

Environmental Management Commission meeting summaries, July 11-12, 2007.

Prepared by NC Conservation Network, erin@ncconservationnetwork.org.

The Environmental Management Commission met on July 12, preceded by the Water Quality Committee (WQC), Air Quality Committee (AQC) and Groundwater Committee (GWC) on July 11. Full meeting materials can be found on the [EMC website](#).

Summary of Actions:

Water Quality:

- Chuck Wakild has replaced Colleen Sullins as staff advisor to the Water Quality Committee.
- The WQC and EMC voted to continue to use traditional NRCS maps and USGS quad maps to identify protected streams, rather than NRCS digital maps that omit streams.
- The WQC will vote in September whether to seek public comment on draft rules to protect the Carolina heelsplitter in Goose Creek.
- The WQC heard updates about, but took no action on, the Coastal Habitat Protection Plan, the Phase II stormwater program, an interbasin transfer certificate tied to Goose Creek, a new wetland assessment method, and the nutrient offset rule.
- The EMC approved delegation of Phase 2 stormwater to Gaston County.
- The EMC approved the the Universal Stormwater Management in Kure Beach.
- The EMC gave an interpretive ruling on which maps are to be used in the Neuse and Tar-Pam buffer rule.

Air Quality:

- The AQC did not take any actions but discussed several concepts and reports, including on 1,3-Butadiene, mercury rule, the PSD rule and Title V permit fees.

Groundwater:

- The GWC granted two variances from groundwater standards.
- The EMC approved the risk-based dry cleaning solvent cleanup rules.
- The EMC approved the UST secondary containment rules.

Water Quality

New WQC staff advisor. In previous Weekly Alerts we reported that Colleen Sullins has been promoted to Chief of the Division of Water Quality. At last week's Water Quality Committee (WQC) meeting, she introduced Chuck Wakild as her new deputy. Until 2005, Wakild served as Director of Environment, Health & Safety at Progress Energy. In late 2005 he was appointed by Governor Easley to the industry slot on the Environmental Management Commission (EMC); he resigned that position last winter to become the Raleigh Regional Office Supervisor for DWQ. In his short EMC tenure, Wakild showed some sympathy for water quality rules and rather less for air rules. As Director Sullins' deputy, Wakild will sit beside WQC Chair Pete Peterson and offer advice at every meeting.

Interpretive ruling: stream maps. John Dorney, DWQ, presented the WQC with a request for an interpretive ruling on the state of NRCS digital soil maps. The background: the Neuse and Tar-Pam buffer rules require landowners and developers to observe a number of management measures around streams. Of course, every stream has a starting point above which it isn't a protected stream. In the initial Neuse basin rules, the EMC said that point must be determined on a case by case basis. The NC General Assembly replaced the case by case analysis with two official maps: the US Geological Survey 7.5 minute quadrangle maps and NRCS soil surveys. The EMC's new rules provided that DWQ would always use the most up to date versions of the maps. In the last few years, NRCS has decided to move to digital soil maps, which do not include any stream data. So, Dorney requested that, for the short term, the EMC find that the new digital NRCS maps are an incomplete subset of the paper maps, not a replacement for them. Dorney also recommended that, longer term, the EMC revise its rules to tie stream status to the state's new GIS floodplain maps, which are based on superbly accurate LIDAR data. That will take a while; currently, the state Center for Geographic Information Analysis has drawn streams for 19 mountain counties.

Commissioner Donnie Brewer asked a practical question: are the NRCS paper maps still available? Dorney: they are no longer being published; some are easier to find than others. Commissioner Kevin Martin, who helped bring this issue to the attention of the WQC: that's what consultants have been doing – going to NRCS for photocopy or scanned versions. On a motion by EMC Chair David Moreau, seconded by Commissioner Leo Green, the WQC voted to approve the interpretation and forward it to the full EMC. On Thursday, the full EMC affirmed the interpretation, but added an instruction for DWQ to make paper maps available and scan in NRCS maps when needed to make them accessible to landowners and consultants over the internet.

