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FAX TRANSMITTAL COVER SHEET

See 505953

PLEASE DELIVER THE ATTACHED FAX TO:

NAME: The Honorable Mark Sanford

COMPANY: _____

FAX NO.: 803-734-5167

No. of Pages (including cover sheet): _____

FROM:

Governor Sonny Perdue

FAX NO.:

(404) 656-5948

COMMENTS/MESSAGE: Please see attached.

If you have problems receiving this fax, please contact Almee Brandenburg at (404) 651-7715.



STATE OF GEORGIA

OFFICE OF THE GOVERNOR

ATLANTA 30334-0900

Sonny Perdue
GOVERNOR

March 17, 2005

The Honorable Mark Sanford
Governor, State of South Carolina
P.O. Box 12267
Columbia, SC 29211

RE: Savannah Harbor Dissolved Oxygen TMDL

Dear Mark:

I enjoyed the opportunity to visit with you recently and discuss a number of state-specific issues with you. Please find enclosed a copy of the January 27, 2005 letter we discussed, which the South Carolina Department of Health and Environmental Control sent to the U.S. Environmental Protection Agency. In the letter, the DHEC requested, among other things, that EPA "fulfill its responsibility to negotiate an equitable allocation."

Your office previously had the foresight to initiate a discussion forum consisting of representatives from our two states. The stated objective of this effort was to create a context within which the two states would be able to discuss the issues of concern on either side of the Savannah River. South Carolina's team, in fact, includes a representative from DHEC.

I have welcomed this forum in the hope that it would provide an opportunity to discuss the very issues addressed in the attached letter. I hope you will trust the sincerity of Georgia's efforts to engage with you in this forum and welcome your thoughts on this matter.

Sincerely,

A handwritten signature in cursive script that reads "Sonny Perdue".
Sonny Perdue
GovernorSP: hdm
Enclosure

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January 27, 2005

U.S. Environmental Protection Agency, Region 4
 Water Management Division
 61 Forsyth Street, S.W.
 Atlanta, Georgia 30303

Attention: Ms. Sibyl Cole, Standards, Monitoring and TMDL Branch

RE: Savannah Harbor Dissolved Oxygen TMDL

Dear Ms. Cole:

The South Carolina Department of Health and Environmental Control submits the following comments on the proposed Savannah Harbor dissolved oxygen (DO) TMDL. These comments address three aspects of the proposed TMDL: technical modeling issues, water quality standards issues, and TMDL allocation issues.

Technical Modeling Issues:

Based on the presentation and discussion at the January 12, 2005 stakeholder meeting held at EPA offices in Atlanta, the Department understands that EPA will not finalize the August 2004 draft TMDL so as to allow further development of the predictive modeling on which the draft TMDL was based. We understand that EPA will develop a second draft TMDL for public comment once additional modeling work is completed. We agree with this plan and believe it to be the best course of action, for the following reasons:

1. Refinement of the Savannah Harbor EFDC hydrodynamic and salinity model is in progress. The U.S. Army Corps of Engineers has contracted the model developer to modify and re-calibrate the EFDC model for use in evaluating the Savannah Harbor Expansion Project (SHEP). Planned enhancements include increasing the grid resolution and re-working the marsh interactions. These are significant modifications, which could impact the final TMDL. The draft TMDL should be re-evaluated once this work is completed.
2. The March 4, 2004 EFDC model report presents two alternative approaches for setting the offshore boundary conditions for water surface elevation and salinity. The report is not definitive on which approach is preferred for the Savannah Harbor application. While the presentation of alternatives is useful, the report should clearly indicate which approach is preferred.

