

**NORTH CAROLINA  
ENVIRONMENTAL MANAGEMENT COMMISSION**

**National Pollutant Discharge Elimination System (NPDES) Committee Minutes**

**September 9, 2020**

The NPDES Committee held a virtual meeting on Wednesday, September 9, 2020. The NPDES Committee meeting audio and presentations were broadcast via the state web conferencing link posted on the North Carolina Environmental Management Commission (EMC) website at <https://deq.nc.gov/about/divisions/water-resources/water-resources-commissions/environmental-management-commission>

The meeting was called to order by teleconference at 1:00 p.m. with Chair Deerhake presiding. She provided the notice required by N.C.G.S. § 138A-15(e).

<b>NPDES COMMITTEE MEMBERS IN ATTENDANCE</b>	
Marion Deerhake (NPDES Chair)	Mitch Gillespie
Patricia Harris (Vice-Chair)	John McAdams
Charles Carter	Maggie Monast
Dr. A. Stan Meiburg (EMC Chair), Ex-Officio	

<b>EMC MEMBERS &amp; COUNSEL IN ATTENDANCE</b>	
Dr. Suzanne Lazorick, EMC Vice-Chair	Mr. Phillip Reynolds, Counsel
David Anderson	

<b>OTHERS IN ATTENDANCE</b>	
Connie Brower	Danny Smith, DWR Director
Sergio Chernikov	Lois Thomas
Julie Grzyb, NPDES Section Chief	

**I. Preliminary Matters**

The meeting was called to order at 1:00 pm with Chair Deerhake presiding. She took a voice roll call of the members in attendance and confirmed a quorum existed.

**Chair Deerhake** read the State Government Ethics Act - G.S. 163A-159(e) “Conflicts of Interest” notice. No Committee members responded that they had a conflict of interest with any action or information item on the meeting agenda. There were no conflicts of interest.

## II. Action Item

### 1. Request for Approval to Publish Notice of a Public Hearing and Comment Period for the Proposed Removal of the Variance for Color related to the Blue Ridge Paper Products, LLC NPDES Permit.

**Chair Deerhake** recognized EMC Counsel Phillip Reynolds to explain the purpose of the meeting and the variance review process.

Counsel Reynolds explained that the NPDES Committee is a standing committee of the EMC. The Committee was dissolved a few years ago but the request from Blue Ridge Paper Products made it necessary for EMC Chairman Meiburg to re-establish the Committee and appoint members. Counsel Reynolds stated that the U.S. EPA treats a water quality variance-related action such as the one before the Committee as a change in standard. Therefore, the EMC's Water Quality Committee members would be appropriate members to serve on the NPDES Committee. However, he explained that given the nature of the NPDES Committee, there are specific rules and requirements regarding conflicts of interest. Therefore, WQC member **Commissioner Donna Davis** could not serve on the NPDES Committee because she was affiliated with Stanley County which holds an NPDES permit.

Counsel Reynolds said the agenda item was quasi-judicial in nature, meaning the Committee must make a decision based on the record. He explained that the Committee was not being asked to make a final decision at the September 2020 meeting. He stated that the permit and specifically the color variance had been an issue of interest for a number of years, and the last time the variance was considered was by the NPDES Committee was 2010. At that time, there was litigation regarding both the NPDES permit and the variance. He closed by saying that before the Committee makes a final decision about the variance removal request, the proposed decision must be noticed for public comment.

**Chair Deerhake** explained that the Division of Water Resources (DWR) was concurrently reviewing the Blue Ridge Paper Products NPDES permit renewal request. DWR's Division Director is delegated authority to make NPDES permit decisions. However, NPDES permit variance decisions historically have been the responsibility of the EMC NPDES Committee. Blue Ridge Paper's variance has allowed the facility to exceed the narrative color standard in its wastewater treatment effluent discharged into the Pigeon River. The color variance was granted and renewed over the years on the condition that Blue Ridge Paper study, develop, and implement an effective color reduction technology. During the ongoing NPDES permit renewal process, Blue Ridge Paper requested removal of the color variance, explaining that through technology advancements and practices, the effluent discharge can now comply with the narrative instream color standard. She said it is the NPDES Committee's responsibility to determine if the request to remove the color variance should proceed to public hearing concurrent with the public hearing for the NPDES permit renewal.

**Chair Deerhake** said that around 2000-2001 she was the EMC's hearing officer on Blue Ridge Paper's request to continue the NPDES permit's color variance. There has been at least one

renewal of the variance since that time, but she was not the hearing officer even though she sat on the NPDES Committee at that time.

