

AGENDA

Lower Neuse Basin Association, Inc.[®] Neuse River Compliance Association, Inc.[®]

**November 2, 2017
Johnston County Utility Dept., Smithfield, N.C.
10:00 a.m.**

- **Welcome, Roll Call, and Introduction of Guests**
- **Approval of Minutes for September 7, 2017 – pages 2, 3**
- **LNBA/NRCA Treasurer’s Report –**
 - * **October and November 2017 Treasurer’s Reports – Donald, pages 3, 4**
 - * **FY 2018-19 Draft Budget & Membership Fees – Haywood, page 5**
 - * **LNBA/NRCA 2016 990 Tax Returns - Haywood**
- **LNBA Sampling Report, September and October, 2017 – Haywood, page 6**
- **LNBA/NRCA Proposed Board Meeting Dates for 2018 - Haywood**
 - January 25th – City of Goldsboro**
 - May 3rd – Contentnea MSD**
 - September 6th – City of Wilson**
 - November 1st – Town of LaGrange**
- **2017 Nitrogen Leases - Haywood**
- **02B Rules Review Update and Comments – Dan, Haywood, & Glenn**
- **Johnston County’s Request to Lease Nitrogen from the NRCA – Haywood, pages 7, 8**
- **NACWA Amicus Brief – Dan, Glenn, & Haywood, pages 9 - 12**
- **Member Reports -**
- **Next Meeting and Adjourn – Location/Date: City of Goldsboro, January 25, 2018**

Lower Neuse Basin Association®/Neuse River Compliance Association®
September 7, 2017, Meeting Minutes
Dow Dupont-Kinston Facility, Kinston, N.C.

Attending:

| | | | |
|------------------|----------------------|-------------------|-----------------------|
| Donald Smith | Town of Cary | Dan McLawhorn | City of Raleigh |
| Tony Hawkins | City of New Bern | Jeff White | Dow Dupont-Kinston |
| Mike Graham | Duke Energy Progress | Emily Elmore | City of Kinston |
| Paul Allen | Town of Benson | Jimmy Pridgen | City of Wilson |
| Laura Pruitt | City of Havelock | Chandra Farmer | Johnston County |
| T. J. Lynch | City of Raleigh | Danny Lassiter | CWS, Inc. |
| James Warren | Town of Clayton | Chuck Smithwick | Contentnea MSD |
| Dan Wall | Johnston County | Gary Perryman? | DEQ DWR Permitting |
| Trupti Desah | DEQ DWR Permitting | Tim Broome | Johnston County |
| Kenny Stevens | City of Kinston | Martin Lebo | AquAeTer |
| Glenn Dunn | Poyner & Spruill | Cyndi Karoly | DEQ DWR Water Science |
| Mike McAllister | Town of Kenly | Mike Wagner | City of Goldsboro |
| Randall Harrell | Dow Dupont-Kinston | Mark VanDer Borgh | DEQ DWR Water Science |
| Haywood Phthisic | LNBA/NRCA | | |

The Chair, Dan McLawhorn, called the meeting to order and welcomed everyone. The roll was called and there were 13 of 18 members present representing the LNBA and 14 of 22 members present representing the NRCA. There was a quorum present for both association. Guests were introduced and recognized.

Board Minutes – The Board Minutes from the May 4, 2017 meeting were presented and approved by the Boards.

Member Reports – All members were given the opportunity to share any items that may be of interest to the associations.

Treasurer's Report - The Treasurer's Report for June, July, and August, 2017, were presented by Donald Smith, Treasurer. As of August 28th the LNBA account balances were \$218,332.73 and NRCA account balances are \$210,821.20. With no discussion T. J. Lynch made a motion to approve the reports as presented, seconded by Kenny Stevens, and approved by the Board. Membership fees for FY 2017-18 have been received from all members in both associations.

LNBA Sampling Committee Report – Work on the Lower Neuse River Monitoring Service Contract No. 5 with Environment I continues. All sampling was completed by Environment 1 in May, June, July, and August, 2017. Data sets have been received through June, 2017 and uploaded to the website. All invoices through July, 2017 have been processed and paid.

May, 2017 – J5250000, J5410000 and J5500000 were inaccessible due to road flooding. As a result, the second set of field parameter readings could not be done for these 3 locations. Full sample collection was done at each of these later in May. The final data results have been received. All samples collected, analyzed, and reported per MOA.

