

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

May 13, 2015

Archdale Building-Ground Floor Hearing Room

1:00 PM

BRIEF

The Water Quality Committee (WQC) of the Environmental Management Commission (EMC) at the May 13, 2015 meeting:

- approved the March 11, 2015 WQC meeting summary.
- approved a Major Variance request from the Jordan Lake Riparian Area Protection Rule by 3M for expansion of the Pittsboro Mine at 4191 Hwy. 87 South in Moncure, NC.
- denied a Major Variance request from the Neuse Riparian Protection Rule for deck construction for Riverwinds Condominiums at 2316 Pointe Loop Road in Oriental, NC.
- approved sending the 2016 303(d) Listing Methodology to the EMC for approval.
- heard an update on the final draft of the Tar Pamlico Phase IV Agreement.
- heard an update on the High Rock Lake Nutrient Model.
- heard an update on the North Carolina Nutrient Criteria Development Plan.

WQC Members in Attendance:

Mr. Steve Tedder (Chairman)
Mr. Gerard P. Carroll, EMC Chairman
Dr. Albert Rubin
Mr. Thomas Craven
Dr. Lawrence W. Raymond
Mr. Charles Elam
Mr. Kevin Martin

Others Present:

Ms. Jennie Hauser, Attorney General Office
Mr. Charles Carter, EMC
Mr. David Dawson, EMC
Ms. Julie A. Wisely, EMC
Mr. William Puette, EMC
Mr. Jay Zimmerman, Division of Water Resources Director (DWR)

I. Preliminary Matters:

None of the WQC members recused himself from making a decision on any of the items on the May 13, 2015 WQC agenda. The March 11, 2015 WQC meeting summary was unanimously approved.

II. Agenda Items

1. Request for a Major Variance from the Jordan Lake Riparian Area Protection Rules by 3M Company for Expansion of the Pittsboro Mine at 4191 Highway 87 South in Moncure, NC

Description:

Jennifer Burdette with DWR's 401 & Buffer Permitting Unit presented a request for a Major Variance from the Jordan Lake Riparian Area Protection Rules by 3M Company for the expansion of their Pittsboro mine located at 4191 Highway 87 South in Moncure, NC. Chatham County has been designated authority to administer the Jordan Lake Riparian Area Protection Rule. Due to the presence of unnamed tributaries to Robeson Creek north of the existing mine, the proposed mine expansion will need to encroach into Zones One and Two of the riparian buffer. The applicant is proposing mitigation to offset the proposed buffer impacts. Chatham County and Division of Water Resources (DWR) staff support this request for a Major Variance from the Jordan Lake Riparian Area Protection Rule because all of the requirements in Section 507(B)(2)(a) of the 2014 Chatham County Watershed Protection Ordinance are met.

Discussion:

Mr. Martin asked when 3M received their mining permit and when Chatham County adopted their ordinance. Ms. Burdette replied that 3M obtained their mining permit in 1997, and Chatham County adopted their ordinance in January of 2010. Mr. Martin then made motion to approve the Major Variance request and the associated conditions as proposed by staff. Mr. Elam seconded the motion, and the WQC unanimously approved it.

Motion:

Mr. Martin made motion to approve the Major Variance request and associated conditions as proposed by staff. Mr. Elam seconded the motion, and the WQC unanimously approved it.

2. Request for a Major Variance from the Neuse Riparian Area Protection Rules by Mr. Gwinn Hedrick for construction of five decks for Riverwinds Condominiums at Oriental, NC

Description:

Jennifer Burdette with DWR's 401 & Buffer Permitting Unit presented a request for a Major Variance from the Neuse Riparian Area Protection Rules to Mr. Gwinn Hedrick for construction of five decks that are ADA accessible from inside for Riverwinds Condominiums at 236 Blackwell Point Loop Road in Oriental, NC. Due to the townhomes' location at the edge of and within the protected riparian buffer along Smith Creek, the proposed decks will need to encroach into 509 square feet of Zone One and 931 square feet of Zone Two of the riparian buffer. The applicant is proposing mitigation to offset the proposed buffer impacts and maintenance of diffuse flow by discharging gutter downspouts outside the buffer. Staff does not support this request for a Major Variance from the Neuse Riparian Area Protection Rules because the request does not comply with evaluation criteria 15A NCAC 02B .0233(a)(i)(A), (C), (E), & (F); ii and iii.

Discussion:

Dr. Rubin asked where the 12 trees that were required as mitigation for a previous minor variance were planted. Ms. Burdette indicated that they were planted near the northern property line. Dr. Rubin stated that the applicant purchased the property after the effective date of the rule and should have known the restrictions that the rule placed on the property. Mr. Elam asked to see the existing gutter downspout in the presentation again and clarified that the purpose was to route stormwater outside the buffer.

Motion:

Dr. Rubin made a motion to approve staff's recommendation to deny the Major Variance request. This motion was seconded by another WQC member and then unanimously approved by the WQC.