**Chair Deerhake** explained the extensive work Blue Ridge Paper has done over the years to research and modify its production process technology to reduce wastewater effluent color. She added that the wastewater is discharged to a very small receiving river that makes it more prone to color issues. She said she asked DWR's Sergei Chernikov before the meeting what steps Blue Ridge Paper had taken since 2010 to bring the discharge and the receiving water closer to the compliance level because that wasn't clear in the original documents the Committee received. She said Mr. Chernikov recommended the 2015 Blue Ridge Paper annual report she sent Committee members because it contained a good chronology of the color-related work done at the facility. She pointed members to the effort invested in maintenance, process modifications, equipment replacement, etc. Her last comment was that originally, instream monitoring was performed to measure for the color standard of 50. Now the new approach appears to be to measure the change in color between the background level upstream of the paper mill to the first point monitored downstream of the wastewater treatment plant's outfall; the goal being a color difference of 50. She asked Dr. Chernikov to explain why this change in approach was taken to achieving compliance was made.

Dr. Chernikov stated that when the first Settlement agreement was signed, the level of 50 Platinum Cobalt Units (PCU) was established at the state line and that NC never agreed to establish 50 PCU as the interpretation of the narrative color standard, which shall be met at the first downstream sampling point (Fiberville Bridge). The DWR approach to establish  $\Delta 50$  PCU between upstream and downstream color is consistent with the state of Tennessee color limit implementation that uses  $\Delta 50$  PCU for their facilities. The state of Maine uses  $\Delta 40$  PCU for their facilities. By using this approach, we are trying to exclude other color contributions from the upstream sources. Dr. Chernikov also pointed out that the original EPA interpretation of the NC narrative color standard to be 50 PCU is based on the ability of the average observer to detect the color, and NC state standard is based on the objectionability of the color; there is a significant difference between these two terms. Dr. Chernikov mentioned that consultations have been made with EPA and TN about the proposed permit and both parties have not made significant objections regarding color.

**Commissioner Carter** asked why the Committee was meeting about this request. He stated that it seemed like taking the request to public notice could be managed by DWR. He added that he understood the NPDES Committee would be responsible for acting on whether or not the variance should remain in the permit. But it was not clear why the Committee must act to send the request to public notice.

Counsel Reynolds explained that DWR was responsible for the permit, and the Committee was responsible for the variance. Because the Committee is required under NC GS 143-215.3 (e) to issue a notice for public comment on the variance removal request, it can authorize staff to do that at the same time DWR issues its notice for public comment on the NPDES permit renewal. If the NPDES Committee sends the request to public notice, the EMC Chairman would appoint a hearing officer for the variance separate from a hearing officer for the NPDES permit, and two

hearing officers' reports would be prepared – one for the EMC (variance removal request) and one for DWR (permit renewal request). The reason the Committee was asked to act in September 2020 is because it must act in order to authorize support staff.

There was further discussion and questions from **Commissioner Carter** which Counsel Reynolds addressed. Chairman Meiburg also made some comments regarding **Commissioner Carter's** questions.

Connie Brower then proceeded with DWR's presentation.

**Chair Meiburg** asked for clarification on the chart about evaluation with the Surface Water Quality Narrative Standard. He asked if the return of the Walleye in the river run and the trophy small mouth bass fishery were both occurring below the dam. Ms. Brower responded yes. Mr. Chernikov presented following Ms. Brower.

**Chair Deerhake** asked if there were any other questions or comments for the presenters. Hearing none, she said she roughly tabulated the work reported in 2015 by Blue Ridge Paper. She said there were four actions that followed the definition of Best Management Practice (BMP) "improvement"; 19 actions defined as BMP "sustaining"; nine actions categorized as the Technical Review Workgroup's recommendations; and one action that responded to consulting engineer Dr. Liebergot's recommendation. She noticed some of those actions may have been part of routine maintenance whereas other actions were capital improvements. She said Blue Ridge Paper needs to assure DWR that the company's internal color committee will remain active and continue to maintain the facility, so that the facility's discharge and the river would continue complying with the color standard.

**Chair Deerhake** then asked for a motion to take the request to public hearing.

### **Motion**

**Commissioner Harris** made a motion to approve DWR to proceed with the public hearing and comment period to advise the public of the revised NPDES permit conditions applicable to Blue Ridge Paper Products, LLC and to announce the decision that Blue Ridge Paper Products, LLC was no longer eligible to continue the color variance under the Clean Water Act. **Commissioner Carter** seconded the motion. **Chair Deerhake** took a roll call vote, and the motion passed.

**Chair Meiburg** indicated that **Commissioner Gillespie** had volunteered to be the hearing officer.

**Chair Deerhake** thanked Ms. Brower and Mr. Chenikov for the work they had done in the past month to prepare for the Committee for the request.

Hearing no further comments, the meeting was adjourned.