

NORTH CAROLINA  
ENVIRONMENTAL MANAGEMENT COMMISSION

Minutes of January 9, 2020 Meeting

The North Carolina Environmental Management Commission met on Thursday, January 9, 2020 in the Ground Floor Hearing Room of the Archdale Building in Raleigh, NC.

---

Meeting Called to Order: Dr. Stan Meiburg, Chair

The meeting was called to order at 9:03 a.m. with Chair Meiburg presiding. He provided the notice required by N.C.G.S. §163A-159(e).

Present: 15 – Dr. Stan Meiburg (Chair), Dr. Suzanne Lazorick (Vice-Chair), David W. Anderson, Shannon Arata, Yvonne Bailey, Charles Carter, Donna Davis, Marion Deerhake, Mitch Gillespie, Pat Harris, Steve Keen, John McAdams, Maggie Monast, J. D. Solomon, Donald van der Vaart

Others Present: Commission Counsel Phillip T. Reynolds

## I. Preliminary Matters

1. Approval of minutes from Commission meeting on November 14, 2019 (attached)

**Chair Meiburg** asked for a motion to approve the minutes. **Commissioner Solomon** made a motion to approve the minutes and **Commissioner McAdams** seconded the motion. The minutes passed **unanimously**.

**Commissioner Solomon** indicated that on the agenda that the Commission heard a request or a briefing on the RRC pushed back one of our nutrient rules. He stated that he didn't see it as an information item and asked if he could add that as information item. It was stated that the Commission would add this item after the update on the permanent rules.

## II. Action Items

### **20-01 Request to Proceed to Public Notice with the Proposed Removal of EPA Disapproved Swamp Designation and Portion of Management Strategy from a Section of the Cape Fear River, NC**

**Chair Meiburg** indicated that this item was considered before the Water Quality Committee in November 2019 and asked Commissioner Deerhake if she would speak to this.

**Commissioner Deerhake** indicated that today's action item was for the requirements for the petition for rulemaking that the EMC granted earlier this year, and the Commission's next step is

for the EMC to begin rulemaking process to remove the swamp designation in the lower Cape Fear River and amend the rule pertaining to the management strategy. After the Water Quality Committee heard staff's presentation you will hear today, committee voted unanimously to bring today's draft rule's revisions to the EMC for approval to proceed to rulemaking. The unanimous vote occurred after the Water Quality Committee had a good discussion about challenges with dissolved oxygen in the lower Cape Fear River including sources such as legacy, sediment deposited before the Clean Water Act and that sediment's demand on dissolved oxygen. During their discussion staff also explained the need for today's amendments to align with Federal law. The Water Quality Committee's November action expressed support for proceeding with a separate stakeholder engagement process on the management strategy to address dissolved oxygen using a variety of information that has been compiled over the years including an options analysis in 2012 which helped arrive at the potential for action such as site specific criteria. With the Chair's approval, and the Commissioners also, the staff will present their information. Mr. Jeff Manning will present, with Pam Behm who will discuss the modeling aspects.

Jeff Manning, from DWR Classifications, Standards and Rules Review Branch, used the live map on the branch's webpage to show the locations of upstream and tributary waterbodies to the LCFR to reveal their Swamp designations. Then Pam Behm, Chief of the DWR Modeling and Assessment Branch, provided an overview of the history of DO modeling investigations in the LCFR area. Ms. Behm said the assumption could be made that over time reduced organic matter loading would lead to reductions in the sediment oxygen demand (SOD) rate, **Commissioner Solomon** asked if there was science behind that correlation, and Ms. Behm responded that there was science behind it, but not enough site-specific information. Subsequently, Mr. Manning provided a timeline of milestones regarding recent LCFR rulemaking efforts and requested the EMC grant approval to proceed with sending out the proposed rulemaking to public notice.

**Chairman Deerhake** moved that EMC proceed to public notice and comment on amendments to 15A NCAC 02B.0311 and .0227 as presented by staff today in slides 11 and 12. **Commissioner Harris** seconded the motion and the motion passed unanimously.

