

**MEETING OF THE NORTH CAROLINA
ENVIRONMENTAL MANAGEMENT COMMISSION**

**Raleigh, North Carolina
January 9, 2014
Minutes**

The North Carolina Environmental Management Commission met in the Ground Floor Hearing Room of the Archdale Building, 512 North Salisbury Street, Raleigh, North Carolina. Chairman, Benne C. Hutson presided. The following persons attended for all or part of the meeting.

COMMISSION MEMBERS:

E. O. Ferrell	Daniel E. Dawson	Clyde "Butch" Smith, Jr
David W. Anderson	Benne C. Hutson	Steve W. Tedder
Gerard A. "Jerry" Carroll	Steve P. Keen	Julie A. Wilsey
Charles "Charlie" Carter	Manning W. "Bill" Puette	
Tommy Craven	Dr. Albert R. Rubin	

DIVISION OF WATER RESOURCES:

Kevin Bowden	John Huisman	Cam McNutt	Steve Vozzo
Janice Bownes	Cyndi Karoly	Jeff Poupart	Debra Watts
Connie Brower	Elizabeth Kountis	Tom Reeder	Nat Wilson
Jennifer Burdette	Gary Kreiser	Jason Robinson	Adriene Weaver
Amy Chapman	Jeff Manning	Diane Reid	Sarah Young
Tom Fransen	Susan Massengale	Kathy Stecker	
Richard Gannon	Matt Matthews	Lois Thomas	
Karen Higgins	Ian McMillan	Julie Ventaloro	

ATTORNEY GENERAL'S OFFICE: Mary Lucasse

DIVISION OF AIR QUALITY: Sheila Holman
Michael Abraczinskas
Joelle Burleson
Lori Cherry
Patrick Knowlson
Sushma Masemore
Michael Pjetraj
Schliesser, Steve

I. Preliminary Matters

(Chairman Hutson called to order the January 9, 2014 meeting of the North Carolina Environmental Management Commission at 9:05 a.m.)

Chairman Hutson: Welcome all those who are here in the public present for the meeting. I would ask all of you here if you would please silence your cell phones so we don't have those interruptions. As we start out all meetings I do want to remind members of the Commission that General Statute 138A-15 mandates that I inquire as to if any members know of any known conflict of interest or the appearance of a conflict of interest with respect to the matters before the Commission today. If any member knows of a conflict or appearance of conflict, please so state at this time.

Before we go to approval of the minutes, I do want to welcome our newest member of the Commission, Dan Dawson. Dan was recently appointed by Governor McCrory to fill the professional engineering slot on the Commission and he took the initiative to be sworn in already with the clerk. Dan is from the Wilmington area and W.K. Dickson, and has a stellar record in the engineering field in all areas of water and other development activities. So Dan welcome to the Commission.

The minutes from our November 12, 2013 meeting were circulated prior to the meeting and if everyone has had a chance to review I will entertain a motion and a second at this time for any changes to approval of the minutes.

(Commissioner Keen: made a motion to adopt the minutes, seconded by **Commissioner Ferrell.** The vote was unanimous.)

Chairman Hutson: We did this first set of minutes as more of a transcript of the meeting. We will be moving toward more of a summary, traditional summary approach for future minutes. The transcripts and recordings will still be available but we'll try to cut down on the length of the minutes.

We will now move to the action items. The first is item 14-01 which is a request for approval of correction to inspection/maintenance (IM) rules revision that we took up at the last meeting. This will require two motions. One will be a motion to waive our internal operating procedures requirement, the 30-day waiver between the action by the committee and action by the full Commission. Then there will be a motion with regard to the substance itself. Welcome Steve Schleisser.

II. Action Items

14-01 Request for Approval of Correction to Inspection/Maintenance (IM) Rules Revision

Good Morning Commission members. I'm Steve Schleisser with the Division of Air Quality, the rulemaking division. I'm here to talk to you about a request for approval of the correction to the inspection and maintenance rules revision that we talked to you about at the last meeting. The EMC is requested to approve the correction of the recently approved amendments on the exemption of certain motor vehicles from emission inspections. Rule amendments incorporating Session Law 2012-199 were approved in the last meet to amend the existing rule's exclusion of the current model year from emissions inspection to exclude vehicles of the three most recent model years with less than 70,000 miles. This change directly involved amending four rules which are 15A NCAC 02D .1002 Applicability, 15A NCAC 02D .1003 Definitions, 15A NCAC 02D .1005 On-Board Diagnostic Standards, and finally 15A NCAC 02D .1006 Sale and Service of Analyzers. However, there was an inadvertent inconsistency in the Rule .1003 language

between Chapter 1 of the hearing record which is on the summaries and recommendations of response to the comments, and Chapter Two which is the record of the revised rules themselves. A clerical error was made by not including the four-word phrase “or the registration card” in the definition of the new term “three most recent model years” in Chapter II paragraph 10 as it was included correctly in Chapter I. The correct definition should read “For the purposes of this section, the term “three most recent model years” shall be calculated by adding three years to the vehicle’s model year obtained from the Vehicle Identification Number or the registration card to determine the first calendar year an emissions inspection is required.”

The Director of Air Quality recommends that the Commission approve the correction in Rule 02D .1003.

Chairman Hutson: Thank you, Sir. This was heard yesterday at the Air Quality Committee meeting. I will turn forward to Commissioner Carter who chairs that for a report as to what action was taken there and making that in the presentation of a motion on both the 30-day rule and the substance itself.

Commissioner Carter: Thank you Mr. Chairman. The committee heard this yesterday and unanimously recommended that this correction be made to the rule that we approved at the last meeting. The committee unanimously recommended that this go forward.

As the first order of business I would move to waive the normal 30-day period for action by this Commission.

(Seconded by Commissioner Craven)

Chairman Hutson: Any discussion? (Hearing none the motion passed unanimously in favor of waiver of the 30-day rule.)

Commissioner Carter: Then I would move adoption of this correction to the rule be approved.

Chairman Hutson: Motion by Commissioner Carter and second by Commissioner Craven. Any discussion? (Hearing none the motion passed unanimously in favor of the adoption of the correction to the rule.)

Thank you Sir and thanks all of those at the Division of Air Quality for not only working on the major substance of these but it show how much detail must go into these rules. I thank you for catching that and bringing to our attention so we can correct it. We’ll move on now to agenda item 14-02 which is a request to proceed to public hearing with the proposed reclassification of a segment of the Green River (including Lake Adger) in Polk County to class WS-IV. Elizabeth Kountis on behalf of the Division of Water Resources will make the presentation. Welcome; the floor is yours.

14-02 Request to Proceed to Public Hearing with the Proposed Reclassification of a Segment of the Green River (including Lake Adger) in Polk County to Class WS-IV

Elizabeth Kountis: I am here to ask the Commission for approval of the fiscal note for the proposed reclassification and for approval to send the proposed reclassification out to public notice and hearing. A request for the reclassification was received from Polk County for a portion of the Green River including Lake Adger in Polk County which is to be reclassified to

from Class C to Class WS-IV Critical Area (CA) and WS-IV Protected Area (PA). This reclassification is needed to construct a new water supply intake in Lake Adger.

On the screen is a map of the area proposed to be affected by this reclassification. Polk Lake is shown on the right side of the map. The proposed CA is outlined in red around the lake and the proposed PA's boundary is this black line on the screen. A portion of the boundary of the proposed PA does run along the Polk County/Henderson County line which appears in the upper left hand side of the map. It has a faint orange color. This new water supply source will allow Polk County to meet local water demands, thus this proposal serves the public interest for Executive Order 70 and complies with General Statute 150B, the Administrative Procedures Act. A finding of no significant impact or FONSI for this project has not yet been issued, but is being pursued as an Environment Assessment in 3a has been submitted to the state for this project. As a reminder a FONSI indicates that the project will not result in significant impacts to the environment. Lastly, the waters to be classified meet water supply water quality standards according to 2011 Division and Water Resources studies. If this new area is reclassified, wastewater discharge and new development requirements will need to be implemented throughout the proposed watershed. Furthermore, in the CA only, additional treatment will be required for new industrial process wastewater discharges and no new landfills or land application sites will be allowed. There are currently no permitted wastewater discharges in the proposed area. In addition, there are no known proposed land application sites or landfills in the proposed CA and no known waste discharges or developments in the entire proposed area. On the area to be reclassified it's a mixture of forested lands, grasslands, pasture lands and developed properties. If the proposed area is reclassified, Polk County would be the only local government that would have to alter its local water supply and watershed protection ordinances to reflect the reclassification's requirements, because it is the only local government with jurisdiction in the proposed area. Given that Polk County requested the reclassification it did not need to provide a resolution. As a reminder, a resolution indicates that the potentially impacted local government will administer the water supply rules within its jurisdiction once the water supply reclassification becomes effective. The fiscal analysis for this proposal which has been approved by the Office of State and Budget Management included the proposed rule language for its reclassification and revealed a one-time cost of about \$1600 to Polk County and \$800 to the state.

I'm here today to ask for your approval of the fiscal note for this proposed reclassification and approval to send the proposed reclassification out to public notice. The proposed reclassification's effective date is estimated to be September 2014. At this point I would be happy to answer any questions you may have. Thank you.

Chairman Hutson: Thank you Ms. Kountis. We will have two motions on this one, a motion to approve the fiscal note and the second motion will be a motion to proceed to public hearing. I'll open it up now for discussion or questions regarding this proposal.

Commissioner Smith: Mr. Chairman, do I need to exempt myself from this.

Chairman Hutson: Commissioner Smith is your request is based on the fact that you live in Polk County?

Commissioner Smith: Yes. I am very familiar and I grew up there. I know exactly what she's talking about. So I don't know if this is a conflict of interest or not.

Mary Lucasse: If you feel that your vote would be determined by a financial interest or a personal relationship with people who would benefit from this or be hurt by this, then you need to recuse yourself. If you're just familiar with it because you're one of many people who live in that county, then you don't need to recuse yourself.

Commissioner Smith: I'm not going to make any profit off of it. I'm a lot more familiar with it. Actually, they went ten miles and Henderson County would not. I didn't want to force my opinion on what I think.

Mary Lucasse: Well if you have recused yourself or not participated before, that would be a good reason not to participate at this time.

Commissioner Smith: Alright. I won't participate.

Mary Lucasse: If you will not participate, it's best practice to sit in the audience for this vote.

Chairman Hutson: Note for the record that Commissioner Smith has recused himself and has physically left. Any questions or discussion regarding this matter?

Commissioner Tedder: Mr. Chairman, this was heard at the November Water Quality Committee meeting. I move first for the approval of the fiscal note. (Seconded by Commissioner Dawson)

Chairman Hutson: (asked for a vote. Hearing no discussion the motion passed unanimously.)

Commissioner Tedder is the Chairman of the Water Quality Committee and I'll turn it back to you for the other motion.

Commissioner Tedder: The second motion is I recommend granting staff approval to proceed to public hearing with this reclassification request. (Seconded by Commissioner Ferrell)

Chairman Hutson: Any discussion on the matter? (Hearing none the motion passed unanimously.) Thank you Ms. Kountis and you will need an appointment of a hearing officer. Is that correct?

Elizabeth Kountis: Yes.

Chairman Hutson: Commissioner Smith, you can come back to your seat.

We will now move to agenda item 14-03 which is a request for approval of Delegation of the Neuse Buffer Program to Johnston County and Delegation of Further Approval Authority for Previously Delegated Local Governments in the Neuse and Tar-Pamlico Basins to the Director. Jennifer Burdette will make the presentation on behalf of the Division of Water Resources. This was heard yesterday at the Water Quality Committee meeting. So after the presentation I will

yield the floor to Commissioner Tedder for a report on what the committee's recommendation was and then the appropriate motions based upon that action. Ms. Burdette, welcome.

14-03 Request Approval of Delegation of the Neuse Buffer Program to Johnston County and Delegation of Further Approval Authority for Previously Delegated Local Governments in the Neuse and Tar-Pamlico Basins to the Director

Jennifer Burdette: I'm the coordinator in the 401 Buffer Permitting Unit in the Division of Water Resources. I'm here to present Johnson County's request for delegation of the Neuse Buffer program. Johnson County has unanimously adopted a riparian buffer protection ordinance that closely follows the state rules with a few exceptions that I'll discuss later. The county has provided a map of the county's land use jurisdiction assuring they have the staff and resources necessary to implement and enforce the state's riparian buffer protection requirements. They are assuring they have the procedures in place to review and authorize uses and process variance requests, included a provision in their ordinance to limit their authority for activities conducted under the authority of the state, United States multiple jurisdictions, local units of government, forestry and agriculture operations. To aid the Commission members in determining that the proposed ordinance is at least as stringent as the state rule, staff summarized where Johnson County's ordinance deviates from the state rule. The biggest difference is the use and title descriptions since Johnson County's ordinance follow the Jordan Lake buffer rules. Uses are the same as those listed in the Neuse buffer rules, but worded much more efficiently and user friendly. There are also some differences in the classification of a few uses that are certainly more stringent than the Neuse buffer rule. However, these classifications are consistent with the Jordan Lake buffer rule. Staff has reviewed Johnson County's delegation request and determined that the county has met the delegation requirements of the Neuse buffer rule.

