development of the list and TMDLs; (2) affirmation of the data guidelines and other decisions used to list waters; and (3) a targeting of scarce state and local resources to development of the most high-priority TMDLs.

Public process. For an undertaking with such large regulatory consequences, a robust, transparent public process is critical. This process need not be done through rulemaking; in fact, the League supports a more-nimble "EMC approval" process. In such a scenario, the EMC would advertise notice of a public meeting and opportunity for comment when a draft use assessment methodology is prepared – preferably months ahead of its use. The League also suggests a public notice and comment period on

[1] N.C. Gen. Stat. §143B-282(c) states: "The Environmental Management Commission shall implement the provisions of subsections (d) and (e) of 33 U.S.C. § 1313 by identifying and prioritizing impaired waters and by developing appropriate total maximum daily loads of pollutants for those impaired waters. The Commission shall incorporate those total maximum daily loads approved by the United States Environmental Protection Agency into its continuing basinwide water quality planning process."

proposed TMDL priorities at this time. Then, EMC members or appropriate Division of Water Quality (DWQ) staff would serve as hearing officers and provide a summary of comments to members of the EMC Water Quality Committee. We envision the committee and then the full EMC incorporating comments and approving the use assessment methodology and TMDL priorities. After this approval, DWQ would proceed with data analysis, pursuant to the approved use assessment methodology, and propose that cycle's 303(d) list. The League supports this draft list being subject to a final public comment period prior to submission of the list to EPA.

Data guidelines. The League suggests that the EMC, as part of its oversight, provide routine review of the data guidelines and other decisions used to list waters. In this way, the EMC would provide the answers to over-arching policy questions such as:

- Which watersheds, if any, should be prioritized for intensive monitoring in a particular cycle?[2]
- Which use support categories, if any, should be prioritized in a particular cycle?
- How much data is required to assign a water body impairment?
- For what time period would data be considered valid?
- How many excursions from water quality standards justify designation as impaired?
- If insufficient "new" data is collected, what amount of "old" data may be evaluated?
- Which waters should be prioritized for more-intense sampling, if previous results are incomplete?
- Under what circumstances should factors besides excursions from water quality standards be considered in determining impairment status (for example, as in the current use assessment methodology for copper and zinc)?
- What water body conditions constitute bioclassifications of "severe," "poor," "fair," "good/fair," "good" and "excellent"?
- Under what circumstances may a decision by a sister agency, such as the Division of Marine Fisheries (shellfish growth area classifications) or Department of Health and Human Services (fish consumption advisories), form the basis of an impairment listing?

TMDL prioritization. Having the EMC set priorities for TMDL development[3] -- a task related to development of the 303(d) list – ranks in equal importance to the need for the Commission to

[2] Other EPA Region 4 states, such as Kentucky and Tennessee, utilize a five-year cycle to rotate through the state's river basins for sampling and monitoring of water bodies. While each state still receives samples and data from other sites around the state from other agencies and the public each year, the state's water body monitoring efforts concentrate on that year's priority river basins.

[3] Other EPA Region 4 states provide instructive examples of TMDL prioritization. In Florida, each impaired body is designated as high, medium, or low priority based on specific factors such as the type of water body and the

determine the data guidelines for development of the 303(d) list. As described above, approved TMDLs can significantly increase the scope of a permitted wastewater or stormwater program. A more explicit priority ranking of waters slated for TMDL development would help affected cities and towns better forecast the need for additional resources to implement their programs. The League recommends subjecting the TMDL priorities to the same public comment processes that the EMC may put in place for the use assessment methodology.

In addition, a more public process for TMDL prioritization would dovetail neatly with a draft EPA initiative now under consideration. This initiative, which aims to formalize a TMDL program "vision" (attached), stresses a shift away from developing specified quantities of TMDLs each year. Instead, the vision recommends targeting available state and local staff and financial resources to the highest-priority water impairment issues in each state. We believe the EMC is the natural home for this level of program guidance.

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pollutant involved. And Mississippi prioritizes impaired waters for TMDL development based on the pollutant of concern, the basin plan rotation, and the designated uses of the water.