Regarding rulemaking that had been conducted for the Swamp reclassification and associated management plan for the LCFR, **Commissioner Solomon** said that the only groups against it were the non-government organizations (NGOs) wanting to get rid of concentrated animal feeding operations (CAFOs), there was much debate regarding background (DO levels), and supporters stated rates (of payers for water and wastewater services) were being raised to start addressing issues that can't be dealt with (such as naturally low DO levels). He said the EPA letter stated the Swamp classification was wrong due to flow issues and according to applicable standards. **Commissioner Solomon** said that he'd like to get all information he provided at this meeting, the previous hearing officer report, all applicable data, and the historical information that Ms. Behm presented in the record; **Chairman Deerhake** stated that all that information is part of a larger step that EMC is taking next after the change (due to the proposed rulemaking). She said there needs to be a structured analytical stakeholder driven approach to understanding the demands on oxygen in the area so EMC can develop an appropriate strategy; she said WQC received guidance

on a framework for a scientific analysis to understand the sources attributing to the low DO, and along the way, there can be the stakeholder process to establish a management strategy. **Chair Meiburg** and **Commissioner Solomon** echoed that there is the need to develop a management strategy. **Commissioner Deerhake** said EPA's letter stated EPA is willing to consider site specific criteria and EPA has published guidance on site specific criteria analysis and development. **Commissioner Van der Vaart** said his understanding was if no humans were around, we'd still be struggling with this area's DO potentially, and asked if a TMDL was still called for or if the state was going to establish site-specific DO criteria. Mr. Manning stated that there is the option of a site-specific standard, and the large stakeholder group, that Ms. Behm had referenced met for nearly 10 years regarding the LCFR area because a TMDL wouldn't address impairment due to natural causes and didn't appear to be a feasible option.

Regarding the request to go out to public hearing, **Commissioner Arata** asked if EMC needed to add additional language to make it clear that EMC would also like comments on the future management strategy. **Chair Meiburg** stated that this matter wasn't part of the petition, and it isn't necessary. **Commissioner Solomon** expressed concern that this area will need to be studied for 10-15 years, and he wants the discharges and jobs there to be able operate and to stay, respectively; he stated he'd like an ability to get ideas regarding how to more quickly address these issues and ask for alternative proposals that in the public notice.

**20-02 Request for Approval to hold a Public Hearing for the Consolidation of the Metropolitan Sewerage District of Buncombe County and the Cane Creek Water and Sewer District of Henderson County, per NCGS 162A-68.5**

**Chair Meiburg** indicated there were representatives from the different communities and he welcomed them to the Commission meeting and thanked them for their engagement in support of this action. He stated that this matter was approved unanimously by the Water Quality Committee to come to the Commission, and he asked **Commissioner Deerhake** for a recommendation from the committee.

**Commissioner Deerhake** indicated that the Water Quality Committee heard this item in November and voted unanimously to proceed to the EMC recommending that the EMC proceed to public notice and comment on the consolidation of the Henderson County's Cane Creek Sewer and Water District with Buncombe County.

**Commissioner Deerhake** stated that she would make a motion unless the EMC would like to hear a presentation. The EMC decided that a presentation was not necessary. **Commissioner Deerhake** made a motion that the Commission approve to proceed to public notice and comment on the consolidation of the Henderson County's Cane Creek Sewer and Water District with Buncombe County. **Commissioner Arata** seconded the motion. There was no discussion and the motion passed unanimously.

**20-03 Request Approval of Proposed Rule Revisions, Regulatory Impact Analysis, and to Proceed to Public Hearing on Periodic Rule Readoption and Amendments for 15A NCAC 13B Rules .0546, .1105, .1111, .1628, and Proposed Section .1800 Financial Assurance Requirements for Solid Waste Management Facilities**

Ed Mussler, Division of Waste Management, presented the request for approval of the proposed rule revisions, regulatory impact analysis, and to proceed to public hearing on periodic rule readoption and amendments for 15A NCAC 13B Rules .0546, .1105, .1111, .1628, and proposed section .1800 financial assurance requirements for solid waste management facilities and the regulatory impact analysis. Mr. Mussler gave an overview of the rules and noted no fiscal note was needed. A rule making schedule was presented with a public comment period scheduled for February 17, 2020 – April 17, 2020 and a proposed effective date of July 1, 2020. Mr. Mussler described comments made during stakeholder meetings and the subsequent responses. In addition, he spoke of proposed changes to financial assurance requirements.