I'm also here to request delegation of the future approvals. Because delegated local governments occasionally find it necessary and request to modify the riparian buffer protection ordinances, staff requests delegation of future approvals for previously delegated local governments in the Neuse and Tar-Pamlico basins to the Director. This delegation has been granted for the Jordan Lake watershed where local governments were designated authority to implement the rule. As with the Jordan Lake delegation the Director will provide copies of requests for revisions so the Commission members may provide comments. In those instances where the Director determines that approval or modification merits additional scrutiny, the delegation would permit the Director to request a decision by the Commission. The local government may also request the Commission to reconsider the decision made by the Director. I'm happy to answer any questions you may have.

Chairman Hutson: Before we get to questions, Commissioner Tedder would you please report on the actions of the Water Quality Committee meeting. We will consider this in two parts. One will be the Johnson County part and the second will be the overall delegation of authority to the Director for all these programs.

Commissioner Tedder: This was heard also yesterday by the Water Quality Committee. The committee voted unanimously to move this to approval to the full EMC. I would move that the delegation to the local government be approved as recommended by staff.

Chairman Hutson: I was just reminded that we need a motion to waive the 30-day requirements. So if you would.

Commissioner Tedder: I will include that in my motion.

Chairman Hutson: Well, let's do it in a separate motion. It needs to be a separate motion. So first we have a motion to waive the 30-day requirement. Is there a second on that?

(Second by Commissioner Carroll)

Chairman Hutson: Is there discussion? (Hearing none the motion passed unanimously.) We'll now move to the second motion by Commissioner Tedder which is the delegation of authority to Johnson County. Is there a second on that motion?

(Second by Commissioner Rubin)

Any discussion? I would point out that we've just been handed some material. I raised the question yesterday during the General Assembly's most recent session as part of House Bill 74, the General Assembly imposed a limitation on the ability of local governments to enact environmental ordinances covering matters that are regulated by state or federal government that are more stringent than those in general.

Jennifer Burdette: Any ordinance whether it's more stringent or not.

Chairman Hutson: Right. It is any local government ordinances, unless they are unanimously adopted by all members present and voting. You've been handed a copy of that statute section which is section 10.2 (a), (b), (c) and (d) of House Bill 74. We've also been handed on email that was received by Ms. Burdette from a representative of Johnson County. Is that right?

Jennifer Burdette: That's right.

Chairman Hutson: I will complement the county that they erred on the side of caution and that the first meeting it was unanimously adopted but one member was missing, so at the next meeting they put another consent agenda and all of them approved it. So that requirement has been satisfied and this ordinance is valid under that provision. Is there any other discussion or questions about the motion to delegate authority? (Hearing none the motion passed unanimously.) Mr. Tedder, I'll turn it back over to you for the second motion.

Commissioner Tedder: The last part of the motion would be to approve the request for a subsequent program, amendments, to those previously delegated local governments in the Neuse and Tar-Pamlico that may or need to occur in the future, that those delegations be sent to the Director.

Chairman Hutson: This is encompassed within the original 30-day waiver that we had done, that applies to both of these. (Seconded by Commissioner Rubin) Is there any discussion regarding the motion to delegate authority to the Director going forward for modifications? (Hearing none the motion passed unanimously.)

Thank you Ms. Burdette. Appreciate it.

Chairman Hutson: We'll now move turn to agenda 14-04. This was after the presentation by John Huisman. I'll yield the floor to Commissioner Tedder. This was considered yesterday at the Water Quality Committee meeting. He will report on their actions with regard to this item. This will also require two motions. One is the waiver of the 30-day requirement and the other is a motion on the substance itself. Mr. Huisman, welcome. The floor is yours.

14-04 Approval of NCDOT's Falls Lake New & Existing Development Stormwater Management Program and Delegation of Further Approval Authority to the DWR Director

John Huisman: Today I am here to present and request the approval of DOT's Falls Lake new and existing development stormwater management program, and also request delegation of future approval authority to the Director. I will start off real quickly just giving you a few minutes of overview of the Falls Lake nutrient management strategy that we have in place to give you some context of where this program fits in. This is a map of the Falls Lake watershed. It is located in the Upper Neuse River Basin. It's a 770 square mile watershed made up of six counties: Wake, Durham, Orange, Person, Granville and a little piece of Franklin county. Falls Lake serves as the primary drinking water supply for over 400,000 residents in Wake County. Back in 2005 the General Assembly passed legislature directing the Environmental Management Commission (EMC) to adopt and review management strategy for the lake over concerns of its water quality. Following that legislation a water quality special study was conducted with additional water quality samples collected from the lake between 2005 and 2007. That water quality data combined with previous data was combined to list the lake as impaired for not meeting the state's chlorophyll-a standard meaning that it's impacted by overloading of nutrients, primarily nitrogen and phosphorus. A lake model and water quality model were conducted. A stakeholder process was initiated as part of the rulemaking process where rules were drafted and brought before stakeholders for input. A fiscal note was also developed. This is all between 2008 and 2010. Eventually this rule package was brought before the EMC and approved by the EMC and the RRC. The rules went into effect in January 2011. The overall reduction objectives for the nutrient management strategy put in place for Falls Lake is a reduction of 40% nitrogen and 77% of phosphorus all relative to a 2006 baseline year. It is a strategy that is a staged implementation approach. In looking at the map we refer to Falls Lake in two parts. There's the upper watershed shown in green and the lower watershed shown in grey. In Stage One, the reductions are called for from the entire watershed with the overall objective achieving the water quality standards in the lower lake located in the lower watershed. That was between 2011 and 2021 which is Stage One. Stage Two goes from 2021 to 2036 and it requires additional reductions in this upper watershed area show in green, for the overall objective of achieving water quality standards throughout the entire lake, which is impaired for the chlorophyll-a standards. The management strategy for Falls Lake addresses both point and nonpoint sources. These 80 rules make up the management strategy for Falls, and as you can see, it leaves out requirements for both new and existing development for local governments, wastewater dischargers, agriculture, and it sits in a trading rule, trading across sources. What I will be talking about today is this rule 0281, the stormwater rule for state and federal entities.

What 0281 does is this rule establishes stormwater requirements for state and federal lands within the Falls Lake watershed. It applies to both NCDOT and non-DOT entities. When I say non-DOT entities, I'm talking about things like state owned universities, hospitals and prisons that exist in the watersheds. This rule puts in place similar requirements for these lands that are

applied to the new and existing development rule for local governments. New development is required to meet nitrogen and phosphorus loading export targets in the post-construction stage and existing development has to achieve overall percent reduction goals relative to the baseline. The state and federal entities and DOT use a similar accounting tool as the local governments and developers use. It's the Jordan/Falls Lake stormwater accounting tool which we refer to as JSLAT. The DOT's version of the tool is slightly modified to represent specific scenarios with DOT, the primary and secondary roads, different maintenance yards, and research data that they had to support the different export factors from different road types. The rules list specific requirements for DOT implementing the overall state and federal entities rule where it requires DOT to develop and implement its single stormwater management program for the new and existing development. The new development requirements for DOT require that their non-road projects, things like maintenance yards and rest stops meet those post construction loading export targets of 2.2 lbs per acre per year for nitrogen and .03 lbs per acre per year for phosphorus. Again, this is similar to the requirements for local governments. The new DOT road projects have to meet the buffer requirements. In Falls, as you saw earlier there is no new buffer rule for Falls. Falls is within the existing Neuse River basin and there are existing Neuse buffer rules already in place in Falls. So DOT new road projects have to meet those buffer requirements. The existing development requirements for DOT, again is broken into two stages. In Stage One; they have to reduce the loads that have occurred from the new development since the baseline year 2006 up to January of this year. They have to reduce those loads back to the 2006 to 2011. Then in Stage Two, if they achieve these overall percent reductions of 40% and 77%. The rule also requires that DOT implement a minimum of six BMP retrofits per year as they work through those goals. There's also a requirement for an annual report to be submitted to the division tracking their progress.

Just to give you an overview of where we are in the process, as I mentioned earlier the rules were adopted back in 2011. Back in July 2012 the EMC approved the DOT accounting tool for stormwater and existing new development, and baseline loads for DOT. In July of 2013, DOT submitted their new and existing development stormwater program to the division. We met with DOT for and provided some comments. They went back and made some minor revisions to the report to the program, resubmitted it and it's been provided to you. In the rule it calls on the division to make recommendations to the EMC on DOT's program as of this month. Once approved DOT begins implementing their EMC approved program on January 15, 2014. So the submittal from DOT contains the new and existing development program elements. I'll go over the new development program elements first, and then the existing development program elements. The new development elements that are included in the program essentially lay out the post construction runoff control requirements for their new rules, and non-road developments that I just went over. It also lays out the process for the Division of Water Resources to review these projects. DOT has already had a well-established process with the Division of Water Resources in reviewing their road projects and making sure that we're meeting the buffer requirements. For their non-road projects the process in place would be in the submittal of their annual report that will provide opportunity for the division to review their projects. Their annual reports will be submitted as part of their NPDES permit report, and will be subject to the NPDES permit audit process that's already in place. Another element of the new development program is laid out, specifying which projects are vested. In this case DOT plays out in the program to have projects that are planned or developed prior to this month of 2014 that would be vested and would fall into their existing development camp. Anything moving forward would be subject to

the new development post construction requirements or the buffer rules. They also define a lower threshold of significance, and this is a land disturbance threshold. It means how much land needs to be disturbed before the project is required to meet these new development requirements, and did they establish a half acre of land disturbance. Anything that disturbs a half acre or more we need these requirements for new development. So shifting over to the existing development program elements, this is where the program lays out the nutrient loads for the baseline, which were previously approved by the EMC back in July 2012, and establishes their interim loads. Basically, these interim loads are loading that has occurred from any development that has happened since the 2006 baseline between 2006 and January of this year. I'll talk about those interim loads in detail in a moment. The existing development program elements also include their implementation rate and schedule of implementing the BMPs. Again, this is where it lays out their attentive move forward with the rule requirement of at least six BMP retrofits per year as they work with BMP Stage One and Stage Two goals. Another requirement that's addressed in those elements is inventorying the stormwater outfalls, and DOT already has a prioritization and stormwater system inventorying processing place where it'll be inventorying stormwater outfalls and identifying their locations throughout the watershed. They also have to have an illegal discharge detection elimination program in place meeting the rule requirements. Another element is fertilizer management, education for field staff and consultants that will be working out in the field and potentially fertilizing in the right of ways.

That existing development interim load that I just talked about is the development that's occurred since the baseline, essentially, January 1, 2007 through January of 2014. The message that was used to develop those interim loads was using the post development load for all that developed land that occurred since the baseline, and compare that post development load to a uniform pre-development load that's provided in the rule. This is an option that's laid out in the rule where we, given number you can assume 2.89 lbs per acre per year of nitrogen as a pre-development condition and .68 lbs per acre per year of phosphorus which is a pre-development condition. DOT compared their post development numbers to that pre-development uniform number and came up with an interim development load that they would have to offset. In this case they provided an interesting result where the result was a net decline in interim development loads. I know that sounds a little counter intuitive, so I'll explain that a little bit further. Essentially the development that has occurred in the Falls Lake watershed in this interim period of DOT, there has been about 450 acres of development. It's not enough for an increase in load from development because these are secondary roads. They're small roads rather than primary large interstate roads. Based on the research that's available and was provided by DOT, the loading from the smaller secondary roads is quite small. When you compare it to the previously existing condition, it's actually less. So in this case the secondary roads had a lower concentration of nutrients, and again that's merely from the fact that these are smaller roads. They typically have a lot of tree canopy over them at intercept atmospheric depositions, there's less traffic on these roads providing mobile sources of depositions, and typically the right of ways around these roads are not fertilized. It results in that low concentration of runoff. Nevertheless, even though they resulted in net decline interim loads, under the rules in DOT's program lays out their intent to move forward with implementing it lists at least six BMP retrofits per year in Stage One and then into Stage Two in order to meet the water quality targets of the overall management strategy. So it won't affect implementation rates.

