

## Minutes July 14, 2016 Meeting

The North Carolina Environmental Management Commission met on Thursday, May 12, 2016 in the main floor hearing room in the Archdale Building, Raleigh, NC. Commissioners present were:

Steven J. Rowlan, Chairman  
David Anderson  
Charlie Carter  
Gerard Carroll  
Tommy Craven  
Charles "Boots" Elam  
E.O. Ferrell  
Kevin Martin, Vice-Chairman  
Bill Puette  
Larry Raymond  
Bob Rubin  
Clyde ("Butch") Smith, Jr.  
John D. Solomon  
Steve Tedder  
Julie Wilsey

Commission Counsel Jennie Hauser was also present.

### I. Preliminary Matters

The meeting was called to order at 9:00 a.m. with Chairman Rowlan presiding. He provided the notice required by N.C.G.S. §138A-15(e). No conflicts of interest or appearances of conflicts of interests were identified at this time.

### II. Approval of Minutes

The Chair asked for approval of the minutes from the Commission meeting on May 12, 2016. **Commissioner Wilsey** made a motion to approve the minutes with one minor amendment to change the adjournment time to at 11:11 a.m. instead of 1:11p.m. **Commissioner Tedder** seconded the motion. The motion passed unanimously.

### III. Action Items

**Agenda Item: 16-30 Request for Approval to Proceed to Public Comment on the Report for 15A NCAC 13A, Hazardous Waste Management for the Periodic Review of Existing Rules in accordance with S. L. 2013-413**

Julie Woosley, Hazardous Waste Section Chief of the Division of Waste Management, presented the Regulatory Requirements for Session Law 2013-413 which requires existing rules be reviewed through G.S. 150B-21.3A. The Environmental Management Commission (EMC) is the authority for 15A NCAC 13A. The

Division of Waste Management previously brought the rule set before the Groundwater and Waste Management Committee (GWMMC). The review process is a 3 step process. Step 1 is Agency Determination (Initial determination and public comment period) Step 2: Rules Review Commission (RRC) Review (Reviews agency's report and makes final determination) and Step 3: Administrative Procedure Oversight (APO) Committee Consultation (Opportunity to review final determination before it becomes effective).

Step 1 Agency Determination can be one of three, Unnecessary (Rule will expire and be removed from code), Necessary without substantive public interest (Rule will remain in effect without further action) and Necessary with substantive public interest (Rule shall be readopted as if it was new in accordance with APA). Ms. Woosley explained and described the summary of the rules in detail. Rule 15A NCAC 13A .0101 being necessary without substantive public interest, 15A NCAC 13A .0114 being necessary without substantive public interest, 15A NCAC 13A .0102 - .0113 (12 rules) being necessary with substantive public interest, 15A NCAC 13A .0116 - .0117 (2 rules) being necessary with substantive public interest, and 15A NCAC 13A .0118 - .0119 (2 rules) being necessary with substantive public interest. 15A NCAC 13A .0101, .0102, .0103, .0106, .0107, and .0108 date change to read effective July 1, 2016 is in process.

Ms. Woosley stated on behalf of staff they were requesting approval to proceed to public comment on the report for 15A NCAC 13A, hazardous waste management for the periodic review of existing rules in accordance with S. L. 2013-413.

**Commissioner Carroll** made a motion that the Commission approve the initial determinations and proceed to public comment for 15A NCAC 13A, Hazardous Waste Management for the periodic review of existing rules in accordance with S.L. 2013-413. The motion seconded by Commissioner Ferrell.

**Dr. Rubin** asked if the Division will reach out to people that may be impacted, opposed to just an announcement.

Ms. Woosley responded that DWM has a Division email list for people interested in rule making changes and any happenings in the Division as well as a Section email list. Department Website with all the rules will be listed and announcements as well. There were no other comments and the motion passed unanimously.