Goose Creek Interbasin Transfer condition. Robin Smith, Department of Environment & Natural Resources (DENR), offered the WQC a heads up that a contentious issue from last winter will return to the EMC's agenda in November. In 2002, the EMC approved a request by the Charlotte Mecklenburg Utility District (CMUD) to increase a transfer of water from the Catawba to feed growth in the Rocky River basin (part of the Yadkin basin). In approving that IBT, however, the EMC ruled that transfers of water should not be increased to the Goose Creek watershed (within the overall Rocky River basin) until the EMC could issue rules to protect the endangered Carolina heelsplitter mussel that lives there.

Over a period of several years, scientists at the US Fish and Wildlife Service has insisted that a package of very strong land use rules will be needed to protect the mussels. The EMC cannot contest the science, but has been politically unwilling to adopt the USFWS recommendation. Local governments in the watershed have adopted stormwater management ordinances, and DWQ has developed a package of land use controls (see notes below). Smith's purpose in coming before the EMC was to say that, in DWQ's view, the combination of stormwater ordinances and land use controls will satisfy the requirement in the original interbasin transfer certificate. DWQ has began an environmental assessment (EA), the results of which will be brought to the full EMC in

November. Most likely, staff will recommend that the EMC “conform the IBT” to reference the stormwater permit and site-specific rules, and remove the constraint on sending new water to the Goose Creek Watershed.

Commissioner Kenny Waldroup wasn’t sure all this was necessary: do we really need a new EA? Can’t the EMC just decide the new regulations provide the needed protections? Smith: the Attorney General has advised that it would be “more prudent” to conduct an EA, but the EMC will have to decide whether the regulations are adequate. Waldroup: so will CMUD or DENR develop the EA? Smith: “We haven’t really sorted out that detail.” Commissioner John Curry: you’re not talking about CMUD wanting a larger transfer? Smith: no, just whether water must be excluded from the Goose Creek watershed.

Goose Creek site specific plan. Jeff Manning, DWQ, presented the draft rules for Goose Creek. The draft rules would ban new and expanded wastewater discharges in the watershed. They would also require a 50 foot buffer (but exempt certain activities); limit but not prohibit new impervious surfaces in the 150 feet beyond the buffer; and require stormwater controls for activities greater than ½ acre. The draft rules also claim for DWQ a vague authority to do whatever is necessary to limit ammonia pollution in the river, since ammonia is a particular threat to mussels.

Our editorial take: the draft rules are cobbled together from other water quality rules, such as the Neuse rules, and are nowhere near as strong as the minimum the USFWS says is needed to protect the mussel. Unlike the Neuse and Tar-Pam situations, where rules apply throughout a large basin to influence net conditions far away, Goose Creek presents a different challenge. In Goose Creek, the mussels will live or die based not on average conditions upstream, but on specific conditions close by, with very little margin of safety. Staff observed that in most of the Goose Creek watershed, the 100 year floodplain is wider than 200 feet. The draft rules would not limit impervious surfaces in parts of the floodplain more than 200 feet from the river; those surfaces – and lawns and buildings in the floodplain – will regularly flood, washing chemicals and other pollutants into Goose Creek. In Goose Creek, the EMC confronts the challenge of protecting a fragile ecosystem, rather than the more familiar (and simpler) challenge of gradually groping towards water quality improvements.

Both EMC Chair David Moreau and Forrest Westall suggested that the four remaining wastewater discharges into the river should be eliminated as soon as possible.

Kenny Waldroup objected that the buffer rules, as written, would not allow local governments to lay water and sewer lines parallel to streams within the 50 foot buffer. He added that several EMC members would like to see options added to allow sewer lines (with mitigation), and clarification of the techniques allowed for stream crossings. WQC Chair Peterson pointed out that, while the Neuse and Tar-Pam rules allow these options, the Goose Creek rules are intended to protect an endangered species. Mitigation will not address the threat posed to the mussels by sedimentation when pipe is laid. Waldroup: that’s why I’m recommending seeking public comment on these alternatives.

