NCWQA Expresses Concerns Regarding DEQ's Proposed Revisions to 15A NCAC 02T and 02U, December 2017

In November, the NCWQA submitted comments on DEQ's proposed revisions to the 2T and 2U rules and, in particular, expressed significant concerns about DEQ's proposed changes related to residuals management (e.g., proposed deletion of the term "bulk" and the absence of references to Exceptional Quality materials). Because many of our proposed changes made on the draft of these rules earlier this spring were not made, we requested a meeting with DEQ to discuss them. A summary of our comments follows.

02T (*Waste Not Discharged to Surface Waters*)

- The definition and usage of "Bulk residuals" must be retained for clarity and consistency with federal requirements. The deletion of "bulk residuals" and reliance on the categories "Class A" and "Class B" will result in uncertainty and inconsistencies with federal law. Under the federal regulations, biosolids must comply with pollutant limits, pathogen reduction requirements, and vector attraction reduction requirements, and, depending on the treatment provided, may be required to comply with various management requirements. *The manner by which biosolids are distributed (bulk or bagged) determines in part which requirements are applicable*.

- The Department should revise the regulations to include EQ materials. Many of the nation's wastewater plants are generating EQ materials; many more are seriously considering the plant upgrades necessary to do so. If a wastewater treatment plant invests the significant capital needed to comply with the federal regulations for EQ materials, it should be allowed to distribute and/or land apply those materials without any management or site restrictions.

- The Department should review and revise, as appropriate, management practices. It appears that several management practices included in this rule are not required by federal law (for example, the prohibition on prolonged nuisance conditions, which is also problematic because of its vagueness). Accordingly, NCWQA recommended that the Department carefully review the management practices at 40 C.F.R. § 503.14, and consider eliminating any .1109(a)(1) terms that are not found therein.

- NCWQA supported DEQ's efforts to remove unnecessary setback requirements. NCWQA suggested revising paragraph (f) to state "Setbacks to property lines as noted in Paragraphs (a), (c) and (d) are not applicable when the Permittee; the entity from which the Permittee is leasing; or the entity that executed the notarized landowner agreement in 15A NCAC 02T.1104(c)(4) owns both parcels creating said property line." This change provides important streamlining where adjacent properties are under co-ownership or operation such that internal buffers make no sense.

- NCWQA supported the modification to the reporting requirement for any utilities delegated to implement local sewer permitting programs. However, the Department should clarify when it may require increased reporting. We recommended that the standard be stated as "unless more frequent monitoring is required by the Division to address specific compliance issues identified by the Division."

- The Department should allow a permittee to demonstrate that daily inspections of pump stations not connected to a telemetry system are unnecessary.

- Rather than inspecting sewer lines every six months, an annual inspection of high priority sewer lines is adequate.

- NCWQA supported the Department's decision to retain the 180-day permit application deadline, as well as the Department's decision to allow extensions. However, to be consistent with federal law, the Department should clarify that an extension may not allow an application to be submitted after the expiration date of the existing permit.

02U (*Reclaimed Water*)

- The definition of "dedicated system" should be revised. As drafted, the definition of dedicated system is both ambiguous and likely unnecessarily restrictive. By specifying that these systems exist only where "reclaimed water utilization is necessary" and other wastewater utilization or disposal methods "are not available" the Department is limiting voluntary use of reclaimed water. This is contrary to public policy. If anything, water reclamation should be encouraged. Accordingly, the definition should be revised as follows (proposed deletions in strikeout and new language underlined): "'Dedicated system' means a system where the reclaimed water utilization is utilized necessary to meet the wastewater disposal needs of the facility or to support community water reuse goals and where other wastewater utilization or disposal methods to accommodate the entire wastewater flow generated at the facility are not available."

- Year round vegetative cover should not be required for irrigation areas. There is no reason to have this requirement and, with the climate in North Carolina, bare ground at some point in the year may not be preventable (e.g., in the winter or extreme heat in the summer). Also, it is not clear what would constitute sufficient "vegetative cover." Accordingly, this requirement should be deleted.

- Permittees should not be unfairly exposed to double liability. In specifying conditions applicable to permitted uses by regulation, 02U .0113(a) states that such uses cannot result in violations of water quality standards or result in unpermitted discharges. These requirements are redundant. It is a violation for an unpermitted discharge to reach surface waters. That is enough liability. A party should not be in violation of duplicative requirements if the unpermitted discharge also violates water quality standards, although any alleged water quality standards exceedance could in any event be a consideration in the nature or level of any penalty. Whether the discharge meets standards or not is legally unimportant as the discharge to surface waters itself is in any event a violation. Accordingly, the following phrase should be stricken from the section: "the system does not result in any violations of surface water or groundwater standards."

- DWR should retain the Discretion to approve a freeboard requirement less than 2 feet. While it may be appropriate in most cases to require at least two feet of freeboard on open-atmosphere treatment lagoons and ponds, there may be instances where it is unnecessary.

- The Department should simply require that reasonable measures be taken to restrict public access to a facility. By virtue of the “there shall be no public access . . . “ wording, both .0402(e) and .0404(b)(1) could be read as improper and contrary to North Carolina law by imposing strict liability if a person from the public gained unlawful access to a facility (e.g., by ignoring warning signs or by scaling a fence). To prevent this unfair liability, NCWQA proposed revising these sections to require that “reasonable measures be taken to restrict public access at all times.”