THE LAND TRUST FOR THE LITTLE TENNESSEE

October 9, 2012

We note that the DWQ is currently soliciting comment on two related issues. With regard to water quality assessment methodology, the Director of our Stream Biomonitoring Program, Dr. William O. McLarney has already submitted technical comments, based on 23 years experience doing biological assessment in western North Carolina, including occasional collaborations with the DWQ. Here we would like to briefly state our position on "the EMC role in setting water quality assessment methodology", as related to your ongoing effort to enhance the quality of water quality assessment.

It is well recognized that historically North Carolina is one of the leaders among the 50 states in biological assessment of water quality. Your current effort to improve DWQ methods can only serve to make a good situation better. In that light, we consider that it behooves the State of North Carolina to show their confidence in the DWQ by stressing their technical competence in designating impaired waters according to established state standards.

The EMC has an important role to play in the designation of waters of the state – and in officially removing them from the impaired list when the designation serves its purpose of facilitating improvements. Given the standard for technical excellence which the DWQ has set it seems clear that the DWQ, in consultation with other water quality and bioassessment experts, should be the primary entity responsible for determining assessment methodologies. To increase the role of the EMC in this phase of the work of protecting our waters would seem to us redundant, while at the same time burdening the EMC with an unnecessary responsibility.

We would be pleased to expand on these comments if desired. For now we simply want to state our satisfaction with the present division of responsibilities between the DWQ and the EMC and our willingness to work with the DWQ in continually upgrading the quality of water quality and habitat protection in North Carolina.

Sincerely,

Paul Carlson, Executive Director

P.O. Box 1148 • 557 East Main Street • Franklin, North Carolina 28744-1148
Tel: 828-524-2711 • Fax: 828-524-4741 • Web: www.ltlt.org

October 22, 2012

VIA E-MAIL

Ms. Kathy Stecker, Modeling and TMDL Unit Supervisor
Division of Water Quality
NC Department of Environment and Natural Resources
1617 Mail Service Center
Raleigh, NC 27699-1617

Re: EMC Role in Setting Water Quality Assessment Methodology

Dear Ms. Stecker,

As an informal group of municipal professionals from across North Carolina, we appreciate the opportunity to comment on whether the N.C. Environmental Management Commission (EMC) should be more involved in setting future assessment methodologies for developing the state's list of impaired waters, and if so, to what extent. The "use assessment methodology" employed by the state determines the processes used to evaluate and list waters on the state's 303(d) list.

As those responsible for implementing the requirements for the state's numerous stormwater programs, such as the federal Phase I/II stormwater program or requirements in nutrient management strategies like the Jordan Lake Rules, we understand first-hand the significance of decisions made in listing waters on the 303(d) list. Many of us manage programs with stormwater discharges to these "listed," impaired waters. The consequences of listing a water body as impaired can be dramatic, as the federal Clean Water Act requires development of a Total Maximum Daily Load (TMDL) in response to the listing. A TMDL then is implemented through discharge permits under the National Pollutant Discharge Elimination System (NPDES) program. As holders of NPDES MS4 stormwater permits, we must adhere to any additional, TMDL-related permit conditions. We must also ensure we have the necessary financing to address the added permit terms, a process which takes time and planning in consultation with our governing boards.

In this context, we make the day-to-day program management decisions about where to best allocate our resources to ensure we meet the expectations laid out for us. Informed by that experience, we believe there is a valuable role for the EMC to play in overseeing development of the 303(d) list. Further, we believe the EMC should prioritize waters for TMDL development.

We start by noting that N.C. law already allows the EMC to assume both the 303(d) list oversight role and the responsibility of prioritizing TMDLs.[1] Therefore, the EMC may move quickly to address the 2014 303(d) list cycle. We urge the EMC to do so.

Broadly, we believe EMC involvement in both the use assessment methodology and TMDL prioritization processes would advance these important goals: (1) a robust public process for development of the list and TMDLs; (2) affirmation of the data guidelines and other decisions used to list waters; and (3) a targeting of scarce state and local resources to development of the most high-priority TMDLs.

Public process. For an undertaking with such large regulatory consequences, we believe a robust, transparent public process is critical. We do not suggest that this process must be done through rulemaking; in fact, we support a more-nimble "EMC approval" process. In such a scenario, the EMC would advertise notice of a public meeting and opportunity for comment when a draft use assessment methodology is prepared – preferably months ahead of its use. We also support public notice and comment on proposed TMDL priorities at this time. Then, EMC members or appropriate Division of Water Quality (DWQ) staff would serve as hearing officers and provide a summary of comments to members of the EMC Water Quality Committee. We envision the committee and then the full EMC incorporating comments and approving the use assessment methodology and TMDL priorities. After this approval, DWQ would proceed with data analysis, pursuant to the approved use assessment methodology, and propose the 303(d) list. We support this draft list being subject to a final public comment period prior to submission of the list to EPA.