Kevin Martin pointed out that classifying activities as ‘allowable’ wouldn’t let them happen automatically; DWQ would still get to approve or deny each request individually. Forrest Westall suggested that if sewer lines can’t be built along the creek, developers might build upland pump stations that are prone to failure and could also threaten the creek. Dickson Phillips noted that, based on what he’s seen of sewer lines built along streams near Chapel Hill, they can clearly be a source of sediment in the streams. Peterson: it sounds appropriate to seek comment on this.

Commissioner Tom Ellis, a partisan for conventional agriculture, worried aggressively whether the rules would prevent farmers from spraying pesticides and fertilizers on their existing fields. The clear answer: no, there is an exemption for existing uses. Ellis suggested that, with respect to pesticides, the rules should defer to a voluntary program being developed by EPA under which, within a few years, manufacturers will include a note on pesticide labels with active ingredients that are bad for mussels. Manning: the rule will adopt that program when it becomes final, but for the time being, it would disallow new pesticide spraying in the 50 foot buffer. Ellis: does the EMC have the authority to issue a rule limiting pesticide use? Should that come from the Pesticide Board? EMC Counsel Frank Crawley didn’t have an answer.

At this point, Ellis’ concerns began to backfire. Chair Peterson: there shouldn’t be any livestock in this stream, given the concern about sedimentation and bank stability. I’m not clear about the land use in the basin, but I don’t think current usage should be continued if it includes animals grazing in the stream. Ellis: well, if you’re going to prohibit existing uses, that ought to be explicit in the proposed rules. Peterson: that’s what I was saying. Westall stepped in, asserting that it is already illegal for cattle to be in a stream – they are illegal dischargers – but enforcement is complaint driven, and therefore sparse. Better management practices ought to be built into the rules, and there should be an assessment of existing uses to make sure farmers are complying with the current best management practices. Ellis, now of the defense: we could ask the Division of Soil & Water Conservation to evaluate the watershed with a voluntary program. Westall: it will be important to make sure that ongoing activities – including fertilizing – are complying with best management practices. Peterson requested this change be incorporated into the draft rules sent to comment – and also, that the public notice seek comment on the USFWS recommendation that the rules provide a 100 foot buffer for intermittent streams.

Finally, EMC Chair Moreau asked that provisions be added to the rules to require local governments granting building permits to monitor the results of the protections and conditions. A new draft of the rules will be brought back to the WQC in September.

Coastal Habitat Protection Plan. The EMC heard an update on the [Coastal Habitat Protection Plan](#) (CHPP), adopted jointly by the EMC, Coastal Resources Commission, and Maine Fisheries Commission in 2005. Roughly 23 of the 105 action items called for in the CHPP fall within the jurisdiction of the EMC; the CHPPs [implementation plan](#) for 2005-2007 is 23 pages long. WQC Chair Peterson responded to the update with a discussion of the threat to coastal wetlands and other resources presented by long term

sea level rise. He mentioned the potential benefit from the adoption of ‘rolling easements’ advanced by James Titus at EPA as an alternative to shoreline hardening and loss of habitat.

Phase II update. Bradley Bennett, DWQ, updated the WQC on the status of the Phase II stormwater rules. Post-construction standards (in the form of local ordinances requiring new development to control stormwater) are taking effect in 40 to 50 cities across the state this summer. Thanks to legislation adopted by the NC General Assembly last year, DWQ will begin requiring controls on new development in the unincorporated portions of 26 whole counties and parts of 19 other counties. The boundaries of coverage are not intuitive, so DWQ has launched an internet-available GIS system to help landowners figure out whether they are covered by Phase II.

Wetland assessment method. John Dorney, DWQ, briefed the WQC on a new wetlands assessment methodology. Since President Bush (pere) established a national policy of ‘no net loss’ of waters and wetlands, federal and state wetland regulatory programs have been driven by requirements that wetlands destroyed by human activities be replaced, on at least an acre or acre basis, with restored wetlands. In practice, given the cost of restoration and the scarcity of good sites, many states, including North Carolina, have allowed preservation to satisfy restoration obligations for some projects. All along, however, wetland scientists and regulators have argued that acre for acre replacement of wetlands fails to account for differences in functions between similarly sized wetlands.