**Commissioner Bailey** made a motion to approve the proposed rule revisions, regulatory impact analysis, and to proceed to public hearing on periodic rule readoption and amendments for 15A NCAC 13B Rules .0546, .1105, .1111, .1628 and proposed section .1800 Financial Assurance Requirements for Solid Waste Management Facilities. **Commissioner Carter** seconded the motion. A few comments were addressed for clarification. The motion passed unanimously.

**20-04 Request Approval of Proposed Rule Revisions, Regulatory Impact Analysis, and to Proceed to Public Hearing on Periodic Rule Readoption and Amendments for 15A NCAC 13B Rules .0531 - .1627, .1629 - .1637, and .1680 for Requirements for Municipal Solid Waste Landfill Facilities**

Ed Mussler, Division of Waste Management, presented the request for approval of proposed rule revisions, regulatory impact analysis, and to proceed to public hearing on periodic rule readoption and amendments for 15A NCAC 13B rules .0531 - .1627, .1629 rules regarding Construction and Demolition Debris Landfills (CDLFs) and Municipal Solid Waste Landfills (MSWLFs). Mr. Mussler gave an overview of the amendments and rule re-adoptions being requested, noting that the fiscal note had been approved. A rule making schedule was presented with a proposed effective date of July 1, 2020. Mr. Mussler spoke about comments received during the comment period, one of which referred to the term “Seasonal High Water Table” (SHWT). **Commissioner Solomon** expressed concern with the multiple definitions that exist for this term and whether alternative terminology was needed. Mr. Mussler responded that the use of the term, SHWT was being used in this case due to its historical familiarity, but that they could look at the variations and see if a different term could be used. Mr. Mussler closed his presentation by requesting approval of the proposed rule revisions, regulatory impact analysis, and to proceed to public hearing on periodic rule readoption and amendments for 15A NCAC 13B rules .0531 - .0545, and .0547 for construction and demolition landfill facilities and .1601 - .1627, .1629 - .1637, and .1680 for requirements for municipal solid waste landfill facilities.

**Commissioner Keen** asked about solar farms/solar panels and how they factor in with regards to waste management. He also expressed concern that there was no mention of solar decommissioning and he felt that, at least, there should be an indication that some sort of study had been initiated. Mr. Mussler responded that, currently, recycling is recommended, and that they continue to study the best way to manage material from decommissioned solar farms but that they were not ready to make recommendations at the present time.

**Chairman Meiburg** recommended that this concern be noted in the minutes of the meeting and that, if there is a public comment, it be taken into account by the hearing officer. **Commissioner Bailey** added that this topic would be a good information item for the Groundwater & Waste Management Committee and recommended that they work with DWM's Solid Waste Section and DWM Division Director Michael Scott to put together an information item for the March committee meeting. Mr. Scott responded that he agreed with presenting an information item and added that a report was submitted to the General Assembly in December 2019, regarding the stakeholder processes related to solar decommissioning and that he would send a copy to members of the EMC.

Following the discussion, **Commissioner Bailey** made a motion to approve the proposed rule revisions, regulatory impact analysis, and to proceed to public hearing on periodic rule readoption and amendments for 15A NCAC 13B rules .0531 - .0545, and .0547 for construction and demolition landfill facilities and .1601 - .1627, .1629 - .1637, and .1680 for requirements for municipal solid waste landfill facilities. **Commissioner Arata** seconded the motion. The motion passed unanimously.

**20-05 Request Approval of Proposed Rule Revisions, Regulatory Impact Analysis, and to Proceed to Public Hearing on Periodic Rule Readoption and Amendments for 15A NCAC 13C Rules .0301 - .0308 Voluntary Remedial Action Oversight by Registered Environmental Consultants**

Janet Macdonald, Division of Waste Management, gave a presentation to request approval to proceed to public hearing on 15A NCAC 13C rules .0301 - .0308, Voluntary Remedial Action Oversight by Registered Environmental Consultants. It was noted that the RRC had established a deadline of March 31, 2021 for the readoption of these rules. Ms. Macdonald gave a summary of the Registered Environmental Consultant Program rules. She also presented a rule making schedule with a proposed effective date of July 1, 2020. A summary of the rule change process was given noting that the regulatory impact analysis was approved by OSBM on September 5, 2019 and, because the proposed changes impose a less stringent burden on the regulated community, no fiscal note was required. Ms. Macdonald described the purpose for the rule changes and specified the changes. Ms. Macdonald concluded by requesting approval to proceed to public comment on 15A NCAC 13C rules .0301 - .0308 "Voluntary Remedial Action Oversight by Registered Environmental Consultants".