Data guidelines. We would expect EMC oversight to provide routine review of the data guidelines and other decisions used to list waters. In this way, the EMC would provide the answers to over-arching policy questions such as:

- Which watersheds, if any, should be prioritized for intensive monitoring in a particular cycle?[2]
- Which use support categories, if any, should be prioritized in a particular cycle?
- How much data is required to assign a water body impairment?
- For what time period would data be considered valid?
- How many excursions from water quality standards justify designation as impaired?

[1] N.C. Gen. Stat. §143B-282(c) states: "The Environmental Management Commission shall implement the provisions of subsections (d) and (e) of 33 U.S.C. § 1313 by identifying and prioritizing impaired waters and by developing appropriate total maximum daily loads of pollutants for those impaired waters. The Commission shall incorporate those total maximum daily loads approved by the United States Environmental Protection Agency into its continuing basinwide water quality planning process."

[2] Other EPA Region 4 states, such as Kentucky and Tennessee, utilize a five-year cycle to rotate through the state's river basins for sampling and monitoring of water bodies. While each state still receives samples and data from other sites around the state from other agencies and the public each year, the state's water body monitoring efforts concentrate on that year's priority river basins.

- If insufficient "new" data is collected, what amount of "old" data may be evaluated?
- Which waters should be prioritized for more-intense sampling, if previous results are incomplete?
- Under what circumstances should factors besides excursions from water quality standards be considered in determining impairment status (for example, as in the current use assessment methodology for copper and zinc)?
- What water body conditions constitute bioclassifications of "severe," "poor," "fair," and "excellent"?
- Under what circumstances may a decision by a sister agency, such as the Division of Marine Fisheries (shellfish growth area classifications) or Department of Health and Human Services (fish consumption advisories), form the basis of an impairment listing?

TMDL prioritization. Having the EMC set priorities for TMDL development[3] ranks in equal importance to the need for the commission to determine the data guidelines for development of the 303(d) list. As we described above, approved TMDLs can significantly increase the scope of a permitted stormwater program. As North Carolina's TMDL program has listed many waters in our jurisdictions as impaired for parameters that indicate increased stormwater runoff, we have witnessed the efforts of our colleagues to comply with these additional regulations.

Recently, we have seen several "stormwater TMDLs" proposed in North Carolina. One such TMDL, based on turbidity, regulated the municipalities of Winston-Salem, Lewisville, and Clemmons. As a result, these three MS4 programs, which represent a small portion of the watershed and contribute a fraction of the load, are now subject to reducing the entire load identified in the TMDL. The second TMDL was a controversial, unproven strategy for the Little Alamance Creek watershed. That TMDL was based on stormwater flow, an approach that has not gained acceptance nationwide. In response to our concerns, DWQ allowed the affected communities to write an alternate strategy. However, if a process had been in place letting communities know of the prioritization schedule of TMDL development and encouraging collaboration from the beginning, a better solution for the affected communities and for water quality could have been worked out ahead of time. We believe an EMC that is active in this process would have better-focused all parties on ways to achieve water quality results.

A more explicit priority ranking of waters slated for TMDL development would help us better forecast the need for additional resources to implement our programs. We recommend subjecting the TMDL priorities to the same public comment processes that the EMC may put in place for the use assessment methodology.

[3] Our sister EPA Region 4 states provide instructive examples of TMDL prioritization. In Florida, each impaired body is designated as high, medium, or low priority based on specific factors such as the type of water body and the pollutant involved. And Mississippi prioritizes impaired waters for TMDL development based on the pollutant of concern, the basin plan rotation, and the designated uses of the water.

In addition, a more public process for TMDL prioritization would dovetail neatly with a draft EPA initiative now under consideration. This initiative, which aims to formalize a TMDL program "vision," stresses a shift away from developing specified quantities of TMDLs each year. Instead, the vision recommends targeting available state and local staff and financial resources to the highest-priority water impairment issues in each state. We believe the EMC is the natural home for this level of program guidance.

