**ENVIRONMENTAL MANAGEMENT COMMISSION**

**GROUNDWATER AND WASTE MANAGEMENT COMMITTEE**

**SUMMARY**

**May 9, 2018**

**3:00 p.m. – 4:30 p.m.**

Bill Puette, Chairman, Presiding

The Groundwater and Waste Management Committee (GWWMC) of the North Carolina Environmental Management Commission (EMC) addressed the following at its May 9, 2018 meeting:

* Request Approval to Proceed to the EMC for Public Comment and Hearing for 15A NCAC 13B Section .0800 (Jessica Montie, DWM)
* Request Approval to Proceed to the EMC for Public Comment and Hearing for Proposed 15A NCAC 13B Section .200 CCR Unit Rules (Ellen Lorscheider, DWM)
* Request Approval to Proceed to the EMC for Public Comment and Hearing for Proposed CCR Dam Safety Rule 15A NCAC 02K .0224 (Andrew Brooks, DEMLR)

On May 9, 2018, the GWWMC met in the Ground Floor Hearing Room at the Archdale Building in Raleigh, North Carolina.

**GWWMC Members in Attendance:**

Mr. Bill Puette, Committee Chairman Mr. Charles “Boots” Elam

Mr. Steve Keen, Committee Vice-Chairman (via telephone)

Dr. Albert R. Rubin, WQC Chairman Mr. Gerard Carroll, CP Group Vice-Chair

**Other Commissioners Who Attended:**

Dr. Stan Meiburg, AQC Chairman

**Preliminary Matters:**

In accordance to North Carolina General Statute § 138A-15, **Chairman Bill Puette** asked if any GWWMC member knew of any known conflict of interest or appearance of conflict with respect to any item on the May 9, 2018 GWWMC agenda. None of the members stated there was a conflict.

**Commissioner Rubin** made a motion to approve the minutes from the March 7, 2018 GWWMC meeting. **Commissioner Elam** seconded the motion. The minutes were approved as written.

**Action Items:**

1. **Request Approval to Proceed to the EMC for Public Comment and Hearing for 15A NCAC 13B Section .0800 (Jessica Montie, DWM)**

Jessica Montie, of the Division of Waste Management, Solid Waste Section, brought forward the Division’s request to proceed to the EMC for Public Comment and Hearing for proposed amendments to rules in 15A NCAC 13B Section .0800 Septage Management and stated that the rules are proposed for readoption pursuant to G.S. 150B-21.3A. Ms. Montie stated that the proposed amendments were included to address technical corrections, clarify vague or unclear language, remove redundant or unnecessary language, and to be consistent with changes to statute or other rules. A regulatory impact analysis had been drafted and submitted to OSBM. Ms. Montie presented a summary of the rule review process as well as the rule changes and also noted the proposal to change the order of the rules so that the rules for each permit type would be grouped together and easily referenced.

One comment was received during the public comment period for Rule .0831 regarding the definition for “seasonal high water table” and its use in landfill permitting requirements, and Ms. Montie noted that the Division updated the definition of “seasonal high water table” in these rules and will update this definition when readopting the landfill permitting rules and the general definitions in Rule .0101.

An additional comment was received from the NCDA&CS Division of Soil and Water Conservation expressing a concern with the definition of the term “Technical Specialist” as being a person who is required to prepare nutrient management plans for land application sites, as the training for a technical specialist does not address or include the particular waste types regulated by this rule. The Division responded to this comment by removing the requirement for a Technical Specialist in preparation of these plans, and instead, will include a requirement that the person preparing the plan is an environmental professional with a baccalaureate or post-graduate degree from a university and has training and experience related to agronomic principles utilized to manage wastewater.

Ms. Montie closed with a proposed rulemaking schedule and a request for a volunteer to act as Hearing Officer. **Commissioner Rubin** made a motion to proceed to the EMC for Public Comment and Hearing and a second was made by **Commissioner Elam**. The motion passed unanimously.

1. **Request Approval to Proceed to the EMC for Public Comment and Hearing for Proposed 15A NCAC 13B Section .2000 CCR Unit Rules (Ellen Lorscheider, DWM)**

Ellen Lorscheider, Deputy Director of the Division of Waste Management, appeared before the GWWMC to discuss proposed Coal Combustion Residuals (CCR) Rules developed for landfills, recycling facilities, closure of ash impoundments and the dams associated with those impoundments. Ms. Lorscheider stated the CCR Rules are being developed to address North Carolina’s unique considerations pertaining to coal ash, including the historic disposal of coal combustion residuals into impoundments and landfills, and the dams associated with the impoundments, locations of power plants and disposal facilities, quantities and types of waste found in the ash impoundments.

