**ENVIRONMENTAL MANAGEMENT COMMISSION**

**WATER QUALITY COMMITTEE MEETING SUMMARY**

**January 10, 2018**

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| **BRIEF**   |  | | --- | | The Water Quality Committee (WQC) of the Environmental Management Commission (EMC) at its January 10, 2018 meeting:   * approved the draft summary of the November 8, 2017 WQC meeting. * approved to proceed to the EMC with the proposed reclassification of Enka Lake in Buncombe County (French Broad River Basin), NC to Class B. * approved to proceed to the EMC with the proposed rule readoptions (including the minor rule changes requested by the WQC at the January 8, 2018 WQC meeting) and revisions for Triennial Review to rules 15A NCAC 02B .0100 - .0300 and draft fiscal note. * approved to proceed to the EMC with the readoptions and proposed amendments to Water Supply Watershed Protection rules 15A NCAC 02B .0620 through .0624 with the following conditions: remove proposed deletion of the 10-foot vegetated setback and seek public comment on the cumulative impacts on all these actions from an outside party. * accepted the draft proposed amendments to the Nutrient Strategy Rules and approved to reconvene in one month to refine the rules based on the opinions of the EMC and that as needed request staff to provide additional support once some decisions have been made as a committee. * approved to proceed to the EMC with the Water Quality Permitting rules drafts in 02B & 02H. * approved to proceed to the EMC with 15A NCAC 02K .0210 of the Dam Safety rules. | |

**WQC Members in Attendance:**

Dr. Albert R. Rubin, WQC Chair

Ms. Marion Deerhake, WQC Vice Chair

Ms. Julie Wilsey, EMC Vice Chair

Mr. Steven Keen

Dr. Stan Meiburg

Mr. J.D. Solomon, EMC Chair

**WQC Members not in Attendance:**Dr. Suzanne Lazorick

Mr. Mitch Gillespie

**Others Present:**Dr. Richard Whisnant, EMC

Mr. Phillip Randolph, Attorney General Office

Ms. Linda Culpepper, Department of Environmental Quality, Division of Water Resources Interim Director

**I. Preliminary Matters**

WQC Chair Dr. Albert Rubin read the conflict of interest statement under General Statute 138A-15. No member of the WQC expressed a conflict of interest with any item on the January 10, 2018 WQC agenda.

EMC Vice Chair Julie Wilsey made a motion to approve the summary for the November 8, 2017meeting. Mr. Steve Keen seconded the motion. Each WQC member was in favor of the motion and the motion passed.

**II. Agenda Items**

**1. Request to Proceed to the EMC for Public Notice with Proposed Reclassification of Enka Lake in Buncombe County (French Broad River Basin) to Class B**

**Description**Elizabeth Kountis, Division of Water Resources (DWR) Classification, Standards and Rules Review Branch, asked WQC to approve the proposal to reclassify Enka Lake to Class B from the Biltmore Lake Association. Approval of this reclassification request would allow DWR staff to proceed to the full Commission for permission to send the proposed reclassification out to public notice.

**Discussion**EMC Vice Chair Wilsey asked whether the assignment of a hearing officer is required if the reclassification proposal goes out to public comment. Ms. Kountis expressed that it has not yet been decided on whether to have a public hearing for the proposal.

**Motion**Dr. Meiburg made a motion to approve moving forward to the EMC with a public notice for the reclassification. EMC Vice Chair Wilsey seconded the motion. The motion passed unanimously.

**2. Request to Proceed to the EMC for Public Notice and Hearings with Proposed Rule Readoptions and Revisions for Triennial Review to Rules 15A NCAC 02B .0100-.0300**

**Description**Jeff Manning, DWR Classification, Standards and Rules Review Branch Chief, provided an overview of the proposed rule readoptions and revisions for Triennial Review to Rules 15A NCAC 02B .0100, .0200, and .0300. A request was made for the WQC to proceed with these rules to the EMC for approval to go to public notice and hearing. The 15A NCAC 02B rules underwent S.L. 2013-413 Rules Review in 2014 which required the rules to be readopted. In addition, the US EPA disapproved parts of these rules in 2016, after the EMC had adopted them in 2014 for the Triennial Review of water quality standards. These rules have undergone stakeholder review in 2015, and again in 2017. Amendments are proposed to address organization, needed clarifications, and deletions of unnecessary or outdated components. Amendments are also proposed to address EPA’s disapprovals, specifically regarding Action Level regulations for copper, silver, and zinc. Removal of these Action Level components requires a revision to the fiscal note. Further, to suffice the federal Triennial Review requirement to review standards and provide opportunity for public comment at least once every three years, staff will provide a list of concepts to consider including in the “Notice of Text” for these rules.