Along with the different program elements, as I mentioned earlier there is this requirement that DOT report at any late to the division, this reporting would be required for both the new

development and existing new development activities where it would summarize the different implementation activities over the course of the year, like the types of projects and lands affected, describe the different measures, different BMPs that's implemented and any offset payments made and itemize different reductions achieved. As I mentioned earlier, this report would be submitted in conjunction with their NPDES permit report that they already submit every year.

So the recommendation requested that we're making today is that the Commission approve DOT's Falls stormwater program as meeting the minimum requirements established in item nine of the rule. Item nine is where it lays out those program elements for new and existing development that I went over. We're also requesting that the EMC approve delegation of authority to the director to approve any subsequent programs and amendments from DOT. Of course, the director would forward any unique future revisions of concern to the Water Quality Committee for review if they came up. With that, I am happy to answer any questions that you may have.

Chairman Hutson: Thank you Mr. Huisman. I appreciate it. I'll make a change. We do not need a 30-day waiver on this. This is not really rulemaking activities approval of the plan. We will need to consider this in two separate motions. One is approval of the DOT plan and one is the delegation of authority. This was considered yesterday at the Water Quality Committee meeting. Commissioner Tedder is the Chair of that committee, and at this time I'll turn to him for his report on the recommendation of that committee in the form of a motion.

Commissioner Tedder: Yesterday this information was reviewed by the Water Quality Committee and had a unanimous motion of approval to move forward to the full EMC. The first motion would be for approval of the stormwater program for DOT as presented by staff. (Commissioner Anderson seconded.)

Chairman Hutson: Any discussion or questions?

Commissioner Ferrell: I have a question. The first year you're talking about Falls Lake but are these same rules and strategies in effect elsewhere in the state? Are they proposed to be in effect elsewhere in the state in the future?

John Huisman: Right now we have nutrient management strategies in place for the Neuse River basin as a whole, the Tar-Pamlico River basin and the Jordan Lake strategy. In Falls Lake, which is basically overlay on top of the Neuse, those are the four nutrient management strategy packages that we have in place right now.

Commissioner Ferrell: So the anticipation of something like this as time goes on would be implemented elsewhere?

John Huisman: Right now there's ongoing work in the High Rock Lake watershed where a management strategy is located. But right now they're doing the modeling processing and that will fill the whole stakeholder rulemaking process will follow that. That will be the likely next area where nutrient management strategy would be developed.

Commissioner Ferrell: The second question is has there been a fiscal analysis of what this will cost DOT to implement?

John Huisman: Yes. As part of the rulemaking process for the Falls and the other management strategies was to develop a fiscal note, fiscal analysis. That was presented to the EMC as part of the rulemaking processing that we brought forward.

Commissioner Ferrell: What is that? Do you know?

John Huisman: I'd be happy to provide the report to you and find numbers for you. It's been a while since I looked at the numbers. With DOT, we had different pie charts showing the road to contributions from the different sources and DOT was one of the smaller sources within the Falls Lake watershed. Their costs relative to the some of the other sources was much less. It's significant to each source. I'd be happy to get those numbers for you.

Commissioner Ferrell: Thank you.

Chairman Hutson: I believe that fiscal analysis was added the time the Falls Lake rules were put into place and there is not a separate rule with regard to DOT, Commissioner Ferrell. It was part of the adoption of the overall Falls Lake rules that are in place. This action is required pursuant to those rules which were adopted when?

John Huisman: Those Falls Lake rules were adopted back in 2011. So this is just a part of the implementation requirements laid out in those rules that are already adopted.

Commissioner Puett: I was looking at your recommendation. What would be an example of the unique future program revision required that coming back to the Water Quality Committee?

John Huisman: I guess something like that would be where we have the review process. The Division of Water Resources has that opportunity to review, if DOT down the road would propose something that would change that review process or they wanted to introduce some different BMPs that aren't currently approved or just some kind of significant change to the program; not a minor update. They're allowed to add additional BMPs that are toolbox, but if there's some kind of new technology that they wanted to add that was going to be totally new or change the review process or maybe change, not submit annual reports any more, some kind of subsequent change or something that would need further discussion and approval, we would feel more comfortable bringing it forward to the full Commission through writing it out; rather than approving some kind of minor update to the program.

Commissioner Carter: In answering Commissioner Ferrell and I'm not sure if I missed this or not. I believe he said there was already in place a program for the entire Neuse basin.

John Huisman: Yes there's a nutrient management strategy that has been in place for the entire Neuse basin since back in 1998 that was implemented. That strategy has requirement for the agriculture, new and existing new development and point sources. But it did not have in place a

rule requiring reductions from state and federal entities. So the Falls Lake rules have this added layer on top of the existing Neuse rules.

Commissioner Carter: So you're adding to that particular component. Is the reason why this is being done is just for the Falls Lake portion of the Neuse basin, rather than the entire basin?

John Huisman: Correct. The Neuse management strategy has been in place since 1998. That's all of the achievement reductions for the estuary down the coast. The Falls Lake management strategy was put in place to address specific concerns just with Falls Lake and concerns with the loading for that area. So the Neuse strategy continues to move forward with its reductions to the overall goal of the estuary. This strategy is specifically targeted to the Falls Lake area for that waterbody.

Commissioner Keen: You derived at one-half acre on disturbance. In other words, is the acreage up?

John Huisman: We have different proposed, different land disturbance thresholds in the different rules for local governments, commercial and residential throughout. The rules allow DOT to propose the different lower thresholds for them and they proposed a half acre because that would encompass the majority of all their development that would occur. Anything that would fall below that half acre based on existing requirements that DOT has where they have to do all the pollution control programs, they would be addressed by those existing requirements already. So if it seems, from an administrative standpoint a half acre capturing the majority of all the development; that made the most sense for them to propose.

Commissioner Keen: So they proposed it knowing they can come back on the state as far as DOT and the fee process?

John Huisman: Yes.

Commissioner Keen: Do you know what the fee is, by the way?

John Huisman: I'm sorry. I do not know. But I can find that out for you?

Commissioner Keen: Thanks

Commissioner Dawson: Two items. The first one and this is a vesting. Is there a definition for vesting? Is vesting, let's say when a project is being studied? There's no construction but there's been investments, let's say a road. Does that mean that project is considered vested or does it actually have to be under construction or complete?

John Huisman: In this particular case the vesting is fairly broad. If they were already planning something and start to begin work on it from the planning stages; that would be considered vested. In this particular case with DOT, it comes to the other stormwater programs, local governments and new development. The local governments typically have vesting defined in their local ordinances and it's a little bit different where there's usually about.....

Vesting only happens when significant financial investments have already occurred or if they've actually begun development activities on it.

Commissioner Dawson: It's not with just local governments. It's also with private sector and some of the time that definition of when vesting actually occurs can be very critical.

John Huisman: Yes, exactly.

Commissioner Dawson: And that's why I was curious if there was some clear definition here. Because it could be at some point in the future it's sighted as not being very clear. Then it's subject to a lot of debate on other stormwater matters, completely unrelated to this situation. That's why I was hoping there was some clear definition of what was considered vested.

John Huisman: It is described in the document. I have to go back and look just to get a clear definition but they do address in how layout the different criteria for what is considered vested. I was just making the point that here it is a little broader than traditional cases.

Commissioner Dawson: I'm not suggesting any changes on this. That's a very important. It was very careful to listen to you when you mentioned that. The second item was that you said the rules and how DOT would be working with these rules is consistent with the municipalities. Was that correct?

John Huisman: It's consistent and that the new development requirements and existing development requirements. There are some slight differences between exactly how things are implemented. For example, with the new roads are only subject to buffer requirements for DOT. Non-road construction, maintenance yards, rest stops – that's identical to local governments.

Commissioner Dawson: As long as we are not talking about roads?

John Huisman: Right.

Commissioner Dawson: But if we're talking about roads, not subdivision roads but DOT roads. They are separate. But non-roads are consistent with local governments.

John Huisman: Yes.

Commissioner Dawson: The most interesting thing and I heard this yesterday and you may have discussed a little bit more yesterday in the committee. But I think it's important for the Commission to make sure we hear this. That is the DOT, when they actually constructed secondary roads and what had been mostly a great in type and agricultural areas, there was a reduction in nutrient loading on the streams. Did I hear that correctly?

John Huisman: That's correct. I know that's kind of a counter into who it is.

Commissioner Dawson: No, not necessarily. It's an item that we've never dealt with and that's the mind point pollutants from the agricultural sources. But the built-upon community has been

dealing with this and attempted to try to manage these nutrient loadings for a long time. But I think this is a good example of where the built-upon community is not always because of the nutrient loading. I just think if I was that we didn't miss this, a report will come back again that talks about nutrient loading actually being reduced by construction of roads. Thank you.

John Huisman: Thank you.

Chairman Hutson: Other questions or comments? I'll just point out for the benefit of the Commission, normally votes on actions or things related to rulemaking and we don't oftentimes have to officially approve plans. In this case the regulations that were adopted for the Falls, basins specifically require us to prove this plan under the regulation. That's why it is before us as an action item. (Hearing no further questions the chairman asked for a vote and the motion passed unanimously.)

Mr. Tedder I yield the floor to you for a motion on the second portion of this matter.

Commissioner Tedder: Yes the second part of the next motion would be to approve and delegate authority to the director for minor changes that may occur in the future recommended for this document as planned. (Commissioner Rubin seconded.)

Chairman Hutson: Any discussion on that motion? Hearing none I'll call a question. (The motion passed unanimously.)

Mr. Huisman, thank you very much for an excellent presentation.

14-05 Request for EMC Approval to Proceed to Publication for Public Comment and Hearing on Changes to Rule 15A NCAC 02H .002

Tracy Davis: Thank you Mr. Chairman and Commission members. My name is Tracy Davis and I am the Director of the Division of Energy, Mineral, and Land Resources and Stormwater Programs report under my Division. So that's why I am here today.

As the Chairman stated we're requesting approval to move forward the temporary rule to amend Rule 15A NCAC 02H.1002 which defines "Built-Upon Area". As the Chairman stated this definition for Built-Upon Areas was amended this last legislative session to include gravel from built upon area, but the word gravel was not defined in the statute during this change. The actual definition that's in the statute at the present time states, "For purposes of implementing stormwater programs, "built-upon area" means impervious surface and partially impervious surface to the extent that the partially impervious surface does not allow water to infiltrate through the surface and into the subsoil. "Built-upon area" does not include a wooden slatted deck, the water area of a swimming pool, or gravel." The word gravel was added to the definition this last session. So the reason why we're here today is actually to try to define gravel as a pervious surface, its characteristics, shape and size and gradation so that it will meet the exemption under the build-upon area. It's a difficult thing to do which we will be talking about later as we go through this. Within the stone, sand and gravel industry, gravel is defined as basically "a loose aggregate of small rounded water-worn or pounded stones." We did have a proposed definition for "gravel" that was offered to the Water Quality Committee yesterday. There was some concern with that, the size of the type of gravel we were talking about which is in your packet. It was provided in advance of this meeting which was based on the American

National Standards Institute or (ASTM) which classifies gravel as having a diameter ranging between 2.00 millimeters and 4.74 millimeters. But we've looked into some additional resources overnight and have another option you may want to consider that I can provide later on in my presentation. That's based on the Unified Classification System for soils.

In any event, gravel is defined by various technical references often used in walkways through gardens and yards or around vegetation as it is permeable, allowing adequate drainage for precipitation yet harder and more aesthetically pleasing than just exposed soil. It's basically used as a type of mulch or a low traffic type of material. A placement of the gravel is normally conducted during dry periods and heavy vehicular and foot traffic is avoided in the gravel area during and immediately after the placement to avoid compaction of the subsurface to allow water to infiltrate through the material into the subsoil.

In contrast, laypersons often imprecisely use the word or term "gravel" to refer to *any* aggregate material, such as the non-gravel crushed stone material that is used in constructing roads or parking lots. Such material may be either impervious due to compaction at the time of installation or partially impervious due to compaction at the time or installed on a compacted surface that does not allow water to infiltrate into the subsoil. As a result, if an aggregate crushed stone material as opposed to gravel is used, it could cause water including pollutants and sediment to runoff the surface at higher velocities and volumes than the stormwater and sedimentation control measures were designed to handle. In this way, stormwater designs may be overwhelmed or bypassed and the unintended consequence may be the gradual or catastrophic release of pollutants and sediment into the environment, either by short-circuiting the basins or overwhelming them and failing those measures. Other statutes that use the term "gravel" also use the terms "rock" and/or "stone" as well. These include the definition of minerals in the Mining Act, requirements for haulers under the Motor Vehicle Act, the definition of conservation easement and authority of the Department of Transportation to acquire land and materials. By using the separate terms "gravel," "stone" and "rock" together in these other statutes, the General Assembly has recognized that these materials are different from each other but has not needed to define them because they were grouped together in these statutes.