SOUTH CAROLINA DEPARTMENT OF HEALTH AND ENVIRONMENTAL CONTROL
 2600 Bull Street • Columbia, SC 29201 • Phone: (803) 898-3432 • www.scdhec.gov

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3. The Savannah Harbor WASP7 water quality model calibration report is not complete. Full technical review of the model calibration cannot be accomplished without complete documentation.
4. The reaeration routine within the WASP7 model code has been re-worked since the August 2004 draft TMDL was proposed. Reaeration is a critical component of the dissolved oxygen balance. This code change needs to be fully documented and reviewed.
5. As discussed at the January 12 meeting, the TMDL should evaluate potential loadings from the dredge spoil areas. We recognize that discharges from the spoil areas may be intermittent; however, the proximity of the spoil areas to the critical segment identified in the draft TMDL and the potential for increased disposal due to harbor deepening indicate the need for evaluating the possible impact on dissolved oxygen in the harbor.
6. As discussed at the January 12 meeting, a more rigorous evaluation of stormwater and non-point source impacts is needed.
7. It is not clear in the draft TMDL documentation how the F-ratios for the upstream dischargers to the Savannah River were determined. This parameter is important for allocating the ultimate carbonaceous oxygen demand. The TMDL documentation should clearly indicate the source for this parameter.
8. The method used to interpret model output and calculate the 30-day 0.40 mg/L dissolved oxygen impact should be discussed in greater detail. The TMDL identifies the segment around station Fort Jackson as the controlling segment. It appears the critical segment spans a reach that transitions from Georgia waters to shared South Carolina-Georgia waters. Thus, the applicable water quality standard would appear to change within the critical segment. The TMDL should identify the impact in all shared waters, not only in the Savannah River, but also in Back River near the sediment basin and the Little Back River near Union Creek.

Water Quality Standards Issues:

Under Section 303 of the Clean Water Act and pursuant to 40 CFR 131, the Department asks that the EPA review, approve, and if necessary, promulgate a dissolved oxygen water quality standard for the State of Georgia that will ensure that all of South Carolina's water quality standards are maintained and protected. To this end, we ask that the EPA ensure that the beneficial uses established by the State of South Carolina are protected, that our dissolved oxygen criterion for those portions of the Savannah that are

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within our jurisdiction is maintained, and lastly, that our antidegradation rules are also considered and implemented.

South Carolina has adopted aquatic life uses for these waters and has duly-promulgated and approved dissolved oxygen water quality criterion for these waters that is more stringent than those promulgated by the State of Georgia and the marine DO criterion proposed by EPA. Under Section 510 of the Clean Water Act and 40 CFR 131.10, Georgia and the EPA must ensure that downstream uses are maintained and protected.

The implementation of any TMDL that does not take into consideration South Carolina's antidegradation water quality standards would be inconsistent with federal regulation. To explain further, South Carolina has adopted antidegradation rules requiring that prior to any degradation of water quality within its jurisdiction, a public process must occur which includes the consideration of the benefit to its citizenry for the lessening of water quality in the affected areas. During the years that the EPA has not moved to resolve the issues concerning Georgia's DO standard for Savannah Harbor, the State of Georgia has issued permits to its dischargers which have, according to the EPA, exceeded their half of the assimilative capacity in the shared waters of the Savannah River. This has resulted in South Carolina water resources being degraded without documented benefit to the citizens of the State of South Carolina. In order to assure that South Carolina's citizens receive adequate notification and benefit from a lowering of water quality in waters that affect them, the EPA must resolve this antidegradation issue prior to implementing any TMDL.

As to the specifics of the development of a site-specific dissolved oxygen water quality criterion for Savannah Harbor, the Department will reserve our comments until such time as the criterion is offered for public comment through a formal promulgation process.

TMDL Allocation Issues:

The draft TMDL issued by Region 4 in August of 2004 proposes a wasteload allocation of zero pounds per day for oxygen demanding substances based on the State of Georgia's current dissolved oxygen criterion of "no less than 3.0 mg/L in June, July, August, September, and October". An alternate TMDL with a wasteload allocation of 132,000 pounds per day Total Ultimate BOD (TBOD_u) is proposed based on EPA's recommended marine DO criterion for the harbor of one-day water column average of 2.3 mg/L, seven-day water column average DO of 3.0 mg/L, and thirty-day water column average DO of 3.55 mg/L. This wasteload allocation of 132,000 pounds/day TBOD_u represents a reduction of approximately 30% from the 1999 TBOD_u loading from all NPDES permitted discharges to the Savannah River system below Lake Thurmond.