June, 2017 - All samples were collected and analyzed per MOA requirements. The final data sets have been received and posted on the LNBA website.

July, 2017 - All samples were collected per MOA requirements. Results are in the final data review.

August, 2017 - All samples collected with the following exception: J5410000 (8/13 & 8/29) unable to sample due to bridge construction.

LNBA/NRCA Annual Training Workshop – The workshops were held on July 18, 2017 in Raleigh and July 20, 2017 in Kinston. A total of 96 attendees received CEUs for participating in the workshop this year. Cost for the workshops was \$1,829.33 (lunch and snacks). The CEU Report for the workshops has been submitted to DWR.

NRCA Mid-Year Report – The summary page of the 2017 mid-year report (July 1, 2016 to June 30, 2017) was presented to the Board. The members continue to achieve outstanding end of pipe total nitrogen concentrations with many operating below 3.0 mg/L. for both associations. This report is not required to be submitted to DWR until the NRCA exceeds 80% of its allocation. However, this report is prepared to calculate the NRCA membership dues each year.

Financial Policy for LNBA and NRCA – Haywood presented a draft financial policy for the Board to review and consider adopting at a future board meeting. The purpose of the policy is to memorialize how the associations conduct their financial business (in addition to the requirements of the by-laws). The Board was asked to review the document and make suggested edits, if any, to Haywood so the Board could consider adopting the policies in November.

Rules Review Schedule and Process – The proposed Rules Re-adoption process is moving forward with being placed on the Environmental Management Commission, Water Quality Committee's agenda for the meeting in September. Dan gave several examples of rule revisions that have not been vetted and noted a follow up with the water quality committee chair requesting a delay in moving these rules forward is in order.

Atlantic Sturgeon Update – Portions of the Neuse River have now been designated as critical habitat area for the Atlantic Sturgeon. This may become another issue when renewing or expanding your NPDES permits.

Smithfield Agreement Lawsuit – Glenn Dunn presented a memo outlining a recent lawsuit filed against the Smithfield agreement which was designated to offset swine issues in river basins where pollution occurred. At issue in this case is the fact the payments are in lieu of civil penalties and should be declared unconstitutional and payments stopped (\$2 million annually). Following discussion, the Boards took no action.

Legislative Update – Dan updated the Board on recent legislation noting that the Institute of Government at UNC-CH has posted all legislation posted on that website.

The next meeting is scheduled for November 2, 2017 at 10:00 hosted by the Johnston County. With no further business, the meeting was adjourned.

Lower Neuse Basin Association, Inc. / Neuse River Compliance Association, Inc.

Treasurer's Report

10/31/2017

LNBA

| | | | |
|---|---------------------|-----------|---------------------------------|
| Balance Forward: (checking per bank statement - 9/26/17) | Checking | \$ | 131,786.61 |
| | Savings | \$ | 70,422.96 |
| Debits: | | \$ | |
| Environment 1 (Sept 17 Inv) | | | 7,289.58 |
| Phthisic Consulting, Inc. (Sept 17, Inv) | | | 1,566.31 |
| MFG Consulting, LLC (Sept 17 Inv) | | | 100.00 |
| Bank Charges (checks & maintenance fees) | | | <u>1.00</u> |
| | Total Debits | \$ | 8,956.89 |
| Credits: | | \$ | |
| Interest (checking) | | | 14.85 |
| Interest (savings) | | | 16.40 |
| Membership Fees | | | - |
| Transfer to Savings | | | - |
| Checking Account Balance (per bank statement - 10/24/17) | | \$ | 122,844.57 |
| LGCU Share Account Balance (savings account) | | | <u>70,439.36</u> |
| Total LNBA Account Balance | | \$ | <u><u>193,283.93</u></u> |

NRCA

| | | | |
|--|---------------|-----------|---------------------------------|
| Balance Forward: (per bank statement - 9/26/17) | Checking | \$ | 96,768.61 |
| | Savings | | 111,866.10 |
| Debits: | | \$ | |
| Poyner & Spruill (August 17 Inv.) | | | 1,770.45 |
| Phthisic Consulting, Inc. (Sept 17, Inv) | | | 2,907.00 |
| Bank Charges (checks & maintenance fees) | | | 1.00 |
| | Total: | \$ | 4,678.45 |
| Credits: | | \$ | |
| Transfer to Savings | | | - |
| Interest (Savings) | | | 21.46 |
| Interest (Checking) | | | 10.80 |
| Membership Fees | | | - |
| Account Balance (per bank statement -10/24/17) | Checking | \$ | 92,100.96 |
| LGCU Share Account Balance (savings account) | Savings | | <u>111,887.56</u> |
| Total NRCA Account Balance | | \$ | <u><u>203,988.52</u></u> |

Lower Neuse Basin Association, Inc. / Neuse River Compliance Association, Inc.