Throughout the profession, we are proud of the part we play in addressing and preventing water quality impairments in North Carolina. We hope that future EMC involvement in the significant regulatory decisions inherent in the 303(d) listing process will ensure that future regulations target our state's top-priority watersheds, with scientifically and legally defensible strategies that will improve our state's waters. We take our responsibilities seriously and look forward to working with the EMC going forward to share the best available information.

Sincerely,

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NC Conservation Network • Western North Carolina Alliance

October 22, 2012

Environmental Management Commission
1617 Mail Service Center
Raleigh, NC 27699-1617

Dear Commissioners:

We write to share our thoughts on the proper role of the Environmental Management Commission (EMC) in overseeing revisions to North Carolina's assessment methodology, the technical process by which the state determines which streams, rivers, lakes, and estuaries are failing to meet water quality standards. Our organizations work of behalf of thousands of North Carolinians who drink, swim, fish, and paddle North Carolina's diverse waters. The assessment methodology, although administrative and technical in nature, plays a vital role in the implementation of state and federal water quality protections, and we appreciate the chance to consider the best role of the EMC in its revision.

Finding the proper oversight role

At the outset, we note that the EMC has already received encouragement from a variety of regulated interests to involve itself more directly in the process of revising North Carolina's methodology. We also grasp that, at any given time, for any given issue, a regulated or public interest may benefit from having the EMC assert more authority or defer more to staff. A single interest's ideal balance may change as that interest gains or loses influence with appointed EMC members, agency staff, or the Governor's leadership team. In this letter, we try to look past any particular historical moment (including the present) to ask, what is the best institutional balance for the state over the long term?

NCGS 143B-282(c) charges the EMC to "implement the provisions of subsections (d) and (e) of 33 U.S.C. § 1313 [Clean Water Act §303] by identifying and prioritizing impaired waters and by developing appropriate total maximum daily loads of pollutants for those impaired waters." As with other authorities, the EMC can delegate some or all of that authority to Division of Water Quality (DWQ) staff. It appears that the EMC has in effect delegated the authority to approve the assessment methodology as long as anyone can remember. The EMC clearly can choose not to delegate, but as a practical matter, the EMC lacks the expertise or time to establish the assessment methodology itself; it will have to delegate much of the work.

Given this practical constraint, there are at least four ways the EMC can structure its oversight:

Complete delegation. This is in effect what the EMC has done until now, and could be made official, turning the entire process of revisions over to staff, relying on expert DWQ staff to incorporate public comments and finalize the methodology. Given the highly technical nature of the assessment methodology, this is not a wrong choice.

Rubber stamping DWQ's recommendation. The EMC could exercise nominal oversight, but in fact simply approve whatever staff brings before it. The EMC does this in some other areas. The approach makes review pointless, so it is hard to see this as optimal.

Cherry picking issues. In this approach, the EMC would review the draft methodology, with individual commissioners raising concerns about specific technical choices, and the EMC voting to restructure those on a case by case basis. There are several problems with this approach. Most commissioners lack the technical expertise to do this constructively. Instead, regulated interests are likely to carry proposed tweaks to commissioners, hoping to game the assessment system in favor of avoiding impairment designations that could eventually require reductions in discharges. Specific changes in the technical methodology would likely win or lose based on how well regulated interests could lobby and muster votes on the EMC, rather than on the basis of sound science. If the assessment methodology is a complex fabric of expertise-based decisions, the cherry picking approach would pull individual threads out of the weave with little attention to the impact on the whole fabric. This approach also seems likely to invite legal challenges: with 19 members, the EMC has often had a difficult time articulating a non-arbitrary rationale for decisions in complex, fact-specific cases (as, for example, in contested cases). That danger may be similarly real in a highly technical area like the assessment methodology, if the EMC starts cherry picking.

Expertise-based oversight. On the other hand, the EMC's structure and membership, established by NCGS §143B-283(a), suggests a more constructive role. Most of the seats on the EMC are defined by a special expertise – indeed, only three seats are 'at large'. When the Commission functions at its deliberative best, Commissioners do not act simply on behalf of a single regulated community, but bring distinct ways of thinking about policy that reflect the Commissioners' diverse trainings: public health, industrial pollution control, stormwater engineering, and all the rest. Those are expertises that DENR lacks the budget to keep on staff, or at any rate cannot assign to work on every project. Commissioners can add value to a highly technical process – such as revising the assessment methodology – by asking questions, seasoned with a good bit of humility and deference, about the tools and choices reflected in the draft methodology. In places, the Commissioners' special knowledge may open doors for staff to build more efficient or insightful assessment methods. Yet, at the end of the day, it makes sense for the EMC to show great restraint in overturning staff technical judgments, since staff is in the best position to know how to fit the whole package together in a way that will satisfy the federal Environmental Protection Agency (EPA) and make sense of the state's available data.

