

**NORTH CAROLINA  
ENVIRONMENTAL MANAGEMENT COMMISSION**

**Minutes of the September 9, 2021 Meeting**

The North Carolina Environmental Management Commission meeting was held in-person and virtually in the Ground Floor Hearing Room of the Archdale Building at 512 N. Salisbury Street, Raleigh, NC. The meeting was an in-person and virtual meeting held on Thursday, September 9, 2021. Limited seating was available to the public and a link was provided for those who attended virtually.

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**Meeting called to Order: Dr. Stan Meiburg, Chair**

**The meeting was called to order by teleconference at 9:00 a.m. with Chair Meiburg presiding.** General Statute § 138A-15 mandates that the Chairman inquire as to whether any member knows of any known conflict of interest or appearance of conflict with respect to matters before the Commission. If any member knows of a conflict of interest or appearance of a conflict, please so state at this time.

**Present:** 13 – Dr. Stan Meiburg (Chairman), Dr. Suzanne Lazorick (Vice-Chair), David W. Anderson, Yvonne Bailey, Shannon Arata, Charles Carter, Donna Davis, Marion Deerhake, Pat Harris, Steve Keen, John McAdams, Maggie Monast, J.D. Solomon

**Others Present:** Commission Counsel Phillip T. Reynolds

**I. Preliminary Matters**

**Chair Meiburg** welcomed Chris Duggan and Jennifer Kelvington. Chris Duggan stated he enjoyed the committee meetings and was looking forward to the point when he could participate.

Jenny Kelvington indicated that she was looking forward to working on the Commission and opportunities ahead.

**Chair Meiburg** introduced Elizabeth Biser, Secretary of the Department of Environmental Quality. He indicated that Secretary was an alumnus of the Department, and she had previously served as the Director of Legislative and Government Affairs. She was the President of Biser Strategies and a senior policy advisor of the recycling partnership, Vice President of policy and public affairs for the recycling partnership. She was the Government relations and policy advisor for Brooks, Pierce, McLinden and Humphrey, LLP and an alumnus of the University of North Carolina at Chapel Hill. She has both a Bachelor and Masters' degree from UNC Chapel Hill. He stated that she was very familiar with the landscape of environmental protection in the state. He reported that she had been confirmed overwhelmingly by the Senate and was, therefore, in place, fully confirmed. He asked for remarks from Secretary Biser.

Secretary Biser was thrilled to be back at the Department and indicated that she was looking forward to working with the EMC to further the work of the Department. She expressed how much she appreciated the time and effort that they give to the Commission and to the State of

North Carolina. She also stated that together, they could build on the great work of the last four years to advance their efforts in protecting public health, the environment and the economy. She stated that one of the key challenges of the Department and also for the State, was the emerging compounds like PFAS and that challenge has to be addressed with a comprehensive policy, regulatory approach and ensure that all of their actions, both short term and long term, work as part of a larger strategy protective of the residents, their health and natural resources. She said that emerging compounds represented a way of their business that has fundamentally shifted. She indicated that this issue was an evolving one and was going to require a lot creative problem solving and innovative thinking.

She has challenged the teams here at DEQ to assess their approach to emerging compounds. We've been a leader on this issue, and we must continue to speak strategically and avail ourselves of the best available science to make sure that we are protecting public health in the environment from the danger that these compounds pose. Given the events of the last few weeks, resilience is another issue. Secretary Biser commented that she hoped to work with the EMC as they modernize processes that would provide regulatory certainty in environmental protection for clean air, water and the management of waste. She mentioned the permit transformation project, which was an effort to put all permitting processes on-line. She thanked the Commission for their service, the perspective and guidance that they provided to DEQ and to the State of North Carolina.

**Chair Meiburg** asked if any of the Commission members had any questions. There were no questions and the Commissioners welcomed Secretary Biser.

1. Regarding approval of minutes **Commissioner Anderson** made a motion approve and the the May 13<sup>th</sup> minutes and **Commissioner Bailey** seconded. The minutes were approved unanimously.

**Commissioner Davis** made a motion to approve the July 8, 2021 minutes and **Commissioner Anderson** seconded. The minutes were approved unanimously.

The July 13, 2021 minutes were deferred until the November 18<sup>th</sup> meeting.

## **II. Action Items**

### **21-22 Request Approval of Updated, Revised Draft Water Supply Watershed Protection Ordinance**

Paul Clark, Stormwater Program presented this item. He indicated that the EMC had several questions. Many of these pertained to local government related issues. EMC requested that the UNC – School of Government (SOG) review the draft model ordinance and provide input prior to EMC approval. The UNC-SOG has local government expertise and experience with helping to develop the first WSWP ordinance. Paul Clark agreed to share draft model ordinance with UNC-SOG for their review. After incorporating UNC-SOG review comments, Paul Clark will seek EMC approval of draft model ordinance in 2022.