**Discussion**There were 45 minutes of discussion on these rules and the draft fiscal note. Several edits were requested to be made or considerations made for them, and all the specific edits made were considered minor and included in the motion to approve the rule drafts to move to the EMC.

EMC Chair J.D. Solomon expressed the importance of maintaining communication with the Division of Energy, Mine, and Land Resources (DEMLR) as we move forward reorganizing the water supply protection program rules which are now located in DEMLR. Details of the draft fiscal analysis that was attached for the agenda item were discussed.

WQC Vice Chair Marion Deerhake indicated that the definition for the term “watershed” ought to be included. She invited other WQC members and Counsel Randolph to provide their opinion on this matter.

She also asked whether the reference “… facilities may be required to have spill and treatment failure control plans… for toxic substances;” in 15A NCAC 0214(4) (d) is the appropriate terminology to use. EMC Chair Solomon suggested adopting a reference from somewhere else.

EMC Chair Solomon suggested removing the last line in 15A NCAC 0101(b) ~~(4)~~(6), making 15A NCAC 0101(b)~~(7)~~(9) more generic, and replacing in 15A NCAC .0110 replace the term “Environmental Management Commission” with the term “Commission.” Staff agreed with the minor changes requested and committed to explore some additional details and references around spill control measures.

**Motion 51:00**EMC Vice Chair Wilsey made a motion that the minor changes talked about today [at the January 10, 2018 WQC meeting] be made and to proceed to the EMC for public notice and hearings with proposed rule readoptions and revisions for Triennial Review to rules 15A NCAC 02B .0100 -.0300 with the draft fiscal note. Mr. Keen seconded the motion. The motion passed unanimously.

**3. Request to** **Proceed to the** **EMC for Public Notice and Hearings on Readoptions and Proposed Amendments to Water Supply Watershed Protection Rules 15A NCAC 02B .0620 through .0624**

**Description**  
Julie Ventaloro, DEMLR Water Supply Watershed Protection Program, provided an overview of the proposed amendments to the Water Supply Watershed Protection rules in 15A NCAC 02B .0620 - .0624. Amendments are proposed in accordance with G.S. 150B-21.3A which directs state agencies to review and update their rules every 10 years. The content of these rules is proposed to be moved from within Sections 15A NCAC 02B .0100 and .0200, which contain water quality standards, to Section 15A NCAC 02B .0600 Water Quality Management Plans. This reorganization will result in a rule set that is clear in its purpose and will be easier to understand. Proposed amendments to the text are for clarification, increasing flexibility of local government administration, and consistency with recently-readopted stormwater management rules. The WQC’s approval was requested to proceed to the EMC in March 2018 with proposed amendments to the Water Supply Watershed Protection Program rules.

**Discussion**Dr. Meiburg expressed concern with DEMLR’s rationale for the proposals to eliminate the requirement for a 10-foot vegetated setback or the equivalent control for agricultural activities within the half-mile critical area. Ms. Ventaloro explained that the Soil and Water Conservation Commission (SWCC), which the Commission delegated to implement these requirements, has not been implementing it. She further stated that staff doesn’t know what “equivalent control requirement” means. WQC Vice Chair Deerhake suggested that the chair of the SWCC be contacted about this issue and be given the opportunity to comment. Counsel to EMC, who is also counsel to SWCC, volunteered to talk to the SWCC about this issue and report back to the EMC. EMC Chair Solomon asked is the 10-foot vegetated setback additive to other buffer or setback requirements. Ms. Ventaloro responded no. He suggested that we solicit comment specifically on the proposal to remove the 10-foot vegetated setback requirement during the public comment period. Staff agreed to do so. He also asked if staff though the language regarding sources local governments could use to determine normal pool elevation would be sufficient for mapping backwaters. Ms. Ventaloro said that mapping backwaters is challenging, and that including a list of sources puts brackets around a process and that is better than we have now. Commissioner Meiburg expressed that the rule changes overall seem to be watering down the rules. WQC Chair Rubin stated that the EMC counsel will check with the SWCC counsel on the 10-foot agricultural setback requirement.

**Motion**WQC Vice Chair Deerhake made a motion to proceed to the EMC for public notice and hearings on readoptions and proposed amendments to water supply watershed protection rules 15A NCAC 02B .0620 through .0624 with the following conditions:

* remove proposed deletion of the 10-foot vegetated setback on agricultural activities;
* ask for public comment specifically on the 10-foot vegetated setback on agricultural activities during the public comment period; and
* ask for public comment on the cumulative impacts of all these proposed changes.

Mr. Keen seconded the motion. The motion passed unanimously.