To the extent that the EMC can provide expertise-based oversight, this approach will expand the resources available to the agency, and will therefore be an improvement over wholesale delegation. On the other hand, if Commissioners lack restraint, or default to carrying water for regulated interests, the process will slide into cherry picking. The EMC would do better to wash its hands of the process through complete delegation than end up there.

The assessment methodology is not a rule

Whatever line the EMC draws for its oversight, it is worth stressing that the assessment methodology is not, and cannot workably be considered, a rule within the meaning of the state Administrative Procedures Act (APA).

NCGS §150B-2(8a) defines rules broadly, but excludes (in (a)), "policies and procedures manuals, if the statement does not directly or substantially affect the procedural or substantive rights or duties of a person not employed by the agency or group of agencies." In this case, the choice of assessment methodology – and even the application of that methodology to the state's waters to develop the 303(d) list of impaired waters – does not directly affect the rights or duties of dischargers. Instead, the adoption of the assessment methodology and its application is a technical, science-driven process. The substantive rights are affected by rules that say what is allowed or required of dischargers in an impaired watershed, rules which are indeed subject to the state APA.

NCGS §150B-2(8a) also excludes (in (h)), "scientific, architectural, or engineering standards, forms, or procedures". The assessment methodology is, through and through, a scientific procedure: how the state applies water quality standards to monitoring data to determine impairment.

Finally, the EMC's authority to be involved in the assessment methodology or impairment decision is couched in language that makes it clear that adoption and application of the methodology is not a rule. As noted above, NCGS §143B-282(c) charges the EMC 'to identify and prioritize' impaired waters. In contrast, the very next subsection, NCGS §143B-282(d), which authorizes the EMC to adopt strategies to cure impairment, explicitly frames that authority in terms of rulemaking.

It is fortunate that the assessment methodology is not a rule. A decision to treat it as such would collapse implementation of the Clean Water Act in North Carolina. Given the length of the rulemaking process, it would be literally impossible for an assessment methodology to ever be completed in time to be applied to its integrated report. That would have a host of damaging impacts on dischargers from all regulated communities, and the EMC should be glad to avoid that outcome.

Conclusion

We appreciate the opportunity to comment on the question of how the EMC should best structure its oversight of North Carolina's assessment methodology. Thank you for your consideration of these comments.

Sincerely,

Grady McCallie
Policy Director
NC Conservation Network

Julie Mayfield
Executive Director
Western North Carolina Alliance

October 22, 2012

Memorandum

To: Members of the NC Environmental Management Commission

c/o Ms. Kathy Stecker, Supervisor, Modeling & TMDL Unit

NC Division of Water Quality

From: George Santucci, President, National Committee for the New River (NCNR)

Re: EMC Role in Assessment Methodologies for developing the state's Impaired Waters List

NCNR is responding to the public comment request by the Environmental Management Commission (EMC) at its September 2012 board meeting: (1) whether the EMC should be more involved in setting future assessment methodologies for developing the state's list of impaired waters pursuant to the Clean Water Act, and if so, (2) to what extent should the EMC be involved.

Forty years ago groundbreaking legislation was developed to protect and restore our nation's waters. The Clean Water Act developed a successful federal-state partnership that empowered states to develop and employ sound science-based methodologies that inform stakeholders about the current state of water quality. This information is then used by decision makers to develop plans that will guide agencies to improve waters with degraded water quality and protect those waters that are of the highest quality.

The assessment methodology employed is technical, complex and requires a high degree of analysis by which North Carolina's water bodies are judged to be impaired or not. These assessments can use physical, chemical or biological data to determine the health of water bodies. The scientists, engineers, and planners at the NC Division of Water Quality (DWQ) have both the expertise and experience needed to develop and implement robust assessment methods based upon the best scientific information available. Their

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methods and assessments have credibility with university scientists, the public, and the EPA. The public and decision makers like the EMC rely upon accurate information about the health of their waters to make informed decisions.