**Agenda Item: 16-31 Request for Approval to Proceed to Public Comment on the Report for 15A NCAC 13B, Solid Waste Rules for the Periodic Review of Existing Rules in accordance with S. L. 2013-413**

Jessica Montie, Compliance Officer within the Division of Waste Management Solid Waste Section, presented this item. She indicated that there were 144 Rules Necessary with Substantive public interest, 2

rules were necessary without substantive public interest and 8 rules are unnecessary. .0100 -General Provisions, Necessary with substantive public interest; .0200-Permit Required, Necessary with substantive public interest; .0300-Treatment and Processing Facilities, Necessary with substantive public interest; .0400-Disposal Sites, Necessary with substantive public interest; .0500-Treatment and Processing Facilities, Necessary with substantive public interest, except .0560 Land Cleaning and Inert Debris Landfills is unnecessary; .0600- Monitoring Requirements, Necessary with substantive public interest; .0700-Treatment and Processing Facilities, Necessary with substantive public interest; .0800-Septage Management, Necessary with substantive public interest, except .0830 Septate, Management Incorporation by Reference (to 40CFR 257 and 40CFR 503) is without interest. .1000- Solid Waste Management Loan Program, (5 rules) unnecessary (GS 159) repeated by SL 2015-286); .1100 Scrap Tire Management, Necessary with substantive public interest, except .1112 Scrap Tire Hauler is unnecessary; .1200- Medical Waste, Necessary with public interest; .1300- Disposition of Fetal Remains, Necessary with substantive public interest; .1400- Solid Waste Compost Facilities, Necessary with substantive public interest; .1500-Standards for Special Tax Treatment of Recycling and Resource Recovery Equipment and Facilities, Necessary with substantive public interest, except .1510 Severability is without interest and .1511 Pamphlet is unnecessary; .1600- Municipal Solid Waste Landfill Facilities, Necessary with substantive public interest; and .1700-Requirements for Beneficial Use of Coal Combustion By-Products, Necessary with substantive public interest. She stated that the schedule would be the same as Julie Woolsey presented earlier. **Commissioner Tedder** made a motion to concur with the initial determinations and approve moving to the public comment phase for 15A NCAC 13B, Solid Waste Management for the Periodic Review of Existing Rules in accordance with S.L. 2013-413. **Vice-Chair Martin** seconded motion

**Dr. Rubin** had same question about outreach to public. Ms. Montie replied that the outreach would be the same as what Ms. Woosley spoke of and the motion passed unanimously.

**Agenda Item: 16-32 Request for Approval of Hearing Officer's Report and Adoption of Proposed Amendments to Rules for Permits for Solid Waste Management Facilities: 15A NCAC 13B .0200**

Ed Mussler, Permitting Branch Head with the Solid Waste Section of the Division of Waste Management presented this request for approval of the hearing officer's report and the fiscal note, and adoption of amendments to Rule 15A NCAC 13B .0200. Session Law 2015-241, as amended by Session Law 2015-286, requires that the EMC adopt rules to implement the requirement for sanitary landfills and transfer stations be given permits for the life of the site of the facilities. Amendments to rules 15A NCAC 13 B .0201 and .0206, and new proposed rule 15A NCAC 13B .027 were published in the NC Register for comment on April 15, 2016. The comment period ended on June 14, 2016. A public meeting was held in

Raleigh on May 4, 2016 with thanks to Commissioner Craven for serving as the Hearing Officer. During the comment period one comment letter was received from Waste Industries USA Inc. Mr. Mussler presented and explained the comments requested that the proposed rule changes that were to be edited.

He described in detail that the Division was recommending the rules be revised from the published version. He also stated that the fiscal note for the rule changes as they were published in the NC Register were approved by OSBM on March 24, 2016 and posted on the DEQ and Solid Waste Section websites during the comment period. An impact to state government revenues was estimated due to the changes in permit fees, however the permit fees were changed via statute and not a rule change. No substantial impact or impacts to local government were estimated.

Mr. Mussler stated on behalf of the Division that the Commission approve the fiscal note, the hearing officer's report and adopt the proposed amendments to Rule 15A NCAC 13B .0201 with changes from the published version, repeal rule 15A NCAC 13B .0206 as opposed to adopting the rule amendment in the published version; and adopt new rule 15A NCAC 13B .0207 with changes from the published version.

**Commissioner Craven** added it was his pleasure to serve as the hearing officer and made a motion that the EMC adopt the proposed rule amendment to Rule 15A NCAC .0201 with changes in the NC Register, Repeal rule 15A NCAC .0206 as opposed to adopting in the NC register published version and adopt the new rule 15A NCAC 13B .0207 with changes from the NC Register published version. **Vice-Chair Kevin Martin** seconded motion. The motion passed unanimously.