Last week, Dorney announced that North Carolina has reached the holy grail of wetland science: a functional assessment system that allows regulators accurately to rate the quality of wetlands and takes just 15 minutes longer per site visit than the current method. The NC Wetland Assessment Method (WAM) rates wetlands as high, medium, or low quality, within 16 wetland types, for three main functions – hydrology, water quality, and habitat. The system will replace the existing DWQ wetland rating system, and will be used by the federal EPA and the US Army Corps of Engineers as well. It remains to be determined how the method will be integrated into the regulatory program.

Forrest Westall raised a key concern: in urban environments, many wetlands are degraded. Will using a functional assessment system lower mitigation requirements? Dorney’s answer was not entirely clear, but he appeared to say that the assessment method takes account of the filtration benefits provided by degraded wetlands. Kenny Waldroup: this actually gives me hope – it could open up mitigation opportunities in urban areas. Dorney: yes, because now it will be possible to give credit for enhancement of existing wetlands, which hasn’t really been allowed in North Carolina until now.

Update on nutrient offset legislation. Tom Reeder, DWQ, updated the EMC on the status of the nutrient offset rule. The Neuse water quality rules includes a provision allowing wastewater plants and developers to pay into a state fund in lieu of paying to reduce nitrogen discharges themselves. The state fund is then supposed to pay for projects – buffer restoration or stormwater retrofits – to reduce nitrogen pollution nearby in the watershed. In 2005, the EMC approved an increase in the program fees, from an

inadequate \$11/ pound of nitrogen to \$57 per pounds. The EMC also expanded the program to the Tar-Pamlico basin, and added a fee for removal of phosphorus. However, influenced by developers, the NC General Assembly voted last year to rescind the rule and put the fee back to \$11 per pound of nitrogen while studying the issue. A deeply flawed study, released to the legislature in April by RTI Consulting, found that the Neuse program could continue functioning through 2020 with a fee of \$25.77 per pound of nitrogen. Bills to extend the current fee pending further study are in the North Carolina House. The report left the WQC members fuming. They debated whether, if the fees are inadequate to perform mitigation, if the EMC has authority simply to stop accepting payments from developers, effectively shutting down the program. The discussion did not reach an active conclusion, and the WQC will likely review the issue again after the 2007 legislative session adjourns.

Stormwater Phase 2 – Gaston County. Gaston County requested delegation of the Phase 2 stormwater program to allow them (rather than the State) to administer and enforce post-construction stormwater controls in all unincorporated portions of the county. DWQ will return for approval of rules at a future meeting. The EMC approved the delegation.

Universal Stormwater Management Program. The Town of Kure Beach requested and received approval from the EMC to adopt the Universal Stormwater Management Program (USMP). This requires the town to adopt a local ordinance that is at least as stringent as the USMP. Kure Beach has proposed a threshold of 5,000 square feet of disturbance, which is more stringent than the current 10,000 square feet threshold. The state will handle permitting and review, and local government will handle compliance and enforcement. The EMC approved the implementation, effective September 1, 2007.

In a separate action, the EMC approved allowing the WQC to approve local ordinances under the USMP instead of the full EMC.

Neuse and Tar-Pam buffer rules. The Neuse and Tar-Pamlico stream buffer rules apply to streams that are shown on soil survey maps of the Natural Resources Conservation Service (NRCS) or the most recent US Geological Survey maps. Now the NRCS has web-based digital maps available in several counties in the basins, but these are not as complete and do not include streams that are depicted on the NRCS's paper-bound maps. DWQ staff asked the WQC for an interpretive ruling affirming that the more accurate paper-bound NRCS maps are to be used for stream identification when determining buffer requirements. A motion to that effect passed, with the condition that DWQ agree to make all paper maps available on the internet.

Groundwater

Groundwater standards – variances. The Groundwater committee began with a presentation by Linda Culpepper (Division of Waste Management) of two requests to proceed to the Environmental Management Commission with approval of variances from groundwater quality standards.