Following the presentation there was some discussion, between **Commissioner Solomon** and **Ms. Jesneck**, Division of Waste Management regarding consultants within the REC program and their requirements within the program and as environmental professionals.

**Commissioner Bailey** made a motion to approve the request to proceed to public comment on 15A NCAC 13C rules .0301 - .0308 “Voluntary Remedial Action Oversight by Registered Environmental Consultants”. **Vice-Chair Lazorick** seconded the motion. The motion passed unanimously.

**20-06 Request for Approval of Proposed Rule Revisions, Regulatory Impact Analysis and to Proceed to Public Hearing on Readoption of Group 6 Air Quality Rules 15A NCAC 02D .0403, .0500, .0900, .1400, .1700 and .2615 and Repeal of .0615 (549)**

**Commissioner Arata** noted that the Air Quality Committee voted unanimously to move the Group 6 rules forward to the full Commission. Also, 15A NCAC 02D .0615 and .2615 were deferred from the Group 5 readoption package to the Group 6 readoption package after conclusion of the public comment period.

Joelle Burleson, Division of Air Quality (DAQ) Senior Regulatory Advisor, presented the request to proceed to public comment and hearing of the fiscal note and proposed readoption of 15A NCAC 02D .0403 and .2615, 15A NCAC 02D Sections .0500, .0900, .1400, .1700, and the repeal of 15A NCAC 02D .0536 and .0615. The presentation included an overview of the rulemaking process to date, substantive and procedural revisions, distinctions between Method 27 of Appendix A to 40 CFR Part 60 and 49 CFR Part 180.407, an update on federal actions pertaining to municipal solid waste landfills, and a summary of the fiscal note developed in accordance with G.S. 150B-21.4. The fiscal note was approved by the Office of State Budget and Management (OSBM) on December 6, 2019, as having little to no impact on local governments and having substantial economic impacts to the State, regulated community, and other parties.

**Commissioner Van der Vaart** asked whether the DAQ had discussed its intention and reasoning for repealing 15A NCAC 02D .0536, *Particulate Emissions from Electric Utility Boilers*, with the United States Environmental Protection Agency (EPA). Ms. Burleson affirmed that was the case. She noted there were no objections from the EPA in repealing the rule and removing it from the Clean Air Act Section 110 State Implementation Plan (SIP). **Commissioner Van der Vaart** asked for clarification regarding the interpretation language in 15A NCAC 02D .0502, *Purpose*, stating, “all sources shall be provided with the maximum feasible control” for New Source Performance Standard (NSPS) and pre-NSPS sources. Ms. Burleson stated that unless there is another rule requiring pre-NSPS sources to do more, the DAQ is not seeking to broadly apply the statement to them. **Commissioner Van der Vaart** asked, “whether it would be acceptable, if a source is in compliance with all emissions standards, but is not utilizing a control device to its maximum potential”. Ms. Burleson affirmed and specified that compliance is the fundamental element. **Commissioner Van der Vaart** asked for clarification whether there was an additional requirement imposed by the purpose statement if a source was in compliance with 15A

NCAC 02D Section .0500. Ms. Burleson stated that there is not an additional requirement imposed by the purpose statement.

**Commissioner Carter** noted that we are 32 years plus past the rescission of the TSP standard by EPA, and we've still got it on the books. I think maybe, now that we've finished the HB-74, it is time to move on and see if we can fix this situation. It is going to take a review of the PM rules, but it is way past time to get that done.

Ms. Burleson stated we are indeed planning to continue to look at that and see what updates can be made; but we weren't able to quite complete an adequate review and vetting in order to do it within the timeframe of H74.

**Commissioner Keen** asked for interested stakeholders pertaining to the revisions in 15A NCAC 02D .0926, *Bulk Gasoline Plants*, and 15A NCAC 02D .0932, *Gasoline Truck Tanks and Vapor Collection Systems*. Ms. Burleson specified that David McGowan of the American Petroleum Institute was a stakeholder for the rule actions of interest. Stakeholder comments were in favor of the revisions. **Commissioner Keen** recommended that the DAQ obtain representation from the military for rule revisions pertaining to "bulk gas".