**Agenda Item: 16-33 Request for Approval to Proceed to Public Comment on the Report for 15A NCAC 13C, Inactive Hazardous Substance or Waste Disposal Sites for the Periodic Review of Existing Rules in accordance with S.L. 2013-413**

Jim Bateson, Superfund Section Chief of the Division of Waste Management stated that Session Law 2013-413 requires existing rules be reviewed through G.S. 150B-21.3A. The Environmental Management Commission (EMC) is the authority for 15A NCAC 13C. The Division of Waste Management previously brought the rule set before the Groundwater and Waste Management Committee (GWWMC). 15A NCAC 13C covers a total of 15 rules. 15A NCAC 13C .0100, Notice (2 rules), 15A NCAC 13C .0200, Prioritization System (5 rules), (no public interest for .0100 or .0200), 15A NCAC 13C .0300, Voluntary Remedial Action Oversight by Registered Environmental Consultants (8 rules). The Registered Environmental Consultant (REC) Program established a mechanism for privatizing the cleanup oversight for lower-risk hazardous sites. DEQ approves firms meeting certain qualifications to conduct and certify cleanup

actions in place of state oversight. Qualified RECs use their own professional judgement to direct and approve cleanup activities in accordance with the REC rules.

**Commissioner Tedder** made a motion that the EMC approve the initial determinations and proceed to public comment for 15A NCAC 13C, inactive hazardous substance or waste disposal sites for the periodic of existing rules in accordance with S.L. 2013-413. **Dr. Raymond** seconded the motion and the motion passed unanimously.

**Agenda Item: 16-34 Request to Proceed to Hearing on Revision of Odor Control of Feed Ingredient Manufacturing Plants Rule per S.L. 2015-263 (536)**

Patrick Knowlson, Division of Air Quality, requested to proceed to public hearing on the amendment to the odor control of feed ingredient manufacturing plants rule. He stated that Section 18.(d) of the Session Law 2015-263 requires the Environmental Management Commission to adopt amendments that are substantially identical to the Session Law provisions. He explained the different time periods when raw material is considered to be in storage and when raw material must be unloaded for processing. He stated per the session law, the rule amendments are not subject to review by the Rules Review Commission under the Administrative Procedures Act, become effective as provided in G.S. 150B-21.3(b1) as though 10 or more written objections had been received and thus would become effective following opportunity for legislative review.

**Commissioner Ferrell** made a motion to approve proceeding to public hearing on the proposed amendments and regulatory impact analysis and that the Chairman appoint a hearing officer for this matter. **Dr. Rubin** seconded the motion and the motion passed unanimously.

**Agenda Item: 16-35 Request for Approval of Hearing Officer's Report and Adoption of Proposed Amendments to Stormwater Rules including new "Minimum Design Criteria" and "Fast-Track Permitting Process"**

Annette Lucas, DEMLR, Environmental Engineer presented the powerpoint and report provided to members, explained the tasks accomplished by the MDC Team and DEQ Stormwater staff. She recommended that the EMC approve the Hearing Officer's Report and adopt the proposed rule package. **Commissioner Solomon** explained that his recommendation to allow licensed landscape architects to submit fast-track permit applications was based on current statutes. **Chairman Rowland** asked staff to report back to the Commission on professional licensure issue in the future.

**Vice-Chair Kevin Martin** made a motion that the Commission adopt the rule package with the following two amendments: a sentence was added to the definition of “Seasonal High Water Table” to identify how it can be determined in the field, and a requirement was added to the Wet Pond MDC Rule (.1054) to require that a minimum of six inches of sediment storage be provided. [REDACTED] seconded the motion and the motion passed unanimously.

**Agenda Item: 16-36 Draft Interbasin Transfer Certificate for Union County (Quasi-judicial)**

Kim Nimmer, DWR/Interbasin Transfer Program Coordinator stated that part of the process as outlined in statute 143-215.22L for obtaining an IBT certificate requires the EMC to issue a draft determination on whether to grant the certificate. This draft determination must be issued within 90 days after the adequacy determination has been made for the environmental document or once the applicant submits the petition for the certificate, whichever comes later. In this case, the adequacy of the EIS was made when the Department issued the Record of Decision on April 12<sup>th</sup> and the applicant submitted the final petition on April 29<sup>th</sup>. Therefore, the 90-day window for issuing the draft determination runs through July 29<sup>th</sup>. This step of the process for issuing a draft determination was added during a change to the statute. The EMC had not issued a draft determination before, because this was the first certificate following this section of the statute since the statutory changes were made. Union County requested a new IBT certificate in order to transfer up to 23 million gallons per day, based on projected demands through the year 2050, from the Yadkin River IBT basin to the Rocky River IBT basin.