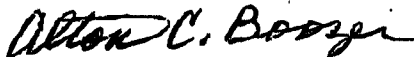
A goal of the TMDL process should be an equitable allocation of available loading not only between dischargers to the system but also between the States. Currently, more than

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90% of the TBOD₅ load to the system originates in the State of Georgia. Department staff intend to meet with our counterparts in Georgia to discuss the current inequity and explore alternatives to the current allocation. It is hoped that the states can agree upon an equitable allocation of the available load; however, in the event the states cannot agree, we expect EPA to fulfill its responsibility to negotiate an equitable allocation. Due to the current inequity in allocation between the states, it is expected that, until an agreement on a final allocation is reached, South Carolina dischargers will not be required to reduce loadings below 1999 permitted values regardless of any decrease in loading required by the final TMDL.

Thank you for the opportunity to comment on this most important matter. If you have questions concerning these comments, please contact me at (803) 898-4259.

Sincerely,



Alton C. Boozer
Chief, Bureau of Water

ACR/let

TITLE 44. HEALTH**CHAPTER 59. THE RIVER BASINS ADVISORY COMMISSIONS****SECTION 44-59-10. Definitions. [SC ST SEC 44-59-10]**

As used in this chapter:

(1) "River basins" means that land area designated as the Catawba/Wateree, Yadkin/Pee Dee River Basins by the North Carolina Department of Environmental and Natural Resources and the South Carolina Department of Health and Environmental Control.

(2) "Commissions" means the River Basins Advisory Commissions. The commissions shall be constituted as described below and there shall be a separate commission for each river basin.

SECTION 44-59-20. River Basins Advisory Commissions established; purpose; authority. [SC ST SEC 44-59-20]

(A) There is established the River Basins Advisory Commissions. The commissions shall be permanent bodies composed of members from the State of North Carolina and the State of South Carolina.

(B) The purpose of each commission shall be to:

(1) provide guidance and make recommendations to local, state, and federal legislative and administrative bodies, and to others as it considers necessary and appropriate, for the use, stewardship, and enhancement of the water, and other natural resources, for all citizens within the river basins;

(2) provide a forum for discussion of issues affecting the basin's water quantity and water quality, and issues affecting other natural resources;

(3) promote communication, coordination, and education among stakeholders within the river basins;

(4) identify problems and recommend appropriate solutions;

(5) undertake studies related to water quantity, water quality, and other natural resources in the basin based on existing data available from agencies located in either state;

(6) develop rules and procedures for the conduct of its business or as may be necessary to perform its duties and carry out its objectives including, but not limited to, calling meetings and establishing voting procedures. Rules and procedures developed pursuant to

This item must be effective upon an affirmative vote by a majority of the commission members;

(7) establish standing and ad hoc committees, which must be constituted in a manner to ensure a balance between recognized interests and states. The commissions shall determine the purpose of each standing or ad hoc committee;

(8) determine the optimum approach to comprehensively and collaboratively provide recommendations for integrated river management including, but not limited to, the total assimilative capacity of the basin;

(9) seek, apply for, accept, and expend gifts, grants, donations, services, and other aid from public or private sources. The commissions may accept or expend funds only after an affirmative vote by a majority of the members of the commissions;

(10) exercise the powers of a body corporate, including the power to sue and be sued, and adopt and use a common seal and alter the same;

(11) enter into contracts and execute all instruments necessary or appropriate to achieve the purposes of the commissions;

(12) designate a fiscal agent;

(13) perform any lawful acts necessary or appropriate to achieve the purposes of the commissions.

(C) All of the authority granted to the River Basins Advisory Commissions shall be advisory in nature and in no way shall the commissions be construed to have any regulatory authority.

(D) The commissions shall have no authority to obligate or otherwise bind the State of North Carolina, the State of South Carolina, or any agency or subdivision of either state.

SECTION 44-59-30. Staff support; agency cooperation. [SC ST SEC 44-59-30]

(A) The North Carolina Department of Environmental and Natural Resources and the South Carolina Department of Health and Environmental Control shall provide staff support and facilities to each commission within the existing programs of the respective agencies.

(B) All agencies of the State of North Carolina and the State of South Carolina shall cooperate with the commissions and, upon request, shall assist each commission in fulfilling its responsibilities. The North Carolina Secretary of Environmental and Natural Resources and the Commissioner of the South Carolina Department of Health and Environmental Control or their designees shall each serve as the liaison between their

respective state agencies and each commission.

