

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

May 10, 2017

Archdale Building-Ground Floor Hearing Room

BRIEF:

The Water Quality Committee (WQC) of the Environmental Management Commission (EMC) at the May 10, 2017 meeting:

- approved a Major Variance from the Tar-Pamlico Riparian Area Protection Rule by Mr. Peter Warlick for Construction of a Proposed Roofed Enclosure to an Existing Home at the 74 Northpoint Road in Ocracoke, NC.
- approved a Major Variance from the Neuse Riparian Area Protection Rule by Johnston County for Expansion of the Johnson County Landfill at 680 County Home Road in Smithfield, NC.
- approved the Division of Water Resources (DWR) to proceed to the Environmental Management Commission (EMC) with Proposed Rule Amendments to 15A NCAC 02T, 02U, and 02H .0800 and .1100.
- approved the Division of Mitigation Services (DMS) to proceed to the EMC with Proposed Rule Amendments to 15A NCAC 02R.
- was updated on the Department Regulatory Programs for Coal Combustion Residual Landfills and Impoundments by the Division of Waste Management (DMS).
- was given a presentation on an overview of the State Water Infrastructure Authority and Division of Water Infrastructure (DWI).
- was updated on 303(d) List.

WQC Members in Attendance:

Ms. Julie Wilsey, WQC Chairwoman
Mr. Steve Tedder, WQC Vice Chair
Mr. John D. Solomon, EMC Chairman
Mr. Thomas Craven
Dr. Albert R. Rubin
Mr. Kevin Martin

Others Present:

Mr. William "Bill" Puette, EMC
Mr. Charles "Charlie" Carter, EMC
Mr. Jay Zimmerman, Division of Water Resources Director
Mrs. Jennie Hauser, Attorney General Office

I. Preliminary Matters

None of the WQC members recused him or herself from making a decision on any of the action items on the May 10, 2017 WQC agenda.

II. Agenda Items

1. Request for a Major Variance from the Tar-Pamlico Riparian Area Protection Rule by Mr. Peter Warlick for Construction of a Proposed Roofed Enclosure to an Existing Home at the 74 Northpoint Road in Ocracoke, NC

Description

Jennifer Burdette, on behalf of DWR, requested for the WQC to grant a Major Variance from the Tar-Pamlico Riparian Area Protection Rule to Mr. Peter Warlick for construction of a proposed roofed enclosure to an existing home within Zone 1 and Zone 2 of the buffer at 74 Northpoint Road in Ocracoke, NC. The applicant proposed mitigation to offset the buffer impacts if required by the WQC. Based on the information submitted, (DWR) supported this request for a Major Variance from the Tar-Pamlico Riparian Area Protection Rule because all the requirements in 15A NCAC 02B .0259 have been met.

Discussion

EMC Chairman Mr. Solomon asked what the mitigation requirements are for a variance in the rules. Mr. Martin replied stating that the rules do not require mitigation for a variance; the EMC could attach any condition to a variance. He continued, stating that he uses best judgment in cases like this where an individual has owned a home prior to the implementation of the rules, and the renovations are necessary due to the individual's health conditions. He does not believe that mitigation in this case will significantly impact water quality, nor meet the intent of the rule.

Motion

Mr. Martin moved that the WQC approve the requested variance; however, without the requirement for mitigation, but with the diffuse flow. Mr. Martin also wanted it to be noted that there is a septic system on site and the storm water should not be directed over the septic systems drain field in order to accomplish the diffuse flow. Mr. Tedder moved to second the motion. The motion was approved unanimously.

2. Request for a Major Variance from the Neuse Riparian Area Protection Rule by Johnston County for Expansion of the Johnson County Landfill at 680 County Home Road in Smithfield, NC

Description

Jennifer Burdette, on behalf of DWR, requested the WQC to grant a Major Variance from the Neuse Riparian Area Protection Rules to Johnston County for the expansion of their landfill located at 680 County Home Road in Smithfield, NC. Due to the presence of an unnamed tributary to Middle Creek west of the existing landfill, the proposed landfill expansion will need to encroach into Zone 1 and 2 of the riparian buffer. The applicant proposed mitigation to offset the proposed buffer impacts. DWR staff supported this request for a Major Variance from the Neuse Riparian Area Protection Rule because all the requirements in 15A NCAC 02B .0233(9) were met.

Discussion

Mr. Martin commented that he supported the condition for mitigation because in this situation the buffer area contains vegetation, where in other situations the buffer area was completely denuded of vegetation. Mr. Martin also wanted it to be clear WQC approval of the variance was not at all related to the effects on wetlands to be addressed by the 401/404. He explained that in this situation there are wetland impacts the WQC had not heard anything about, and it is not the WQC's call to issue a 401/404. He stated that in no way are we (WQC) limiting staff from their due diligence to address wetland impacts in a 401/404.