Ms. Nimmer indicated that the EMC is required by statute to consider nine specific Findings of Fact when deciding to issue an IBT certificate in whole or in part, or to deny it. Mitigation measures may be required by the EMC to minimize any detrimental effects. She summarized each of the nine findings of fact per G.S. 143-215.22L and stated based on the nine Findings of Fact presented, a draft determination is sought to issue an Interbasin Transfer Certificate to Union County authorizing a transfer not to exceed 23.0 MGD from the Yadkin River IBT basin to the Rocky River IBT basin. The Division of Water Resources was requesting that the Environmental Management Commission issue a draft determination on the Draft Interbasin Transfer Certificate for Union County to transfer up to 23.0 mgd from the Yadkin River IBT Basin to the Rocky River IBT Basin, thereby allowing the Draft Certificate to go out for public hearings before the EMC issues a Final Determination. Discussion among commissioners proceeded following the conclusion of the presentation.

**Commissioner Solomon** made a motion that the EMC issue a draft determination on the Draft Interbasin Transfer Certificate for Union County to transfer up to 23.0 mgd from the Yadkin River IBT Basin

to the Rocky River IBT Basin, thereby allowing the Draft Certificate to go out for public hearings before the EMC issues a Final Determination. **Commissioner Carter** seconded the motion and the motion passed unanimously.

### **III. Concluding Remarks**

#### **By Committee Chairs**

**Commissioner Wilsey** stated that the Water Quality Committee had three action items yesterday. One was that the committee approve the Stormwater Annual Report which is due to the ERC in accordance with G. S. 143-214.7(e). That will come before the full EMC at the next meeting in September and that report is due October 1. The second action item was a major variance approved for the Neuse riparian area protection rule and the third action item was an approval of the annual report for the CHPP which is the annual report due to the General Assembly on September 1. She indicated that they were the first of the three Commissions that participated in that group to approve it. That will go to Marine Fisheries next and then the Coastal Resource Commission. They also heard two information items which were outstanding presentations on the High Rock watershed area. Many of the Commissioners stayed and listened to that and it was very beneficial considering some of the things that we have before us in the next year to year and a half. The first presentation was from the Yadkin Riverkeeper, Mr. Will Scott and the second was from Dr. Deana Osmond of N. C. State. Again they were outstanding presentations and she looks forward to other types of information on both the Water Quality Committee and also other committees.

**Chairman Rowlan** stated that he had spoken with **Vice-Chair Martin** about this. There are apparently some dam safety issues coming up and he would like for Commissioner Wilsey to look at the WQC and see if they are capable of handling those rules in the committee, or if it would overburden them. He asked if she could follow up with him on this issue.

**Commissioner Wilsey** responded she would follow up with him on this issue.

**Commissioner Smith** reported on the Water Allocation Committee. The EMC received a ruling on what was discussed yesterday and they voted unanimously to accept the draft.

**Commissioner Puette** reported they had three action items before the Groundwater and Waste Management Committee. One was dealing with Rule 2L .0507 and Rule 02N and 020. The third one was dealing with 2I rule .0501 and they had an information item on session laws dealing with Rule 02C.

**Commissioner Carter** reported on the Air Quality Committee and they didn't have any action items. They spent the majority of their time on presentations by the DAQ staff to update them on some ongoing regulatory matters including the pending regulations and the HB74 view, ozone and sulfur dioxide standard implementation. They also had a presentation on the ozone transport issue that the state is currently subject to in certain regards. He mentioned that they should have an action item coming to the Commission in September on the startup shutdown and malfunction rules which are going to public hearing on the following week. That will be the primary business before the Committee.