3. Request Permission to Proceed to the Environmental Management Commission for Approval of 2016 303(d) Listing Methodology

Description:

Jeff Manning with DWR's Classification and Standards/Rules Review Branch presented information on the 2016 303 (d) Listing Methodology. Section 303(d) of the federal Clean Water Act requires states to submit a list of waters that do not meet water quality standards to the US Environmental Protection Agency (US EPA) for approval by April 1 of even-numbered years. The EMC on March 14, 2013 approved the 303(d) Listing Methodology that was used for the 2014 303(d) List. The 2014 303(d) List was subsequently prepared by DWR, submitted to US EPA and approved. There is a subset of waters on 2014 303(d) List on which the State and the US EPA disagree with regard to the appropriateness of including those waters on the 303(d) List. They are listed based upon water quality standards that are outdated. The State has adopted new, revised standards and is pursuing assessment of waters using the new, revised water quality standards. Therefore, it is proposed to apply in 2016 the listing methodology that was used in 2014, with minor modifications to reflect that the State has adopted new, revised water quality standards and to add clarity about which data qualifiers allow data to be included or excluded for impairment and listing purposes. Staff requested the WQC's approval to proceed to the EMC for approval of the 2016 303(d) Listing Methodology.

Discussion:

There was no discussion.

Motion:

Dr. Rubin made a motion that the WQC accept the 2016 303(d) Listing methodology and send it to the EMC for approval. This motion was seconded by another WQC member and then unanimously approved by the WQC.

4. Final Draft of the Tar-Pamlico Phase IV Agreement

Description:

John Huisman with DWR's Nonpoint Source Branch presented information on the final draft of the Tar-Pamlico Phase IV Agreement. The Phase IV Agreement is the next iteration of a nutrient control Agreement for point source discharges in the Tar-Pamlico River Basin. The first phase of

the Agreement was initiated in 1990 in response to nutrient-driven water quality impairments in the Pamlico River estuary and its Nutrient Sensitive Water designation. The Agreement launched and remains an important part of the overall Tar-Pamlico nutrient management strategy. It establishes the performance goals for the nutrient strategy of 30 percent reduction in nitrogen loading from a baseline year of 1991 and no increase in loading of phosphorus from that baseline. An association of point source dischargers, the Tar-Pamlico Basin Association, receives collective annual end-of-pipe nitrogen and phosphorus loading caps. In the event that either cap is exceeded, the Association will fund agricultural practices at a predetermined cost-effectiveness rate to offset those exceedances through the NC Agriculture Cost Share Program. Phase IV incorporates modifications negotiated during Phase III including updates to the Association membership and inclusion of individual load allocations in member's NPDES permits. Staff provided an update of the final draft of the Agreement.

Discussion:

Chairman Tedder commented that based on information in the Tar-Pamlico River Basin Plan that was presented at the March 11, 2015 WQC meeting, the Tar Pamlico nutrient management strategy is not working and there has not been a re-assessment of the strategy in the 20 years it has been in place to verify that the 30 percent reduction in nitrogen loading goal was right for the Pamlico River estuary.

Mr. Martin asked why the re-modeling is not being done in the Tar-Pamlico River Basin when the [1994] TMDL for the basin calls for it if things weren't going as planned. Staff replied that it does not make sense to re-model what the target needs to be (30% or something else) since [DWR] we are not seeing nutrient load reductions to the estuary. Staff went on to say that the time to re-model would be if the 30% is met for the estuary but not enough to meet its water quality standard. There are a lot of resources within DWR dedicated towards other problems (i.e. fish kills) in the watershed and so it has not had enough staff to go back and do the re-modeling work. Mr. Martin asked is there any action required by EMC in order to alleviate the requirement to do the re-modeling. Chairman Tedder replied that the TMDL is developed by DWR but not approved by EMC.

EMC Chairman Carroll asked why the environmental groups are not going to sign the Phase IV Agreement. Staff replied that two environmental groups have declined signing onto to the Phase IV Agreement over concerns about how the point source loads were calculated and their waste load allocations and issues with the Evaluation of Progress Section in the Agreement. Does not include specific recommendation/or actions. Staff said that it feels that it is necessary to point towards the Tar Pamlico Basin Plan because the plan is the best place to address recommendations on a basinwide scale. Agreement just for point sources was not proper place to address basinwide issues/concerns.

Motion:

Not Applicable

5. High Rock Lake Nutrient Modeling Update

Description:

Pam Behm with DWR's Modeling and Assessment Branch provided an update on the status of

the High Rock Lake nutrient modeling and information on the next steps in the process of developing a Nutrient Management Strategy for the lake.

Discussion:

There was no discussion.

Motion:

Not Applicable

6. North Carolina Nutrient Criteria Development Plan Update

Description:

Steve Kroeger with DWR's Ecosystems Branch provided an update on the progress made on the NC Nutrient Criteria Development Plan (NCDP), a summary of the discussion at the NCDP-Scientific Advisory Council's May 6, 2015 meeting, and an overview of all nutrient advisory committees.

Discussion:

Chairman Tedder asked who is on the Council.

Motion:

Not Applicable

III. Closing Comments

There were no closing comments by the WQC members.

Summary was prepared by Jennifer Burdette, John Huisman, Jeff Manning, and Steve Kroeger.