**Commissioner Van der Vaart** asked whether the cost savings for the annual average opacity determinations were administrative costs and if there was a relaxation of an air quality standard? Ms. Burleson affirmed that the cost savings were administrative and noted that there were no relaxations of an air quality standard.

**Commissioner Arata** made a motion for the EMC to approve proceeding to public hearing and comment on the fiscal note and proposed readoption of 15A NCAC 02D .0403 and .2615, 15A NCAC 02D Sections .0500, .0900, .1400, .1700, and the repeal of 15A NCAC 02D .0536 and .0615. **Commissioner Carter** seconded the motion. The motion passed unanimously. **Commissioner Monast** stated that it would be interesting to evaluate public comments in regard to how the DAQ considers the interactions of various permits, cumulative risks outside the fence line of facilities, and the relevant characteristics of nearby communities.

**20-07 Request Approval to Proceed to Public Hearing on an Additional Risk Management Option for Proposed Rule Adoption on Control of Emissions from Log Fumigation Operations, 15A NCAC 02D .0546 and Rule Amendment to Toxic Air Pollutant Guidelines, 15A NCAC 02D .1104 (548)**

**Commissioner Deerhake** provided introductory comments for the rulemaking that included a brief history of North Carolina's air toxics program, historical recommendations from the North Carolina General Assembly's 1997 air toxics working group report, the EMC's risk management duties, a brief history and need for the current rule action, toxicological conclusions and averaging times from North Carolina's Secretaries' Science Advisory Board (SAB) for the current rule

action, risk management options initially presented for public comment for the current rule action, and the number of public comments received for the current rule action.

Michael Pjetraj, Deputy Director/DAQ and Brad Nelson, DAQ Engineer presented the request to proceed to public hearing on an additional risk management option for the proposed adoption of 15A NCAC 02D .0546, *Control of Emissions from Log Fumigation Operations*, and amendment to 15A NCAC 02D .1104, *Toxic Air Pollutant Guidelines*. The presentation included an overview of the rulemaking activities to date, methyl bromide usage from log fumigation operations in North Carolina, the number of permitted and operational log fumigation facilities in North Carolina, health hazards associated with methyl bromide fumigation, other regulatory options that were initially considered, a summary of public comments received during the first comment period, scientific input and recommendations from the SAB in October and December 2019 regarding the acceptable ambient level (AAL) and averaging times, a comparison of various methyl bromide reference values and risk management options, modeling results for the proposed risk management options, and a summary of the updated fiscal note as a result of public comments and SAB feedback. The updated fiscal note containing an addendum was approved by OSBM on January 7, 2020, as having a substantial impact pursuant to G.S. 150B-21.4.

**Commissioner Solomon** asked for the data sources comprising the “*Methyl Bromide: Comparison of Reference Values*” chart in the presentation. Deputy Director Pjetraj stated that Dr. George Woodall from the EPA’s Office of Research and Development provided the base chart. However, the four new icons and additional text at the bottom of the chart were added by Deputy Director Pjetraj. **Commissioner Solomon** specified that the information of interest should be added to the chart for future reference. **Chair Meiburg** asked for clarification as to whether the additional purple and blue icons were derived from the *Methyl Bromide Draft Human Health Risk Assessment* prepared by the Office of Pesticide Programs as part of their reregistration review under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA). Deputy Director Pjetraj affirmed that was the case. **Chair Meiburg** provided a brief summary of modeling assumptions utilized in the fiscal note, the likelihood of current operations to expose individuals at levels above 0.005 mg/m<sup>3</sup> on a 24-hour basis, the slope factor for methyl bromide, and quoted from the health assessment for methyl bromide under FIFRA. The Commissioners and the DAQ’s staff discussed the labeling nomenclature of the last column’s title in Table 8 of the fiscal note. It was concluded that the DAQ should revise the nomenclature in the last column of Table 8 on page B-28 to state, “*Number of People Who May Benefit*”. **Commissioner Solomon** stated that the fiscal note’s tables should be cleaned up before going to public comment so that its information cannot be misrepresented. **Commissioner Deerhake** stated that the fiscal note has already been through the public comment process; however, the addendum is a new addition.