The General Assembly created the Environmental Management Commission to bring different expertise and viewpoints to North Carolina's environmental policy making. To ensure a diverse and comprehensive approach to policy development is employed, EMC members have valuable scientific, engineering, policy making and other appropriate experience. EMC members can add value to this highly technical process by asking questions based on their diverse and specialized backgrounds.

The EMC should take great care to preserve the scientific integrity of the methodologies. NCNR believes it is critical for those who develop the policy to rely on sound science. Science-based methodologies must be used to inform effective policies. And they must be developed independently. Expanding the role of EMC policy makers in developing scientific assessment methodologies could risk the credibility of the methodologies.

Thank you for your consideration.

NICHOLAS INSTITUTE FOR ENVIRONMENTAL POLICY SOLUTIONS
DUKE UNIVERSITY

October 18, 2012

Memorandum

To: Members of the NC Environmental Management Commission
c/o Ms. Kathy Stecker, Supervisor, Modeling & TMDL Unit
NC Division of Water Quality
From: Bill Holman, Director of State Policy & Abby Van de Bogert, Research Associate
Re: EMC Role in Listing Impaired Waters

At its September 2012 meeting, the Environmental Management Commission (EMC) decided to request public comment on: (1) whether the EMC should be more involved in setting future assessment methodologies for developing the state's list of impaired waters pursuant to the Clean Water Act, and if so, (2) to what extent should the EMC be involved.

The Clean Water Act – enacted forty years ago on October 18, 1972 – established a successful federal-state partnership to protect and restore water quality. Developing and employing sound science has been fundamental to the significant progress that North Carolina and other states have made in reducing water pollution and improving water quality.

The Clean Water Act requires states to develop science-based methods to assess the health of their waters and to regularly report the information to both the public and the EPA. At the most fundamental level, the assessment methodology process is a technical, science-based set of standards by which North Carolina's water bodies are judged to be impaired or not. These assessments can use physical, chemical or biological data to determine the health of water bodies.

The scientists, engineers, and planners at the NC Division of Water Quality (DWQ) have both the expertise and experience needed to develop and implement robust assessment methods based upon the best scientific information available. Their methods and assessments have credibility with university scientists, the public, and the EPA.

The public and decision makers like the EMC rely upon accurate information about the health of their waters to make informed decisions. The staff of DWQ has to answer scientific questions such as "How many and what type of invertebrates can this water body sustain?" and "What water temperatures and oxygen levels will trout need to survive in this stream?" These questions and others form the basis of a science-based assessment methodology.

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The General Assembly created the Environmental Management Commission to bring different expertise and viewpoints to state environmental policy making. Many EMC members have valuable scientific and engineering expertise. Other EMC members bring other non-technical expertise and experience to policy making.

In considering whether the EMC should play an active role in setting water quality assessment methodologies, the EMC should take great care to preserve the scientific integrity of the methodologies. In our many years of experience working in the environmental policy field, we have found it is critical to keep scientific issues separate from policy issues when developing effective policies. Expanding the role of EMC policy makers in developing scientific assessment methodologies could risk the credibility of the methodologies.

The EMC knows from experience that there are many policy options available to address impaired waters or other environmental problems identified by technical experts. Policy options address not only what is scientifically feasible, but also what is socially acceptable and economically efficient.

Although North Carolina has made great progress in protecting and restoring its waters, much more needs to be done. Developing new policies, refining old policies, and collaborating with stakeholders to address the impaired waters identified by DWQ and the issues and opportunities identified in the EMC's river basin water quality plans already require tremendous effort by the EMC and its staff.

The EMC will have to step up its efforts to address water supply and allocation issues in the future. it will also need the best scientific and technical information available to develop effective policies to manage our increasingly valuable water resources. We encourage you to continue to allow the technical expertise of the staff at DENR to be the primary authority on the assessment methodology process.

Thank you for your consideration.

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City Of Raleigh
NORTH CAROLINA

October 19, 2012

NC Environmental Management Commission
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Raleigh, NC 27699-1617

Delivery via email and first class mail

Re: 303(d) List Duties of the EMC

Dear Chairman Smith and other Commissioners:

Thank you for the opportunity to comment on the duties of the Environmental Management Commission as regards the 303(d) list development and the adoption of TMDLs. Both issues are of great importance to the City of Raleigh.