**Vice-Chair Martin** stated in the Steering Committee that they had a number of discussions. One of them was related to the delivery of reports to the legislature, the ERC or whoever that we're occasionally asked to do. Sometimes those reports are a joint effort by the Department and the Commission. Sometimes they're just the Commission and sometimes just the Department. We had a couple of reports that were due to the ERC on April 1. They were pulled from our agenda on March 1, so we didn't make the April 1 deadline. Those reports were approved at our May meeting but they were not submitted to the ERC until June 30. One of those reports had absolutely no changes made to it by the Commission. The other report had one sentence added. From my perspective, I'm a bit frustrated that it took six weeks for these reports to be filed. He suggested that the Commission make the operating change, "if any such reports in the future are due from the Commission, that the Commission take a more active role in seeing that those reports are submitted on time and to the appropriate parties." His suggestion was that the Commission, themselves deliver the report, either the Chairman or the Chairman delegate that to me. The other would be that the EMC set a date certain that the report be delivered in their motion, and if it is not, they deliver it. The third suggestion he heard was when the report comes to the EMC for approval it comes with a cover letter for transmittal already prepared and dated for the Chairman to sign, so that the report is ready to go. That's part of the information that they have the time that they review it. He indicated that this was up for discussion. He asked if they want to establish a protocol for handling those reports in the future. If so, what that protocol should be.

**Vice-Chairman Martin** asked if the Commission was in agreement that they should take control of getting those reports submitted themselves or which option did the Commission favor out of the three he had mentioned.

**Commissioner Tedder** stated that he favored the last option which was to have a cover letter ready that if the Commission adopts something to have the Chairman sign it and let it go. **Chairman Rowlan** asked if the Commission favored that option and that he was fine with that option. He indicated that if he is not able to deliver the report or the Vice-Chair would be assigned to deliver it. **Vice-Chair Martin** stated that he would deliver it.

**Vice-Chairman Martin** stated that the direction to staff of all the directors and the divisions is that if there was a report that is due to the legislature or anybody else who may be able to require the EMC to send them a report, that part of the report coming forward to them would include a transmittal letter and cover letter for the Chair, so that it is ready to go out.

**Chairman Rowlan** indicated that **Vice-Chair Martin** was working with all of the Chairs and the Department Heads, and the Department Heads had worked out a spreadsheet that shows issues that are coming before the Commission. They are out about six months and they would like to get a little further out so the EMC could see what issues would be in front of them when they come to Commission meetings. That will give the Commission three weeks to look at the materials prior to the meeting. There still will be different issues of information and decisions that come before the EMC but they won't be able to place on the tracking document. But in general, the rule changes and things of that nature are on the tracking sheet.

**Vice-Chair Martin** mentioned that by the September meeting that the tracking sheet would be finalized to have it where it can be accessed by all the members, and it will be updated in real-time. He encouraged all the Commissioners to look at the tracking document and if anyone noticed something that needed to be changed to feel free to let him know, and he would follow up.

**Chairman Rowlan** stated to the Commission for them to look at the document and count on having their materials for the meeting in general in three weeks before the next Commission meeting.

**Commissioner Tedder** some time ago the Commission adopted new water quality standards. That was sent to EPA and EPA objected them in certain parts of those standards that they adopted. The request from Counsel is would we not have to for recommendation and as part of duly adopted state standards and part of the APA not have to take the changes back through the APA to hearing process, prior to implementation of the changes?

**General Counsel Jennie Hauser** indicated if there were changes that affect rules you had previously adopted, those changes would normally have to go through the APA notice and comment period

process before they could be effective. She didn't know exactly what EPA has done in this situation, but in general, that would be the process.

**Jay Zimmerman** stated that he would talk to staff and they would make sure that they address this issue.

### **By Commission Members**

**Dr. Raymond** acknowledged Director Holman provided them with information on the cost, both CAP-X and operating costs for a typical poly [REDACTED] non-[REDACTED] system and it came down to basically \$116,000 per site. He appreciated the work that the staff did to bring that information to the EMC as they had previously requested.

### **By Directors**

**Jay Zimmerman**, Division of Water Resources stated that he appreciated the Commission for supporting the staff in approving the IBT to move forward. He made a few comments about some of the session laws that they may have been tracking. There were three bills of particular interest that were passed: H.B. 1030 which was a bill that required development of new comprehensive nutrient management regulatory framework, H.B. 630 was a drinking water protection Coal Ash Cleanup Act that was passed, and S.B. 770, the North Carolina Farm Act of 2016. As far as H.B. 1030, there are a number of significant provisions in that bill. The first included a 1.3M dollar appropriation to the Department to study alternative in situ water treatment strategies and implement trials. The study is to determine whether or not those treatment technologies would provide for water quality improvements and if they would be more cost effective than the more conventional nutrient management strategies. If DEQ wants to implement a trial then we're required to enter into a contract by the end of this year, December 31, 2016. Of course, that would likely require involvement and approval by the Corps for anything that would be in one of the jurisdictional waters. The DEQ is required to submit an interim report by March 1, 2017 and a final report by March 1, 2018 to the ERC, the Joint Legislative Oversight Committee on Agriculture and Environment as well as the Fiscal Research Division. If any are found to be effective, then we have to incorporate those technologies into our nutrient strategy in the rule re-adoption process.

