

Minutes November 10, 2016 Meeting

The North Carolina Environmental Management Commission met on Thursday, November 10, 2016 in the main floor hearing room in the Archdale Building, Raleigh, NC. Commissioners present were:

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

Commissioner Butch Smith was absent from this meeting.

Commission Counsel Jennie Hauser was also present.

I. Preliminary Matters

The meeting was called to order at 9:01 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 September 8, 2016. **Commissioner Martin** and **Commissioner Wilsey** stated corrections to the minutes which noted that **Commissioner Carroll** did not attend the meeting and to correct the meeting date to September 8, 2016. **Commissioner Rubin** made a motion that the appropriate changes/corrections be made and to approve the minutes. **Commissioner Wilsey** seconded the motion and the motion passed unanimously.

Chairman Rowland stated that action item #5, 16-55 Request to Proceed to Public Comment and Hearing and Approval of Fiscal Note with New 15A NCAC 13B .2000 Rules for Coal Combustion Residuals, the Groundwater & Waste Management Committee wanted to go forward in January and had removed from the agenda.

III. Action Items

Agenda Item: 16-51 Stormwater Rules Section 15A NCAC 2H .1000 – Request to Adopt Revisions in Response to RRC Objection

Annette Lucas, Division of Energy, Mineral and Land Resources Stormwater summarized the objection of the Rules Review Commission (RRC) to 14 proposed stormwater rules in Section 15A NCAC 2H .1000. The RRC objected to these rules on the basis that the EMC lacks the statutory authority to set requirements of who can design stormwater systems, with the exception of the fast-track permitting rules authorized under G.S. 143-214.7B.

Chairman Rowlan asked if staff looked at the RRC's statement, that the EMC doesn't have this authority.

Counsel Jennie Hauser stated that they argued this point in front of the RRC, but the RRC had final say, and that staff thought they had found a solution in the proposed revisions.

Commissioner Martin supported the proposed revisions but disagreed with the RRC's position as it totally opposed what staff had done in the past and that it didn't protect the public and the environment. **Commissioner Carter** asked, why was the second sentence needed in proposed Rule 2H .1050(14) regarding allowing persons for whom a license was not required to design SCMs for the standard permitting process.

Director Tracy Davis explained that the RRC was requiring staff to differentiate between the fast-track and standard permitting processes. **Chairman Rowlan** asked if applications were reviewed by the staff under the standard permitting process or were they just rubber stamped. **Commissioner Martin** stated that staff did review all applications. **Commissioner Solomon** stated his concern was that if an unlicensed professional did SCM design, the AGO would have to tell staff whether or not they were qualified, and only the licensing boards could tell PE's whether they were qualified or not.

Counsel Jennie Hauser responded that the AGO only takes referrals from the Boards after the Boards have determined that unlicensed practice has occurred. Craig Bromby stated that they recapture potential unlicensed practice in the third sentence in Rule 2H .1050(14) regarding "no exceptions to the unauthorized practice of the professions. . . "and that the second sentence was essentially "snakebite insurance" against the RRC objecting again. **Commissioner Carroll** asked if staff could change the first sentence to make reference to fast-track, remove the second sentence, and move the third sentence somewhere else so that it applies to everything.

Chairman Rowlan asked if the RRC understands that the results could be catastrophic. **Chairman Rowlan** said he would contact the Chairman of the RRC to discuss this issue. Counsel Jennie Hauser explained that, for the motion, that they are not going to approve actual wording on 2H .1050(14); but whoever made the motion needed to be clear on the concepts to be included.

Commissioner Tedder made a motion to add a reference to fast track in the first sentence of 2H .1050(14); delete sentence two in its entirety; move sentence three to the end of the rule; and accept all other proposed changes. **Commissioner Carroll** asked if staff should refer to fast track in the title of this item. **Commissioner Tedder** amended his motion to include fast track in the title. **Commissioner Carroll** seconded the amended motion.

The Commission adopted the revisions to the 14 rules as presented with the following amendments: Change the title of Item .1050(14) to specify that it applies to fast-track permitting only; add a reference to fast track to the first sentence; remove the second sentence regarding the standard permitting process; and move the third sentence regarding unauthorized practice to its own item in Rule 2H .1050.

Agenda Item: 16-52 Request Approval to Proceed to Public Comment with the “Initial Determinations” for the Dam Safety Rules (15A NCAC 02K) as Required in HB 74 and GS 150B

Boyd DeVane/Division of Energy, Mineral and Land Resources, Stormwater section presented what House Bill 74 required that they redo the dam safety rules. HB 74 required that we do an initial determination. In September the dam safety staff provided the Water Quality Committee with suggested initial determination for the 33 dam safety rules. They recommended approval in sending them to the Commission. The dam safety rules were adopted as a requirement of the Dam Safety Law in '67 and it specifies procedures for approval of dam design construction, repair and maintenance. Mr. DeVane described briefly the different rules in the 33 rules. Mr. DeVane stated that as explained to the Water Quality Committee our approach was to use bucket symbols to show the three categories in looking at the dam safety rules. They had concluded that none of the 33 rules being reviewed were considered as ones where someone would be upset enough to write a letter of objection. Nobody has written one in the last 30 years about their rules. He pointed out that the statutes did not properly provide for a fourth category that says rules with no objections occurred but could benefit from change. They felt that the dam safety rules were a little different. They had clear authority in the statutes and they are based on nationally recognized engineering standards and they stood the test of

time. Most of them were adopted 30 years ago and they have not had problems with them. The initial determination is what the statute says that the EMC must produce. Their rules are in the category 2 except the two that they recommended to be repealed that had to do with administrative hearings. As a final note he pointed out that HB 74 is very confusing in that it requires a periodic review of existing rules. He stated that they could do that but it was different from the conventional rulemaking process. They are not overlapped and they are a different process. In their schedule initial determination will be sent out for public hearing for at least 60 days, then it will be revised as appropriate and go back to the Water Quality Committee in May of 2017, and back to the EMC in July of 2017. They intend to expedite the process as much as possible so they can get all the rules approved, report to the RRC in September of 2017. They are requesting that the EMC

Commissioner Tedder made a motion that the Commission approve staff to proceed to public comments with initial determinations as presented. **Commissioner Martin** seconded the motion and the motion passed unanimously.

Agenda Item: 16-53 Request Approval of Falls and Jordan Nutrient Rulemaking Group Required Under S.L. 2016-94

John Huisman, DWR/Non-point Source Planning Branch presented this item. He indicated that S.L. 2016-94 came out of the most recent General Assembly session which was the Budget Bill. It had a section 14 that specifically addressed nutrient management regulatory framework that addresses specifically the Falls and Jordan Lake watersheds. Mr. Huisman explained that the session law revises the Jordan implementation timeframe, delays the dates for the Falls and Jordan EMC rules readoption process. This bill takes the Falls and Jordan and sets them on their own track and timeframe. It also calls for UNC evaluation of the management strategies and calls for several different reports from the Department. He stated that he was there to direct the EMC to convene a Stakeholder Group to provide input into the rules readoption process. In terms of the implementation impacts in Jordan what this session law did was to terminate the Solarbee Project in the lake. Along with that it appealed the previous three-year delays from previous session laws. It also specifically and definitely prohibits local implementation of the new development and existing development in stormwater rules in Jordan, and prevents the readoption of the Jordan rules until October 2019. In the Falls Lake it doesn't impact the implementation. The Falls rules are being implemented, but the implementation prevents the readoption of those rules until October 2022. This allows both of these

strategies in their own timeframe, to direct the EMC to begin rules readoption process by March 2019. He presented a table describing all the various tasks and actions required by session law in chronological order. He commented that the Division of Water Resources and Division of Mitigation Services are working together to submit a nutrient offset report to the ERC by December 1, 2016 which is required by the session law. The two watersheds have also looked at the adequacy of the availability of private banks, DMS's banks and the necessity of the DMS program to meet the existing needs for nutrient offsets. That report is being worked on now and will be submitted in December to the ERC.