**Chair Meiburg** recommended that NCDEQ-DEMLR share draft model ordinance with UNC-SOG for their review prior to EMC approval and stated that a motion was not necessary.

### **21-23 Request Approval of the 2021 Pasquotank River Basin Water Resources Plan**

Forest Shepherd with DWR's Basin Planning Branch presented the 2021 Pasquotank River Basin Water Resource Plan. The presentation highlighted portions of the nine-chapter plan addressing water quality and quantity in this northeastern North Carolina river basin.

**Commissioner McAdams** and **Chair Meiburg** provided positive comments regarding the plan and associated materials. **Commissioner Solomon** asked about aquifer storage and recovery (ASR) projects in the Pasquotank River basin. Staff responded that they did not know of any ASR projects in this river basin. **Commissioner Deerhake** commented on the rising trend in annual mean water temperatures in the White Oak River and Pasquotank River basins and advocated for future monitoring and analysis to look for correlations with temperature, bacteria, and algal blooms.

**Commissioner Harris** made a motion to approve the 2021 Pasquotank River Basin Water Resources Plan and **Commissioner McAdams** seconded the motion to approve. The Pasquotank River Basin Water Resources Plan was approved unanimously.

### **21-24 Request Approval of Hearing Officer's Report on Proposed Rule Amendments to 15A NCAC 02L .0202 Groundwater Quality Standards**

(This item was removed from the agenda.)

### **21-25 Request for Approval to Proceed to Public Notice and Hearing with Proposed Permanent Rules 15A NCAC 02H .1401-1405 "Discharges to Federally Non-Jurisdictional Wetlands and Federally Non-Jurisdictional Classified Surface Waters" and Permanent Rule Amendments for 15A NCAC 02H .1301 "Discharges to Isolated Wetlands and Isolated Waters: Purpose and Scope"**

Sue Homewood began by providing a summary of the topic, provided additional information on issues that arose during adoption of the temporary rules related to this item. Ms. Homewood then presented the information that the Division used to draft the permanent rules, the regulatory impact analysis, the draft permanent rules and the proposed timeline to ensure the permanent rules are adopted prior to expiration of the temporary rules. **Commissioner Keen** appreciated the work put into answering the questions and concerns related to the mapping issue but continues to believe that making maps available is essential. **Commissioner Solomon** noted that he had comments about the rules and the RIA but that they were probably not significant enough to derail moving forward currently.

**Commissioner Harris** made a motion to approve these rules to go to public notice and hearing. **Vice-Chair Lazorick** seconded the motion. The motion passed 11 votes in favor, 1 vote against.

**Commissioner Solomon** stated that he still thought this was outside the EMC purview and was premature and this should be reviewed by the legislature. **Commissioner Carter** asked what had been the experience so far in the temporary rules? Why had there only been two applications? Ms. Homewood responded that the thresholds in the temporary rules were very high and most

projects were able to proceed without review and approval from DWR under the temporary rules. **Commissioner Carter** asked if the thresholds in the permanent rules were lower and Ms. Homewood responded that they were. **Commissioner Solomon** stated that he thought this would have a big impact on NCDOT. **Commissioner Carter** indicated that he thought that they needed public input.

**Commissioner Harris** made a motion to approve these rules to go to public notice and hearing. **Vice-Chair Lazorick** seconded the motion. The motion passed 11 votes in favor, 1 vote against.

## **21-26 Review Draft Coastal Habitat Protection Plan 2021 Amendment with Recommended Actions**

Anne Deaton, Division of Marine Fisheries, and Jimmy Johnson, Albemarle-Pamlico National Estuary Partnership gave a presentation on the recommended actions included in the draft Coastal Habitat Protection Plan. Jimmy Johnson provided background on the value of coastal fish habitats, not only for fish production, but for ecosystem services they provide, such as flood and erosion control, and water quality filtration. Anne Deaton reviewed the recommended actions under each of the five issue papers, focusing on those that will involve Division of Water Resources (DWR) or Environmental Management Commission (EMC). They asked the EMC for approval to take the draft plan out for public comment.