**4. Request Approval to Begin Rulemaking Process for Proposed Amendments to Nutrient Strategy Rules 15A NCAC 02B .0229 through .0258 and Proposed 15A NCAC 02B .0701 and .0730**

**Description**John Huisman, DWR Non-Point Planning Branch, provided an overview of the proposed amendments to Nutrient Strategy Rules 15A NCAC 02B .0229 through .0258 and proposed 15A NCAC 02B .0701, Nutrient Strategy Definitions and .0730, Tar-Pamlico and Scope. The 15A NCAC 02B Nutrient Strategy Rules for the Neuse and Tar-Pamlico River Basins (.0229 to .0258) underwent Rule Review in 2014 per Session Law 2013-413 which requires all the Department’s rules to be readopted. The rules went through a series of stakeholder meetings in 2015 and were revised based on stakeholder input in 2016. An update on rule revisions was provided to the WQC in March and September 2017. A supplemental stakeholder meeting was then held in October 2017 to receive additional input and an update on revisions based on this stakeholder engagement was provided to the WQC in November 2017. The WQC’s approval was requested to begin the rulemaking process on these proposals.

**Discussion**The WQC Chair Rubin asked what the target for obtaining Rules Review Commission (RRC) approval of the rules was. Mr. Huisman explained that the RRC must approve the rules by 2019. Jennifer Everett, DENR Rulemaking Coordinator, clarified Mr. Huisman’s statement about the 2019 date. She explained that the EMC has until October 31, 2019 to readopt the rules to meet the 2019 readoption deadline. EMC Chair Solomon stated that now is the time for the EMC to make value decisions on the draft rules. WQC Vice Chair Deerhake noted the exclusion with the previous revisions to references to atmospheric deposition. Mr. Huisman assured her that the term would be added to the rules.

**Motion**EMC Chair Solomon made a motion that “…we accept the draft rules as presented to us and that this committee reassemble in a month to fine tune these based on the opinions of the Commissioners and that as needed we will request staff to provide additional support once we have made some decisions”. EMC Vice Chair Wilsey seconded the motion.

**Discussion off the Motion**After some discussion about cumulative impacts in the New Development rule Mr. Keen asked for clarification “clarity Mr. Chairman, is that 30 days?”. EMC Chair Solomon responded “30 days instead of a month.”

**Vote**  
Following the discussion after the motion, WQC Chair Rubin asked for a vote on the motion saying, “all those in favor of the motion to accept the draft and take a 30-day breather and get back with comment.” The motion passed unanimously.

**5.** **Request Approval to Proceed to the EMC with Water Quality Permitting Rules in 15A NCAC 02B and 02H**

**Description**  
DWR’s Karen Higgins (401 Wetland and Buffers Permitting Program), Mike Templeton (National Pollutant Discharge Elimination System Program), and Deborah Gore (Pretreatment Emergency Response and Collections Systems Program), provided an overview of the proposed revisions to various sections of the water quality permitting rules in 15A NCAC 02B and 02H. The 15A NCAC 02B and 02H rules underwent S.L. 2013-413 Rules Review in 2014 which required the rules to be readopted.  The WQC received an update on these rules in March and September 2017. Included in this package are the following rules: Effluent Limitations (02B .0400), Surface Water Monitoring: Reporting (02B .0500), Point Source Discharges to Surface Waters (02H .0100), Coastal Waste Treatment Disposal (02H .0400), Special Orders (02H .1200), Local Pretreatment Programs (02H .0900), Water Quality Certification (02H .0500), Discharges to Isolated Wetlands and Waters (02H .1300), Goose Creek Water Quality Management Plan (02B .0601 - .0604), Randleman Lake Water Supply Plan (02B .0720 to .0722), and Riparian Buffer Protection Rules for Goose Creek, Catawba River Basin, Neuse River Basin, Randleman Lake, and Tar-Pamlico River Basin (02B .0605 - .0608, .0610 - .0614, .0714, .0715, .0724, .0734, .0735). All current proposed versions of the rules 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> (user note:  Once in the Excel table, use the tabs in the Lower Left corner to navigate to the 02B and 02H Subchapters of rules).  Included in the spreadsheet are the Regulatory Impact Analyses, where available.  The WQC’s approval was requested to proceed to the EMC with the Water Quality Permitting rules drafts in 02B & 02H for the rules to go to public hearing and notice.

**Discussion**Mr. Keen asked whether local governments would have an input in the case by case process for approvals in the buffer rules. Ms. Higgins explained that there is usually not a lot of local government input in this process. She continued to explain that for the most part the buffer rules are implemented at the state level. As a follow-up, he asked did this rule come from county governments. She stated the she believed that this rule came about through negotiation during the General Assembly’s bill review process amongst stakeholder with an interest on how waterfront property is impacted by the buffer rules.