There is also provision in the session law that states that Chesapeake Bay program, stormwater BMPs are approved up in the Chesapeake Bay for TMDL compliance will be allowed for TMDL compliance with the same reduction efficiencies in the Jordan and Falls watersheds and calls for the Department to submit the ERC report if we want to make the case or state specific nutrient values for BMPs. DEMLR is taking up the lead with that report and that is also due in December to the ERC. The highlight here is the next step in the process is to convene that stakeholder work group which will happen by the end of December. That's the EMC workgroup and the Divisions is working on your behalf to convene that group. Another report called for from the Department is to look at alternative strategies such as insitu, in lake treatment. This would build upon the previous work, the previous reporting that the Division has done. The session law does specifically say that along with that report looking at in lake treatment does specifically look at things like phosphorus locking technologies. It will be taking a closer look at those things in that report. The big thing is the UNC evaluation of the nutrient management strategies. This essentially sets aside \$500K per year for six years to UNC, the Chief Sustainability Officer. It doesn't need entity to evaluate management strategies in Falls and Jordan, look at water quality trends in relation to the implementation of those rules, evaluate the cost and benefits of management strategies in other states and develop a report to the ERC that makes recommendations on a regulatory and statutory changes to the rule requirements. The reports for Falls and Jordan are on separate timelines. A final report would be due to the ERC and to the EMC in 2018 with interim reports in 2016 and 2017. In Falls the final report wouldn't be due until 2021 with interim reports in 2019 and 2020. The final is for the EMC begins the rules readoption process in 2019. He explained the table that highlighted the timeline of S. L. 2016-94 tasks.

Mr. Huisman mentioned that the action item was convening the stakeholder group that's called for to start 2016. Under the session law this group is supposed to represent all users and geographical areas in the river basins. Staff worked with EMC members to identify perspective candidates to serve on the group. He thanked **Commissioners Tedder, Wilsey, Solomon and Dr. Rubin** for their help in identifying potential

candidates. They reached out to those candidates to find out whether they would be interested and available to participate. They did indicate that they would be and the plan is to have a kick off meeting by conference call in December. He mentioned that from the timeline there really wasn't a lot for the group to discuss at this point, but they can touch basis with them and have the kick off meeting, develop a schedule looking in the years ahead, draft a charter for the group to identify their purpose and their objectives. As information becomes available they would set up regular meetings with them into the future. He stated with a long range stakeholder group as this one and a long range rule reduction process, there may be some change in the makeup of the participants. They plan to work and update the EMC and the Department if any changes to the group are needed to move forward. Mr. Huisman provided a list of the stakeholder group candidates that they identified with the EMC's help. He concluded by requesting the EMC's permission to proceed with convening the Falls and Jordan Lake Stakeholder Group as called for under S. L. 2016-94.

Chairman Rowlan asked **Commissioner Wilsey** how did the Water Quality Committee deal with this request?

Commissioner Wilsey answered that they did a lot of work in between the past meeting and they knew they were on a short timeline. She stated that they were ready to move ahead with this action item.

Dr. Rubin made a motion that the EMC approve the request to proceed with the convening the Falls and Jordan Lake Stakeholder Group. **Commissioner Ferrell** seconded the motion. No further discussion and the motion passed.

Agenda Item: 16-54 Request to Proceed to Public Comment and Hearing and Approval of Fiscal Note for Rule Changes to 15A NCAC 13B .0840 Rule

Mr. Tony Gallagher, Solid Waste Section's Composting and Land Applications Branch Head, presented a proposed rule amendment to the sampling and analysis regarding septage management. Mr. Gallagher briefly summarized the NC septage management rules. The proposed change was to move from annual sampling to sampling every two years– it will affect section B and C within the rule.

Mr. Gallagher requested to proceed to public comment and hearing, approval of the fiscal note, and requested assignment of a hearing officer. No questions/comments were offered. **Commissioner Martin** made a motion to proceed to public comment and hearing as requested by staff, and approve the fiscal note.

Commissioner Tedder seconded the motion and had a question. He indicated normally annual sampling was not necessary. He asked if staff was receiving consistent information or is to reduce cost? Mr. Gallagher responded in the affirmative. Data was consistent there is no issue when going from annually to sampling every two years.

Chairman Rowlan asked for a vote and the motion passed unanimously. **Commissioner Rubin** volunteered as the hearing officer.

(THIS ITEM WAS REMOVED FROM THE AGENDA)

Agenda Item: 16-55 Request to Proceed to Public Comment and Hearing and Approval of Fiscal Note with New 15A NCAC 13B .2000 Rules for Coal Combustion Residuals

Agenda Item: 16-56 Request Approval to Send the Commission and Department Basinwide Water Quality Management Plans Annual Report per GS 143-215B (d) to the ERC

Ian McMillian, Supervisor for the Basin Planning Branch presented today to request approval to send the Commission and Departments Basinwide Water Quality Management Plans Annual Report per GS 143-215B(d) to the ERC. The report covers the 17 River Basins within North Carolina and reports the schedule in which DWR monitoring, planning and implementation activities are slated to occur. The Cape Fear, Chowan, Pasquotank, White Oak and Watauga River Basin Water Resource Plans are under development along with water quality assessments and recommendations for improving water quality.

During Ian's presentation, he gave a brief overview of the results that are in the report. Just to briefly mention a few: Starting with the RAMS stations data, 98 of the 120 stations did not exceed the Total Dissolved Metals in NC Surface Waters. The other 22 stations had one or more exceedances over the standards. Of those, Arsenic, Copper, Lead, Mercury, Selenium, silver and Zinc where the ones that stood out the most for exceedances. In viewing the assessments from the 2010-2013 Turbidity reports to the 2005-2009 assessment, the Yadkin River basin had the highest basin mean and median turbidity concentrations of 25.2 and 11 NTU's, with 0% change over the median turbidity concentration over the two periods. The Yadkin River basin also had the highest river basin mean and median Total Nitrogen concentrations, with a 13% increase between the same time periods. However, the Yadkin River Basin did show a 21.4% decrease in the median for the Total Phosphorus assessment between the 2010-2013 and 2005-2009 report. The South

Yadkin sub-basin had the highest sub-basin mean and median concentration with a 14% increase in the median concentration between the two periods.

Currently, the State of North Carolina does not have a total nitrogen (TN) instream standard, nor does it have a current Total Phosphorus (TP) instream standard. With the Assistance of the Science Advisory Committee (SAC), the division is in the process of evaluating nutrient criteria for TN. The TP will eventually be reviewed as part of the nutrient criteria development process. The goal is to evaluate lake, stream and estuarine standards that will be applied to surface waters of NC. When reviewing the Fecal Coliform Bacteria, standards apply only to individual stations that were monitored at least five times within a 30-day period. The Cape Fear River Basin had the highest mean fecal coliform bacteria concentration of 531 cfu/100ml and the White Oak basin had the highest geomean concentration of 229 cfu/100ml. Due to staff and funding limitations, waters classified as B, were only used for primary recreation and prioritized and evaluated using the 5 in 30 standard assessments. The other stations remain as “data inconclusive”.

For the Division’s basin planning programs, stakeholder input is highly valued. It enhances the public’s participation, provides a broader range of information essential to protecting and enhancing watershed water quality and issues associated with reliability of water supplies; which include input from watershed associations, land trusts, soil and water conservation districts to name a few. This will aid the Basin Planning Branch when joining in with the Modeling and Assessment Branch to provide three public meetings per hydrologic model that is to be completed in 2017 among other areas.

As the basin plans move forward and become more interactive, updates will occur when projects are completed or a significant amount a new data become available. A report for each basin will also be presented to the EMC for approval at least every 10 years as mandated by GS 143-215.8B(c).

