

Neuse River Compliance Association®

P.O. Box 1410
Clayton, N.C. 27528 - 1410

January 7, 2019

Mr. J. D. Solomon, Chair,
and Members of the EMC Commission
N. C. Environmental Management Commission
NCDEQ – Division of Water Resources
1617 Mail Service Center
Raleigh, N.C. 27699 - 1617

Subject: EMC Agenda and Action Item for January 10, 2019, "DWR Request Approval to Proceed to Public Notice and Hearing with the Fiscal Note and Proposed Rule Re-Adoption and Amendments to Nutrient Strategy".

Dear Chairman Solomon:

On behalf of the Neuse River Compliance Association (NRCA) we are submitting the attached comments on the above subject matter. The NRCA received its NPDES permit in 2003 and is the oldest "bubble" NPDES permit in the State for collective compliance with nutrient limits. The Association represents 23 water waste treatment facilities (see attachment), including the municipal plants east of Falls Dam, one Facility that discharges into Falls Lake, and several privately owned facilities.

The NRCA appreciates the attention that the EMC has given to its concerns and also appreciates the time demand on the EMC to readopt these rules in accordance with the schedule set forth by the Rules Review Commission. The NRCA concerns expressed regarding the Fiscal Note and the adequacy of the discussion of impacts on local governments can be addressed, as the Hearing Officer deems appropriate, during the public hearing process.

The NRCA respectfully requests that the EMC approval of proposed rules for notice and comment include a ratio for the use of nutrient credits that is consistent with the minimum as set forth by the US EPA in its guidance, i.e. greater than 1.0 to 1, and that the EMC direct the DWR staff to work with the local governments in the Neuse Basin to provide a more comprehensive and specific examination of the impacts on local governments which have near term needs to expand existing facilities or to add new facilities.

The NRCA requests that the Fiscal Note be expanded to include the information available from the long term waste water plans of the Neuse Basin local governments, the forecast growth in population, and that the available nutrient allocation for potential long term lease or sale be examined in light of the current market conditions for the reallocation of the existing nutrient allocation as well as the amount of allocation tied to and included within existing NPDES permits.

Mr. J. D. Solomon, Chair
Page 2.
September 11, 2017

Thank you for your time and consideration in this very important matter.

Sincerely,

Dan (F. M. S. L. - h) by J. P. H. E.

Dan McLawhorn, Chair
Neuse River Compliance Association

CC: NRCA Board

Neuse River Compliance Association Membership

Town of Apex, N.C.

Town of Benson, N.C.

Town of Cary, N.C.

Town of Clayton, N.C.

Contentnea Metropolitan Sewer District, Grifton, N.C.

Town of Farmville, N.C.

Dupont-Kinston, Kinston, N.C.

City of Goldsboro, N.C.

Town of Havelock, N.C.

Johnston County, N.C.

Craven County, N.C.

Town of LaGrange, N.C.

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Duke Energy - Progress

City of Raleigh, N.C.

City of Wilson, N.C.

City of Kinston, N.C.

Aqua, North Carolina

South Granville Water and Sewer Authority, Butner, N.C.

Marine Corp Air Station - Cherry Point, Havelock, N.C.



Utilities, Inc., Charlotte, N.C.

CWS Systems, Charlotte, N.C.

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TO: Environmental Management Commissioners

FROM: Daniel F. McLawhorn, Chair 
Haywood M. Phthisic, Executive Director 

DATE: January 7, 2019

RE: Fiscal Note and DWR Recommended Changes to Neuse Estuary Rules

The Neuse River Compliance Association (NRCA) offers comments in response to the Fiscal Note prepared by DWR that it saw for the first time on Monday, December 31, 2018.