However, in this case with the General Assembly revising the built-upon definition to exclude gravel, we're exempting gravel but we're not specifically exempting stone and rock. Since the amendment of the statute became effective in August, we've had the regulated community and local governments who implement delegated stormwater programs in dealing with our Division questioning how to interpret this term gravel, what products or materials falls within that term. It's for these reasons that we're asking for your support to go to rulemaking to try to define the term gravel in a way, that again the surface application and to have material that can be defined as pervious on an ongoing basis in order to be exempted from the built-upon area definition.

We still have problems we encountered in the interim period related to this exemption of gravel without definition. One is the fact that of gravel is generally considered to cover all types of rock and stone, and exempted from "built-upon area" as pervious; this would be similar to a naturally vegetated area. We have concerns that designers will under-design their measures or consider that area as not running off to look at other areas that are paved, and use those areas in their designs and have under-design measures that would be overwhelmed as I stated earlier, because it would actually be receiving runoff from these impervious areas.

Currently, our stormwater rules allow for impervious areas to be redeveloped without further stormwater permitting as long as the built-upon area is not increased and equal or better

stormwater control is in place. This would include a scenario of someone who has an existing impervious stone parking lot that they want to build a building on. This would be handled as redevelopment and we wouldn't require any stormwater permitting or additional measures. With the new statutory definition of gravel as essentially pervious as it stands now, we would have to treat that area as a natural area and require stormwater controls because it's a pervious defined area, and we would have to have engineers and clients to design measures to address those impervious areas.

Our Division is receiving requests from existing permittees that have "gravel" as to whether they can now go in and add more built-upon area to their project sites getting credit for the gravel area that they have already existing on their sites. This could lead to numerous existing systems. Again being overwhelmed under-sized for the additional built upon areas.

Lastly, many local governments that have existing stormwater programs and ordinances are unclear as to whether they should proceed, how they should proceed in light of the new statutory definition of built-upon area. Some local governments may proceed as they currently are in calling such surfaces impervious. Some may end up changing their ordinances to allow gravel to be pervious. So we'll have some potential for inconsistencies in application of the program statewide as well as some regulatory uncertainty across the state. So again to avoid the inconsistency and regulatory uncertainty the Department is requesting again your support for a temporary rule to define gravel and then the nature of identifying what gravel is to remain to be considered pervious to meet this exemption under built-upon area. In your packets you have a redline copy of the rule amendments to 15A NCAC 02H.1002. There's a redline version that shows the detail markups but there's a clean version that has some highlighted text. That's a little easier to cover. I can go through these proposed temporary rule amendments.

The first one is under Definition (1) which is built upon area. Essentially what we did is just modify the existing rule to reflect exactly the wording that's in the statute that I read earlier that exempts gravel from the built upon area. I'll skip over gravel definition for just a moment so I can cover the last change in the rule set that was number 27 for permeable pavement. That change was just to remove the last sentence that stated compacted gravel shall not be considered permeable pavement. We just thought that might leave a little bit confusion if we defined gravel for the first time we needed to take that sentence out and just let the gravel definition stand on its own and the rest of the permeable pavement definition would stay as it's written.

Now back to the definition of gravel which is #10, the current wording that we had that was proposed to the Water Quality Committee yesterday is gravel means a clean or washed loose aggregation of small rounded water worn or pounded stone ranging in size from 2 millimeters to 4.74 millimeters. Gravel is not crushed stone or rock. There were some concerns and discussions at yesterday's meeting about what the size for the 2 millimeters to the 4.74 millimeters. Again we have pulled that from the ASTM standards looking at various sources, probably about ten different sources, and gravel has different size categories and different shapes if you look at the range within gravel. So we looked at different sources and looked like they all fell in the same general range of 2 millimeters to 4.74 millimeters. That's what we had based on our initial rule draft on. I do have an option or another version that could be considered that I'd like to hand out at this time real quickly with you so you can look at that to see if this is a better fit for addressing some of the concerns from yesterday's meeting.

Chairman Hutson: This handout will be posted on the website.

Tracy Davis: I apologize for handing this out now. We actually worked out this late last night and had a concurrence from the Chair to at least share it with you this morning for consideration.

During yesterday's meeting Commissioner Martin had some questions and he had mentioned one source which is a unified sole classification system. We might want to look at to see if we might want to consider the size, maybe making the size a little larger or to look at a better way to describe gravel in a way that would meet the terms for, again looking at this as a surface application of gravel to be considered pervious on an ongoing basis. So the markup that I put up before you is #10. It now reads or the proposal would be gravel means a clean or washed loose aggregation of well-rounded spherical stones up to 3 inches in diameter where 50% is larger than the #4 sieve with less than 5% fines. Gravel is not crushed stone or rock. What I did here was insert the references that were used. You can see where we got each of those terms in this revised version. The first diagram that's been inserted here for your discussion purposes is the roundness chart that you see. This shows sphericity. You see the spherical nature of the stone vs roundness and you can see halfway up the chart we went to spherical. We came across to lower rounded and this is the size we're looking at. We're looking at rounded stone that's not angular that will not interconnect and start to seal itself. Whether it's clean or not we need more like a rounded stone that will just roll on itself, have less chance to chip and less chance to consolidate and cause imperviousness. This would be basically that the shape of the stone that we would like to define as gravel. Then if you look on the next two pages, the 3 inches came from the last chart which is the U.S. Department of Agriculture looking at grade limits and grade names. You can see textual description gravel is up to 3 inches. For a coarse stone it's a maximum of up to .08 inches. That's where the size of 3 inches came from. The second chart that I provided is a unified soil classification system. If you look at the major divisions it says gravels, sands, silts and clays in that second column at the top it says gravels are basically defined as more than half of coarse fraction is larger than #4 sieve size. So that's where we took that from. If you look at clean gravel which is what we're after so it does remain pervious, clean gravel is less than 5% fines. I just wanted to show how we kind of pieced together this definition to try to put the wording in place again considered rounded stone that will be considered pervious in the surface application. As I mentioned earlier most of the times that we see under the stormwater permitting program is when people want to use this stone or aggregate material on the surface for roadways and parking lots. With vehicular traffic and heavy loading this material needs to be able to take that impact and still remain pervious in order for us to consider it as absorbing the stormwater rather than having runoff from that. I hope I didn't complicate matters but we had the original wording. Then we tried to improve it some with the recent submittal.

Chairman Hutson: I will now before we get in discussion with the report from the Water Quality Committee and this will also require a 30 day waiver. I would like to ask Ms. Lucas as our counsel to describe the process that goes along with temporary rulemaking as opposed to permanent rulemaking. Ms. Lucas, if you would?

Ms. Lucas: Temporary rulemaking is a stop gap measure before you do permanent rulemaking. It goes more quickly and it does not include a fiscal note. Just to hit the highlights, it's once the proposed temporary rule is approved by you to move forward, it would be submitted to the Office of Administrative Hearings, go through a relatively brief public hearing, public comment period and then agency may adopt the rule. That leaves 30 business days from submission to OAH after receiving those comments. It then proceeds to the Rules Review Commission which

would review it within 15 days of its submission, and if it is approved the temporary rule could be entered into the code within about 8 business days from the time the RRC approves it. If the RRC doesn't approve it there's a process to appeal that. The agency can appeal or they can choose to resubmit. But altogether it's expedited and the rule would be in effect for a finite period of time. If the rule, for example is published in March of 2014 which is the date we're shooting for if this were to move forward. Then it could continue in effect until 270 days from its publication in the register which is January 10, 2015. So basically by using a temporary rule the EMC would provide the regulated community with a way to address the concerns that Mr. Davis has indicated exists over this unclear definition. During the time they then proceed with a fiscal note and proceed with permanent rulemaking which would need to be completed before the temporary rule is no longer in effect on January 2015. So that's how those two things fit together. You're buying yourself some time to get the permanent rule in place, should you choose to do that.

Chairman Hutson: Just to add to that if we did a temporary rulemaking now, the permanent rulemaking would be coming back to us in July with the anticipated schedule of adoption in November of 2014. I've been working on scheduling the staff. My concern with January 10th as expiration date is that we meet January 8, 2015. As a Chair, I'm not comfortable with only having a two day window between a meeting and a deadline, especially January 10th which is a Saturday. So we really only have January 9th. I will also add that over laying our process, there is the potential that the General Assembly will take action on this issue in the short session which might resolve this issue, and we may not have to proceed with the permanent rulemaking. So with that I will yield the floor to Mr. Tedder in report of the Water Quality Committee and then we will take a motion first on the 30-day waiver, and then action upon the direction of the Committee after that.

Commissioner Tedder: First I would move for a waiver of the 30 day requirement.

Chairman Hutson: Do I have a second the motion to waive the 30 day requirement? (Motion by Commissioner Tedder and seconded by Commissioner Ferrell.)

Any discussion? Hearing none the motion passed and the 30 day waiver was adopted.

Commissioner Tedder: During the meeting yesterday at the Water Quality Committee this was considered. It was approved unanimously to move forward to the Commission today. What I'm going to do is make the motion that it be approved which includes version 1. That's what the committee approved yesterday as far as the size of stone. So that would be my motion and then hopefully at that point maybe we can get into discussion of Option 2 that was drafted by the staff last night which personally I support. But I'm going to make the motion that was made yesterday at the committee.

Chairman Hutson: Procedurally what we will need is a second to that motion and we have a second by Commissioner Dawson. Now I will open it up for discussion. What we will do during the course of that if we want to move to Option 2 or some other option we will get consent of the move and the second on the original motion to change their motion so that we don't have to go through voting on a substitute motion and like that. So that's what we will be looking at procedurally. But let's now move to a discussion of the substance of the motion. So I will open the floor for discussion.

Commissioner Dawson: Having not been involved in the discussions last night, and maybe some new information. But there's some points that when I visited the Water Quality Committee yesterday I did refrain from participating but I would like to make some comments today that may influence some of the discussion and decision that may have taken place since the last meeting. The first item is I think we're getting the message loud and clear from the legislature that they're looking for some fairness in the stormwater rules. When you look at that enabling legislation the word gravel shows up three more times, not just once, but it's three more times. When you look at how it's defined in those other three locations it contradicts what this definition is. So I think what we can clearly, in my opinion it's a clear indication there's some desire to see these rules addressed for more fairness and there was an attempt to do it, and that's why we're here, because the attempt, while probably well intentioned did not really solve the problem. We're looking for predictable outcomes. I think everyone's looking for those things. What I will need to do first is I would like to ask the staff to explain how they would use this proposed definition in interpreting a request for a project that, let's say has an existing gravel parking lot that today according to the word gravel before this definition is created would be considered impervious. But with this definition it appears to me that it would still be impervious because the gradation size of the stones in this definition are so strange, unique, and minute that there'll be no gravel parking lot made of this stone. Therefore the staff would be able to look at a gravel parking lot and say well you don't meet the definition that the EMC approved of this really fine grain gravel, and therefore they would continue to use the rules as they have up to before the legislature threw the word gravel in this. I'd like to make sure that I'm interpreting that correctly because it appears to me what we're really doing here, based on the advice of the staff and so forth is recreating a definition of the word gravel that, quietly frankly will never be a project constructed with gravel defined like this, and there will never be an existing project brought in for redevelopment constructed of this same type material. If that's the case what we're politely doing for the legislature is we are helping them keep the legislation in effect, and this is if someone comes in and they truly have gravel as defined then they're exempt. It's considered pervious material and they don't have to abide by certain requirements and so forth. But if it's a typical gravel parking lot, then they will have to abide by the rules. Is that correct?

Tracy Davis: I think basically the hard position is from a stormwater standpoint is if we don't define gravel issues in layman's terms like I mentioned earlier, every type of rock and stone is thrown into that possibility of exemption. In practical purposes what people use when they call them gravel roads or gravel driveways is really crushed stone, either #67 crushed stone, or abc, or depression run so it's an aggregate that's not really gravel as a soil science. It's another crush and run. So in practical purposes we feel like that's crushed stone or aggregate of what we see out there is impervious surface unless it's designed in a certain way with the sub-surfaces are pervious as well where they can move through. I think that's what the first sense of built upon area does is provide anyone to say here's my proposal. I want to meet this exemption. Here's how I plan to show you how it is. Not impervious how, they can percolate through the surface and that material into the subsoil. When we get into the gravel exemption we feel the need as soon as possible to define the narrow scope of what type of stone or gravel, what gravel should be to be able to percolate, be pervious. So we were looking at rounded stone and that's sort of how that's classified in the classification systems we've seen thus far.