Recommendations under the “SAV Protection and Restoration through Water Quality Improvement” issue paper call for working with the DWR staff and Nutrient Criteria Development Plan Scientific Advisory Council to determine and recommend water quality standards for water clarity. Other recommendations involve monitoring and developing a plan to encourage increased use of nature-based Best Management Practices (BMPs) to improve water quality. The “Wetland Protection and Restoration through Nature-based Solutions” issue paper includes recommendations to obtain updated wetland maps in the coastal plain to assess change by wetland type, and prioritize where restoration, conservation of marsh migration routes, and other nature-based strategies should focus. The issue paper “Environmental Rule Compliance to Protect Coastal Habitats” has recommendations to reduce unauthorized impacts to 401 wetlands and non-compliant engineered stormwater structures through securing additional positions in DEMLR and DWR for compliance inspections and outreach. The Wastewater Infrastructure Issue Paper includes recommendations to prioritize coastal areas in need of infrastructure improvement for grants and loans under the State Water Infrastructure Authority to protect high quality waters important to fisheries, and to develop incentives to encourage improved maintenance of wastewater collection systems. Finally, the issue paper “Coastal Habitat Mapping and Monitoring to Assess Status and Trends” includes recommendations to develop a set of indicator metrics to evaluate each habitats status and trends.

**Commissioner Bailey** made a motion to take the Coastal Habitat Protection Plan 2021 Amendment out for public comment and **Commissioner Keen** seconded the motion. The motion passed unanimously.

**21-27 Request Approval to Proceed Public Hearing on 15A NCAC 02L .0100**  
**“GROUNDWATER CLASSIFICATION AND STANDARDS – General Considerations”**

Rick Bolich, DWR Groundwater Section requested approval to proceed to public hearing for proposed amendments to 15A NCAC 02L .0100 “Groundwater Classifications and Standards – General Considerations”. The purpose of the rule-making is to incorporate changes required by Session Law 2018-114 Sections 19.(a)–(e) and 19.1(a)-(e) and Session Law 2020-74 Section 17.1(a)-(e). A summary of the proposed changes to the 15A NCAC .0100 Rules were presented to the commissioners. A fiscal analysis of the proposed rules indicates that no fiscal impacts will be incurred.

**Commissioner Bailey** made a motion to vote to proceed to Public Hearing on the rules was **Commissioner Arata** seconded the motion. The motion passed unanimously.

**21-28 Request Approval of the 2021 Annual Report on the Progress in Developing and Implementing Basinwide Water Resource Management Plans to the Environmental Review Commission (ERC)**

Michelle Raquet, DWR’s Basin Planning Branch presented the 2021 Annual Report on Basinwide Water Resource Management Plans to the Environmental Review Commission (ERC). G.S. 143-215.8B requires the Environmental Management Commission and the Department of Environment Quality to annually report progress on development and implementation of basin plans to the General Assembly. G.S. 143-355(p) also directs the Department to report progress on development of basinwide hydrologic models in the annual report. The report addresses activities occurring between July 1, 2020, and June 30, 2021. Ms. Raquet requested EMC approval of the 2021 Annual Report.

**Commissioner Harris** noted that the report was approved unanimously by the Water Quality Committee on September 8<sup>th</sup>, 2021. She also noted that many committee members expressed their appreciation for the value of the report and the summary of water quality concerns it provided in basin plans that were updated during the past year. **Commissioner Solomon** complimented the report and expressed interest in a more detailed evaluation of nitrogen species and how they be may contributing to recurring algal blooms. Ms. Raquet and Ms. Nora Deamer of the Basin Planning Branch indicated that basin plans include a breakdown of nitrogen species when available. Ms. Deamer further explained that recommendations in the Chowan and Pasquotank basin plans include monitoring for nitrogen species to help identify potential pollution sources and better target implementation of best management practices. Commissioner Solomon asked which nitrogen species are being collected. Ms. Deamer responded that DWR monitors nitrate, nitrite, ammonia, and organic nitrogen. DWR does not currently monitor dissolved nitrogen and relies on researchers to identify the dissolved portion of total nitrogen (TN) in the system. **Chair Meiburg** commented on the need for more data and expressed his appreciation for the progress made on updating basin plans and hydrologic models.

**Commissioner Harris** made a motion to approve the 2021 Annual Report on Basinwide Water Resource Management Plans to the Environmental Review Commission (ERC) and **Commissioner Deerhake** seconded the motion. The motion was approved unanimously.



**21-29 Request for Approval of Proposed Rule Revisions and Regulatory Impact Analysis and to Proceed to Public Hearing on the Amendments to Nitrogen Oxide State Implementation Plan Rules, 15A NCAC 02D .1400 (552)**

Bradley Nelson, DAQ was recognized to present this item. He requested Commission's approval to proceed to public comment and hearing on proposed amendments to 15A NCAC 02D .1401 and .1402 and the proposed adoption of 15A NCAC 02D .1424 and .1425. These amendments will allow the State to comply with the statewide ozone season budgets for EGUs and large non-EGUs and to satisfy the anti-backsliding requirements of 40 CFR Part 51. In addition, the amendments include the NOx SIP Alternative Monitoring Rule finalized by the EPA which provides states with flexibility to allow large non-Electric Generating Units (EGU) subject to the NOx SIP Call the ability to use alternative monitoring methods other than 40 CFR Part 75 monitoring requirements to demonstrate compliance with the state's NOx SIP Call budget.