The first request was made by Home Concrete and Supply, LLC in Salisbury where concentrations of organic chemicals exceed 2L standards in an area where petroleum above-ground storage tanks were operated. The site is now owned by Chandler Concrete Company, Inc which operates as a retail supply and distribution center for home construction and concrete products. Some clean-up of the site has occurred with impacted soils being excavated and replaced with clean backfill material and groundwater monitoring data indicates concentrations are degrading over time and will not exceed 2L standards at the property boundary. Culpepper mentioned that the plume would stay on site and that, due to limited funds, money would be better spent somewhere else given the limited liability on this site. She said there had been not public attendance at meetings and the department had received no public comments. Donnie Brewer made a motion to send the variance to the EMC for approval, which was unanimously approved.

The second variance request was made by Rockwell Collins for a site owned by Kaiser Aerospace & Electronics Corporation, located in Charlotte. Rockwell Collins requested that the EMC grant the variance to allow chemical concentrations to remain above 2L levels. Sources of contamination include the loading dock and materials storage areas, tooling and deburring areas, hydraulic pump and compressor rooms and the former settling tank and degreaser. Groundwater data indicate that halogenated volatile organic compounds (HVOC) levels exceed 2L standards. Environmental modeling indicates that the concentrations of HVOC will degrade over time and should not exceed the standards at the property boundary.

The department received comments from an adjacent property owner who was concerned about the level of uncertainty of contamination affecting her property in the future. She asked to be given a letter of indemnity for her property (adjoining the site) which would hopefully not have to be used if the contamination was in fact contained. She also commented on the stigma that contaminated property can have on property value. There was a second adjacent property owner who also asked for a letter of indemnity.

After presenting the second variance request, Ms Culpepper said that this variance was more technically tricky than the first. Commissioner Brewer wondered if the property owners could get a letter from the department if they did, at some point, want to sell their property. Ms Culpepper replied that the department would be hesitant to issue a letter that was too committal. One of the commissioners stated that, in the past, wording could read that 'there is not a significant likelihood of migration'. A second commissioner wondered if the polluter could still be held responsible for contamination if the variance was granted and letters were issued to land owners. Commissioner Martin replied that if the pollutant migrated the case would open back up but stated that such cases are not always straightforward. In the end, Harrell made a motion to send the variance request to the EMC, the motion was passed unanimously.

Private drinking water wells. In 2006 the General Assembly passed SL 2006-202 requiring the EMC to adopt rules governing the permitting, and inspection by local health departments of new private drinking water wells. Terry Pierce, Division of Environmental Health gave an overview of the proposed rules. Pierce said that at the time

last year when the General Assembly passed the law about one third of counties had adopted their own ordinances and that at the next reporting, the department expected 80% of counties to adopt local rules. Jim Hayes, also of the Division of Environmental Health, made a quick and dirty presentation of the proposed rules:

- Well contractors must notify the Health Department when they plan to put grouting into a well so that it can be inspected, though inspection would not be required. A comment was made that the Health Departments do not have the manpower to inspect every well and requiring inspection would delay contractors which would cause them to lose money. Health Departments then have within 1 hour of the scheduled grouting to get to the site and inspect the grouting (this caused not very subtle scoffing by Martin to his neighbor).
- Permits would be good for 5 years.
- All current and past permits would still be valid.
- If a well is contributing to the contamination of groundwater, they must be abandoned, and the Department can order them abandoned for health or safety reasons.

Hayes concluded by clearing up a miscommunication that these rules require initial sample, they do NOT require yearly inspection.

Dry-cleaning solvent cleanup rules. The full EMC gave final approval to new risk-based clean up rules for dry cleaning solvent contamination. DWR staff presented the hearing officers' report, and noted that there is some public opposition to the risk-based rules, but that the rules are generally supported. In fact, several groups are very concerned that this new risk-based approach to cleanup will create a loophole in the state's groundwater standards and allow contamination at some sites to remain untreated forever. Now the rules must be approved by the Rules Review Commission.