1. Significant errors in calculation of the cost of the current rule to local governments for expansion or new WWTP construction cause the Fiscal Note to misrepresent the impact of the current rule. DWR estimated a cost of \$34M for nutrient credits to operate a 10 MGD WWTP for 70 years. NRCA estimates that cost at over \$400M.
2. DWR misrepresents that nutrient allocation dedicated by permit to existing plants, but not currently in use, is available to use for expansion or new WWTP construction. Raleigh, Johnston County, and Clayton have NO available nutrient allocation for future growth TODAY.
3. DWR representation that there is nutrient allocation currently available for lease or sale to support the construction of expansion or new WWTPs is incorrect. None is available.
4. DWR asserts that its nonpoint source valuation system will assure appropriate compensatory reduction for in lieu new development projects, but the same valuation system grossly underestimates the value for point source offset reduction. This places a disproportionate load on point sources in violation of N.C. Gen. Stat. §143-215.8B(b)(1):

“Provide that all point sources and nonpoint sources of pollutants jointly share the responsibility of reducing the pollutants in the State’s waters in a fair, reasonable, and proportionate manner, using computer modeling and the best science and technology reasonably available and considering future anticipated population growth and economic development.”

FAILURE TO ESTIMATE COST TO LOCAL GOVERNMENTS OF FOR ADDING CAPACITY FOR WWTPs.

The NRCA finds it incredible that DWR can estimate the cost of the rule changes for stormwater for the next 10 years, yet it finds it impossible to calculate and show in its Fiscal Note the cost to local governments for the changes in the Waste Water treatment rule. See p 35, 4.2.3 of the Fiscal Note. The failure to include the information is in direct violation of N.C. Gen. Stat. §150B-21.4(b) Local Funds. “The fiscal note **must state the amount by which the proposed rule change would increase or decrease expenditures** or revenues of a unit of local government and **must explain how the amount was computed.**”

DWR ignored information readily available within the Division which could be used to estimate the capacity needs of local governments in the Neuse basin. Pursuant to N.C. Gen. Stat. §143-355(l) Local Water Supply Plans, local governments have provided DWR with all the information needed to project needs in the basin. DWR apparently ignored this information so that it could find it impossible to project needs and demands.

CURRENTLY UNUSED ALLOCATION IS NOT AVAILABLE FOR ADDITIONAL WWTP CAPACITY

Similarly, the Fiscal Note misstates the permitting process for Neuse Basin WWTPs when they failed to apply the plain language of 15A NCAC 2B .0234, the rule that is proposed to be amended. To support its illusory conclusion that 41% of the nutrient allocations to WWTPs in the Neuse Basin are available for future expansions or new facilities, the Fiscal Note ignores that the current rule causes the full allocation to support a NPDES permit for a WWTP to be dedicated at the time of the permit application. Thus, for example, the City of Raleigh has **NO NUTRIENT ALLOCATION TO USE FOR EXPANSION OR A NEW 10 MGD FACILITY**. That incorrect assumption was used in the Fiscal Note at 4.2.5.1. and 4.2.4.4. [“With half or more of the waste load allocation unused in the Neuse basin each year, there appears to be considerable room to accommodate new or expanding facilities in the foreseeable future.”] At 4.2.5.1, the Fiscal Note assumed that because Raleigh used 61% of its permitted flow for its largest plant IN 2017, the remaining 39% of the nutrient allocation is available to build another plant. Instead, Raleigh used all of its remaining nutrient allocation to meet the requirements of 15A NCAC 2B .0234 (8)(c) when its permit to expand the plant from 60 MGD to 75 MGD was approved.

The examination of Clayton as the mid-sized facility engages exactly the same false assumptions

DWR made no effort to ascertain the amount of nutrient allocation that could be sold or leased for long term needs in the Neuse basin. See p 35, at 4.2.3. Instead, it engaged the wrong assumption that every pound of nitrogen allocation not in actual use in 2017 is available for sale or long term lease. See p 38, at 4.2.4.4 [“On the other hand, nutrient loading still has not seen a substantial uptick since total nitrogen limits became effective in 2003 due to increasing wastewater treatment efficiencies. With half or more of the waste load allocation unused in the Neuse basin each year, there appears to be considerable room to accommodate new or expanding facilities in the foreseeable future.”]

