

**ENVIRONMENTAL MANAGEMENT COMMISSION
WATER QUALITY COMMITTEE MEETING SUMMARY**

November 9, 2016

Archdale Building-Ground Floor Hearing Room

BRIEF

The Water Quality Committee (WQC) of the Environmental Management Commission (EMC) at the November 9, 2016 meeting:

- approved the draft summary for the September 7, 2016 WQC meeting.
- approved to proceed to the EMC with the EMC and the Department Basinwide Water Quality Management Plans Annual Environmental Review Commission Report.
- approved a request for an After-the-Fact Major Variance from the Neuse Riparian Area Protection Rule by Belinda Keever for a pool and deck partially constructed at 8005 Falling Leaf Court in Raleigh, NC.
- approved to proceed to the EMC with a request for approval to convene a Falls and Jordan rulemaking stakeholder group as required under S.L. 2016-94.
- heard an updated on the annual implementation progress for Neuse, Tar-Pamlico and Falls Lake.
- was given a report on the Department's position of the EMC regarding studies submitted by local governments.
- was given an overview of the process to reissue the 401 Water Quality General Certifications.

WQC Members in Attendance:

Ms. Julie Wilsey, WQC Chair
Mr. John D. Solomon, WQC Vice Chair
Dr. Lawrence W. Raymond
Mr. Thomas Craven
Mr. Kevin Martin
Dr. Albert Rubin
Mr. Steve Tedder

Others Present:

Mr. Steven Rowlan, EMC Chair
Mr. William "Bill" Puette, EMC
Ms. Jennie Hauser, Attorney General Office
Jay Zimmerman, Director of Division of Water Resources

I. Preliminary Matters

None of the WQC members recused him or herself from making a decision on any of the action items on the November 9, 2016 WQC agenda.

II. Agenda Items

1. Request Approval to Send the Commission and Department Basinwide Water Quality Management Plans Annual Environmental Review Commission Report per G.S. § 143-215.8B (d) to the EMC

Description

Mr. Ian McMillian, on behalf of the Division of Water Resources (DWR), requested the WQC's approval to send the EMC and the Department Basinwide Water Quality Management Plans Annual Environmental Review Commission Report (ERC) per G.S. § 143-215.8B (d) to the ERC. General Statute § 143-215.8B (d) requires these state agencies to report on or before October 1st of each year to the ERC on the progress in developing and implementing basinwide water quality management plans. The report includes information on the completion and approval of the Tar-Pamlico River basin water quality management plan by the EMC in July 2015. The report also includes a list of water resource plans currently under development by the Basin Planning Branch with the assistance of many other resource agency staff. As a requirement of the statute to include an overall pollutant summary for surface waters of the state, a summary graph of the draft 2016 Integrated Report is included.

Discussion

Mr. Steve Tedder questioned staff concerning the use of the numbers in the report. Mr. Solomon asked how the scientific advisory committee uses the data. Staff said this council will have much more data available to them to make their assessments beyond the data summaries available in this report.

Motion

Mr. Solomon made a motion to send the EMC and the Department Basinwide Water Quality Management Plans Annual Environmental Review Commission Report to the EMC for approval. Dr. Raymond seconded the motion. The motion passed.

2. Request for an After-the-Fact Major Variance from the Neuse Riparian Area Protection Rule by Belinda Keever for a pool and deck partially constructed at 8005 Falling Leaf Court in Raleigh, NC

Description

Ms. Jennifer Burdette, on behalf of DWR, requested that the WQC grant an after-the-fact Major Variance from the Neuse Riparian Area Protection Rule to Belinda Keever for a pool and partially constructed deck in Zone 1 and Zone 2 of the buffer at 8005 Falling Leaf Court in Raleigh, NC. The applicant is proposing mitigation to offset the buffer impacts. Based on the

information submitted, DWR supported this request for a Major Variance from the Neuse Riparian Area Protection Rule because all of the requirements in 15A NCAC 02B .0233 have been met.

Discussion

Mr. Martin asked staff to explain why it decided that stormwater treatment wasn't necessary with this variance. Ms. Burdette said that previous request involving deck expansions also included screened porches that are impervious. Because the pool captures stormwater and deck is not impervious surfaces, stormwater treatment equivalent to the impact is not necessary to protect water quality.

Motion

Mr. Kevin Martin made a motion to approve the After-the Fact Major Variance as proposed with the exception that the mitigation requirement for the buffer impacts be removed. Mr. Solomon seconded the motion. The motion passed.

3. Request to Proceed to the Environmental Management Commission for Approval to Convene the Falls & Jordan Nutrient Rulemaking Stakeholder Group Required Under S.L. 2016-94

Description

Mr. John Huisman, on behalf of DWR, requested the WQC to proceed to the EMC for approval to convene the EMC's stakeholder group - to provide input to the EMC regarding revisions to the nutrient management strategies - as required under Session Law 2016-94. The stakeholder group represents lake users and affected parties. The group will convene with a kickoff meeting via a conference call in December 2016 as required by the Session Law. The session law also calls for these nutrient management rules to have their own rulemaking timelines and the Department to conduct other studies.

Discussion

Dr. Rubin asked staff if (it) would be involved in the Chesapeake Bay states' data sharing program for stormwater BMPs. Mr. Huisman explained that North Carolina has state-specific values based on state-specific research and will be recommending those state-specific values. Mr. Martin asked for confirmation as to whether or not members of the group from academia will serve on an as needed basis. Mr. Huisman's response was that some of the EMC members felt that it was important that folks from the academic community be involved on the front end of the process and when asked to participate they expressed an interest in doing so and had no concerns about being involved on the front end.