The City recommends that the EMC move forward immediately with its statutory duty clearly established in N.C. Gen. Stat. § 143B-282(c) to identify and prioritize impaired waters and to develop appropriate TMDLs for these impaired waters. The designation of waters as impaired has the potential for enormous impacts on local governments. It is a process that should have sunshine, notice, and full consideration of all relevant scientific information. The past practices of DWQ have not fully embodied those principles and key designations have occurred that remain a problem. A recent example of those problems was the designation of all waters of the State as impaired for mercury contamination and the resulting problems engendered by the attempts to cure the problems with a TMDL.

There has been question raised as to whether the EMC has the requisite expertise for these decisions. I respectfully remind that EMC that it exercises similar, if not identical powers, when it establishes water quality designation, adopts nutrient management strategies, adopts capacity use plans and implementing rules, among a myriad of other complex environmental issues. Its legislatively established member composition is designed to make it a body with the appropriate expertise.

As a City Manager, I am acutely aware of the impact of a 303(d) designation and the issuance of a TMDL. It has strong ramifications arising from the City's MS4 NPDES Stormwater permit. It is equally important the development and amendment of the City's NPDES permits for its waste water treatment facilities.

For all these reasons, I believe that the EMC should actively be involved in these critical decisions and that it should take ownership of the powers and duties conferred in 1997. The duties were part of a comprehensive legislative package responding to the need, abundantly shown by the Neuse Estuary fishkills, for a comprehensive methodology to manage the State's 17 river basins. The EMC's efforts in this essential function of the State are laudable and will only be enhanced by its active participation in the 303(d) listings and the development of responding TMDLs.

Sincerely,

J. Russell Allen
City Manager

CC: John Robert Carman, CORPUD Director
Carl Dawson, Public Works Director
Kenneth Waldroup, Ass't CORPUD Director
Danny Bowden, Stormwater Manager
Dan McLawhorn, Associate City Attorney

WKC
Guardians of North Carolina's Water and Health
from the Mountains to the Sea

Waterkeepers Carolina
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Washington, NC 27889
252.946.7211

Ms. Kathy Stecker
Supervisor, Modeling and TMDL Unit
Division of Water Quality
NC Dept. of Environment and Natural Resources

October 22, 2012

RE: Waterkeepers Carolina Comments on the EMC role in setting water quality assessment methodology

Dear Ms. Stecker:

Thank you for the opportunity to comment on the Environmental Management Commission's (EMC) role in setting water quality assessment methodologies, which are used to develop the state's list of impaired waters pursuant to the Clean Water Act. These comments are submitted by Waterkeepers Carolina (WKC), an umbrella group that represents all ten Waterkeeper programs in North Carolina, including the Cape Fear Riverkeeper, Catawba Riverkeeper, French Broad Riverkeeper, Haw Riverkeeper, Pamlico-Tar Riverkeeper, Upper & Lower Neuse Riverkeepers, Waccamaw Riverkeeper, Watauga Riverkeeper, White Oak New Riverkeeper & Yadkin Riverkeeper.

Last week, Waterkeepers Carolina joined advocates all over the country in celebrating the 40th Anniversary of the Clean Water Act, and the goal it establishes of keeping our waters swimmable, drinkable and fishable. Unfortunately, North Carolina has not reached those Clean Water Act goals for all of our waters. Instead, we continue to work toward those goals, and the state's assessment methodology is absolutely essential in that process. Given that the assessment methodology plays such a vital role in the protection and restoration of North Carolina's waters, the process of determining impairment must be established and carried out by those with scientific expertise and sufficient resources to make sure it is done adequately.

Currently, the EMC unofficially delegates the setting of water quality assessment methodologies to Division of Water Quality (DWQ) staff, and has done so for a long time. This has been a wise choice given the technical expertise of the DWQ staff, and the fact that setting a valid methodology is time and resource intensive. As Riverkeepers working on the ground dealing with pollution issues in our watersheds, we see the critical role that technical training and expertise plays in underpinning the methodology. EMC commissioners bring many forms of expertise and diversity to the table, but few EMC members possess the requisite technical expertise for setting the water quality assessment methodologies, and any that do possess expertise are outside the structure of accountability built into the chain of management authority in the Department of Environment and Natural Resources (DENR). We think it likely that, if individual commissioners become too involved in decision making on such a technical issue as the assessment methodology, the EMC's actions run a significant chance of becoming arbitrary and capricious.