DWR emphasizes that local governments can used leased nutrient allocation from another Neuse source of point source allocation and avoid the nutrient credit costs. Because the lease will be for a long duration (10-30 years), no holder of excess allocation will lease it. Instead, it will reserve the allocation for its own needs.

Thus, the Fiscal Note is fatally flawed in its fallacious assumptions that expanding or new WWTPs can rely on allocation not presently in active use to get a new or expanded facility permitted. That situation will not change with the rule changes sought by the NRCA.

FISCAL NOTE ERRS IN CALCULATION OF COST FOR NUTRIENT CREDITS UNDER THE CURRENT RULE

Equally disturbing is the cost of Offset Credits as set forth in Table 4-5 for a large plant expansion. The NRCA has shared with the preparers of the Fiscal Note its calculation as to the cost of complying with the current version of the rule for a new 10 MGD. That cost is \$136M for each 30 year

period of time. [By email, the staff who prepared the Fiscal Note agreed the NRCA calculation was correct.] The cost for 70 years, as the Table represents, will be over \$400M. For reasons that are unknown, DWR showed in the Fiscal Note that the cost is \$34M. This gross understatement of the current rule's impacts is also called into question by the calculation of the cost to Clayton of sufficient nutrient credits to support a 2 MGD expansion. That estimated cost was \$13M as compared to \$34M for Raleigh. The Raleigh example is for 10 MGD or five times larger than the Clayton expansion. But the Raleigh cost would be \$65M based on the Clayton cost.

NUTRIENT CREDIT VALUE FOR SCMs TO OFFSET NEW DEVELOPMENT UNEQUAL FOR SAME SCMs TO OFFSET POINT SOURCES

In 3.1.3 of the Fiscal Note, DWR discussed the improvements in the proposed SNAP accounting tool for capturing the actual amount of reduction from SCMs. DWR represents that the revised SNAP accounting tool will result in "a reduced need for nitrogen offsets under the proposed rule relative to current requirements, particularly at high development density. This effect is limited to Current Neuse and Tar programs since new programs no have no nutrient requirements."

In the part of the Fiscal Note concerned with offset nutrient credits to be used by WWTPs, DWR attempts to justify a ratio higher than the 1 to 1 ratio applicable to new development. PP 59-60, 5.3.2. DWR contends that the trading ratio must be "utilized to account for the relative and unavoidable uncertainty of nonpoint nutrient reduction practices in comparison to increased nutrient loading from point sources." Thus, the Fiscal Note finds that no ratio is required for an appropriate level of nutrient offsets for new development, but a significant ratio, or tax, is required when point sources rely on exactly the same nutrient reducing SCMs. This is in clear violation of N.C. Gen. Stat. §143-215.8B and thus exceeds the authority of the Environmental Management Commission.

The Fiscal Note acknowledged that EPA Guidance sets forth means to address the uncertainties in its Water Quality Trading Policy. First on the list of such solutions in "monitoring to verify load reductions." This option is included in the proposed rule, but DWR did not offer any evaluation of it as a means to deal with the cited uncertainties. The Fiscal Note also failed to acknowledge that the NPDES permit for point sources will establish the total load of nutrient loading from the WWTP. The permit holder is responsible for showing that load is not exceeded or it is subject to civil penalty and third party suit under the Clean Water Act. Both are strong and ample tools to address the perceived uncertainty, yet this important constraint against exceeding the allowed load is ignored by the Fiscal Note.

Finally, the Fiscal Note failed to acknowledge that the State agencies set the values for nutrient credits to be awarded to every nutrient reduction project. Through that authority, DWR has ample authority to assure that the nutrient credits used by point sources will meet the needs of their NPDES permit.

CC: Assistant Secretary Shelia Holman
DWR Director Linda Culpepper