Another provision of H.B. 1030 included \$500,000 appropriation to UNC for fiscal years beginning 2016, and 2017 for the next six fiscal years to designate an entity to continue overseeing the continuing study of analysis of nutrient management technologies or strategies and compilation of existing water quality data for Jordan and Falls Lake. This entity which is yet to be named or established shall report to the ERC, the

EMC and to the Department starting with Jordan Lake. Jordan Lake is the first set of rules or strategies that have to be evaluated and studied in the first interim report due by December 31, 2016, followed by a second report at the end of 2017 and the final report and recommendations by December 31, 2018. Falls Lake would then be after that. Based upon the study that's going to be carried out by this yet to be named entity working with UNC, the session law requires the EMC to review the Falls Lake and Jordan Lake water supply nutrient strategy rules entity. We have to report to the ERC by December 31, 2016 a list of any rules that would likely require modification. We'll be bringing something to the Commission providing more details of what is going to be required by H.B. 1030 at the September Water Quality Committee, and if desired, to the EMC in September. The last significant provision of the bill also puts on hold the Falls Lake and Jordan Lake rules, particularly any with effective dates between the date of the Budget bill and October 15, 2019 for Jordan Lake and October 15, 2022 for Falls Lake. We are also required to evaluate stormwater treatment practices approved by the Chesapeake Bay Commission for TMDL compliance. Those are stormwater treatment practices. Tracy may have more on that. We're required to evaluate those practices and allow them to be used for TMDL compliance in Jordan and Falls Lake.

A significant provision of that bill requires that Duke Energy provide permanent alternate water supplies to all residents within one-half mile radius of each of those facilities compliance boundaries. We estimate that will be close to a thousand households that we will be required to have long term permanent water supplies. Staff are already working on letters and information to be distributed to those owners to notify them what to expect, and whether or not they are to be covered by the provision of this bill. The bill does require permanent replacement of water supplies but it would also include an option to provide for long term filtration in the event that extending water isn't cost effective or feasible, or the homeowners elect to have a filter as opposed to water. Staff has to evaluate and make a final decision to approve or disapprove Duke's plan no later than January 15, 2017. Between now and then Duke has to come up with a plan for each of the 14 facilities submitted to staff and staff will have to review and make a decision as to whether or not to approve their plan for long term water. The earlier provisions of the Farm Act provided for an exemption for farmers that were subject to the capacity use provisions of the rules requiring that they report water use for certain withdrawal amounts. There was an exemption proposed in the S.B. 770 which that provision was not adopted. It was removed from the bill at their request.

DWR believes that it was important that in order for staff to plan for future water use and to assist those who rely on groundwater for their water supplies, that they have available all information related to significant water supplies from significant consumers. The Senate and House agreed and removed that from

the bill. That's probably one of the more successful parts of their program, and they are actually seeing recovery in the aquifers that are affected by the Capacity Use Program. They don't intend to extend the capacity use areas at this point. He doesn't believe there is a need for the exemption. The Director stated that he would make a note that the 2L rules that the EMC recently approved, had a number of meetings prior that affected the cleanup and compliance boundary provisions, and the corrective action provisions of the 2L .0106 rules which were approved by the EMC and then went to the ERC. There were 10 letters of objection. Those rules were not acted on by the General Assembly this session. Effective with their leaving town those rules go into effect as adopted or approved by the EMC. Commissioners continued to ask questions and give comments.