Commissioner Dawson: I understand that. I've followed your discussions. But at the same time I'm probably the only person that has more time dealing with the state stormwater rules and myself in this room is Steve Tedder because he helped to write them. But it's very important that we understand, if this were to move forward and become the rules being amended for this definition, we would be saying that if your material meets this gradation of 2 millimeters to 4.74 millimeters in size, which is about like beach sand. Ok. But we're calling that not beach sand. We're calling that gravel because there's no definition for gravel. We're not calling it crushed stone. We're not calling it anything else. Because if you bring in crushed stone or you propose to use crushed stone the word gravel doesn't apply to you. Correct?

So in essence since there's probably no chance of anyone of ever building something out of gravel or parking lot, out of what we define as gravel to me it means we've provided definition to help interpret the session law exemption of gravel. But in essence what happens is the regulators, the stormwater units, the regional offices, the local governments, etc., they would basically continue to administer the program as they did before the legislation; unless somebody for strange reason decides they want to build a gravel driveway or parking lot out of what is in essence beach sand.

Tracy Davis: The next thing I wanted to say is we need to define gravel as we feel gravel should be defined in a classification system. Then the first sentence of built upon area would be to provide folks to use any kind of stone if they can show it can be pervious in a design in which the permeable pavement, for instance so it could be other materials. But we're concerned if we just leave gravel as it's written in a very broad sense that crush and run, abc stone, other things would be considered pervious when in reality they're really not. Then we have those potential impacts to the environment in water quality if we just let it all be pervious.

Commissioner Dawson: But right now I think what you in essence do, we would do if this moves forward as we would allow the basically the application and permitting of stormwater projects to remain just like they were before the legislation. If we start to enlarge the stone and open up the gradation of the stone to something other than this beach sand, this fine sand that was originally proposed to be the definition of gravel; if we opened it up to something more coarse grains, in essence will be crushed stone. Therefore, if we do that I think we'll have a hard time explaining how that is pervious. Before the rules, correct me if I'm wrong, if somebody wanted to build a grass parking lot, if they were going to park on it wasn't that considered impervious in the stormwater rules?

Tracy Davis: I believe if the sub-surface could be compacted where it can't meet the definition and percolating into the subsoil, then we would look at that. We had those discussions with the legislative committee about it. It gets into the sub-surface aspects of the "built upon area definition". If it is grass there's nothing applied to the surface but it's driven upon and becomes basically compacted.

Commissioner Dawson: Over time it becomes more than compacted and the compaction therefore pushes it more toward the impervious definition. So we're not solving any of that with any of this other than, again I go back to my original point. That is I think we should hear the message loud and clear that there's concern about fairness on these stormwater rules and in the late hours of the session law preparation, I think the messages have been made very clear.

What's proposed by the staff originally will let the system continue to operate as it did prior to session law and I need to make sure that my interpretation is correct. I would hate to see that move forward and then be told no that's not how it will be administered. To me, it's very important today that we understand that if we were to keep this 2 millimeters to 4.74 millimeters grain size as the definition of gravel, that anyone that brings in something that's crushed stone that's existing today I won't use the word gravel. Crushed stone compacted mobile, whatever else you want to call it. But not gravel. If they brought in a parking lot that was crushed stone today and they asked to do a redevelopment plan and pave it with asphalt, it would be considered a redevelopment project. Not a pervious project that is now going to have to treat its stormwater. I think it's very important that be clear today before we go forth.

Tracy Davis: I'll just add we were faced with a one word change and the definition says gravel, so we feel like we're very pigeonhole into a temporary rule just to define it in the near term, sort of an emergency move to say let's define gravel of a gradation that will allow to be pervious in this interim period. I think when we get into the permanent rulemaking I think we'll have more time to actually get into maybe looking at re-crafting a more.....

Commissioner Dawson: I absolutely agree with that. I still need to know how it would be interpreted when somebody is ready to submit their application. I have, in the transition, I have watched a project or two go before DWQ and the question came up, well its gravel; gravel is not considered impervious out of the session law. Therefore for the session law if you wanted to pave over and build a building on the site it would just be redevelopment. No problem. Now because it's considered pervious and you're going to pave it you must provide your stormwater measures. It doesn't matter one way or the other, other than the fact we need to make sure we get some clear direction. So I'm asking again how will the Division of Water Resources and the stormwater units, and whoever those people are that are going to have to administer this, how will they interpret that. Because I would hate to create further problems in the ones that we're dealing with today.

Tracy Davis: I guess the short answer to that is we would have to consider it pervious as it's written now but there's inconsistency already because we have some of us are saying if we do this, it's pervious and we start shifting all the gears. Then whatever temporary rule comes out of this Commission we shift it back to where that temporary rule is. Then we have a permanent rule that comes after that. So we've been kind of being held in abeyance right now for the very reason that you stated, that we needed some clarity.

Chairman Hutson: I know Mr. Craven has got a comment. Let me ask him to present that and then get back to the discussion. Ok?

Commissioner Craven: I very much appreciate the concerns. I think if we can make this definition a little simpler such that, both regulators, scientists and laymen can all stand on site and agree to what we have there, then we'll come pretty close to doing the best job we can in this situation. To illustrate the two extremes and I'm going to use generic terms here. I'll call it river rock. It's white rounded stone. You see it in driveways all over the coastal plains. I would say it runs to a size, it's a little larger than this when you go to the mulch yard to get some in the back of your pickup truck it may be from an eighth of an inch in diameter up to a couple of

inches in diameter. Throw that on the drive way. You stand there in a rain. You see the water go down into it where you pour a bucket of water on it and your feet don't get wet. That meets most of the generic wording in here other than the upper level of the size criteria. It also changes it to English units because there're not many people in the field that converts in metric units. The other end of this extreme is crusher rock. It has lots of fines. It is angular in shape. You put it on the ground and even if you don't compact it, overtime it will compact itself. Water hits it and you see it run off. It doesn't go down into it; it doesn't soak in. If we took this first step emission and just simply said ranging in size from.....and again I'm not very good with metrics. Let's talk about what the small range ought to be. But it's something a little larger than beach sand because it did come in as gravel and take it up to the upper range, 2 inches or 3 inches. When it gets to be 3 inches I start to think of it as something I can throw. It's more of a baseball. Two inches in my mind, my experience is clearly acceptable. Gravel means a clean or washed. I think I'd put a comma after washed, clean or washed loose aggregation, loose being the key word. Not compacted but loose of small rounded. Water worn is fine with me or pounded stones, pounded stones is fine too. That allows for some quarry material, granitic material has been crushed up and washed out. It is loose and it is rounded. It qualifies. We talked about what the size should be. Gravel is not crushed stone or rock. To me I'm comfortable with that definition. I think with something like that we have drawn a line and they're separating the two extremes. It's a definition that everyone can understand. It may not be specifically defined but I think it can be understood.

Commissioner Rubin: I'd like to ask a question and this kind of goes to the next phase of this. Should we accept this as a temporary rule and we go to permanent rulemaking, and they start developing design guides for use of gravel, most of the gravel I've seen is placed on top of some kind of fabric. It's not placed in direct contact with soil. As you start developing guidelines for use of some of these materials, would you be looking developing those design standards that would include, say nursery cloth or some kind of textual material between the gravel and the soil surface?

Tracy Davis: That could be something to look at but I guess we're looking at it being pervious. A lot of times it's graded or bladed first to get the vegetation off and then placed on top of that bladed, sometimes compacted roller compacted. It depends on what the intended use is. But I don't recall that we have geotextiles underneath a gravel road.

Commissioner Rubin: Not under gravel roads but under some other drive and some of the walkways I've seen, I've observed it. Some of my landscape friends told me that's what they did.

Tracy Davis: I guess it goes back to the how we would apply this if somebody came in to get an exemption from the built upon area, we would have them basically address the first sentence of that and say ok. To us, by material, if it's not this definition of gravel then everything else would be impervious until you come to us with a design that says here's the material type I'm going to use, the size and the gradation. If it's clean or not what is the geotextile? You start getting into those layers of what you do just like, what a permeable pavement detail shows. So we go through that analysis for anything that's not exempted or even to prove that exemption, we

would need to at least look at something to say yes you need the definition of wood sided deck or swimming pool or gravel as the Commission has defined it.

Chairman Hutson: Just so the Commission is aware we have a limited jurisdiction when it comes to a temporary rulemaking. It's limited to addressing the issue that is raised by new legislation and it is action that has to be taken within a certain number of days after the legislation has taken affect. Some of the issues we've heard today, I appreciate Commissioner Dawson raising them because there is this broader discussion that has been ongoing for some time as to, to use your phrase Commissioner Dawson, the fairness of the stormwater rules, the aggregate industry and those that use the materials have long made the contention that they should be entitled to some sort of credit, partial credits because their material, even when it's crush and run, the larger stone has some permeability as compared to asphalt and concrete. Therefore the water does permeate through that. I've sat through now a day long discussion of that technical issue. Our jurisdiction is limited to addressing the issue that was raised by the legislation. We're fortunate to have the technical expertise we have here. I'll tell you from the lawyer's side, and Mr. Carter and Mr. Puette would chime in here, from a legal ambiguity all of these other statutes use the phrase gravel, stone and rock, which under legal principles means the legislature made the decision that those are three different things. But they didn't have to define them because they were all covered under this statute. This is one of the first times that we can find that they used only the term, gravel. Commissioner Dawson is correct that they did incorporate in another part of 74. They didn't change the definition. That was in the section that went through and made all the technical wording changes to change it from the Division of Water Quality to the Division of Water Resources. My own view is they just didn't notice that and that is something that would have to be corrected, the rule substance change was in this section. Commission Dawson I yield the floor back to you.

Commissioner Dawson: I agree totally with you. I think it's just more of an example of the haste in which the attempt to address this issue was made in this session law. That's my only reason for bringing that up. Not to criticize their drafting of what they did. To me we have two choices. We can define gravel as what most people think of as gravel, crushed stone, compacted aggregate base coarse or whatever you want to call it, a compacted gravel surface. If we do that then that may be consistent with what might have been the idea behind the legislation, but from an engineering standpoint anytime you have crushed stone with fines in it and you have traffic over that crushed stone eventually it can become as hard as a brick. When it does it may not be as impervious as concrete or asphalt but it's pretty close to it. So we can attempt to go down that avenue and therefore the staff knows and the applicant know that in North Carolina, believe it or not, gravel means compacted crush stone. Or we can define gravel as something nobody will ever in their right mind submit an application for because it's a gradation. That's like beach sand but we define it as gravel. Therefore since no one is ever going to submit that once the legislation realizes and we have to sort of dialogue with them as we're trying to work with you on this, then at that point we get into more permanent rulemaking and we try to find where that fair set of rules will be. But in the meantime it will give the staff and the local governments and the developers, etc., those people that have to apply for these stormwater rules, it will give them a definition that basically allows them to go back to the rules prior to session law unless they venture into we think we want to use this really fine gradation for our pavement which I can't imagine anyone ever doing. Therefore we've overcome this hurdle definitely on a temporary basis. But we have not voted because something that's eventually going to be impervious.

We're not going to do something that says gravel that can eventually become impervious. We're not about to define it as something that's pervious. I would prefer that we not, as much as we're trying to work this thing out, I still don't think we should call something that will be impervious, pervious just because of trying to satisfy this problem.

Chairman Hutson: Other comments or questions?

Commissioner Keen: I like the motion on the Option 1. By going to Option 2, I would like to discuss Option 2. I appreciate the staff working on this late into the night and coming up with the definition and crossing out some things here and adding some things. But the last page when you get into grade limits and the inches it was mentioned by one Commissioner about the 2 inch standard but here's the 3-inch standard. This is a grain size schedule used by soil scientists with the U.S. Department of Agriculture. I like that because farmers and agriculture has been hit by stormwater rules and regulations for much too long, trying to move into the agriculture area and having that defined out specifically that it is coming from agriculture. I would like to ask is landowners, farmers, agriculture if they build these paths along wood line ditches and having setback rules off those ditches. How is that going to affect agriculture as we move forward with this?

Tracy Davis: Well the only reason we reference agriculture at all is really the source that we found would give a size for gravel, and the stormwater rules that applied to construction and whatever exemptions from agriculture remains the same. We just use this table from a source from the Department of Agriculture, again to try to show a reputable source of where we got the 3 inches for gravel. That's not to imply anything that we're trying to pull in, agriculture or anything else. It's really just a reference to show an upper limit for the size of the stone as considered gravel according to the soil science community.

Commissioner Dawson: Just because they're referring to an agricultural document doesn't change the agriculturally exemption from all of the stormwater rules. I just want to make sure that this is very clearly understood.

Chairman Hutson: Only until the fourth circuit rules in the case as to whether or not that implies.