Underground storage tanks. The full EMC gave final approval to new rules for Underground Storage Tanks requiring secondary containment, including double walls and leak detection systems. Staff presented the hearing officers' report and noted that public comments were generally supportive, though some expressed concern that the rules do not apply to existing tanks, the setback between USTs and water supply wells should be greater, and the division needs better oversight and enforcement.

Air Quality

Concepts. The Air Quality committee (AQC) met on Wednesday and discussed 6 concepts – ideas for future rulemaking - which staff will pursue. The first of these was a tiny change clarifying that permit renewals have to be postmarked (rather than submitted) 90 days before they expire. The second is a change in the mercury rules to reflect EPA amendments to the federal Clean Air Mercury Rule (CAMR) regarding applicability, and DAQ may also include the exemption for municipal solid waste combustors, which are, staff said, covered under more stringent federal rules. Third is a change in permit fee tables so that the fee for significant modifications is the same as for minor modifications, as is the current practice.

The fourth concept discussed was an update to the Prevention of Significant Deterioration (PSD) and New Source Review (NSR) rules to incorporate EPA changes stemming from a 2005 court case. The change involves removing the definition of “clean unit test” and “pollution control projects” from the state PSD rule. Staff emphasized that they need to make the change soon in order to move forward with approval of the State Implementation Plan (SIP) call a halt to the Federal Implementation Plan (FIP) that the EPA is preparing since we are out of compliance on this issue.

The next concept was a revision to the state’s Clean Air Interstate Rule (CAIR) to address a discrepancy in NO_x allowances for the emission trading program. These changes are in response to EPA comments on the State Implementation Plan.

The last concept on the agenda was a proposal to increase Title V permit fees. Facilities must receive a Title V permit for their air emissions. The program is supported solely by permit fees which have not changed since 2001. The current fee structure is \$6,300 base plus \$18.10 per ton. Staff plans to propose an increase to \$25 per on next year, \$30 per ton the next year, and \$35 per ton the year after that. This is low compared to other nearby states, and if fees in NC had been adjusted according to the Consumer Price Index, they should be at \$41 per ton right now, staff said. There are about 350 permitted facilities in NC, and staff estimates that the fee increase would not have a significant impact on the financial situation facilities.

1,3-Butadiene. In May the EMC approved a loosening of the acceptable ambient level (AAL) for the air toxic 1,3-Butadiene. This precipitated some changes in the modeling, specifically a recalculation of the emissions rate requiring a permit (ERRP). DAQ found that the ERRP needed to be tightened from 12 to 11 pounds per year. So the allowable concentration at the property line of the facility (the AAL) can now be higher for 1,3-Butadiene, but the facility can emit less of it at the source before they are required to get a permit and demonstrate through modeling that the property line concentrations will not exceed the AAL.

Mercury rule reporting. The mercury rule adopted by the EMC in 2006 to control mercury from coal-fired power plants calls for reports in 2008 and 2012. At their May meeting, the AQC discussed what the Division is planning to include in each report, and at that time staff reported that it did not plan to include a discussion of economic feasibility of mercury control technologies in the 2008 report. Commission Smith had made a specific request at that time that the 2008 report include cost and performance information on existing and potential control technologies. At the meeting this week, the AQC’s packet included an update from staff, though no presentation was given. Staff still does not plan to include cost information because, they say, the technology is changing rapidly and costs will initially be high. They will, however include general information on technological and economic feasibility though this will be limited to “an estimation of ‘go’ or ‘no go’ for the technology.” Advocates have argued that control technology is currently available, and it seems like it would be quite useful to have cost information earlier rather than later. Under the rules, utilities must submit their mercury control plans

in 2013 and install controls by 2018 unless it is not “technically or economically feasible.”

Supreme Court decision on CO2. At the request of AQC chair Marion Deerhake, staff presented a brief report on the recent US Supreme Court decision on carbon dioxide emissions, in which the court ruled that greenhouse gasses are air pollutants and the EPA has authority to regulate greenhouse gasses from new cars and trucks under the Clean Air Act.