A question was asked by **Dr. Rubin** regarding all the data presented in the report. Such as nitrogen and phosphorus, copper, zinc, etc. What do we (EMC) do with that and how do we (EMC) relate that to downstream waters, and the chlorophyll levels in downstream bodies of water and where it fits in? Dr. Rubin went on to comment that the EPA has standards for bathing water and the EPA standards for bathing water recommend looking at indicators other than fecal bacteria, chloroform, e-coli bacteria, the brain eating amoeba (naegleria), and that maybe this isn’t the place for that, but where do we start to incorporate the basin wide data in water quality recreational use programs. Ian McMillan goes on to answer that the Science advisory committee is looking at some those areas. However, there really is not a definitive answer. Dr. Rubin feels these are critical issues and wants to know how to improve that information for the public’s awareness,

knowledge, although the report for this presentation is not really what it is targeting. Jeff Manning, supervisor for the Classifications & Standards/Rules Review Branch stated that Connie Brower is going to be working with a national working group for the criteria regarding to the recreational use programs. This group will be looking at fecal chloroform, strepocotus, e-coli, naegleria, etc. However, the naegleria is so rare that it is probably likely no standard will be set. Even though the data is very broad and general, the sub-set data may be used for other things.

Commissioner Tedder commented that where **Dr. Rubin's** concerns/questions best fit would be to discuss it in the basin planning. The summary report is unfortunately required in the statutes. If you go back to the slide where the actual legislative statute language is, the first part of that language is that we (EMC) had never done a management plan before and are working through it. **Commissioner Tedder** goes on to state that 'we are in the 5th cycle and this is antique language that should not even be in the statute anymore.' 'The last part is also not guided very well. The Division should work on having the language eliminated from the statute. It is useless and a waste of staff time. When averaging data for an entire sub-basin and basins, it is useless, misleading and bad science.' One can only do so much in a 10-15-page report when summarizing 17 basins for the entire state.

Chairman Rowlan stated that there is not a whole lot you can do with the report, as far as developing what the impacts are, because most of the data is so average, that it is watered down and doesn't tell you where the point sources are. When it comes to the trending from report, **Chairman Rowlan** wants to know if that could be in the report being presented today. **Commissioner Martin** asked who would be using this data, and in response, Ian is not sure.

No more questions or comments arose. **Commissioner Wilsey** motioned, stating they received report, and approved at the committee level, so that it should be sent the ERC for review. **Dr. Rubin** seconded the motion and the motion passed.

Agenda Item: 16-57 Request Approval to Engage Settlement Process for Union County Application for Interbasin Transfer Certificate and to Delegate the Appointment of a Mediation Officer

Craig Bromby, Deputy General Counsel for the Department presented this item. He stated as the Commission was aware, Union County has applied for an interbasin transfer certificate for the transfer of water from the Yadkin basin to the Rocky River basin. That process has been ongoing for months but an

issue has recently arisen, one of which is a serious procedural issue. The Office of General Counsel and I have spoken with Counsel for several parties who have raised this issue with the process. Montgomery County G.S. 143-215.22L contains a subsection (h) that provides for a mediation process. This subsection was put into the statute with one of the reforms of the interbasin transfer statute. The staff proposed to the Commission, the Commission adopted guidelines for invoking and engaging in this mediation process, and that guidance was attached to your materials. What the guidance provides for among other things is that the Commission would appoint a mediation officer which could be a department employee or an EMC member, or a third party. The Department of Environmental Quality is recommending that they engage this process for this particular dispute. DEQ would recommend that a third party mediator be appointed because it may require someone who is very skilled in mediation. But the action they are seeking is direction from the Commission to commence that mediation process and they are asking the Commission to delegate to either the Chair or some other member of the Commission to appoint the mediation officer and to delegate to the mediation officer, who is appointed, the authority to determine which parties may participate in that mediation. The mediation is not compulsory and they cannot require other parties to participate in this action, however, in this case they have discussions with Counsel for the parties raising the dispute. They got indications from their willingness to engage in the process, and it is a worthwhile effort to see if there are some things that they can do, some things that they can offer those parties to resolve the dispute, so they can move on and not take this process too far out of the normal order of things. The mediation process itself by EMC guidelines is limited to 120 days. Staff wouldn't ordinarily anticipate that they would require that much time but they are at the cusp of the holidays.

He stated that their request was to engage in the process, to delegate to the Chair or one of the members the authority to appoint that mediator, and to delegate to the mediator the authority to determine which participants would participate in the mediation they would look forward to starting that as soon as possible to keep the delay to a minimum. The other consequence would be very likely litigation and could delay.

Chairman Rowlan commented that staff needs the EMC too authorize them to go to mediation and designate someone.

Mr. Bromby stated yes and that the authority to designate the mediation officer rest with the Commission so they would ask that the Commission delegate one of its members to identify and engage that mediator.

Vice-Chairman Martin asked if they were recommending, at least right now, the ultimate mediator be a third party, not one of the Commission members. You just want us to select the mediator but not be the mediator.

Mr. Bromby responded yes. **Chairman Rowlan** asked if he had some recommendations for the Commission as to who that mediator should be. Mr. Bromby responded that they had no one as of yet. If the Commission was going to authorize them to engage in the process they would have discussions with Counsel for the other parties that are disputing this matter, and there could be additional parties after that to get some nominations for mediators that would be acceptable to all parties.

Chairman Rowlan commented that moving forward with mediation would be the smartest way to handle things.

Commissioner Solomon stated that as the hearing officer he felt that the Commission needed to follow this and this was a sticky issue that they need to get resolved to try to put off the lawsuit or further delay of the IBT. I think the Chairman should be the one to coordinates. It is a quasi-judicial matter and I think we need to stay separate of this process.

Commission Tedder stated just for clarification would you elaborate on what the issue is? Mr. Bromby stated that the issue had to do with notification and whether or not notification was properly with all parties. That's purely a legal issue. That is not an issue itself which would be susceptible to mediation. However, in his experience particularly in that area while there may be an issue like that could send the process back to the beginning, there are other substantive matters. Those had been raised in comments by some of the parties. There was a concern among other things that the environmental impact statement, in this case didn't study or calculate the effects of any form of non-portable water conservation such as a reuse system that the draft certificate found that for capital usage would increase by 10.4% by 2050, essentially concluding that while Union County seeks to take all of its access needs from Montgomery County, which is the county in dispute. It is being 10.4% less efficient in its use of water. Substantive questions like that are

what we would seek to engage in a mediation to see if we could come to some agreement on that and get back on track.

Chairman Rowlan asked what would happen if they didn't get resolution? **Commissioner Tedder** stated in the normal process most of those would be handled by the hearing officer in the normal process. The procedural part, if there was any question or anything to mediate there, he could see that as part of the mediation. Normally, it's something that would be handled normally as part of the process with the Commissioner and the hearing officer and what comes before us.

Commissioner Solomon commented that he had gotten the comments from the Department and he had been working with them. Some of the notification issues are germane to whether we are fully considered some of the technical issues. Part of it is has this process moved forward or we've ignored something because we failed to notify and get input. This notification issue is really the core of the discussion.

Chairman Rowlan stated if you go to mediation and you reach a solution that comes back before the Commission anyway, doesn't it? Mr. Bromby responded yes.

Commissioner Solomon asked Mr. Bromby and stated that they were planning on getting the Commission this issue in January, so this will postpone it until some point in the future. Mr. Bromby commented that it would by necessity have to come off in January. If it was not presented on the agenda in January, I don't think the other parties would agree to mediation.

Commissioner Solomon stated that any more processing of the comments on the hearing officer's report, we need to hold until this mediation process. After continued discussion, **Chairman Rowlan** asked for a motion.

Counsel Jennie Hauser clarified the motion by stating the motion would have three parts. The first part is whether the Body wants to authorize settlement and mediation. The second is who among the membership will be delegated the authority to appoint the mediator. The third is whether or not the Body wants to allow the mediator to determine the parties to participate.