SECTION 44-59-40. Officers. [SC ST SRC 44-59-40]

Members of each commission shall elect a chairman, vice chairman, and those other officers as they consider necessary with the chairmanship to be rotated between the States of North Carolina and South Carolina.

SECTION 44-59-50. Catawba/Waterce Commission and Yankee/Tee Dee Commission; membership; terms; filing vacancies. [SC ST SEC 44 59 50]

(A) The Catawba/Waterce Commission shall be composed of fifteen members who reside in counties which abut the Catawba/Waterce River Basin as follows:

- (1) two members of the North Carolina House of Representatives, to be appointed by the Speaker of the North Carolina House of Representatives;
- (2) two members of the North Carolina Senate, to be appointed by the President Pro Tempore of the North Carolina Senate;
- (3) two members of the South Carolina House of Representatives, to be appointed by the Speaker of the South Carolina House of Representatives;
- (4) two members of the South Carolina Senate, to be appointed by the President Pro Tempore of the South Carolina Senate;
- (5) one member from South Carolina representing a water or sewer municipal utility to be appointed by the South Carolina legislative members of the commission;
- (6) one person from a nonprofit land conservation trust operating within the North Carolina portion of the basin, appointed by the Governor of North Carolina;
- (7) the President of Duke Power or his designee;
- (8) the Chairman of the Bi-State Catawba River Task Force or his designee;
- (9) the Chief Executive Officer of the Carolina's Partnership, Inc. or his designee;
- (10) one person to represent the commissions referenced below, appointed jointly by the three chief executive officers of the commissions: the Lake Wylie Marine Commission established pursuant to Article 4 of Chapter 77 of the North Carolina General Statutes, the Mountain Island Lake Marine Commission established pursuant to Article 6 of Chapter 77 of the North Carolina General Statutes, and the Lake Norman Marine Commission established pursuant to Chapter 1089 of the 1969 North Carolina Session Laws;

(11) one member from a lake homeowner's association located on the Catawba/Waterce River whose members reside in South Carolina, to be appointed by the President Pro Tempore of the South Carolina Senate.

(B) The Yadkin/Pee Dee Commission shall be composed of fifteen members who reside in counties which abut the Yadkin/Pee Dee River Basin as follows:

(1) two members of the North Carolina House of Representatives, to be appointed by the Speaker of the North Carolina House of Representatives;

(2) two members of the North Carolina Senate, to be appointed by the President Pro Tempore of the North Carolina Senate;

(3) two members of the South Carolina House of Representatives, to be appointed by the Speaker of the South Carolina House of Representatives;

(4) two members of the South Carolina Senate, to be appointed by the President Pro Tempore of the South Carolina Senate;

(5) one member from South Carolina representing a water or sewer municipal utility to be appointed by the South Carolina legislative members of the commission;

(6) one member from South Carolina representing the agricultural community to be appointed by the South Carolina legislative members of the commission;

(7) one person from a water or sewer municipal authority, appointed by the Governor of North Carolina;

(8) the President of Progress Energy or his designee;

(9) the President of Alcoa Power Generating, Incorporated (APGI) or his designee;

(10) the President of Weyerhaeuser or his designee;

(11) a representative of the land development industry, whose organization does business within the Yadkin/Pee Dee River Basin and who shall be appointed by the chairman of the commission.

(C) The legislative members of the commission may appoint as they consider necessary additional members to the commission to serve as advisory members.

(D) State legislative members appointed to the commission shall serve ex officio and shall have terms coterminous with their terms of office. All other members shall serve for a period of two years. Appointments to fill vacancies must be made for the remainder of

the unexpired terms. Vacancies shall be filled in the same manner as the original appointment.

SECTION 44-59-60. Compensation. [SC ST SEC 44-59-60]

The members of the commissions shall serve without compensation.

SECTION 44-59-70. Obtaining information from state officers and agencies. [SC ST SEC 44-59-70]

The commissions may obtain information and data upon request from all state officers, agents, agencies, and departments of the States of North Carolina and South Carolina while in discharge of their duties.