We also have pragmatic concerns about the ability of the EMC to add such a time and resource intensive item to its already full agenda, given that the Commission is not only responsible for water quality decisions, but for air quality, land resources and water

resources decisions as well. As a practical matter, the EMC cannot revise the assessment methodology by itself. On the other hand, if the EMC allows DWQ to set the assessment methodology but then picks and chooses aspects to rewrite, the revisions are likely to upset the intricate and interdependent technical choices embodied in the methodology, and potentially harm its effectiveness. Waterkeepers Carolina would like to see the EMC in a role of oversight, bringing to the table those specializations that each member carries; however, such oversight must be in conjunction with a general deference to the expertise of DWQ staff on highly technical water quality issues.

We appreciate the ability to comment on the decision of the EMC's role in the assessment methodology, and we also look forward to commenting in November on the actual assessment methodology itself. Between now and then, we intend to gather further research on the specifics of what is positive about the existing methodology and what science suggests should be adjusted in future methodologies. Thank you for your time and consideration of our comments.

Sincerely,

Erin Riggs
Associate Executive Director
Waterkeepers Carolina

NORTH CAROLINA WATER QUALITY ASSOCIATION

OCTOBER 22, 2012

By Electronic Mail (kathy.stecker@ncdenr.gov)

Ms. Kathy Stecker
North Carolina Department of Environment and Natural Resources
Division of Water Quality
1617 Mail Service Center
Raleigh, North Carolina 27699

RE: NCWQA Comments on EMC Role in Setting Water Quality Assessment Methodology

Dear Ms. Stecker:

The North Carolina Water Quality Association ("WQA") appreciates the opportunity to provide comments on the Environmental Management Commission's ("EMC's") role in setting water quality assessment methodology. The WQA comprises public water, sewer, and storm water utilities statewide serving a significant majority of the population in the state.

The North Carolina Division of Water Quality ("DWQ") has requested public comment on (1) whether the EMC should be more involved in setting future assessment methodologies for developing the state's list of impaired waters pursuant to the Clean Water Act, and if so, (2) to what extent.

We believe that the EMC should review and approve the assessment methodology for North Carolina's biennial list of impaired waters under section 303(d) of the Clean Water Act. Given the regulatory significance of the 303(d) list, it is incumbent on the EMC to review and approve the methodology which will yield the list of impaired waters. This is simply too important an issue to delegate to the DWQ Director.

We further believe that the assessment methodology should be put out for public notice with each draft 303(d) list. In addition to being able to comment on the draft list for the year in question, the public should be able to offer comments on the listing methodology that will be used to develop the subsequent list. We feel that is the most efficient approach in that only one public notice is necessary to address both the specific list in question and the methodology for the subsequent list. Moreover, we believe that the best time to get meaningful input on the methodology is when the public's attention is focused on a proposed list of impaired waters.

The assessment methodology is of great legal and practical significance because it plays a large role in determining what waterbodies will be listed as impaired on North Carolina's 303(d). Such listings trigger regulatory restrictions, more stringent permits and subject landowners and dischargers to requirements under the total maximum daily loads ("TMDLs") program.

Requiring EMC review and approval of the assessment methodology would add an additional public safeguard to the 303(d) listing process, helping to make sure that an appropriate methodology is used in developing North Carolina's list of impaired waters. It would be beneficial for the EMC to review and approve the assessment methodology because, as an entity not directly involved in the drafting of the assessment methodology, the EMC will be better able to objectively assess its reasonableness and legality than the DWQ staff that prepared the methodology.

As noted above, the 303(d) listings lead to the development and imposition of TMDLs on landowners and regulated entities. We believe that the EMC should routinely review controversial and otherwise significant (regional/statewide) TMDLs. An expanded role for the EMC with respect to TMDLs is appropriate given the significant policy choices often underpinning TMDL development as well as the impact of TMDL wasteload allocations on permit requirements for regulated entities. These allocations are having increasingly significant public policy implications and regulatory impacts. This warrants the opportunity for EMC review of controversial or otherwise significant TMDLs.

Thank you for considering our comments. We are available to meet with you regarding our suggestions. Please do not hesitate to contact me should you have any questions.

Sincerely,

//S//

Jackie Jarrell
WQA President

cc: NCWQA Members
Mr. Chuck Wakild