**Commissioner Deerhake** made a motion for the EMC’s continuation of the public comment period on the additional risk management option of 0.078 mg/m<sup>3</sup> at a 24-hour averaging time paired with a 0.005 mg/m<sup>3</sup> at an annual averaging time, the revised fiscal note, and that the previous comments and records remain open for a future hearing officer’s recommendation for the proposed

rule adoption on *Control of Emissions from Log Fumigation Operations*, 15A NCAC 02D .0546, and rule amendment to *Toxic Air Pollutant Guidelines*, 15A NCAC 02D .1104. **Commissioner Arata** seconded the motion.

The Commission had discussion with Counsel Reynolds regarding updating an approved fiscal note with the Commission's recommendations for Table 8. Counsel Reynolds concluded that provided the underlying substance or data is not changed, clarifying the column titles in the fiscal note tables should not be an issue. **Commissioner Solomon** stated that there appears to be consensus around the 0.005 mg/m<sup>3</sup> value at an annual averaging time; however, he asked if the Commission would be restricted at the 0.078 mg/m<sup>3</sup> value at a 24-hour averaging time with the proposed motion. Counsel Reynolds stated that if the Commission proceeds to comment with a specific value and averaging time, it would not be prohibited to make minor adjustments on the value based on public comments. However, he did discuss that drastic changes to the value based on public comment could be debated as a substantial change. **Commissioner Solomon** stated that the Commission had initially discussed alternative methods to regulate this agenda item; however, a control technology and distance approach may be best. **Chair Meiburg** stated that a control technology approach was discussed at the beginning of the rulemaking process, and there is no perfect answer to the question of the values and concentrations.

**Commissioner Carter** summarized his understanding of the modeling, the nature of the batch operations, that the first hour has the largest concentration of emissions, and how in his opinion the California 1-hour standard of 3.9 mg/m<sup>3</sup> will likely be more protective than the proposed 24-hour average.

**Commissioner Carter** made a motion to amend **Commissioner Deerhake's** motion to include an additional risk management option of 3.9 mg/m<sup>3</sup> at a 1-hour averaging time. **Commissioner Arata** asked whether the motion would require amending the fiscal note. **Commissioner Deerhake** stated that the SAB rejected California's 1-hour standard of 3.9 mg/m<sup>3</sup>. **Commissioner Solomon** stated that the study backing California's value contains old science. Counsel Reynolds stated that the fiscal note would need to be revised to incorporate the newly recommended value. Director Abraczinskas stated that the 3.9 mg/m<sup>3</sup> value was not included in the fiscal note due to OSBM reiterating the SAB's conclusions that the value did not represent sound science pursuant to G.S. 150B. **Chair Meiburg** asked for a second to the motion. No Commissioner seconded the motion; therefore, the motion failed.

**Commissioner Solomon** stated that based on the "*Methyl Bromide: Comparison of Reference Values*" chart, the 1.29 mg/m<sup>3</sup> non-occupational bystander exposure for pre-plant fumigation of fields for planting value at a 24-hour averaging time may be appropriate to prevent going back through the public hearing process in the future. **Commissioner Deerhake** stated that if there are strong opinions on the recommended value, she preferred to take two options to public comment as an additional risk management approach: (1) retain the 0.078 mg/m<sup>3</sup> value at a 24-hour averaging time paired with the 0.005 mg/m<sup>3</sup> at an annual averaging time as recommended by