Commissioner Solomon made a motion that the Commission engage in mediation, that they allow **Chairman Rowlan** to designate the mediator and that the Commission allow the mediator to determine who should be engaged in that process. **Commissioner Wilsey** seconded the motion and there was no other discussion. The motion passed unanimously.

Agenda Item: 16-58 Action on Rules Review Commission's Objection to 15A NCAC 2I .0501

Deputy General Counsel Craig Bromby stated what happened in this case was the existing rule .0501 listed the various director's contact information for the various Directors of the Division who would be contacted and to whom petitions for rulemaking would be submitted. The Division of Waste Management had an outdated address in this rule so the rule went forward to change and correct that address. However, when the RRC gets a rule, however it came to them they look at the entire rule with respect to the requirements under the Administrative Procedures Act and they determine that Section (b) of the rule which is what is required to be contained in the petition, was beyond the authority of the EMC. This rule is based on 150B-20 in the Administrative Procedures Act and in that section it is provided that petitions for rulemaking must include the text of the proposed rule. They have to include that and it's in the language as "must". The rule must include in the text the proposed rule, a statement of the reasons for adoption of the rule and a statement of the effect on existing rules or orders. In their rule they ask if the petition contains, or the EMC's rule also contain the statutory authority for the agency to promulgate the rules, a statement of the effect the proposed rules on existing practices in the area involved in cost factors for persons affected by the proposed rules, a statement explaining the computation of the cost factors and a description including the agent addresses if known of those most likely to be affected by the proposed rule. What the Rules Review Commission decided was because those matters were not specifically included in the statute, that it was beyond your authority to require that those items be included in the petition for rulemaking. The proposed response from the Department to meet the objections of the RRC is to include those matters which are required by statute, that is the petition would have to have the text of the proposed rule for adoption amendment. It would have to have a statement of the reasons for adoption of amendment of the proposed rule or the repeal of existing rule. It would have to have a statement of the effect of proposed rule or proposed amendment on existing rules or orders and it would need to have the names and addresses of petitioners. We have added a request to present petition to the committee in accordance with .0502 section if desired. We don't think it is going to run a fowl of what the RRC thinks in this case. For the remaining items we are proposing to put them in a second section because the statute also explicitly mandates that agencies develop

rules to describe the process they're going to use in reviewing petitions for rulemaking. We believe that it's intrinsic in rulemaking if the agency which is vested with the authority has some discretion with respect to whether or not they want the rule to go forward. We went back and researched this in the early iterations of the Administrative Procedures Act and in Professor Day's article on that he explicitly addressed this matter very briefly. He decided that the failure of the agency, the refusal of the agency to move forward with a rule for rulemaking would be judged on the basis of an abusive discretion. What we are proposing to put in the rule and this was a late addition to your materials but on the website is a second session that says in its review of the proposed rule. The Commission shall consider whether it has appropriate authority to adopt the rule which is not addressed in the statute itself having to be in the petition. The effect of the proposed rule on existing rules, programs and practices other than just the effect on existing rules, the probable cost and cost factors of the proposed rule because if you're looking at a rule, you're also going to have to do some sort of economic analysis. We think that's just intrinsic in your responsibility for going forward with rules, the impact of the rule on the public and regulated entities. Therefore, we invite the petitioners by saying the petitioner may include the following information within the request, the statutory authority for the agency to promulgate the rules. If you get a petition for rulemaking and when you're reviewing that you find that you don't have the authority to do this, then you would reject it. I do not believe that would be an abusive discretion. Therefore, we don't necessarily have to go on to a rulemaking process that would be time consuming and costly. Secondly, a statement of the effect of the proposed rule on existing practices in the area involved including the cost factors for persons affected by the proposed rules, a statement explaining the computation of the cost factors, a description including the names and addresses if known of those most likely to be affected by the proposed rules and any documents and data supporting the proposed rules. In essence, what we are proposing to go back to the RRC with is the essentials, the things spelled out in the statute that has to be in a petition for rulemaking and inviting petitioners to include information for matters which you are necessarily going to consider when you look at this petition for rulemaking and exercise your discretion for deciding whether or not this is something which you want to initiate rulemaking. We believe that should satisfy the RRC because we're not mandating it. It is obvious that if you include these things in a petition for rulemaking does not include them, your review of it is likely to not conclude favorably for the petition because these matters that you have to think about for your own rulemaking process and for what this agency does would be absent. Those are the changes that we are proposing to meet the objection of the RRC and we would like to go back to them at their meeting in December. We are requesting your approval to move forward with that revision.

Chairman Rowlan commented that you basically want .0501 revised as before us. Is that correct? Mr. Bromby responded that is correct. The Chairman asked for discussion. Mr. Bromby stated that they would include address for DEMLR as well. He stated that this rule was revised when the Division of Water Quality was merged into with the Division of Water Resources with that text and it passed through. It has recently been accepted but differently this time.

Commissioner Tedder made a motion that the EMC approve moving forward with the adoption as presented by Mr. Bromby to make the changes as well as adding the address. **Commissioner Ferrell** seconded the motion and the motion passed.

III. Information Items

Information Item: 16-03 Neuse, Tar-Pamlico and Falls Lake Annual Agriculture Progress Reports

Jim Hawhee, DWR/Non-Point Source Planning unit, presented on the Annual Agriculture Progress report for the Neuse, Tar-Pamlico and Falls Lake basins.

For reference, the location of Neuse River is to the South and West. The Tar-Pamlico River is to the North and East. Both river basins have a similar agricultural reporting purposes. Raleigh is closer to the Neuse basin. There is a 770 sq. mile area feeding into falls lake.

In addressing impairments to these three bodies (Neuse, Tar-Pamlico and Falls Lake), the nutrient management strategies, and water quality impairments data, look at where it over exceeds the chloroform standards. Also it looks at the algae growth and where it leads from in excess nutrients; how it results in the use of recreational use areas, the public's health and aquatic life issues.

The goal is to decrease nutrient loading. Such as the nitrogen load from the baseline, in hopes of 30%. And to have the Tar-Pamlico have no increase in phosphorus. The rules effective for this decrease took effect in August of 1998 for the Neuse and September of 2001 for Tar-Pamlico. Falls Lake adopted the rules more recently in 2011. As part of the rules, the agricultural sector is regulated in addition to a number of other sectors. Regulation is a collective compliance report, in which no individual operations or county operation are mandated, however, it is encouraged that each county is to meet those goals.

In both the Neuse and Tar-Pamlico, a 30% reduction in the nitrogen load for the basin line is what the goal is after. In the Tar-Pamlico, there is an additional requirement to seek no increase in the phosphorus

basin load. Base lines are set at an average 91-95 for Neuse and 91 for Tar-Pamlico basin, by the Basin oversight committee. Some groups that sit on the committee are farming and agricultural agency interest groups, DWR's Jim Hawhee, and local advisory committees on a county level. This is to help with the reporting, and to help understand what is happening on the ground.

The Falls watershed is based on similar model for agricultural rule. Collective compliance, affects all agriculture, which accounts for pastoral land in Falls watershed, and about half of pastoral land. Also, this is in the adaptive Phase approach. In stage 1, they are seeking reductions of 20% nitrogen and 40% phosphorus from 2011-2020, which is in line with the broader rule. In stage 2, they are seeking 40% in nitrogen and 77% in phosphorus reductions from 2021-2035. Watershed oversight committees and local advisory committees work together to monitor the levels. This was talked about in water quality committee meeting. The specific method for calculating for nitrogen is the nitrogen loss estimation worksheet. This is an empirical tool using spreadsheets and best information that is available to calculate losses in nutrients from the edge of fields or pastures. This was developed by DWR, NRCS, NC State and others. It also helps estimate losses at counties scales, for both cropland and agriculture, and pasture agriculture. From a phosphorus perspective, it uses the phosphorus account method approved by the EMC in 2005. This describes a number of indicators and qualitative assessment for increases in phosphorus runoff from agriculture.