EMC Chair Solomon requested staff to provide a summary of the EMC’s recommendations about additional exemptions for existing development. Ms. Higgins informed him that there are no federal exemptions for the buffer rules in the federal rule. He asked when will there be a determination made agriculture exemptions as it relates to road. She stated that she would like to bring this to the EMC in March 2018.

Mr. Keen asked for clarity on the term “existing lot” about single family lots and whether that would apply if the roads were put in. Ms. Higgins explained that “existing lot” is defined in session law as a lot two acres of less recorded in the appropriate county register of deeds office.

WQC Vice Chair Deerhake commented on the parenthetical description in the wetlands definition in the 15A NCAC .0202 Definitions rule. She stated that her interest was to ensure that there were no legal questions that could arise in the future that it could tie back to the original legislation where those words are used and no longer used in the rule. EMC Chair Solomon agreed with the WQC Vice Chair and would rather see the wetlands definition tied to a legal definition.

WQC Vice Chair Deerhake stated that resources need to be provided from some source to continue to educate riparian buffer administrators to be up to date on what is needed to administrate the buffer program. She requested that the comment boxes be written like the rules in agenda item #2 to make clearer future reviews of the readoption process for the rules.

EMC Chair Solomon asked what the economic impact of the rule changes is. Staff explained that a regulatory impact analysis was being prepared but not a full fiscal note.

**Motion**EMC Chair Solomon made a motion to approve to proceed to the EMC with the Water Quality Permitting rules drafts in 02B & 02H. EMC Vice Chair Wilsey seconded the motion. The motion passed unanimously.

**6. Request to Proceed to EMC for Public Notice and Hearings with Proposed Revisions to 15A NCAC 02K .0212 of the Dam Safety Rules**

**Description**  
Boyd Devane, DEMLR Dam Safety Program, gave an overview of the proposed revisions for 15A NCAC 02K .0212 of the Dam Safety rules. In the statutorily-required, Periodic Rules Review process, the “initial determination” or “categorization” of the 33 Dam Safety rules in 15A NCAC Subchapter 2K were sent out to public notice and approved for finalization by the EMC at its May 2017 meeting. The “categorization” included a recommendation that two of the 33 rules be categorized as “unnecessary” and the others categorized as “necessary without substantive public interest.” Although no one objected to EMC classification for the rules, one comment had been received stating that the “The reference to G.S. 143-215.25(4) should be G.S. 143-215.25(2).” Paragraphs (2) and (3) of the statute had been deleted by the Legislature in 1993 which left the EMC’s rule language inaccurate. The DEMLR staff agreed with the need to make this correction and had planned to do that at the next time we took the Dam Safety rules out for public review. However, in considering the EMC recommendations regarding the Dam Safety rules classifications, the Rules Review Commission (RRC) in October of this year, determined that the comment received was an “objection” and they re-categorized this rule as “necessary with substantive public interest.” This means that the EMC must re-adopt this rule pursuant to G.S. 150B-21.3A and update the incorrect statutory reference. Because the entire rule will be reviewed by the RRC, DEMLR asked RRC staff to review the existing rule and offer suggestions for making it consistent with the RRC’s current protocols. Having received those suggestions, the DEMLR staff has proposed rule language changes and requested WQC’s approval to take proposed rule 15A NCAC 02K .0212 to the EMC with a request that it be sent to public notice and hearing.

**Discussion**Mr. Keen asked if there were any comments made during this process about the safety of dams in relation to eastern North Carolina from Hurricane Matthew. Mr. Devane responded no. With a follow-up question, Mr. Keen wanted to know did staff inspect any dams to find any rule that needed to be changed because staff had recognized irregularities of the rules for the dam safety law. Mr. Devane said no one had informed him that the rules need to be changed but he suggested that Mr. Toby Vinson could better address this question.

**Motion**WQC Vice Chair Deerhake made a motion to proceed to the EMC with 15A NCAC 02K .0212 of the Dam Safety rules. EMC Vice Chair Wilsey seconded the motion. The motion passed unanimously.

**7. Algal Blooms – (Information item) (Mark Vander Borgh, Division of Water Resources)**

**THE JANUARY 10, 2018 WQC MEETING RAN OUT OF TIME, AND THEREFORE THIS AGENDA ITEM COULD NOT BE PRESENTED.**

DWR staff will provide an overview of DWR’s algal bloom assessment and its response to harmful algal blooms. (Attachment enclosed: PowerPoint Presentation)

**III. Closing Comments – WQC Chair, Dr. Albert Rubin**

WQC Chair Rubin proposed that we have a lunch and learn session on Algal Blooms. EMC Chair Solomon suggested that this matter could possibly be presented at the Water Allocation Committee meeting.