**Director Sheila Holman**, Division of Air Quality, noted a couple of items from the short session. She indicated that two of their revenue streams were under continuation review. She reported that in the budget bill, the fuel tax and the Inspection and Maintenance Program fees were restored at the recommended funding level in the continuation review reports that they provided to the General Assembly. There was no Regulatory Reform bill passed although there were a couple of versions that went to Conference Committee. One of those included some potential changes to the Inspection and Maintenance Program, but because there was no action on the Regulatory Reform bill, there was no removal of counties for the Inspection and Maintenance Program at this point. There were two sets of rules that were before the short session and one set was the permit exemption rule revisions, which included 02Q .0102 and other permitting rules. There were no bills introduced, therefore the permit exemption rules became effective on June 13 as did the open burning rules which allows the burning of stumps and logs greater than six inches. She mentioned that the state's ambient monitoring network plan, which was due to EPA on July 1, was submitted after addressing comments received during the public comment period. The DAQ is positioned well to implement the SO<sub>2</sub> standard in response to EPA's data requirements rule. There are a total of nine affected facilities in the state. Within the data requirement rules, states are given the option of either using a model to characterize the air quality near these facilities or placing monitors. We've worked with EPA to site three new monitors which will all be part of that ambient monitoring plan. We plan to submit modeling for the other five facilities. Finally, we are watching the ozone levels carefully. We have a new ozone standard that became effective on October 1, 2015. Currently there have been 37 exceedances of the new ozone standard of 70ppb. However, in looking at the past three years of data, all monitors will be in compliance with the new standard. It will be close. The state will submit recommended boundaries to EPA this October. Based on the 2013-2015 data, it all looks good. When you shift to 2014-2016, we're very close to the standard, particularly with two monitors in the Charlotte area.

**Director Michael Scott**, Division of Waste Management answered in response to a question from **Commissioner Solomon**, stated the Mercury Pollution Prevention Fund would sunset in June, 2017. Both the Mercury Pollution Prevention Fund and the UST Commercial Fund were submitted through Continuation Reviews to the General Assembly. Director Scott indicated that DWM was looking at the details of SB575, North Carolina/South Carolina Border Shift – possible impacts to Union and Gaston Counties. A timeline is laid out in the bill to transition permittees from one regulatory agency to another – South Carolina to North Carolina. Gas stations are concerned about the difference in taxation and firework sales (differ in SC and NC). He stated that significant pieces of legislation tied to Regulatory Reform that didn't pass – potential lifting of the landfill ban for electronics, as well as some references to yard waste permitting which could have changed the solid waste .1400 rules. Director Scott commented on the subject of Environmental Justice, and DWM's active engagement when it comes to coal ash permitting. He indicated that staff would be visiting Rockingham County for an information session later in the month for the proposed landfill at the Dan River plant.

**DEMLR Director Tracy Davis** addressed the Commission and thanked the stormwater program staff and **Commissioner Solomon** for their work over the past two years in the development of the storm water rules package the Commission adopted earlier in the meeting. Director Davis then provided the Commission an update on legislation that passed this session that affects DEMLR's regulatory programs, as follows:

- DEMLR staff plans to work with DWR staff regarding the budget bill's nutrient credit study provision as it relates to storm water issues
- HB 630, the Coal Ash Cleanup Act, terminated the Coal Ash Management Commission but reinstated the Mining Commission and Oil and Gas Commission. Departmental staff will provide support to these Commissions, once their seats have been appointed;
- HB 630 also contains dam safety provisions related to coal ash impoundments. The Environmental Management Commission is referenced in the bill as it oversees DEMLR's Dam Safety Program. Coal ash impoundments are going to be considered low risk if they can provide two components: (1) Permanent water supply and (2) Complete their dam safety repairs as it pertains to the Dam Safety Act as enforced by DEMLR no later than July 1, 2017. DEMLR is to conduct a comprehensive Dam Safety Inspection for all 14 facilities to ensure that no further corrective actions are needed and all dams are in good condition. Staff will report to the Commission any findings of deficiencies and issue Dam Safety Orders for repairs to be made within 90 days. It was noted that while the Commission is charged with issuing Dam Safety Orders, such orders have been delegated to the DEMLR Director for issuance;