For all tools, current progress to base line years is compared. Results are for 3 strategy basin. Agriculture is meeting the nitrogen and phosphorus reduction requirements to extent based on its accounting methods. In the Neuse basin, one broad metric reported in 2015 was a 53% reduction in nitrogen loss within a basin, and a 7% improvement from 2014. It was 46% in the reflective year. In the Tar-Pamlico, a similar level of reduction was shown in 2015 by a 58% reduction in nitrogen. This is a 7% improvement over 2014. Improvements are due to the decrease in crop acreages, shift to crops that are less fertilized intensive, and a shift towards soy, and away from hay and corn.

In the Tar-Pamlico watershed, based on metrics, see that 8 of the 9 indicators suggested decreased risk of additional phosphorus run off from agriculture. But did see an increase in animal waste production which is the sole increase from the base line period.

The Falls watershed, which have 3 different metrics reporting: in 2015, a 70% reduction in loss of nitrogen from crop land. This is a 24% improvement from 2014. There was/is a big shift in the amount of crop

land from last year and a big shift in the type of crops. There is a reduction in amount of fertilizer being used in hay fields. This may be due to an increase in fertilizer prices.

For pastures, based on agricultural figures, the latest from 2012 and 2007, used as a proxy as a base line. In 2012, a 36% reduction in nitrogen loss was seen. In the Falls watershed tracking of phosphorus, 7 of the 9 indicators reflected a decreased risk of phosphorus loss. With one basically having no data and one showing an improvement.

In additional to three reports of the oversight committees. DWR was asked to provide a report reflecting on the agricultural progress at mid-point of stage 1 in the falls lake strategy. Findings track largely with those of watershed oversight committee. In nitrogen, loss is across the board. And a decrease in phosphorus loss. Agriculture is making progress.

Do the actual water quality tests in these areas, support the reduction we are calculating? For the most, it is. However, the data is from 2011. It is a little old. So they are having to look at all the data and crunch the numbers. They are working with the modeling and assessments branch and they are updating the graphs and data in this report and those numbers will be in the next report in the next basin plan. Results are done annually, but there has been significant cut in funding for technicians throughout the basins. The 319 payroll grant (used to support some positions, are no longer eligible to DWR), the feds changed their criteria for uses of funding. There will be a request put into the legislatures, for the funding for more technician to be in the field. DWR has gone to some other funders and have been able to piece meal funds together. To keep one of the two lead coordinator positions which is beneficial to aiding in the nutrient sensitive water strategies area. With less money, there are less resources for implementation and for reporting purposes. So now there is a big effort to work smarter rather than harder. The oversight committee will continue to help keep track crop lands. New additions to non-point source planning staff and National guidance that is coming through will also help to fill the void.

Since, nitrogen levels are up 20%, phosphorus levels down 40-50%. And since agriculture is dropping down, where are the results coming from? It's a complicated puzzle, and are not really sure. A good estimate on the factors attributing can't be given to this, without speculating. All sectors are measured differently, to draw conclusions about how agriculture is getting better, does the table top analysis support reality? More work needs to be done to tell what the trending data is really showing and where the problems for increases and what is happening to cause the decreases. Population has changed in the basin areas, so the past history could be and most likely is attributing to the issues. This ends the annual report presentation.

Information Item: 16-04 Request Final Decision on Local Government Buffer Ordinance Applications per HB44 (SL 2015-246)

Craig Bromby, DEQ/Deputy General Counsel stated that this issue was indeed about Section 13.1 of S.L. 2015-246 which was codified at N.C. Gen. Stat. § 143-214.23A. In pertinent part what that section says is that a local government may not enact, implement or enforce an ordinance that “establishes a riparian buffer requirement that exceeds riparian buffer requirements necessary to comply with or implement federal or state law or a condition of a permit, certificate or other approval issued by a federal or state agency.” Local governments are provided the option in subsection (d) to request from the Environmental Management Commission the authority to enact, implement and enforce such ordinances that exceeds those riparian buffer requirements described in subsection (b). He indicated that they had four local governments that timely submitted applications and studies subject to subsection (d). They were the Towns of Cary and Carrboro and Orange and Wake County. Each of the towns had Phase II stormwater NPDES permits which included as conditions stormwater management plans which imposed buffers wider which exceeded those buffers that were required by state rule. All four jurisdictions, Cary, Carrboro, Orange and Wake County had ordinances which imposed buffers which exceeded those which state rule would have had required which were explicitly adopted by the Environmental Management Commission.

He indicated consequently, the Department of Environmental Quality determined that those local governments had requisite authority within the language of the statute. That is, they fell out of the statute as a matter of definition and it so informed those local governments in a letter from the Assistant Secretary dated October 27, which was yet another late addition to your materials. In those letters Assistant Secretary Reeder informed the local governments of DEQ’s conclusion, therefore, their submittals, were not properly before the Commission for any determination and for the grant of authority to them to have these additional buffers. That was presented as an informational item today, but there was discussion at the Water Quality Committee.

Chairman Rowlan stated that right after the Commission’s last meeting, he had spoken to the DEQ and asked them to develop a set of objective standards by which they could look at those applications that had come in. As they started doing that, then Hurricane Matthew hit which diverted them. In the end, he saw that DEQ had looked at this and stated, “wait, we’ve already got this thing solved because the

Commissioners already granted them authority to have these riparian buffer rules that they've got with their NPDES permit." So the letters went out and that's why things were a little bit late and you got a lot of material to read. But in that, you will note that some of these cities even said we don't think we have to do this but out of the abundance of caution, we are submitting this to you because we think that we already have the authority. That is really what this came down to.

Vice Chairman Martin commented that he wanted to reiterate a couple of things he had previously stated and add a new one. One thing he didn't point out if you remember in their presentation information item by Karen in September where there was a table with all the affected governments, and where they fell as far as either they didn't exceed the statute or they were submitting the study, or whatever. There were other municipalities who do exceed the state requirements and didn't submit a study because they believed they met the exemption criteria. His understanding of the statute gives the Commission the authority to review and approve or deny those exceedances from a study, but nowhere does it give the authority to review any claim of an exemption and rule as to what the Commission believes it's legitimate or not. Once that claim has been made it's off their table. His understanding specific to those four after making some inquiries from receiving Assistant Secretary Reeder's letter was specifically to these two, while they may have other reasons they think they might be exempt, the reference was to the Jordan rules which were approved by the Commission and each local government. It was September of 2010 and January 2011 submitted as required their local government ordinances to the Commission and the Commission adopted those ordinances. Those ordinances had those wider requirements. While there was a lot of discussion among the Commission members that we were saying all we were doing was saying that they met the minimum requirement. The Commission was not approving the wider buffers but they weren't condemning them either. They were just taking no position on them. However, that never made it into a motion. It was just a discussion with no descent and it never made it into the letter that **Chairman Smith** sent to the Department, because at that same time they also delegated future approval authority for the revisions to the Department. He stated that he just wanted to confirm that was his understanding, at least partially why the Department believes the studies are not necessary.

Mr. Bromby responded that was correct and that **Commissioner Martin** stated it correctly. DEQ had a struggle trying to figure out what this particular legislation meant

Commissioner Wilsey stated after the great discussion they had in the Water Quality Committee, they wanted to make sure that it was noted that they did receive four studies from four different local governments, Carrboro, Cary, Orange County and Wake County. Also, that the Department then ruled that they did not need to submit them to the Commission, and therefore they did not consider those studies. She indicated that they would like to have those letters written by the Assistant Secretary put into the minutes of the Commission meeting to preserve the fact that those four were already approved by the Department. That relieves the EMC of their requirement to review any of the plans because then there weren't many studies necessary for their review.