A fiscal note was submitted to and approved by the Office of State Budget of Management (OSBM) to reflect economic impacts to the regulated community and local and state agencies. The DAQ estimates the total impact to the facilities to be \$43,076 in the first year with recurring costs of \$25,190 annually thereafter. The DAQ will spend approximately \$7,500 in each of the first two years to complete permit modifications.

**Commissioner Arata** moved to approve going to public comment and hearing and **Commissioner Bailey** seconded the motion. The motion passed unanimously. Staff was given permission to request a DAQ staff member to serve as hearing officer.

### **III. Concluding Remarks**

By Directors (*Comments*)

#### **Committee Chairs**

**Chair Arata** reported that the Air Quality Committee heard two action items. The first rule set was on Title V Rule Revisions based on specific comments the EPA made. There was one piece that is still being worked out and discussed. They hope to have some clarification on that by the time the rule set comes before the full commission. The Committee did vote to send that rule set forward. The Committee also heard the sewage sludge incineration units rule technical corrections and those corrections were also made pursuant to EPA comments and will be coming forward to the Commission at its next meeting. She encouraged everyone who looked at the ambient information reporter tool to do that and stated that it was a great tool and easy to use.

**Vice-Chair Harris** reported that the Water Quality Committee did met, and the agenda included two action items, one information item and a DWR report by Director Smith. All Committee members were in attendance. The Commission took action item and the 2021 Annual Report on the Progress in Developing and Implementing Basinwide Water Resource Management Plans to the Environmental Review Commission. The second action item was a request to proceed to the EMC with the 20-21 White Oak River Basin Water Resources Plan. The Committee passed that action unanimously and the request would proceed to the full EMC for consideration at the November meeting. One information item was heard and approved by the EMC regarding the Draft Coastal Habitat Protection Plan 2021 Amendment with recommended actions to go out to

public comment. She acknowledged thanks to DWR staff, Karen Higgins and Adriene Weaver for their continued support to the Water Quality Committee and a special thank you to WQC **Chair Deerhake** for her continued guidance.

**Chair Bailey** reported on the Groundwater and Waste Management Committee. They had one action item which the Committee approved to proceed to the EMC for public notice and hearing on to Amendments to 15A NCAC 13B Rule .0832 “General Provisions” for Septage Management. That was approved and then the meeting was adjourned.

**Chair McAdams** reported that the Water Allocation Committee did not meet. He stated that their meeting in November depended upon, in part on whether Fuquay-Varina would come through with their inner basin transfer request with the environmental impact statement to get that going.

There were no comments from the Commissioners.

**Chair Meiburg** noted for the record to Chris Duggan and Jenny Kelvington that they could predict a little bit about the agenda for the next meeting by what’s coming out of the committees. He asked EMC Counsel Reynolds for his comments at this time.

Counselor Reynolds provided the Commission with two updates. In January of 2021, they heard a petition for declaratory ruling by Eagle Transport. That petition was denied for good cause shown and it was appealed. There were several issues that were considered by the court, which several of them you were successful on. One of them ultimately the court decided to remand the matter back to the Commission for a decision on the merits. He stated he would be glad to talk with any individual Commissioner about that if they have any questions. He gave an update on it because they were considering an appeal right now; the Solicitor General’s Office is. If they decide not to appeal or decide an appeal is not appropriate at this time, it would be coming back to the Commission at the November meeting to be considered issuing a decision on the merits.

He gave a brief update on the continuing litigation about the Special Order of Consent with the City of Greensboro for continuing settlement negotiations in that matter. Recently the Administrative Law Judge agreed to extend the date for the hearing from December 6<sup>th</sup> to late January. He commended and thanked **Commissioner Deerhake** who had been intimately involved in all the litigation to this point and would continue to be so.

**Chair Meiburg** welcomed the prospective new members of the Commission and stated that in some ways this was representative of a meeting and showed the variety, depth, importance and significance of all the issues facing the State. He indicated that he is looking forward to welcoming Commissioner-to-be Duggan and Commissioner-to-be Kelvington to joining the deliberations of this Commission. He expressed appreciation to Secretary Biser for her appearance at the meeting. He noted that while this was not related to the litigation, in the July 13<sup>th</sup> meeting they discussed the 1,4 Dioxane levels that had been reported in the City of Greensboro and he reported that the Department had been following up vigorously. He stated that he expects that they will hear more about that in future Commission meetings.

With no further business before the Commission, the **Chairman** adjourned the meeting at 12:30 a.m.

Approved this 18<sup>th</sup> day of November 2021.

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Dr. A. Stanley Meiburg, Chairman  
Environmental Management Commission

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