- Storm water and Dam Safety Programs have been issuing permit approvals and Dam Safety Repair Plan Approvals for Duke facilities across the state since February 2014. Review of individual industrial stormwater permit applications is a very comprehensive process, yet stormwater staff have completed its review and DEMLR has issued permits to over half of the coal ash facilities. The remaining applications are currently under review and on the way to being issued. Thereafter, staff will be reviewing the potential for any permit modifications that may be needed as a result of Duke Energy's ongoing excavation of coal ash;
  - SB 770, the NC Farm Act of 2016, has a provision that clarifies what agriculture exemptions are allowed but included an additional exemption, mulching operations, from the Sedimentation Pollution Control Act. It appears this additional exemption was to provide regulatory relief; however, this exemption may cause additional regulatory burden on mulching operations than currently exists. Whereas a mulching operation previously received an automatic general stormwater permit when it received an erosion and sedimentation control (E&SC) plan approval from DEMLR, if an E&SC plan is no longer required due to this exemption, the mulching operation must now apply for an individual stormwater permit which must be reviewed by EPA and could be delayed in approval by six to nine months versus the current 30 days. DEMLR staff plans to discuss this matter further with General Counsel staff. Further, Mr. Davis provided an update to the Commission on several bills that did not pass this session but could move forward in the upcoming long session beginning in January 2017, as follows:
- HB 593 (Amend Environmental Laws): This bill would have added further exemptions to the built-upon area definition, including exempting landscaping and other materials on various portions on a project that do not receive the full weight of vehicular traffic. Director Davis also noted that a section of the Fast Track Permitting statutes would have been amended to list the types of licensed professionals that are deemed qualified to prepare permit applications for fast track stormwater permitting. The list included Landscape Architects, Geologists, Soil Scientists, Engineers and other licensed professionals as deemed appropriate by the Commission.
- SB 303 (Regulatory Reform): This bill proposed to eliminate and consolidate various reports, including some Commission and Departmental reports that would have reduced the burden on staff. One example was the consolidation of the Annual Stormwater Report with the Annual Sedimentation Report. Director Davis also noted that this bill also had a provision that required DOT to handle storm water management if any development encroached within DOT's right-of-way.

Lastly, Director Davis provided the Commission advanced notice that the Dam Safety rules are in the HB74 rules review and re-adoption process and that DEMLR staff's initial categorization for each rule will be presented to the Commission's Water Quality Committee during its September 2016 meeting. If approved, the rule categorizations will be presented to the full Commission at its November 2016 meeting with a request for approval to go out for public notice and comment on the rule categorizations. No further comments were made.

### **By Commission Counsel**

**Counsel Jennie Hauser** distributed the EMC's litigation summary document and indicated to the Commission that they would see that it was a shorter than it had previously been. Counsel Hauser had the EMC begin at the second entry because that was the new contested case. At their last meeting in May they voted to conform the IBT certificate for the cities of Cary and Apex, conform it to the actual motion that was in front of the EMC back in 2015 when they adopted the certificate. They had forecast at that time that the Administrative Law Judge, when he heard the motion for temporary restraining order on that action had signaled that he would entertain a challenge to whatever the EMC did, if the EMC acted. Shortly after the EMC meeting there was another contested case filed and you will note that it has the 2016 numbering on it. That was heard. There was a contested case hearing held in both of these matters which were consolidated and the second one was expedited. The hearing was held the week of June 13 and actually held over into the subsequent week through June 21. She stated that they were all allowed to present their evidence during that contest hearing. The Administrative Law Judge chose not to hear closing arguments from any party, but they are waiting for the transcripts of that hearing, and once they receive the transcripts they will 30 days to file a proposed decision. Each side will have that time. In addition to a proposed decision file a brief of some sort which is basically going to take the place of their closing arguments, and the schedule then allows for reply briefs. They are still continuing with this litigation over this particular matter and would keep the EMC informed as it progressed. The other case of significant issue to the Commission is the House of Raeford Farms case. This case was remanded to the Commission and the Commission sent it back to the Office of Administrative Hearings to determine if there was additional evidence to weigh in on what the Court of Appeals required of you, which was to look again at the amount of civil penalty that had been assessed. The Administrative Law Judge has required the parties in the case to file with him supplemental recommended decisions for his consideration and then he is going to determine whether or not to take additional evidence,

after having received the supplemental decisions. Those are the two cases that directly affect you and the status of those.

**By Chairman**

**Chairman Rowlan** stated that he didn't have any other remarks since he had already spoken as they were going forward in the meeting. He thanked everyone for a lot of hard work and meetings go fast because everyone came prepared and the Departments were working to provide the materials in front of the EMC so they know what they're dealing with when they arrive at the meetings.

With no further business before the Commission, the Chairman adjourned the meeting at 12:25 p.m.

Approved this day 14th of July 2016.

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**Steven J. Rowlan, Chairman of the EMC**