Chairman Rowlan commented that it was a little more complicated than that. He stated what they were saying was their plans were already approved by the EMC and that DEQ evaluated that, and found that to be the case. Therefore, they did not need to come back to the EMC. That's what the letter said as well. It wasn't that DEQ approved the plan. It was they evaluated it and found that the EMC had already approved the plan. He asked if the Commission wanted to have a motion to that affect.

Commissioner Wilsey responded they did not need a motion. They just wanted to make sure that this is in the minutes at the next meeting.

Chairman Rowlan stated to let the record show that was what the EMC determined. **Commissioner Wilsey** agreed.

Commissioner Tedder commented that was a great idea, because they do want to make sure the minutes on this item are very complete because we will approve these minutes at the next meeting. His preference was to have Mr. Bromby's presentation verbatim in the minutes along with the letter that Chairman Rowlan referred to addressed to the EMC from DEQ Assistant Secretary, Tom Reeder and the email indicating that this item was changed from an action item to an informational item. He felt that this necessary. The two documents are listed below as **attachments A on page 22 and email on pages 23-24 prior to Section IV. Concluding Remarks.**

Chairman Rowlan responded that this clarified the issue. They are not saying that you shouldn't have done it. They are saying thank you for doing it and looking out at it so they don't have too.



PAT McCRORY
Governor

DONALD R. VAN DER VAART
Secretary

October 27, 2016

Steve Rowlan
1617 Mail Service Center
Raleigh, NC 27699-1617

Chairman Rowlan,

The Department of Environmental Quality has received applications from the Town of Cary, the Town of Carrboro, Wake County and Orange County requesting authority for continued implementation of their riparian buffer program. However, the Department believes that these applications are unnecessary, as these four riparian buffer programs do not currently exceed the statutory requirements.

Session Law 2015-246, Section 12.1.(b) amended the General Statutes by adding §143-214.23A

“Limitations on local government riparian buffer requirements.” Subsection (b) of this section provides:

Except as provided in this section, a local government may not enact, implement, or enforce a local government ordinance that establishes a riparian buffer requirement that exceeds riparian buffer requirements necessary to comply with or implement federal or State law or a condition of a permit, certificate, or other approval issued by a federal or State agency.

Because in each case the riparian buffer requirements implemented by these local governments are “necessary to comply with...a condition of a permit, certificate, or other approval issued by a federal or State agency,” there is no reason for the EMC to take action pursuant to §143-214.23A(b). We have notified these local governments of this finding (see attached).

This determination is a final agency action and is reviewable under the Administrative Procedure Act.

Sincerely,

A handwritten signature in blue ink, appearing to read "Tom Reeder".

Tom Reeder
Assistant Secretary

Thomas, Lois

From: Thomas, Lois
Sent: Tuesday, December 20, 2016 3:30 PM
To: Bromby, Craig A
Subject: RE: Item 16-57 and Info Item 16-04

Craig
Will you be here tomorrow morning? I am here if now til 4:30. thanks

From: Bromby, Craig A
Sent: Tuesday, December 20, 2016 12:43 PM
To: Thomas, Lois <lois.thomas@ncdenr.gov>
Subject: RE: Item 16-57 and Info Item 16-04

Lois,

If I don't talk to you before you get away, please travel safely. I hope you and your family have a wonderful holiday.

Craig

From: Thomas, Lois
Sent: Tuesday, December 20, 2016 12:41 PM
To: Bromby, Craig A <craig.bromby@ncdenr.gov>
Subject: RE: Item 16-57 and Info Item 16-04

That is absolutely correct. I remember us having that conversation. Thanks Craig. I believe this will be sufficient. I will make the corrections you have accordingly.
Thank you so much.

From: Bromby, Craig A
Sent: Tuesday, December 20, 2016 11:37 AM
To: Thomas, Lois <lois.thomas@ncdenr.gov>
Cc: Everett, Jennifer <jennifer.everett@ncdenr.gov>; Weaver, Adriene <adriene.weaver@ncdenr.gov>
Subject: FW: Item 16-57 and Info Item 16-04

The email chain below is the closest I can find to an email changing 16-04 from an action item to an information item. It actually simply acknowledges that the item was changed, but at least it sets it temporally at Nov. 8 or perhaps the day before (I have highlighted the acknowledgment below). My guess is that you and I had a telephone conversation on Nov. 7 or the morning of Nov. 8 and I asked you to make the change, since the DEQ was recommending that no EMC action was necessary. Let me know if you have a clearer recollection than that.

CAB

From: Bromby, Craig A
Sent: Tuesday, November 08, 2016 4:17 PM
To: Thomas, Lois <lois.thomas@ncdenr.gov>
Cc: Fransen, Tom <tom.fransen@ncdenr.gov>; Higgins, Karen <karen.higgins@ncdenr.gov>
Subject: RE: Item 16-57 and Info Item 16-04

Lois,

On information item 16-04, Karen added (in red) "... it is the position of the Department that there is no basis for the EMC to act upon studies submitted by the local governments." I agree with her that a verb is needed for that sentence. The alternative I would suggest is, in the same sentence, "... it is the position of the Department that no basis exists for the EMC to act upon studies submitted by the local governments." But either is acceptable for me.

From: Thomas, Lois

Sent: Tuesday, November 08, 2016 2:39 PM

To: Bromby, Craig A <craig.bromby@ncdenr.gov>

Cc: Fransen, Tom <tom.fransen@ncdenr.gov>; Higgins, Karen <karen.higgins@ncdenr.gov>

Subject: Item 16-57 and Info Item 16-04

Hello Everyone

I believe I have everything published now for both the agenda item 16-57 (Union Co) and information item 16-04 (local government buffer ordinance) for the full EMC agenda. Please review the website at this link and confirm I have gotten all the information: <https://deq.nc.gov/november-10-2016-agenda>

I will be speaking to Adriene this afternoon so that she can change the **action item** for local government buffer ordinance to an **information item** on the WQC, which I am assuming it is the same information. Please let me know if it is any different.

Thank you.

IV. Concluding Remarks

Committee Reports

Chairman Wilsey, Water Quality Committee stated that they covered two action items which were approved at the full EMC today and approved a major variance for the Neuse riparian area. They had great discussion on a couple of the items that were just covered with Commission.

Chairman Puette, Groundwater & Waste Management Committee stated that they had four informational items dealing with solid waste, Superfund and hazardous waste which will come back to the Commission at the January meeting. The action item that we had dealing with the coal combustion residuals regulations are still being worked on and those will be on the agenda for January.

Directors Comments

Tracy E. Davis, PE, CPM, Division of Energy, Mineral, and Land Resources

Dam Safety Program Updates:

- DEMLR central and regional office staff have been extremely busy prior to, during, and after Hurricane Matthew passed through NC during the weekend of October 8. DEMLR staff participated in a dam safety emergency response exercise this summer with DPS – Division of Emergency Management staff. DEMLR staff also worked with dam owners to lower their water levels and reinforce their dams prior to the arrival of the storm, manned the Emergency Operations Center 24/7 for over two weeks, and responded to dam safety emergencies during and after the storm, and recently completed an intensive dam safety inspection sweep of all dams in the FRO, WARO, WIRO and RRO and will be following up accordingly with dam owners as to whether the dams are in good condition, repair to dams are needed, or if dams should be permanently breached. DEMLR formed 18-2-man inspection teams + individuals inspecting dams for a total of 36-40 DEMLR staff that inspected over 350 dams over three days from 10/18-10/20 (with over 500 inspections performed within two weeks of the storm); as of 11/4, 20 breached dams (no loss of life) + 45 additional dams that need repair=65 damaged dams @ estimated cost of \$41.6 million (not including costs to repair damaged roads!); while FEMA cost share (75/25) money is available to state and local governments to rehabilitate publically owned dams damaged by the storm, there is no funding available to owners

of private dams (repairs or permanent breach of the dams is at the owners' expense); over the two week period, DEMLR expended over 811 overtime hours, 15,261 miles traveled, and \$68,624 in personnel costs, travel expenses, equipment purchases, and the permanent loss of one vehicle due to flooding at the FRO

- DEMLR appreciates the Commission's approval of staff's initial rule categorizations for our NCAC 2K Dam Safety Rules and allowing us to put the categorizations out for public notice and comment.