the SAB; and (2) the 0.005 mg/m<sup>3</sup> value at an annual averaging time paired with the 1.29 mg/m<sup>3</sup> value at a 24-hour averaging time. The Commissioners discussed the procedural issues of adding the recommended value. **Commissioner Solomon** stated that if **Commissioner Deerhake** wanted to amend her motion to include a similar approach that was conducted for the initial comment period by also requesting public comment on an acute AAL value within a range of 0.078 mg/m<sup>3</sup> to 1.29 mg/m<sup>3</sup> with a 24-hour averaging time, it would be acceptable; however, he was not going to officially ask for an amendment to the motion. **Commissioner Deerhake** stated that if the Commission proceeded to public comment on an additional regulatory option of 0.078 mg/m<sup>3</sup> at a 24-hour averaging time paired with 0.005 mg/m<sup>3</sup> at an annual averaging time, while also soliciting public comment on a value within a range of 0.078 mg/m<sup>3</sup> to 1.29 mg/m<sup>3</sup> at a 24-hour averaging time, it would be acceptable. Counsel Reynolds stated that since the initial motion remains for the standards, while also soliciting comment on a range, no additional motion is required. **Chair Meiburg** clarified that there is a motion on the table to proceed to comment on an additional regulatory option of 0.078 mg/m<sup>3</sup> at a 24-hour averaging time paired with 0.005 mg/m<sup>3</sup> at an annual averaging time, while also soliciting public comment on a value within a range of 0.078 mg/m<sup>3</sup> to 1.29 mg/m<sup>3</sup> at a 24-hour averaging time. **Chair Meiburg** asked for a vote on the motion. The motion passed unanimously.

### III. Information Items

#### 1. 20-IF-01 Update on the Status of the NPDES Permitting Rules 15A NCAC 02B .0400 & .0500 and 02H .0100, .0400, & .1200

Mike Templeton, DWR provided an update on the status of the NPDES permitting rules, T15A NCAC Sections 02B .0440 & .0500 and 02H .0100, .0400, & .1200. At its March 2019 meeting, the EMC approved readoption of the 51 existing rules (including 8 for repeal) and 3 new rules. The rules were then submitted to the Rules Review Commission for its review and approval. The RRC produced an extensive Request for Technical Changes and, because DWR staff were not able to respond in the time allowed, objected to the rules in June 2019 and returned them to the EMC for further action. DWR staff continue to work with RRC staff to resolve the remaining comments and anticipate completing that effort in early February and bringing the revised rules to the EMC for approval at its March 2020 meeting.

**Commissioner Solomon** has asked staff to make the rules available to the EMC mailing list prior to the usual posting date for that meeting and to accept comments for one week. **Commissioner Solomon**, who served as hearings officer for re-adoption of the rules, explained that he wants to ensure we are open and transparent about the extensive technical revisions to the rules before the Commission considers them.

#### 2. 20-IF-02 Nutrient Rules Readoption Update from December 19, 2019 Meeting of the Rules Review Commission (EMC Counsel Phillip Reynolds)

Counsel Reynolds updated the Commission that after it adopted the nutrient rules, the matter came before the Rules Review Commission at its December 19<sup>th</sup> meeting. He stated that it did receive one (1) public comment objecting to the rules. The objection came in through public comment from the Upper Neuse River Basin Association and at the risk of oversimplifying the basis for their objection, the UNRBA took the position that the inclusion of the Falls Lake strategy in what is being proposed as being re-codified. It is not re-codified yet but proposed to be re-codified as 0703, the former 240 and particularly the inclusion of the 1.5 to 1 for point and non-point source offset trading. That exceeded the EMC's authority based on the two session laws, one in 2016 and one in 2018 including the Falls Lake rules on Holt. The RRC appeared to agree with the UNRBA despite his vigorous arguing. The objection letter was issued on January 9<sup>th</sup> which means the EMC will have 10 days after their next meeting in March to take some action. He stated that staff would be working with the hearing officers to lead that charge as well as working with the UNRBA to find a reasonable solution to that to make sure there are no unintended consequences and he anticipates that the goal is to have that reasonable solution brought back to the Commission for approval in March. Then it will go back to the RRC at its next meeting and hopefully resolve that objection and allow that rule to move on through.

**Chair Meiburg** asked for comments or questions. **Commissioner Solomon** suggested they get the parties together between staff and the basin association to make sure **they** have that before they begin talking about it.

**Commissioner Solomon** stated that he would only add that they have a good idea. Counsel does and I do. I think that Commissioner Keen do. But we want to make sure we get the parties together between staff and the Basin Association to make sure we have that before we start talking about it. I really think this can be worked out. It was iffy to start with and there's a lot of things we give and take on, and this was one of those that we gave on. It is clear as mud. I just think we need to figure out a way to resolve it.