Motion

Mr. Tedder made a motion to approve staff's recommendation to move the request forward to the EMC. Mr. Martin seconded the motion. The motion passed.

4. Annual Progress Reports on the Neuse, Tar-Pamlico and Falls Lake Agriculture Rules

Description

Mr. Jim Hawhee, on behalf of DWR, summarized for the WQC the annual implementation progress for Neuse, Tar-Pamlico and Falls Lake. The Tar-Pamlico, Neuse, and Falls Agriculture Rules (15A NCAC 2B .0238, .0256, and .0280, respectively) require their Basin or Watershed Oversight Committees to report to the DWR and EMC regarding annual implementation progress. In addition to submitting these three routine reports, DWR also submits a one-time report concluding that agriculture has achieved reasonable progress towards their Stage I reduction goals under the Falls strategy. The reports estimate cumulative nitrogen loss reductions from crop agriculture of 53% (Tar-Pamlico), 58% (Neuse), and 70% (Falls) from baseline through 2015. A 36% reduction in nitrogen loss from pasture-based livestock operations is also reported in the Falls Lake watershed. Finally, an evaluation of qualitative indicators shows no increased risk of phosphorus loss in either the Tar-Pamlico or Falls watershed.

Discussion

Mr. Tedder complemented point sources for meeting their reductions and asked staff what did the instream data show for nitrogen and phosphorus. Mr. Hawhee said that the instream reductions (requirements) for nitrogen and phosphorus are presently not being met for those basins that have them. Mr. Tedder asked what do the (present) trends for nitrogen and phosphorus instream reflect. Mr. Huisman said (we) are seeing some increases particularly with the organic nitrogen in the river basins and there has been discussion about where it is coming from. Mr. Huisman noted that the accounting and instream numbers don't match. Mr. Tedder asked if there is any groundwater monitoring underway in the basin to address legacy nutrients and how they are moving into the system. Ms. Nora Deamer with DWR's Basinwide Planning Section said that we are working with the staff of DWR's Ground Water Planning Section and they are starting a pilot study in the Neuse watershed that is starting to look at some groundwater wells and some loadings and concentrations. Mr. Huisman added that the Upper Neuse River Basin Association is pulling soil cores from the bottom of the lake to get a better handle on the recirculation of nutrient from the soils and (he believes) that this will factor in discussions on the evaluation of the management strategy for the Neuse. Dr. Rubin asked would taking land out of agriculture production eliminate the legacy issue. Mr. Huisman said no and explained that just because you change the use of the surface, nutrients (applied to agricultural land) would make its way to the groundwater system and eventually to the surface water. Mr. Solomon complemented staff for putting the appropriate frame on the report that depicts it as a table top exercise and something that is not field validated. He also noted that (reductions) gains achieved through the process at the expense of the loss of agriculture land is not a good thing. Mr. Huisman commented that (we) recognize the concern about the reduction achieved at the loss of agriculture land and that (we) don't want to see agriculture go away and (we) will discuss this with the agriculture community during the state's rules readoption process. Dr. Raymond asked

staff if there is any pilot information on what happens to nutrient transfer if a large scale solar project was installed on what used to be pasture land. Mr. Huisman said that he is not aware of specific data or numbers for those types of projects and said that he would look into this. Dr. Raymond asked staff to comment on the loss of technician funding at a time when the instream monitoring shows that instream reductions (requirements) are not being met. Mr. Huisman said that funding for technicians is an on-going issue because state and federal funding for technicians has dried up and, as a result, the responsibility for the monitoring has fallen on the voluntarily local advisory committees (the agriculture community at the county level) and the Division of Soil and Water Conservation.

Motion

Not Applicable

5. Report on Local Government Buffer Ordinance Applications per H44 (S.L. 2015-246., sec. 13.1) THIS ITEM WAS CHANGED FROM AN ACTION ITEM TO AN INFORMATION ITEM

Description

Mr. Craig Bromby, Deputy General Counsel for the Department, presented the Department's position that there is no basis for the EMC to act upon studies submitted by the local governments based on the language in Section 13.1 of Session Law 2015-246, codified at G.S. 143-214.23A(b). The four local governments submitting studies are the Town of Cary, the Town of Carrboro, the County of Orange, and the County of Wake. Both Cary and Carrboro have EMC-approved Phase II NPDES permits which incorporate stormwater plans as enforceable pieces of those permits, and both the Towns and Orange and Wake Counties have EMC-approved local ordinances that impose buffer requirements.

Discussion

During the (November 9, 2016) WQC meeting there was a lot of discussion on this item. Mr. Bromby also presented this item at the November 10, 2016 EMC meeting. His remarks on this item are included in the draft minutes for the November 10, 2016 EMC meeting.

Motion

Not Applicable

6. Overview of reissuance of 401 Water Quality General Certifications

Description

Ms. Sue Homewood, on behalf of DWR, provided an overview of the process to reissue the 401 Water Quality General Certifications. The Nationwide Permits issued by the US Army Corps of Engineers expire on March 18, 2017. The USACE is currently in the process of reissuance of

the Nationwide Permits. The DWR 401 Water Quality Certifications require reissuance to correspond with the new Nationwide Permits. A public notice of the draft water quality certifications will be issued in December 2016.

Discussion

Mr. Kevin Martin requested that EMC be made aware public notices of draft 401 Water Quality General Certifications.

Motion

Not Applicable

This summary was prepared by Adriene Weaver with assistance from presenters: Ian McMillian, Jennifer Burdette, John Huisman, Jim Hawhee, Craig Bromby, and Sue Homewood.

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