Stormwater Program Updates:

- DEMLR appreciates the EMC's approval of the revised rule language read by the Chairman later in today's meeting to address the Rules Review Commission's (RRC) objections to the 14 rules related to the prior definition of licensed professional. Staff will deliver the revised rules to the RRC staff this afternoon so that the objections to the rules can be removed and the rules as amended can be approved at RRC's November 18, 2016 meeting. As noted previously, all rules will have an effective date of January 1, 2017 to allow DEMLR staff time to complete development of necessary forms and processes, as well as continue our efforts to inform our stakeholders of the various aspects of these updated stormwater rules.
- Per the Regulatory Reform Act of 2015 (HB 765; SL 2015-286), DEMLR staff, as delegated by the EMC, has reviewed the delegated local government stormwater management programs for Guilford County, Gaston County, Henderson County, and Buncombe County for conformance with the EMC's model program. DEMLR found some areas where the programs exceed the model program and will require the local governments to clarify the legal authority to support the exceedances (such as local zoning regulations or ordinances). If no legal authority exists, the exceedances must be removed before the programs can be approved by DEMLR. DEMLR will send a letter to each of the local programs regarding its determination by the December 1, 2016 deadline specified in HB 765. A summary of our findings will be included in our 2016 Annual Report on Water Supply Watershed Ordinance Approvals, Unified Stormwater Management Program Ordinance Approvals, and Phase II Program Implementation Delegations Report due to the EMC Water Quality Committee in March 2017.

- Pursuant to SL 2016-94, Section 14.13(i), DEMLR compiled a report on behalf of DEQ to report to the ERC, JLOCANER, and the FRD on the need and desirability of establishing state-specific pollutant removal efficiency values for stormwater treatment practices, including consideration of nutrient credits used in the Chesapeake Bay area. The draft report has been provided to DEQ management for review. The deadline for DEQ to submit the report to the appropriate legislative committees is December 1, 2016. DEMLR believes that the Chesapeake Bay recommendations should not be implemented in NC as our state specific research and methodologies (NCDEQ's SCM Nutrient Crediting Document) are more appropriate for assessing the treatment provided by NC SCMs, including providing more nutrient credits as built upon area increases, consideration of soil type in SCM function, the more accurate assessment of runoff reduction by SCMs, and the reliance on research conducted in NC. Once the final report is issued to the legislative committees, DEMLR staff will provide a copy of the report to the EMC via its web site.

Sheila Holman, Director of Division of Air Quality

Ozone Designation Recommendation Update: The EPA issued a new 8-hour ozone standard on October 1, 2015. The new standard is set at 70 parts per billion (the 2008 ozone standard was set at 75 parts per billion). The ozone season in 2016 has been active. As of October 19, 2016, all monitors in North Carolina continue to show compliance with the new standard. However, we have observed 39 exceedances of the new ozone standard (and 9 exceedances of the 2008 ozone standard). Two monitors in Mecklenburg County are very close to the standard.

On September 30, 2016, the state submitted a recommendation for designation of areas in North Carolina to EPA. Under the Clean Air Act, the designations can be attainment (monitor shows compliance with the new standard), nonattainment (monitor shows a violation with the new standard) or unclassifiable (not enough data to determine whether monitor is in compliance or not). Three years of data is needed to evaluate whether a monitor is in compliance with the new standard. We have three years of data at all sites. We recommended that all areas of North Carolina be designated attainment, considering the three years of complete, quality assured data from 2013-2015, and the preliminary data for 2014-2016. The recommendation can be found at the following link:

https://ncdenr.s3.amazonaws.com/s3fs-public/Air%20Quality/planning/ozone/2015_Ozone_DEQ_Designation_Recommendation.pdf

Permit Exemption Rule Update: The changes to 15A NCAC 02Q.0102 Permit Exemption Rule took effect on June 13, 2016. The Division sent email notifications to all facilities that were potentially eligible for permit exemption or for registration shortly after the rule change took effect. As of October 7, the Division has received 319 requests for permit rescission and 39 requests for permit registration. The Division is processing these requests. Most facilities will have a compliance assurance visit every other year, even if they qualify for permit exemption to ensure that the regulatory requirements are still being met.

Proposed Request for Delegation of Specific Clean Air Act (CAA) Section 111/129 Federal Plan Requirements for Sewage Sludge Incineration Units

This proposed request is the subject of a public hearing scheduled for November 29, 2016. The comment period closes on November 29, 2016. The request can be found at the following link: <http://deg.nc.gov/about/divisions/air-quality/air-quality-rules/rules-hearing-process>

On April 29, 2016 the Environmental Protection Agency published in the Federal Register its final Federal Plan Requirements for Sewage Sludge Incineration Units Constructed on or Before October 14, 2010 with an effective date of May 31, 2016 (81 FR 26040-26088). Section 101(a)(3) of the CAA places primary responsibility for air pollution prevention and control with state and local agencies. In order to fulfill its obligation to serve as the primary implementer, the North Carolina Department of Environmental Quality, Division of Air Quality (DAQ) is requesting delegation of authority to implement and enforce the Clean Air Act Section 111(d)/129 Federal Plan 40 CFR 62 Subpart LLL - Federal Plan Requirements for Sewage Sludge Incineration Units Constructed on or Before October 14, 2010.

North Carolina has four affected facilities with units that are subject to the Federal Plan. Three facilities are under the jurisdiction of DAQ, and one facility is under the jurisdiction of a local program. The local program, the Western North Carolina Regional Air Pollution Control Agency, will submit a separate request for delegation of the Federal Plan applicable to the single affected facility in its program area.

Director Michael Scott, Division of Waste Management

Director Scott attended the meeting, however Ms. Ellen Lorscheider spoke because of Director Scott not being able to speak at the present time. She described DWM staff's efforts related to Hurricane Matthew

response: debris management, animal mortality, petroleum releases and hours manning the Emergency Operations Center during the event. Staff assisted the N.C. Department of Agriculture and Consumer Services on mortality composting resulting from the hurricane. Seventy temporary disaster sites were established and 65,000 tons of vegetative debris transported, 50,000 tons of construction and demolition waste and 3,000 tons of mortality occurred. There were underground storage tanks flooded with potential releases, aboveground storage tank incidents and home heating oil tanks which may have been impacted.

Yesterday, staff presented the proposed rules for the Coal Combustion Residuals (CCRs). Ms. Lorscheider extended his appreciation to the Committee for their assistance.

DWM will have three rule sets for the periodic review process heard before the EMC in January: 13A-Hazardous Waste, 13B-Solid Waste and 13C-Superfund. DWM has received several requests from the stakeholder groups to set up meetings related to this process to discuss key rule sets.

Chairman Rowlan asked does North Carolina conduct emergency drills, specifically for your division? Mr. Scott responded in the affirmative. DWM is trained with the Office of Emergency Management, periodic web-based training and training at the National Guard.

Question from a commission member: Are there still communities that are impacted/flooded? Mr. Scott stated to his knowledge there are still impacted communities due to some petroleum releases. There were approximately two million poultry and a couple thousand swine that perished. There was a coordinated effort to ensure facilities could properly receive the mortality.

Dr. Rubin asked could you compare the animal mortality numbers from Hurricane Matthew to those of hurricanes past, i.e. Floyd? Mr. Scott stated he would be happy to share with Dr. Rubin the figures. **Dr. Rubin** stated the numbers were significantly less.