Motion

Mr. Tedder moved for the WQC to approve the variance with mitigation and conditions stated by staff, further noting the 401/404 is a separate issue. Mr. Martin moved to second the motion. The motion was approved unanimously.

3. Request to Proceed to the Environmental Management Commission (EMC) with Proposed Rule Amendments to 15A NCAC 02T, 02U, and 02H .0800 and .1100

Description

Jeff Manning, on behalf of the DWR, requested to proceed to the EMC with proposed rule amendments to 15A NCAC 02T, 02U, and 02H .0800 and .1100. The water quality program rules underwent the S.L. 2013-413 (HB74) rule review during 2014 that resulted in the rules needing to be readopted through the state's rulemaking process. During 2015, DWR hosted a set of stakeholder meetings, presented each rule draft to stakeholders, and incorporated stakeholder input into the rule drafts. Then, the Department of Environmental Quality (DEQ) administration reviewed the rule drafts during 2016. An information session was provided to the WQC in March 2017, and to the stakeholders in April 2017. The WQC was asked to approve the draft language of 160 rules implemented by DWR (non-discharge programs, reclaimed water programs, and the laboratory certification programs). The citations for these rules are 15A NCAC 02T, 02U and 02H .0800 and .1100. Once the WQC approves the draft language, DWR will do the regulatory impact analysis (RIA) and fiscal note documents, where required. Once the RIA/fiscal notes are completed, DWR will proceed to the full EMC, prospectively in July 2017, to proceed to public comment and hearing stage. After the April 2017 stakeholder meetings revisions were made to the following rule drafts: 02H .1110, .02T .0100, .0500, .0600, .0700, .1100, and .1300, and 02U .0700 and .0800. The most current versions of the drafts are located in the "Rule Readoption" spreadsheet located at: <http://deq.nc.gov/about/divisions/water-resources/water-resources-regulations-guidance/dwr-classifications-standards/rule-readoption-process>. Staff stated that the draft versions were ready to be displayed on the screen if there were any questions about any part of the rule drafts, and staff-requested that the WQC approve the rules as proposed.

Discussion

Mr. Tedder commented that he applauded the staff for moving forward over the last year and a half. Furthermore, he was glad to see the lab certification rules since they had been drafted and in progress since 2002. Mr. Tedder stated he had read the rule drafts and approved of them.

Motion

Mr. Tedder moved for the rule drafts to move forward to the EMC. Mr. Craven moved to second the motion. Approved unanimously

4. Request to Proceed to the EMC with Proposed Rule Amendments to 15A NCAC 02R

Description

Kelly Williams, on behalf of DMS, requested the WQC's approval to proceed to the EMC for public notice and hearing with draft amendments to the Subchapter 02R rules for the purpose of readoption in accordance with Session Law 2013-413 (H74).

Discussion

Mr. Martin commented that he was glad to see the quarter acre rounding system for DMS fees removed. He explained that without this change, an individual who would be applying for .01 acre of mitigation would be rounded up and need to pay for .25 acre of mitigation. Mr. Martin stated that this is considerably more money and can have significant impacts, especially on smaller entities applying for mitigation. Mr. Martin also commented there is a dramatic change in the coastal wetland figure, and expects questions when this moves to the EMC and hearing.

Mr. Martin commented on the DMS two-fee system currently in use, where different portions of North Carolina have different rates for mitigation. He also wanted to make it clear when the EMC voted on the two-fee system initially it was a split vote, with only one vote making the difference for the fee system to be approved. Mr. Martin commented that he would prefer the fee system to be a state wide standard and believes that it will fee system will change in the future. He stated that he is currently being quoted from a private bank at \$500/ linear foot for mitigation. He explained that due to DMS rules, you must use a private mitigation bank if it is available, even if DMS prices are cheaper. He stated you can either do your project with the private mitigation bank, or not do the project at all. He also stated his belief that staff will be challenged at the EMC or in the hearing process as to how costs for coastal wetlands were estimated. Mr. Martin also suggested having the method or calculation used to obtain costs for costal wetlands on hand.

Mr. Tedder complimented the staff on keeping up with the rule amendments and working with the stakeholders. He also shared concern regarding the difference between private estimation of coastal wetland costs and staff calculated costs. Mr. Tedder asked if it was difficult for staff to estimate program costs and staffing needs due to varying private sector DMS requests. Ms. Williams replied agreeing with Mr. Tedder, and commented that with an actual cost method, if DMS costs decrease, mitigation rates will also decrease, the savings can be passed along to the persons using the system. Ms. Williams also noted that new technology, regulation change, and efficiency measures could provide these savings in the future. Ms. Williams also commented that the change to the quarter acre rounding system is her favorite change. Mr. Tedder asked if the program was 100 % fee funded. Ms. Williams replied that it was funded based on receipts. Lastly, Mr. Martin noted that stability is provided to the program through DOT forecasting of their needs from DMS.