Commissioner Tedder: Since we're discussing Option 2 which I like better than 1, but I also tried to sit here and capture the discussion of Commissioner Craven. If you don't mind I'd like to see if I captured it to see if it's a language that may be the hybrid of the two that's possible. You tell me if I get it wrong.

Gravel means a clean or washed, loosed aggregate of small rounded water worn or pounded stones up to 3" in size. Gravel is not crushed stone or rock.

Chairman Hutson: My question and I'll direct this to Commissioner Craven and others. That does not include a lower limit. It was up to 3". I thought I'd heard your discussion that it shouldn't include that we should exclude what would commonly be referred to as sand. So should there be a lower limit of x to 3" up?

Commissioner Craven: It certainly wouldn't hurt. I'm satisfied with that language, would put in a lower limit is certainly acceptable to me. I just don't know what that lower limit is. I don't know what the numeric value for that is.

Tracy Davis: We could refer back to the chart that Commissioner Keen mentioned that says very coarse sand is up to .08 inches. It could be from .08 inches to 3 inches in size for gravel.

Commissioner Dawson: In regards to that, the state has a BMP manual for this type thing and I wouldn't want to start something now that would be different and all of a sudden another consequence contradicts what's in the BMP manual. If we want to go down that line the staff could probably help us with what the gradation of that stone should be. But I just want to further express caution.

Chairman Hutson: I'll ask a question of anyone responding. I'll direct this to Commissioner Craven and since the definition uses the term stone I take it that stone is considered different than sand in the field.

Commissioner Craven: By my experience it is, yes. If we do want to put a lower level or lower limit on here it started out as 2 millimeters using the information that was in the handout on the last sheet. One millimeter is .04 inches. Two millimeters is .08 inches. So certainly I'm comfortable to a lower limit of .08 inches.

Chairman Hutson: Now I open it up to discussion for the entire Commission. I just raise that. I'm not sure we need a lower limit if people are going to be comfortable without a lower limit. That's the will of the Commission.

Any further comments or discussion on the issue? Mr. Tedder you were the move on the original. Are you amending your original motion for the language that you just provided?

Commissioner Tedder: Yes.

Chairman Hutson: If you would please read it again and we'll say and do it in the form of a motion. Then I'll ask Commissioner Dawson as the second if he's willing to agree to the revision. If not, we'll have to seek a second from someone else.

Commissioner Tedder: I make a motion to move forward with the temporary rule and that the definition of gravel be changed from the original motion to gravel, means a clean or washed, loose aggregate of small rounded water worn or pounded stones from a lower limit of .08 inches up to 3 inches in size and that gravel is not crushed stone or rock.

Commissioner Dawson: I would not second that.

Chairman Hutson: This is now an amended motion and that would need a second. (Commissioner Keen seconds the motion.) I will now place this motion open for discussion among the Commission. Do you have any Comments or questions?

Commissioner Carter: This is a highly technical question. It has nothing to do with the size. I just noticed in looking at the text in the change here, the built upon area that you've got a change in the (could not hear, needs to be closer to mike). Is there a reason for that?

Tracy Davis: It is a small oversight. I added an "or" in there when the actual statutory definition from that session law said "and". That's a supplemental change in the redline.

Chairman Hutson: Other questions or discussion?

Commissioner Rubin: This is temporary rulemaking and it will be revisited and discussed by staff. This is temporary rulemaking.

Chairman Hutson: Schedule wise what will happen is this is temporary rulemaking. If some proposal is adopted today will move forward under the procedures governing temporary rulemaking, which means there will be a hearing and comment period. It will come back to this Commission at our March meeting with the hearing and comment period having taken place for final action on whether or not to adopt the temporary rule. After that point if it's adopted it will go to the Rules Review Commission, be published in the Register and become effective probably sometime in late March or early April. At the same time, on a parallel track, work will be beginning to propose this as a permanent rule. That work in the early phases mainly consists of the preparation of a fiscal note. That will go through and the fiscal note will be prepared, reviewed by the Office of State Management and Budget. The permanent rule will come back to this Commission at its July meeting in the form of a proposal to proceed to public notice, comment and hearing on the permanent rule. So we will have another hearing and get comments, and like we've done with other rules it will then come back to the Water Quality Committee and then come to the full Commission. Anticipated schedule is in November for action on the permanent rule. The permanent rule does not have to be worded the same or identical to the temporary rule. We have the option of changing it at that point and time. So does that answer at least part of your clarification question, Dr. Rubin?

Commissioner Rubin: That answers the first part of my clarification question. Now may I follow up with this? You mentioned that this will go to hearing if it goes to a permanent rule and at that hearing there will be opportunity to get input from the regulated public.

Chairman Hutson: There will be notice and action. There will be a hearing on this temporary rule as well. It will be open for notice and public comment at both stages of the process.

Commissioner Rubin: Alright.

Chairman Hutson: Any other questions on process or how this will move forward?

Commissioner Tedder: This is kind of related to what Commissioner Dawson said. It's my understanding granted we are adding some clarification to the stormwater rules to interpret a legislative change. Whether I agree with that legislative change is a different matter. But the legislature, as my understanding, they are very aware that we're going through this process and

are not objecting us going through this process. They will be back in May if they don't like, I guess what we're doing in this process.

Chairman Hutson: I will say so that the factual record is known, the Study Committee that the legislative has established, has held various meetings with various stakeholders as well as those with expertise in the area. I was invited and attended one of those meetings within the last month or so. It was a two day meeting. Mr. Davis and his staff were there, legislative staff was there both from the Senate and the House and Representative Samuelson was there. The first day it included a discussion of technical issues, legal issues and policy issues. The second day included a field trip to various sites where they were using permeable pavement and they went to a quarry. I will say that Representative Samuelson told me this. She said when we got to the quarry she said can we see some of your gravel and they said we don't have any gravel here. In the industry they don't consider that subsequent to that, I had a telephone conversation with Representative Samuelson and she discussed what Mr. Tedder said that the Study Committee will be ongoing. This will come up for consideration at the short session. We do not know whether or not action will be taken. But it was my conclusion, the based on statements that she said, I won't put her exact words because I don't want to misquote her, but she recognized that this Commission should proceed with action that it deemed appropriate for protection of the environment in a manner that the regulated community and those employing the regulations could do so in a clear and understandable manner.

Commissioner Dawson: I appreciate everyone's indulgence with me today. I will try to wrap this up as far as this motion and what we are voting on this substitute motion. The biggest concern I have right now if we change what has been discussed with others, what was brought to the committee yesterday by the staff and if we change that, the projects that are going to be redevelopment projects that have gravel parking lots that want to become paved parking lots with rooftops or whatever, those projects will be considered grass turf wooded properties and they will have to prepare stormwater measures that if the definition that was brought to the committee yesterday, (the prior motion, if that were to pass). I don't know if I've ever really gotten a straight answer how the staff would interpret that, but my interpretation is unless your gravel meets that real fine gradation the rules would basically be applied for would be administered just like they were applied prior to the session law. That's my only concern. We can go either way. I'm fine with it but I think there's going to be some consequences that we're going to hear about, if we go with this alternate wording.

Chairman Hutson: I would just say in response to Commissioner Dawson that I would expect the staff to continue to apply the rules based upon what the rules would then say. If the material as you described on an existing unpaved parking lot does meet whatever the definition of gravel is under this motion, it would be considered built upon area and it would be subject to whatever the rules are for changes to the built upon area. Is there the possibility that there is an unpaved area out there that currently is considered built upon that under this new definition would no longer be considered built upon? That may be the case. I don't know if any of us know if that is the case, I would hope that comes up during the public comment period and we can adjust the definition at that point when this proposed rule comes to us in March for final adoption if that's how we decide to proceed. Mr. Davis I think you wanted to say something.

Tracy Davis: I think you've covered most of that without a definition as I stated in my comments, gravel would mean all stone is pervious and so everyone who had the existing built upon area, no matter what type of stone or material it was would be considered, like vegetated cover. If they wanted to redevelop on top of that we'd say, well it was impervious and built upon, with but no definition for gravel. It is now considered equal to vegetated cover so you'll have to provide stormwater controls to built upon your crushed stone parking lot. If we can get a definition for gravel or that defines gravel in the proper sense that it is pervious, I think you're right; we're going to go back to where we were which is going to say it's a pervious surface. You've already got it covered by existing stormwater controls. If you want to build upon that existing impervious surface no additional requirements are necessary. You can just let us know. You can proceed with your redevelopment. You're correct. We'll be back to where we started which we think is a good thing. We are working with folks on that all the time where we are without a definition puts the regulated community with uncertainty and they've had to spend more money and do other things to exist in areas they already had control. Now it's considered not control and has to be addressed. I hope that clarifies how we would apply.

Chairman Hutson: Other questions or comments?

Commissioner Wilsey: I know we have another motion on the floor. I just want to ask a question. We are only voting on or talking about the definition of gravel in the definition sections that we're changing. Because there are changes to the built upon area in that same document but those are already made because they have to match the statutes.

Chairman Hutson: The rule that will go out will include all of the changes reflected on that. Mr. Tedder's motion is to accept what the original proposal was with a change to the definition of gravel. So what will go out is a proposed temporary rule that would show changes to the definition of built upon area, the new definition of gravel and the change to subsection 27 which would eliminate the reference to compacted gravel.

Commissioner Wilsey: But the change to the built upon area definition is to make sure that we're consistent with the

Chairman Hutson: It is to match the statutory change that was made. Correct. Other questions or comments?

Hearing none we'll call a question on the motion made by Commissioner Tedder as stated to proceed with the public to proceed with the temporary rulemaking process on the changes to 2H .1002 of the North Carolina Administrative Code. The motion passed unanimously.

Mr. Davis, thank you. I believe Mr. Bennett and other members of your staff are here. Thank you for your work not only on behalf of the Commission but personally. Thank you for all your hard work on it.

That ends the action item portion of our agenda. We will now move to the information items and I asked Mr. Huisman to come back to make this presentation on the annual progress reports of the Tar-Pamlico River, Neuse River and Falls Lake agricultural rules. Mr. Huisman, thank you.

III. Information Items

14-01 Annual Progress Reports on the Tar Pamlico River, Neuse River, and Falls Lake Agriculture Rules

John Huisman: I'm here today to present the annual agricultural reports for the Tar-Pamlico and Neuse River basins as well as the Falls Lake watershed. These reports are prepared by the Neuse and Tar Basin Oversight Committees and the Falls Lake Watershed Oversight Committee as part of their implementation of the agricultural rules under the Nutrient Management Strategies in the respective watersheds. I want to give you a little bit of background to get some context for why we have these reports from Agriculture. I'll start off with the Neuse and Tar-Pamlico river basins. These two river basins are located at side by side. They stretch from the Piedmont region down to the coast. They're the second and third largest river basins that are wholly contained within the state of North Carolina and cover almost a quarter percent, a quarter of the state. They're very similar in soil type and the crops that are grown within those river basins. The one major difference, I would say is that the Neuse river basin is more developed than the Tar-Pamlico. There's more organization going on in the Neuse river basin than the Tar-Pamlico. Both have nutrient problems in their respective estuaries where they're not meeting their chlorophyll-a water quality standards in the estuaries as a result of high nutrient loading. As a result back into 1998 and 2001 the respective estuary's nutrient management strategies were passed to reduce nutrient loads to the actuary in order to meet those water quality standards. As I was discussing earlier these nutrient management strategies address both point and nonpoint but I'm here today to talk specifically about the ag rule implementation management strategies. In addition, as I mentioned earlier the nutrient management strategy in place for the Falls Lake watershed, that addresses point and nonpoint and there's an agricultural rule associated specifically with Falls Lake as well. In Falls the strategy is implemented through a stage development where we have reductions called for watershed-wide for the first stage and then from the upper watershed in Stage Two. I just want to point out that again the Falls Lake watershed is located within the Neuse River basin so there's a Neuse River basin ag rule and then there's the Falls Lake ag rule. The Neuse River basin ag rules are about getting the reductions to achieve standards in the estuary. The Falls Lake ag rules are about getting reductions to achieve the standards in the lake. All three of those waterbodies have been identified as impaired for the chlorophyll-a standard, the lake and the two estuaries. They each have a management strategy addressing point and nonpoint. There are different goals for each of those three strategies. Ultimately, they all want to reduce loading to achieve the chlorophyll-a standard but they have different percent reduction goals that I'll go over in a moment for each of those strategies. The Neuse and Tar-Pamlico rules have been in effect for some time back in 1998 for the Neuse and 2001 for the Tar-Pamlico, and more recently in 2011 for Falls. The dates for the implementation of the rules for the Neuse and Tar-Pamlico, I want to go over the specific requirements for those two river basins. Essentially the way that agriculture rules implemented is it's through this collective compliance approach. What that means is that the reduction requirements don't fall on each individual farmer. It calls for a reduction from agriculture as a whole. Essentially the numbers are tallied up on a county by county basis and we come up with an aggregate number for the entire river basin for reductions from agriculture. The goal in the Neuse and Tar-Pamlico is a 30% reduction in nitrogen loading relative to their respective baselines. Baseline in the Neuse is a 1991 to 1995 baseline and the Tar-Pamlico is 1991. There's an added phosphorus requirement in the Tar-Pamlico calling for no increase in

