



Rules Review Update: NCWQA Comments on Draft Revisions, May 2017

In early April, DWR restarted the readoption process for its water quality program rules (15A NCAC 02B, 02H, 02T, 02U). Back in 2014, these rules underwent the S.L. 2013-213 (HB74) rule review and accordingly needed to be readopted through the state rulemaking process. During 2015, DWR hosted several stakeholder meetings, presented each rule draft in detail, and incorporated stakeholder input into the rule drafts. As the rules need to be readopted by October 2019, the new administration proposed that the WQC and the EMC consider readopting the rules in stages.

In early April, DWR released updated drafts to stakeholders. While DWR has not formally opened these drafts up to written comments, we plan to submit comments at this stage. Certain of the draft rules incorporated aspects of previous NCWQA comments, but several important issues were not addressed and there were also new proposals warranting comment. NCWQA's comments are briefly summarized below.

DWR conducted two public stakeholder meetings in April on these four subchapters. DWR plans to present Subchapter 02T and 02U rules to the WQC at its May meeting for initial approval before proceeding to a regulatory impact analysis (RIA) and drafting fiscal note documents. Once the RIA/fiscal note is completed, DWR would seek approval from the full EMC (likely in July 2017) for 02T and 02U to proceed to the public comment and hearing stage. Later, in September 2017, DWR would present Subchapters 02B and 02H to the WQC for approval before preparing the RIA/fiscal note documents. Once the RIA/fiscal note is completed on those, DWR would then seek approval from the full EMC to proceed to the public comment and hearing stage.

Summary of NCWQA Comments

Throughout our comments, we expressed concern that DEQ was unnecessarily limiting its ability to exercise independent judgment under the Clean Water Act or flexibility to encourage innovative, cost-effective strategies for water quality compliance and improvement. We also identified opportunities to streamline redundant or otherwise unnecessary monitoring, reporting, and recordkeeping requirements. A few of our priority comments are summarized below:

1. DEQ proposed to eliminate usage of the term "bulk residuals" and simply rely on the categories of Class A and Class B. Although we appreciate efforts to streamline/simplify rules where feasible, we are concerned that this change will result in uncertainty and inconsistency with federal requirements. Accordingly, we recommended a number of specific revisions to ensure clear and consistent requirements mirroring the federal rules.
2. DEQ proposed to eliminate setback requirements from a property line when the permittee, the entity from which the permittee is leasing, or the entity that executed the landowner agreement owns both parcels. This is a welcome change. DEQ also suggested a change that would ensure a permittee is not required to create a setback when a residence or place of public assembly under separate ownership is constructed after a treatment and storage facility is permitted. We believe it would be appropriate to clarify that a permit modification or renewal would not trigger the setback requirement.

3. DEQ proposed to delete (1) provisions for action levels for metals, (2) the low-end cap on hardness for purposes of calculating hardness-dependent freshwater metals standards, and (3) the weight-of-evidence evaluation for confirmation of adverse impact. We objected to these proposed modifications because we continue to believe that prior EPA administrations have improperly failed to defer to state water quality standard development and application. We also believe discussions with the Trump EPA may prove more fruitful with regard to these issues than past efforts.
4. DEQ also proposed several defined terms that are either (1) not in the CWA, or (2) inconsistent with the commonly accepted meaning of those terms within the CWA. While we believe most of these proposals would not have substantive effects, these inconsistencies will create confusion.

We will keep Members apprised of developments with regard to DWR's updates to its water quality program rules, as well as any responses to NCWQA's comments.