Jay Zimmerman, Director of Division of Water Resources

Hurricane Matthew Response/Recovery (4 regions)

Coordination – Emergency Operations Center (EOC)

- Steve Lewis and Deborah Gore were our core people on duty. Shelton Sullivan and Jon Risgaard took on tours of duty and are being trained for future events. Special thanks to Linda Culpepper for handling the day to day updates, spear heading responses, and phone calls.
- Regional staff have been exceptional in their quick response to assess needs and support to local government. They've used boats and planes to access areas where they can normally drive/walk to. Several regions worked with EPA and FEMA officials to evaluate especially hard hit locations.

Some of the facilities were impossible to get to in the first couple days, so assessments were hard to obtain.

- Planning Section staff designed a new GIS mapping application to overlay facility locations with weather forecast information to evaluate and prioritize areas for assessment. Also used the application to identify facilities in areas that received the greatest amount of rainfall.
- Our Water Sciences staff are implementing sampling and analytical strategies to evaluate environmental conditions at our ambient stations in addition to specific locations of concern impacted by flooding.
- Our new Public Information Officer, Marla Sink, and Bridget Munger have been a tremendous help coordinating information internally and providing information to the public on response activities, to the Division and at the EOC)

General conditions – many areas were inundated with flood waters.

- To gather water quality information about the flooding after hurricane Matthew, the Water Sciences Section collected samples across 24 counties from Raleigh to the coast. This post flood monitoring effort spanned 7 river basins (Cape Fear, Neuse, Lumber, White Oak, Tar-Pamlico, Roanoke, and Chowan), 9 large rivers, and several smaller tributaries. Sampling activities will occur in two phases.
- To evaluate the storm's effects, 30 existing ambient monitoring sites were selected, and 396 samples were collected. This included a wide range of potential pollutants and physical measurements.
- This represents the first half of the Phase 1 effort which began immediately after floodwaters began receding the week of 10/17/16. A second collection period will occur the week of 10/31/16 to establish a post flood baseline. Once sample results have been reviewed, long term Phase 2 monitoring will take place if deemed necessary. Water samplings are normally done at bridge locations. Not a lot of impacts from gasoline, oil, nutrients. There was so much water, that it diluted any spills, pollution, etc being introduced.

Ambient well monitoring – flood heights topped some wells but no equipment damage.

- Fayetteville Regional Office was hard hit with Hurricane damage.

Sanitary Sewer Overflows (in gallons)

- Total number of storm related spills is 235.
- Initial volume spilled reported (best guess)
 - 24-hour report = 131.6 million gallons total
and 60.4 million gallons to surface waters.
 - 5-day reports = 101.2 million gallons total
and 62.8 million gallons to surface waters.

These figures reflect more accurate accounting than the initial 24-hr estimates.

Local operators worked through the nights and stayed at the facilities to keep them operational. Our respect and appreciation is given to these individuals as the flooding inundated their facilities. Back-up systems were used and some overtaken themselves. Others had difficulty bringing in fuel to keep pumps operational. Their efforts and prior planning prevented even further overflows.

Coal ash

- Cooling ponds at the HF Lee and Weatherspoon facilities were inundated by flood waters as well as the inactive ash basins at HF Lee.
- Site specific monitoring occurred at the HF Lee facility in Goldsboro in response to the reported release of coal ash and cenospheres. Dissolved and total metals samples were collected upstream and downstream of the facility to determine effects of flood waters on coal ash basins along the Neuse River. Cenosphere samples were also collected from areas along the perimeter of the inactive basins to help identify if this material left the basins and entered the Neuse River.
- Preliminary results from metals sampling (10/17) around the HF Lee plant indicate little if any presence of coal ash related metals in the Neuse River.

Farms

- North Carolina has more than 2100 swine farms. Farmers in the hardest hit areas of Wayne and Green counties along the Neuse River and Robeson and Sampson counties near the Lumber River, reported floodwaters overtopped more than a dozen lagoons, possibly spreading diluted waste into the floodwater.

Region	# of Noncompliant Animal Lagoons Reported	# of Animal Lagoons Inundated/ Breached	# of Animal Lagoons Ret to Compliance*	# of Noncompliant WWTP Lagoons Reported	# of WWTP Lagoons Inundated/ Breached	# of WWTP Lagoons Ret to Compliance**
FRO	124	6	9	3	0	1
RRO	17	1	13	5	5	5
WaRO	64	6	25	7	1 (Hookerton)	2
WiRO	40	2	Unknown at this time	1	0	1
TOTALS	245	15	47	16	6	9

* Animal Inspectors are still getting calls and are doing site inspections, so these numbers are increasing daily

** May not reflect full permit compliance, such as tertiary filter bypass, but substantially back in compliance with permit conditions.

Public Water Supply

Public Water Systems Assessed: 538

Number of Systems that were:

Closed/not producing water:	5
Operating on backup power:	70
Operating on stored water only:	7
Under boil water advisory:	112

Lower Cape Fear Water and Sewer Authority (LCFWSA) raw water main that serves Brunswick County and Cape Fear Public Utility Authority (CFPUA) remains a concern. By-pass hopefully completed Thursday or Friday.

Current Status 10/25/16:

Closed/not producing water:

1. The Arc of Hope Mills; retirement center; Cumberland County; population 28
2. Tabernacle FWB Church; Lenoir County; population 150.

Under boil water advisory:

1. City of Lumberton; Robeson County; population 24,015
2. Cleveland MHP; Johnston County; population 84
3. Johnston County East; Johnston County; 25,514 (Note: Only a few isolated areas remain under a BWA)
4. Gray's Creek MHP, Cumberland County; 212
5. Two-Ten MHP, Cumberland County; 100

Drought is intensifying in the West. A number of forest fires are causing Air Quality issues. The US drought monitor introduced a D-4 level for two counties, Cherokee and Clay counties. There has been limited rain fall reported from the Asheville airport, being 2-one hundredths of an inch of rain for the month of November. The town of Cullowhee reported only .12 inches of rain, which is the Third driest month in 105 years for the town. Shallow ground water is at record lows, and reduced flow in streams nearing record

lows. Impacts to agriculture are minimal for now because a lot of crops are out of the fields. However, hay crops are taking a hit, farmers are feeding hay to their animals which are needed more for their winter reserve.

To add to Hurricane Matthew,

Johnston County Waste treatment plant had some bypass, and the Town of Kinston had a force main break. They were able to patch it, but discharge still occurred, a million gallons a day. More numbers can be pulled together and refined, then a report can be generated to bring up to the next water quality committee meeting. FEMA is helping with the impacts to municipalities. FEMA is helping with funding availability. Getting funding to possibly Elevate man holds to harden some structure to provide resiliency, and provide funding for more generators. Still currently in the middle of identify resources to help improve facilities to withstand future impacts, natural disasters.

Chairman Rowlan thanked Mr. Zimmerman and staff for all the detail that they provided. He asked for comments from the Commissioners.

By Commission Counsel

Counsel Jennie Hauser distributed the EMC's November litigation summary document. She indicated to the Commission that the first two cases listed were the interbasin transfer case involving Cary and Apex. The newest update to that is that they had filed a proposed decision with the Administrative Law Judge and they are waiting for him to issue his final decision in that case. For the House of Raeford Farms case back in July the attorneys representing the Commission in that matter filed the supplemented recommended decision and they are waiting also for the Administrative Law Judge in that case to determine whether or not additional testimony is required for that civil penalty case. Those are the two cases that the Commission has and if anything else developed, it will be presented at the next meeting.

Chairman Rowlan stated that this was the last meeting for 2016 and the Commission had done a lot of great work and he appreciated the work that everyone had done. He indicated that the tracking spreadsheet helped the Commission a lot knowing about what was coming up.

With no further business before the Commission, the Chairman adjourned the meeting at 1:05 p.m.
Approved this day 10 November 2016.



Steven J. Rowlan, Chairman of the EMC