phosphorus load relative to the baseline year. The rules are implemented in both river basins through the formation of these Basin Oversight Committees and local advisory committees. They are these groups of the Basin Oversight Committee is an interagency committee representing different ag interests, the Division of Water Resources and the Soil and Water Conservation that help develop the tools, track progress and report the progress to the EMC. It assists farmers with the implementation. The local advisory committees eventually add interests at the local level with the Division of Soil and Water Districts and farmer representations from grow crop, pasture and operations. They're the ones that collect the data on the local level and the Basin Oversight Committee generates the reports for the entire basin that comes forward to you. In comparison I want to talk about the Falls Lake rule for agriculture that came into effect later in 2011. This does follow the same collective compliance approach as the Neuse and the Tar-Pamlico, but there're different reduction goals for Falls. As I mentioned earlier there's this two stage approach where stage 1 agriculture has to achieve a 20% reduction in nitrogen and 40% in phosphorus. Stage 2, they have the overall reduction of a 40% reduction in nitrogen and 70% in phosphorus. This is relative to a 2006 baseline. Similar to the Neuse and Tar-Pamlico there's a Watershed Oversight Committee for the Falls Lake watershed and local advisory committees that, again help develop the accounting tools, track and report progress and work with the farming community to implement the rule requirements. The way these reports are essentially generated is these river basin technicians that are funded in part through a 319 EPA grant and money from the Ag Cost Year Program. These technicians work with the local districts and LACUs and collect data on the county scale. The Division of Soil and Water resources works with them and comes forward to the Basin Oversight Committees that are made up from these different groups, and provides a report to the Basin Oversight Committee to review, approve and submit to the EMC to track the progress of implementation. As you can see the Basin Oversight Committees and the WAC, there's one of these forms for both the Neuse, Tar-Pamlico and Falls represent a wide range of different agencies in agriculture interests. They include environmental interests and different farming community interests. The way the accounting is done is that there are three different tools that have been approved by the EMC.

I'll talk about these tools in a little more detail in a moment. But the first is this cropland nitrogen loss tool which is called NLEW (Nitrogen Loss Evaluation Worksheet) tool that estimates nitrogen loss for cropland. There's also a phosphorus loss method that looks at qualitative indicators to characterize the risks of losing phosphorus from agriculture. In the Falls Lake watershed there's this additional tool that we use for pasture point system that assigns points for pasture land nitrogen loss. We won't be reporting on that today because the data that's used for that is in the ag census and the most recent data that we will need for 2012 won't be available until the next reporting cycle. I just wanted to make you aware of that accounting method as well. That first tool is that cropland nitrogen accounting tool, the NLEW tool. This is essentially just an empirical spreadsheet-based model that was developed by DWQ, NRCS and NC State research as well as other ag researchers. This tool estimates nitrogen loss from cropland, row crops. I just want to clarify. We're talking about nitrogen loss. This is edge of field nitrogen loss from the agriculture management unit. We're not talking about nitrogen loading to the water body. What they do is they run the tool for the county for the current crop year and compare that nitrogen loss to the nitrogen loss in that county in the baseline year, and see how much less nitrogen is being lost relative to the baseline. It's done for each of the counties in the basin and then we come up with an aggregate level for the entire river basin. The technicians are the ones who collect the data that gets clicked into this calculation and this data is

like the number of acres that are in the county of cropland, the types of crops being grown, the different amounts of fertilizer put down for those different crops and the BMPs that are implemented to reduce nitrogen loss. So essentially there are a couple of ways that get they get the reductions. It's from cropland going out of production to development, changing crops to lower nitrogen crops, applying less fertilizer or installing BMPs. That's already reflected in that NLEW tool and this table shows the results of the NLEW calculations for the Neuse River Basin. We're showing the estimated nitrogen loss reductions for each of those 17 counties in the Neuse. I'd like to show 2011 and 2012 side by side so you can see the progress. Overall on the bottom here you can see that agriculture (again, this is row crop agriculture) achieve 45% reduction in nitrogen loss relative to the baseline year in the Neuse River Basin. That exceeds their 30% reduction goal for agriculture under that rule. This is a similar table for the Tar-Pamlico River Basin. The Tar-Pamlico has 14 counties, and again the numbers for 2011 and 2012. The goal again in the Tar-Pamlico is 30% reduction and agriculture as a whole in 2012 is reporting a 46% reduction in nitrogen loss relative to baseline. As you can see there is some fluctuations in the percent reductions from year to year, and typically that's a result again of implementing BMPs and even more likely is the shifting of crops. Sometimes you have crops that are growing one year that use a lot of nitrogen and then the next year they rotate to a crop that uses less nitrogen. So you see these fluctuations from year to year. This final table shows the estimated nitrogen loss reductions for the Falls watershed. There're just six counties, again the 2011 and the 2012 numbers. In Falls the Stage One reduction for ag is 20% for nitrogen and they're reporting at 31% reduction relative to the baseline year exceeding that goal. As I mentioned earlier the Tar-Pamlico and the Falls watersheds also have that added requirement for phosphorus of no increase in nitrogen loss relative to the baseline in the Tar-Pamlico and then there's percent reduction goals for the Falls. Because of the way that phosphorus behaves differently than nitrogen in the environment, in fact in the early 2000s, a Joint Technical Committee was formed to develop an accounting method for tracking phosphorus. They determined that because of the unique nature of the way it behaves in the environment and the lack of data to quantify the loss in retention of phosphorus that the best method to track phosphorus was through a qualitative method that they developed and brought forward to the EMC that was approved in 2005. This qualitative method looks at nine different indicators that qualitatively assess the risk of phosphorus loss by characterizing the changes in land use and land management from the baseline year compared to the current crop year. This table shows those different qualitative factors for the Tar-Pamlico river basin, the factors here shown on the left, these nine factors. So you're looking at things like how much agriculture is there today compared to the baseline. Is there more or is there less?

So the numbers were generated for the baseline and we do it for each subsequent year, comparing the current year to the baseline to determine whether there was an increase or decrease in these factors, and whether they represent a positive or negative risk of increasing phosphorus loss relative to the baseline. These negatives here show that it represents a decrease relative to baseline. There was an increase in animal waste p and soil test p; so those were positive increase risks. So overall, the BOC found that the risk of losing phosphorus relative to the baseline had not increased. We do a similar process for the Falls where we're looking at the different factors and, again those are two of the factors that aren't really relative to the Falls watershed where there's not much in terms of this CRP, WRP restoration conservation practice up there and scavenger crop isn't a popular factor up in that watershed because of the type of agriculture that is done. But overall the Watershed Oversight Committee found that there was not an increase in the risk of phosphorus loss relative to the baseline in the Falls Lake watershed

as well using this qualitative approach. So in wrapping up, the BOCs and Watershed Oversight Committee have also included in the reports a statement, which is something we talked about yesterday. One thing that is of concern moving forward, as I mentioned, there's these river basin technicians and small water conservation staff that help collect the data and provide to the BOC to generate the report. Funding for these staff is critical but there has been lack of funds over the years because of, just a little bit of context, when the rules first came out for the Neuse, as I recall there was a lot of fishkills, attention in the press to the alga blooms, and the General Assembly passed legislature calling for the rules. They actually provided funding for 12 river basin technicians for the Neuse alone to implement those rules. But that only lasted for five years. Assuming back then the strategy would kind of finish up within five years but odds is that it would take a much longer time. Moving beyond those five years we've had to put together competitive grant funding for the different technicians and the Soil and Water Conservation position, and these funding sources have decreased over time and become increasingly competitive. So there are concerns about the sources of funding for these different staff moving forward, because if those staff doesn't have funding the responsibility of reporting to the EMC would fall back on the local advisory committees that operate on a volunteer basis, and obviously have other responsibilities. So that's something that the Division of Soil and Water is looking into and trying to find additional funding for their positions. They made the agency aware of it and continue to look because they want to make sure that agriculture continues to generate this report to bring forward to the EMC. Aside from that the Watershed Oversight Committees and Basin Oversight Committees will continue to work with the local advisory committees and the farmers to implement the rules and continue to promote adoption of BMPs in the ag community. These committees also meet periodically to review new data, new studies that would be incorporated into the accounting methodologies as we get better ideas of reduction for these different tools and update them along the way. Specifically in the Falls Lake watershed looking forward the Watershed Oversight Committee continues to meet with the Division of Water Resources as we work through some trading topics and trading opportunities for the implementation of the Falls Lake nutrient management strategy. So I know that was a lot of information for the three watersheds, but at this time I'm happy to answer any questions and clarify anything for you.

Chairman Hutson: Mr. Huisman, thank you for the presentation. Are there any comments or questions for Mr. Huisman on this?

Commissioner Rubin: On the two previous tables, phosphorus loss for Tar-Pamlico and the phosphorus loss for Falls Lake, you list soil test p medium and the unit is mg per kilogram. I just wanted to make sure that this is milligram per kilogram, and not MCDA soil test index values.

Mr. Huisman: I believe that is the milligram and kilogram. It's not index value. I will double check with staff on that to make sure. But it has been reported as milligram per kilogram.

Commissioner Rubin: If you're using MCDA soil test data their report is a phosphorus index value and those are numbers that I would typically see in some of the phosphorus index.

Mr. Huisman: I appreciate that. I apologize. It is the index value. This is Julie Henshaw who is going to be in Soil and Water Conservation. They help get the data from USDA. So I'll make sure that's correct, and I appreciate you bringing it up. It is the index value.

Commissioner Craven: It looks like some of the best news in the report is a result of this cropland conversion. Is that a trend that you expect to see continue? Or is this a trend that we expect to see reverse itself and move this back into culture production?

Mr. Huisman: There's a couple of different conversions that happened with agricultural land, that's conversion to grass and trees, and usually those are for fixed time periods. They're like common easements put off after these conservation practices. Then sometimes we see ag land just go into idle state for a while where it's taking on production. That will likely at some point come back and then there's conversion to development, which kind of moves into a different sector. The loss of ag land to these other sources, there is some fluctuation back and forth, I think to the grass and trees it is usually more permeable under these conservation easements. Idle land is definitely a fluctuating thing and then with development, that's more permeable that's moved off to a different sector.

Commissioner Craven: So acquisition of conservation easements over previous farmland would be categorized as cropland conversion to grass and trees, or was there another category in here for it; there's conservation tillage? When I read cropland conversion to grass and trees, to me that's a decision that a property owner or a farmer has made to put possibly into timber production when it was previously cropland, would turn it into pasture land that was cropland. Both of those are fairly reversible decisions for them.

Mr. Huisman: If it pleases the EMC there's someone here who can probably speak a little better to different programs that these fall under to get to your answer more clearly. That's ok?

Chairman Hutson: That would be fine. Just identify yourself and your position within the agency. Thank you.

Julie Henshaw: Good Morning. My name is Julie Henshaw and I work for the Department of Agriculture, Consumer Services, Division of Soil and Water Conservation, their nonpoint source planning, Section Chief. To speak a little bit about the cropland conversion data that's in the table before you, we only use information that's in upper lands that are active, state or federal cost share contracts. Those are term contracts. They're generally about 10 years and some are 15 years. Some may go to 30 year at length. We don't really account for perpetual conservation easement data based on methodology that the phosphorus Technical Advisory Committee developed and that's what we use to report. So it's contracts that are under state or federal cost share contracts.

Commissioner Craven: I appreciate the information.

Chairman Hutson: I have a question and thanks for the presentation. In each of those categories what's the incentive for the landowners. Is the state plan like us as I think I heard Ms.

Henshaw indicated? What's the incentive of the landowner to do the things that resulted in the positive results?

John Huisman: When the technicians or folks that are out there promoting different practices, I mean, there's also the water quality benefits, but I think they're told to the farming community, agriculture community the different benefits for their daily operations. Sometimes there's incentive payments involved in different land management things like conservation practices. Then with some of the different BMPs like water control structures about how things are operated on their farm. They sell the benefit to them in terms of just preserving the soil and nutrients on their land. There are the bigger picture things about contributing to the overall strategy but the BMPs are really sold to them, like what benefit can it provide for that farmer's particular operation. So we need those technicians to kind of look at the specific situation and make recommendations about what they can do. That kind of achieves both goals, helps out their operation and works towards this management strategy. Again, there's the cost share which provides partial funding so the farmer does not have to incur the full cost of it. Then there are other times where they receive incentive payments.

