

TRIENNIAL REVIEW HEARING RECORD

**NORTH CAROLINA DEPARTMENT OF
ENVIRONMENT AND NATURAL RESOURCES**

DIVISION OF WATER RESOURCES

**REPORT OF PROCEEDING OF PUBLIC HEARING
ON PROPOSED AMENDMENTS TO**

15A NCAC 02B .0100 - .0110

15A NCAC 02B .0201 - .0228

15A NCAC 02B .0230 - .0231

15A NCAC 02B .0300 - .0317

November 19, 2013

RALEIGH, NC

ENVIRONMENTAL MANAGEMENT COMMISSION

TRIENNIAL REVIEW HEARING RECORD

BACKGROUND

Every three years the State is required by the Clean Water Act (CWA) to review its surface water quality standards and classifications to determine if any changes are needed and, if necessary, to enact those changes. This review process is known as the "Triennial Review." In addition, as part of the Triennial Review, the CWA mandates a review of any variances to surface water quality standards that have been issued by the State. A Notice of Hearing for the 2014 Triennial Review was published in the November 1, 2013 edition of the North Carolina Register (Attachment B). Additionally, notice was made to the public via the Division of Water Resources (DWR) website. The Public Hearing was held in Raleigh NC on November 19, 2013 and written comments were accepted, in accordance with the North Carolina Administrative Procedures Act, until the close of the public comment period (January 3, 2014). The DWR extended the deadline to accept comments through January 10, 2014 to ensure that no conflicts in delivery by electronic submission and/or by physical delivery due to state recognized holidays prevented the public from having ample opportunity to submit comments.

SUMMARY OF COMMENTS

The Triennial Review public hearing was held in the Ground Floor Hearing Room of the Archdale Building in Raleigh, NC on November 19, 2013 at 1:30 p.m. Mr. Steve Tedder, Environmental Management Commission (EMC) member, served as the appointed Hearing Officer (Attachment C). Approximately 100 individuals attended the public hearing, with 32 requesting to comment. After hearing comments from all interested speakers, Mr. Tedder adjourned the hearing at 4:00 p.m. A list of registered attendees is provided in Attachment D. The Hearing Officer's remarks are presented below. Audio recordings of comments made at the hearing are accessible online ([Public Hearing 11/19/2013 - Presentation & Audio Files](#)).

Approximately 1,900 written comments were received. They included nearly 1,860 e-mails and letters from individuals; approximately 20 from business and industries, local governments, representatives of local governments and agricultural interests; approximately 15 from non-governmental organizations; two from federal government representatives and three letters addressing water quality variances specifically. Written comments are accessible online ([Public Comments - Written Submittals](#)).

HEARING OFFICER RECOMMENDATIONS:

Comments from all parties were considered and reviewed for potential modifications to the 15A NCAC 02B regulations. Although submitted comments were varied in nature and extent, commenters, on the whole, voiced support of modifying and updating the water quality standards to maintain and protect North Carolina's waters.

After careful consideration, the following are recommendations for staff to evaluate as they draft proposed changes to the 15A NCAC 02B regulations:

- **Chlorophyll *a*:**
 - Retain current Chlorophyll *a* standards. Any modifications to the Chlorophyll *a* standard should be proposed after evaluations are completed using the Nutrient Criteria Development Plan process.

- **Metals Standards:**
 - Replace existing Total Recoverable Metals standards with Dissolved Metal standards.
 - Adopt the current Aquatic Life protective National Recommended Water Quality Criterion for dissolved metals, *as acute and chronic* criterion for the following:
 - Arsenic,
 - Copper,
 - Nickel,
 - Silver,
 - Zinc,
 - Lead,
 - Chromium III, and
 - Chromium VI.
 - Allow use of the Biotic Ligand Model as published by the US EPA for the recalculation of Aquatic Life protective criteria for:
 - Copper (Acute and Chronic).
 - Adopt the Aquatic Life protective recalculated National Recommended Water Quality Criterion for the dissolved form of:
 - Cadmium (Acute and Chronic).
 - Maintain current:
 - Total recoverable Mercury standard,
 - Total recoverable Selenium standard, and
 - Reevaluate both during next Triennial Review.
 - Consider deletion of existing standards for:
 - Total Chromium,
 - Manganese, and
 - Iron.
 - Where applicable, adopt equation-based water quality standards for dissolved metals.
 - For equation-based hardness dependent metals, propose instream water quality criteria to be calculated from no less than 25 mg/L to no greater than 400 mg/L hardness.
 - With the exception of Mercury and Selenium, allow careful consideration of aquatic life biological integrity to take precedence over ambient standard violations for water quality assessment purposes.
 - For assessment clarity, define sampling protocol for instream monitoring of acute and chronic dissolved metals.

- **NPDES Permitting Provisions:**
 - Codify the use of 1Q10 stream flows for implementation of acute water quality standards in NPDES permitting.
 - Allow the use of the median instream hardness values in calculating permit limits based on the proposed hardness-dependent metals standards.
 - Specify that the median instream hardness values used in the NPDES permit calculations will be based upon the data contained in the US EPA STORET Data Warehouse within the local US Geological Survey and Natural Resource Conservation Service 8-digit Hydrologic Unit (subbasin level).
 - Retain the existing Action Level regulations for copper, silver, zinc, and chloride.
 - Retain the existing Mixing Zone regulations.

- **Variances:**
 - Comments related to facility-specific water quality standards variances were received and will be considered at permit renewal by DWR staff and the NPDES Committee of the EMC.

- **Timeline:**
 - North Carolina is behind schedule in completing this federally required review and subsequent rulemaking. As the public and the US EPA have placed a level of urgency on this action, it is the Hearing Officer's recommendation that DWR staff evaluate and address the issues noted above and draft proposed regulations for the Water Quality Committee (WQC) and the Environmental Management Commission to consider at the May 2014 WQC and Commission meetings. At the May WQC meeting, a request for a "30 day waiver" is recommended for the Water Quality Committee to allow the EMC to approve the DWR staff to proceed to public hearing during the summer months.