#### IV. Concluding Remarks

##### Directors' Comments

The division directors made their respective comments, the written version of which were published with the agenda and details of those comments can be found at:

[https://files.nc.gov/ncdeq/Environmental%20Management%20Commission/EMC%20Meetings/2020/9January2020\\_DirectorComments.pdf](https://files.nc.gov/ncdeq/Environmental%20Management%20Commission/EMC%20Meetings/2020/9January2020_DirectorComments.pdf)

Director Danny Smith, Division of Energy, Mineral and Land Resources

Director Michael Scott, Division of Waste Management

Director Michael Abraczinskas, Division of Air Quality Division

Director Linda Culpepper, Division of Water Resources

### Committee Chairs

**Chair Arata** stated that Director Abraczinskas covered the substance of the committee meeting. She extended thanks to the Modeling staff for assistance in understanding the different options for the methyl bromide rule.

**Chair Bailey** stated that the Groundwater and Wastewater Committee meeting that the first item was a request to public notice and hearing on the groundwater quality standards in 2L. But after further discussion, the committee asked staff to work on a few different options and they will continue to work on it. This was their second meeting working on these standards and there were still lots of questions. The next item was a request to proceed to the EMC for public notice on some solid waste management facility rules. Those rules did not have a fiscal note completed so they are holding back on that, and that was changed to an informational item. The last item was an update on the rule adoption for the issue on the transfer stations municipal solid waste and sandy landfill and financial issuance.

**Chair Deerhake** reported that the Water Quality Committee had one major variance request for 36 sq. ft, Zone 1 impact area and that was approved. The committee also heard about the nutrient rule re-adoption in RRC, information from Counsel Phillips. She indicated that they had an introductory presentation to the Jordan Lake program and the UNC co-laboratory has released their final report in December. There was discussion about their first impressions, and they are inviting Steve Wall, Director to bring some of his researchers to report on their findings at their March meeting. They are also asking for the staff to provide their first impressions. They had discussion about their 2020 calendar and what additions they would like to see, and we'll be continuing to develop that as time goes on. The WQC said farewell to Director Culpepper and thanked her for her service.

**Chair McAdams** reported on the Water Allocation Committee meeting.. They are using the time for informational presentations and yesterday was a presentation in three parts on reclaimed water, the Town of Cary's reclaimed water program, Orange Water and Sewer Authorities. The health-related microbial aspects of reclaimed water from UNC School of Public Health, Dr. Mark Sobsey. It was a very interesting presentation and gave us something of a command of what reclaimed water was about, the advantages and reduction in the burdening of water sources that can be achieved through the use of reclaimed water. He made a call for suggested topics for other informational purposes to give the background for the issues that the committee will be facing going forward. They will be compiling a list of those topics.

### Committee Members

**Commissioner Deerhake** extended her thanks to the Division of Water Resources and Division of Air Quality staff for all of their work with her on the items on the agenda.

**Commissioner Keen** thanked the Commission for their thoughts and prayers for the loss of his Mother and their relationships with the Commission.

**Commissioner van der Vaart** stated comments on rulemaking to understand and put a regulatory structure on agreements such as the ACPMOU so there will be clearer going forward.

**Dr. Meiburg** reminded the Commission that they are little ahead of their cycle for March meetings which are the 4<sup>th</sup> and 5<sup>th</sup>. He stated that on December 31<sup>st</sup> of 2019 DEQ, Duke Energy and various community groups represented by SELC entered into a settlement agreement to resolve the closure termination, litigation for six coal ash sites, Allen, Belews Creek, Cliffside, Marshall Mayo and Roxboro. Under the agreement, Duke Energy is going to excavate nearly 80 million tons of coal ash to line outside locations and for beneficiation. The three parties are working together to submit a consent order for injunctive relief on or before January 31<sup>st</sup>, which will be filed in Wake County. Duke has submitted their closure plans for the excavation by the deadline, December 31<sup>st</sup> as required by the Coal Ash Management Act. The public will have an opportunity to comment on the closure plans at the public hearings near each of the six sites in February and there will be an opportunity for written comments.

He stated that the Commission would be hearing more about this at the March meeting. He thanked the Commission for their diligence and focus on issues and commented that they would miss Director Culpepper.

With no further business before the Commission, the Chairman adjourned the meeting at 3:00 p.m.

Approved this 5th day of March 2020.



---

Dr. A. Stanley Meiburg, Chairman  
Environmental Management Commission