Commissioner Carroll: I noticed that the goal for the basis is an aggregated goal and historically looks like that some counties have improved and others have regressed. So in the cases where they've regressed do they have an obligation to remediate that?

John Huisman: When we see counties that are starting to dip down, and again, usually those are results in one given year that may have had a lot of acres of soybeans where they put little to no nitrogen down and then they convert it to corn crops where they're putting a lot more nitrogen down so we keep an eye on that. Usually the LACs and the technicians work with those communities, those counties when they see things dipped to try to promote additional BMPs to keep them moving forward. We anticipate fluctuations from year to year. But we certainly want to stem off any downward trends we see. So we tend to focus on folks that tend to fall below that line to make them more of a priority promoting BMPs in those counties.

Commissioner Keen: I like the aggregated thinking in regional and looking at the different parts of the counties and states in getting that kind of important data. But I guess just for comment on setting the baselines in 11 and 12 knowing that's post-recession going back and look at your baseline in 1996 up to 2002, and on into 3, 4, 5, 6 and 7 indicating that there is a great recession then that December '07 up to 2011, possibly indicating that the breakdown in numbers...percentage statistics of the state, the data may be false indicators moving forward if you don't recognize that there was a four year period that there was no agriculture release because of development, because of recession. You're looking at the breakdown as the pluses and minuses as we move forward except just 11 and 12 passing, you might want to use previous and pre-recession of 5, 6, 7 and 8, and then look at 2012, 13, 14, or something like that.

John Huisman: The economics factor definitely plays a large role in the trends over time.

Commissioner Keen: It is in reference to rural area vs your open areas that are predominantly in the Piedmont, somewhat in the west and some in the east too.

Chairman Hutson: Any questions or comments for Mr. Huisman? Hearing none, Mr. Huisman, I thank you for the presentation. Ms. Henshaw, I thank you and we would also hope that you would also extend thanks from the Commission to all the staff and the volunteer organizations that have been working on this and generating the data, and other information that goes into this report. It's very useful and we appreciate your efforts very much.

John Huisman: Thank you.

Chairman Hutson: We will now move to our next information item which is information on 14-02, an update on the nutrient criteria development plan, Dianne Reid from the Division of Water Resources. Welcome Ms. Reid.

14-02 Nutrient Criteria Development Plan

Dianne Reid: Thank you. I'm here to give you an update on the development of the North Carolina nutrient criteria development plan. For those of you that weren't here for the November EMC meeting, the North Carolina nutrient criteria development plan, also referred to as the NCDP is the requirement of the division's EPA water quality program grant under section 106 of the Clean Water Act. Nutrients here are nitrogen and phosphorus. Nutrient over-enrichment can cause nuisance and harmful growth of aquatic plants like alga and can lead to fishkills, and to taste and odor problems for drinking water facilities. Nutrient criteria are part of the water quality standards and can be developed for causal variables like nitrogen or phosphorus, and/or for spot variables like algae or dissolved oxygen. They can be expressed as numerical concentrations and/or mass quantities or loadings, or can be expressed as narrative statements with a translator mechanism to derive or calculate numerical concentrations and/or those mass quantities or loadings. The plan's being updated based on stakeholder input including EPA Region IV input. Specifically the updates include prior waterbodies, stakeholder involvement, shorter timelines and includes consideration of management strategies and implementation throughout the process. The plan lays out broadly what we will be doing over the next few years to develop nutrient criteria and three prioritized waterbodies. Those waterbodies were chosen based on current activities and interests, and cover several ecosystems within the state. They are High Rock Lake which is in the Yadkin river basin near Salisbury where the division has been working with the stakeholder base Technical Advisory Committee since 2005 to address exceedances of the chlorophyll-a standard which is a measure of the response to nutrients. At the second location, Albermarle Sound in northeastern North Carolina where there is great interest by the Albermarle Pamlico National Estuary Partnership in development of quick nutrient criteria to protect and enhance the sound. Thirdly, we're looking at the central Cape Fear River below the Randleman and Jordan reservoir dams down to Lockard Dam #1. This area is experiencing alga-blooms at various dams and in the Rocky River watershed. The Middle Cape Fear Basin Association, Western Water Treatment Plant, Nature Conservancy and the Rocky River Heritage Foundation are very interested in partnering in this water. Through the proposed Technical Advisory Committee and stakeholder groups, management strategies and criteria will be developed for consideration by the EMC based on the uses of the waters and cost benefit analyses. Regular updates to the EMC are going to be provided through the process. Implementation of the plan is expected to require an equivalent of two to three full time staff in the division. As I noted earlier any criteria developed would come to the EMC for approval to

go to rulemaking. This revised draft plan is going to be sent out for interested public via email and posted on our webpage beginning approximately the week of January 20th. We'll take comments for about three weeks and finalize the document to send to EPA Region IV by February 28th. Our goal is to have concurrence by EPA by the end of April at which time we will begin full implementation of the plan. Currently our work plans are being updated, individual work plans of staff are being updated to include the activities to support the implementation of the plan. That's my update and I'll be glad to entertain any questions.

Chairman Hutson: Any comments or questions on this for Ms. Reid? Hearing none, thank you; Ms. Reid and the staff that has been working on this project.

We'll now turn to our last information item which is the update on the Special Air Permit Appeals Committee and a pending matter that will come before us. Under the Clean Air Act we are required as this Commission as part of the state implementation plan to have a committee established to handle appeals of the air permits. We had previously circulated to everyone a certification form so that we can make up the composition of that after we adjourn today. We have blank forms for those of you who have not filled them out yet. We have one pending case that is out there and I will ask our Counsel to describe this requirement that we have as to the timing of our action. If you would, Ms. Lucasse?

14-03 Update on Special Air Permit Appeals Committee – Parties Agreed to Extend Date for Final Agency Decision to May 9, 2014

Mary Lucasse: Thank you. I just wanted to let you all know that the parties have agreed to extend the date of the final agency decision in that case to May 9, 2014. So by the March meeting we will need to have our Special Air Permit Appeals Committee up and running. I'm in the process of working with Lois Thomas and my paralegal to get the record ready for the committee members' review. It looks like it will be large but not as large as some of the things the EMC has seen in the past. So we understand that there will be a need for the committee members to have enough time to be able to review the record, and we will do our very best to make sure that you have the time that you need. I would just reinforce what the Chairman said about the certification form. We've just redone the process to appoint the committee members. That's something that the revised procedure was put into effect December 22, 2013. I apologize to the extent that it might not have been as clear as we would have liked to have been. The disclosure form was a four page and I say disclosure. It's a certification and disclosure. The Chairman has asked every member of the EMC to fill it out, regardless of whether or not you can attest to not having a potential conflict of interest. We're trying to collect the data from everyone. As you fill out the form there's one section in particular that's been confusing, I think, to people, and this is on the last page where you're asked to initial the applicable sections. As you go halfway down there's a phrase, "I am not aware of any potential conflict of interest." That coded to term is one of the defined terms on page 3. There are several others as well. People have a tendency to initial both. That, "I am not aware" as well as the second line right after that line says that "I am aware." This is a situation in which we wanted you to pick one or the other, and I think that this form was not particularly clear. I apologize for that. So for that reason we have some people that have filled out the form already that will need to redo the form, and so I would just ask each Commissioner, perhaps to check with me as you head out. We have six people who are set. The rest of you need to complete the form and I have copies of the form

right here. So please check in before we do the remissions work and I'll talk you through it if there are any questions. We fully anticipate that there will be those of you who do the disclosures who will be aware of potential conflicts and we're trying to visit that information as well as the information about people who don't have any potential conflict. So thank you for that. If you have additional questions I will be glad to answer those now or later.

Chairman Hutson: The case that will be coming forward to us for consideration by this committee in March, I don't have all the particulars but Titan Cement Plant case coming out of New Hanover County. The EPA, the Clean Air Act, requires that a certain, that a majority of the committee that is appointed represents the public interests and does not derive a significant portion of its income from sources that are subject to the Clean Air Act permits. All of the lawyers on here do not meet the standard for representing the public interest as in the term it is defined. The reason I need these forms filled out today is within the next week I will appoint the committee that will hear that appeal in March, so we can get the record out to them. The decision of that committee on the appeal will be the final decision. It does not come before the full Commission. So we will schedule a time in March. Anyone who is appointed to that committee, please recognize you will be acting in what is called a quasi-judicial capacity; which means you cannot have ex-parte contacts with any of the parties in the case. You're basically sitting as a judge in the case. Your consideration of the case will be limited to the information contained in the record that is presented. The committee hearing that will be held that day will include presentations by the counsel for the parties, much like you would see in the Court of Appeals hearing. So there will be a certain allotted amount of time for each party, and some time reserved for rebuttal. The committee then does not retire into closed session. We sit here in open session, discuss the case and render a decision with regard to that. We'll get more direction from Ms. Lucasse at the time that committee meets. The intention, probably, is to schedule that committee meeting for the Wednesday prior to the March meeting. We are under a statutory deadline to have a decision rendered in that case by May 9. The reason it's considered in March is May 9 falls before our May meeting, and out of convenience to the members, we're trying not to schedule a special meeting. Are there any questions about that? Please check with Mary. We'll have a break before we go into the very short, one civil penalty remissions. One committee matter that we have to consider is to get these forms filled out so we can get this committee constituted.

We'll go to concluding remarks. Any Commission members have any concluding remarks?

Commissioner Carter: I would just note following up from our Air Quality Committee meeting yesterday. The matter that we had originally anticipated which will come back to the Commission this session is the revisions to the air toxics rules. The director announced that they're still working on those revisions and they will be back to us at the March meeting.

Commissioner Dawson: I was curious on temporary rulemaking. Is there a fiscal note that goes with that?

Chairman Hutson: There's no fiscal note requirement for the temporary rulemaking. There's a fiscal note requirement for the permanent rulemaking.

Commissioner Dawson: Thanks

Chairman Hutson: Any further comments by Commission members? Alright; Director Holman, any comments, or any comments, Director Reeder, counsel?

Mary Lucasse: Nothing further. Thank you all.

Chairman Hutson: Let me just update you on one thing that was considered at the last meeting. Do you remember we adopted the rule changing the ambient air limit for arsenic? At that meeting what happens after that is that the rule goes before the Rules Review Commission (RRC). Under the law if ten people file letters objecting to the rule, it then goes to the General Assembly the next time they meet, and the General Assembly can either take action, which means the rule comes back to us, or if they don't take action the rule remains in place. With regard to the arsenic rule, 16 letters of objection were filed with the RRC. Under the statute with the RRC was you did not have to state the basis for the objection; you just have to state, I object to the rule. So that rule has not gone into effect yet. It will have to wait until the conclusion of the General Assembly short session or they will convene in May. Anticipation is it's going to be a short session. So it will probably, at its earliest, that change will be sometime in July would be when it goes into effect, and we'll report back on that action or inaction by the General Assembly.

Commissioner Tedder is there anything else you've got for the Water Quality Committee?

Commissioner Tedder: There are a few items the committee did hear yesterday. There were two various requests for the approvals for the Neuse riparian buffer rules. Those were approved and also the committee sent forward the first round of rules review will be taking the place as per House Bill 74. I guess at the March meeting will be coming forward for the classification part of it, which will be the .02B, .02H, .02T and .02U rules.

Chairman Hutson: Anything else regarding the Air Quality Committee?

Commissioner Carter: No Mr. Chairman.

Chairman Hutson: I'll just point out two other things from the chairs. To bring to your attention, next Thursday the Rules Review Commission will have a public hearing on these proposed rules for the implementation of the Regulatory Review Act of 2013 and I will be in town. I plan to attend that meeting to see if I do offer comments, I will offer them in my personal capacity and not on behalf of the Commission. I don't feel it's appropriate to offer comments unless the full Commission has endorsed what I'm going to say. Secondly, next week I will be presenting before the Legislature's Environmental Review Commission. The chairman is required to report to that Commission which is made up of both Senate and House of Representatives on activities that occurred by the EMC during the previous quarter. So it will be covering the September through December timeframe; although, I'll touch on some of the other things that will be going on. I've got a powerpoint presentation and I will make sure that gets posted on the website so that you all have access to it, and I'll report back at the March meeting as to whether or not there were any comments, questions or items of significance from that. Other than that, if anyone else has anything you may come before the Commission at this time.

If not, I will declare the meeting adjourned at 1:45 p.m.

(NOTE: Attachments are on file in the Division of Water Quality with the Official Minutes.)

Lois C. Thomas

Lois C. Thomas, Recording Clerk

By Commission Members
By Directors
By Counsel
By Chairman

Adjournment AG01-09-13