The Construction and Demolition Rules and Municipal Solid Waste Landfill Rules (15A NCAC 13B .0500 and .1600, which are based on 40 CFR Part 258) are a comprehensive set of rules covering site suitability, design and construction standards, ground and surface water monitoring and controls, and closure requirements including financial responsibility. Both of these sets of rules were used as a starting point for the CCR Rules.

With the EPA’s publication of the 40 CFR Part 257 changes, additional changes pertaining to CCR were reviewed to determine which criteria, if any, needed to be included in the new rule. Language was aligned to be as protective as the CCR Rule but, in the format of existing environmental regulations or statute.

Ms. Lorscheider then discussed a timeline of the federal and state rules stating that in September, 2014, the SL 2014-122 Coal Ash Management Act (CAMA) became law. In April, 2015, the EPA published a rule for management and disposal of CCR - 40 CFR 257. Also, in the fall of 2016, DENR sent a rule based on federal rule to the GWWMC and in March, 2018, stakeholder meetings were held.

The proposed rules were subjected to a substantial stakeholder process including public meetings, public comment period, face to face meetings with Duke Energy, environmental groups, and the Public Staff of the NC Utility Commission. Comments were recorded and incorporated into the proposed rule set.

Ms. Lorscheider noted that the DEQ Divisions of Waste Management and Energy, Mineral and Land Resources are proposing rules for the management of Coal Combustion Residuals and that these proposed new state rules do not incorporate by reference the federal Rule and shall be at least as protective as the federal CCR rule.

Some of the rules proposed are:

* Location restrictions for CCR landfills
* Operating criteria for CCR landfills (including structural stability)
* Design criteria for CCR landfills
* Spillway design requirements for dams
* Groundwater monitoring and corrective action for CCR landfills
* Storage and transportation requirements for recycling facilities
* Inspection requirements for landfills and dams

Following Ms. Lorscheider’s presentation, there was some discussion and a few general questions including separation distances from waste to ground water, considerations for environmental justice language within the rule and clarification that there is a definition of the term “operator”.

**Commissioner Rubin** then made a motion to proceed to the EMC for Public Comment and Hearing of the proposed rules. **Commissioner Elam** seconded the motion. The motion passed unanimously.

1. **Request Approval to Proceed to the EMC for Public Comment and Hearing for Proposed CCR Dam Safety Rule 15A NCAC 02K .0224 (Andrew Brooks, DEMLR)**

Andrew Brooks, of the Division of Energy, Mineral and Land Resources, gave the presentation related to Item 3 of the GWWMC agenda, a request for approval to “Proceed to the EMC for Public Comment and Hearing for Proposed CCR Dam Safety Rule 15A NCAC 02K .0224.”   He explained that DEMLR was proposing a new rule to better align the State’s coal combustion residuals rules with those of the EPA. A slightly-revised version of the proposed new rule was handed out at the meeting and there was a question as to any changes from the previously-provided copy.  Mr. Brooks explained that the only change made was in Paragraph (b) regarding the size of the CCR units covered by the rule.

A motion to approve sending this rule package to the July EMC meeting was made by **Commissioner Rubin** and a second was made by **Commissioner Elam**. The motion passed unanimously.

**Information Item:**

1. **Process for Establishment of an Interim Maximum Allowable Concentration (IMAC) (Connie Brower, DWR)**

Ms. Connie Brower, from the Division of Water Resources, presented an overview of the actions taken to establish Interim Maximum Allowable Concentrations (IMACs) for the protection of groundwater as a resource. She explained that IMACs are established when there are no groundwater standards already in place. Currently, there are 60 IMACs with most being requested by the Division of Waste Management or an interested regular party. DWR evaluates the need for an IMAC and the protective level for the chemical of concern, and enlists input from toxicologists at DWM and DHHS. Ms. Brower explained the review process in detail and cited two examples: IMAC for p-toluic and an IMAC for acetic acid. In closing, Ms. Brower presented a chart that listed the differences between IMACs and Groundwater Standards.

Some additional conversation followed with **Commissioner Meiburg** asking if IMACs are considered to be legally enforceable? Ms. Brower answered in the affirmative. **Commissioner Meiburg** also asked if there is any kind of review process in place that allows for additional data to come forward that might require a recommendation for modification. Ms. Brower answered in the affirmative and stated that DWR has just reviewed 50 IMACs for adoption as Groundwater Standards and that these have also been reviewed by DHHS and DWM. There are still some that need to be reviewed, as well as some recent requests, but a thorough review of all IMACs is in progress. **Chairman Puette** asked if the standards in the Coal Residuals Rules, that are IMACs, are correct and are they on the fast track to becoming standards? Ms. Brower replied that they are on track with a plan to present the proposals that are ready during July’s meeting.

Following Ms. Brower’s presentation, **Chairman Puette** adjourned the May 9, 2018 GWWMC Meeting.