Motion

Mr. Martin moved for the rule amendments to proceed to the EMC, and Dr. Rubin moved to second the motion. The motion was approved unanimously

5. Update of the Department Regulatory Programs for Coal Combustion Residual Landfills and Impoundments

Description

Ellen Lorscheider, on behalf of DWM, presented updated information on the Department Regulatory Programs for Coal Combustion Residual landfills and Impoundments. The Water Infrastructure Improvements for the Nation (WIIN) Act, passed by the US Congress in 2016, allows states to implement a delegated permit program for Coal Combustion Residual (CCR) units, if the program is as protective as the federal CCR rule. This presentation was an overview of the Divisions of Waste Management, Water Resources, and Energy, Mineral, and Land Resources program elements in order to solicit the WQC's input regarding potential rule promulgation needed to address any gaps in existing rules and/or amend less protective rules in order to meet the WIIN Act requirements.

Discussion

EMC Chairman Solomon commented that the committee has been keeping this item on the agenda due to its importance. He continued stating that EMC members Mr. Puette and Dr. Rubin have been very passionate about this matter on their committee. He then asked if the WQC would see anything further in July or September. Ms. Lorscheider replied the staff needs a couple of months to work on rules, conduct discussion with EPA and stakeholders prior to presenting the rules in September.

Mr. Craven stated the EPA rule has some requirements for new impoundments; however, the North Carolina rule will not have new impoundments. He added that these are the kind of edits that need to be made, and is in full support of everything that's been discussed and addressed.

Ms. Wilsey commented that even without regulatory deadlines, there still is a desire to complete this as quickly as feasible. The first committee member noted that due to controversy around the subject there is a public responsibility to keep this at the forefront of the commission. Ms. Wilsey recommended that joint committee meetings could be used in the future since this topic is to be addressed by multiple committees.

Motion

Not Applicable

6. Overview of the State Water Infrastructure Authority and Division of Water Infrastructure (DWI)

Description

Kim Colson, on behalf of the DWI, presented an overview of the implementation of the DWI and the State Water Infrastructure Authority. In 2013 the state's water infrastructure funding programs were consolidated into a newly created Division of Water Infrastructure in DEQ. That legislation also created the State Water Infrastructure Authority. This presentation provided an overview of the implementation of both the DWI and authority in helping water utilities meet their infrastructure needs including North Carolina's Statewide Water and Wastewater Infrastructure Master Plan.

Discussion

EMC Chairman Solomon noted that asset management was a factor with recent coal ash problems. He stated further money and proactivity is necessary to prevent harm to human health or the environment. He also recognized Mr. Colson and staff for awards received from the EPA for excellent work. EMC Chairman Solomon added that he keeps hearing requests for money for infrastructure needs across the state, however; the money is not there, and needs to be prioritized. He noted that some communities are struggling, and cannot afford a rate increase from the utility; while other communities could afford a rate increase. Moreover, there are utilities that could borrow before turning to the state government for assistance.

Mr. Colson commented that rates compared to utility expenses, some communities have low rates and others have very high rates. The staff is trying to work more closely with some of the communities for a long term solution. He also said some communities can withstand rate increases, even in communities with lower median income, rates can be increased a little bit. Mr. Colson concluded with rates are really where much of the funding for state infrastructure improvements will be found.

Mr. Tedder agreed with EMC Chairman Solomon that many facilities are in poor condition. He added the conflicting issue is the public mentality of expecting elected board members to not increase rates. Furthermore, emergencies drive the communities to look for additional resources for infrastructure needs. He also stated that demand is increasing for resources and money for infrastructure programs, but the availability is decreasing. Mr. Tedder then asked if there was a reason for duplicating a federal program rather than funneling resources to existing state programs in regards to the WIFIA program.

Mr. Colson replied the advantage of the WIFIA program is purely budgetary on the federal level. He noted that the state revolving funds are better for engaging with the local level efficiently. He added that decreasing availability is occurring for grants only, and that other investments will hopefully continue to increase. Lastly, Mr. Colson explained that regardless where money is resourced from, the user ends up paying for the capitol through rate adjustments used to pay for debt.

Motion

Not Applicable

7. Update on 303(d) List

Description

Jeff Manning, on behalf of DWR, was available to update the WQC on the pending receipt of a response from EPA regarding the EPA's final decision on the State's 303(d) list.

Discussion

Mr. Manning stated that staff is still waiting on response from EPA.

Motion

Not Applicable

III. Closing Comments – WQC Chair, Julie Wilsey

Ms. Wilsey noted that WQC members did receive the email with the 319H 2016 report on nonpoint source grant program, and that the WQC did not receive a presentation. Mr. Tedder suggested the staff conduct a presentation to the WQC on the report in a future meeting. Ms. Wilsey last note is the vacant position on the EMC and WQC should be filled soon.

Summary was prepared by Jennifer Burdette, Jeff Manning, Kelly Williams, Ellen Lorscheider, Kim Colson, Christorfer VandeZande, and Adriene Weaver