Treasurer's Report

10/10/2017

LNBA

| | | | |
|---|---------------------|-----------|---------------------------------|
| Balance Forward: (checking per bank statement - 8/23/17) | Checking | \$ | 147,926.17 |
| | Savings | \$ | 70,406.56 |
| Debits: | | \$ | |
| Environment 1 (July & August 17 Invs) | | | 14,579.16 |
| Phthisic Consulting, Inc. (August 17, Inv) | | | 1,578.76 |
| Bank Charges (checks & maintenance fees) | | | <u>1.00</u> |
| | Total Debits | \$ | 16,158.92 |
| Credits: | | \$ | |
| Interest (checking) | | | 19.36 |
| Interest (savings) | | | 16.40 |
| Membership Fees | | | - |
| Transfer to Savings | | | - |
| Checking Account Balance (per bank statement - 9/26/17) | | \$ | 131,786.61 |
| LGCU Share Account Balance (savings account) | | | <u>70,422.96</u> |
| Total LNBA Account Balance | | \$ | <u><u>202,209.57</u></u> |

NRCA

| | | | |
|--|---------------|-----------|---------------------------------|
| Balance Forward: (per bank statement - 8/23/17) | Checking | \$ | 98,981.15 |
| | Savings | | 111,840.05 |
| Debits: | | \$ | |
| MFG Consulting, LLC (August 17 Inv) | | | 100.00 |
| Phthisic Consulting, Inc. (August 17, Inv) | | | 2,933.00 |
| Bank Charges (checks & maintenance fees) | | | 1.00 |
| | Total: | \$ | 3,034.00 |
| Credits: | | \$ | |
| Transfer to Savings | | | - |
| Interest (Savings) | | | 26.05 |
| Interest (Checking) | | | 13.84 |
| Membership Fees | | | 807.62 |
| Account Balance (per bank statement -9/26/17) | Checking | \$ | 96,768.61 |
| LGCU Share Account Balance (savings account) | Savings | | <u>111,866.10</u> |
| Total NRCA Account Balance | | \$ | <u><u>208,634.71</u></u> |

| DRAFT LNBA/NRCA FY 2018 -19 BUDGET | | | |
|------------------------------------|---------------|---------------|----------------|
| | | | Date: 10/31/17 |
| LNBA BUDGET | | | |
| | | Current | Draft |
| Expenditures | FY 15-16 | FY 17-18 | FY 18-19 |
| | Budget | Budget | |
| Water Sampling Contract | \$ 92,400.00 | \$ 92,400.00 | \$ 92,400.00 |
| Consultant Services | 34,900.00 | 34,900.00 | 34,900.00 |
| Administrative Costs/Website | 2,500.00 | 2,500.00 | 2,500.00 |
| Educational Training | 1,500.00 | 1,500.00 | 1,500.00 |
| Metals Monitoring | 3,500.00 | 3,500.00 | 3,500.00 |
| USGS Stream Gage | | - | - |
| Total | \$ 134,800.00 | \$ 134,800.00 | \$ 134,800.00 |
| Revenues | | | |
| Membership Dues | \$ 134,800.00 | \$ 134,800.00 | \$ 134,800.00 |
| Fund Balance | - | - | - |
| Total | \$ 134,800.00 | \$ 134,800.00 | \$ 134,800.00 |
| NRCA BUDGET | | | |
| | | Current | Draft |
| | FY 16-17 | FY 17-18 | FY 18-19 |
| | Budget | Budget | |
| Consultant Services | \$ 65,000.00 | \$ 65,000.00 | \$ 65,000.00 |
| Administrative Costs/Website | 2,500.00 | 2,500.00 | 2,500.00 |
| Educational Training | 1,500.00 | 1,500.00 | 1,500.00 |
| MODMON Research | - | 5,000.00 | 5,000.00 |
| DWQ Permit Fee | 3,500.00 | 3,500.00 | 3,500.00 |
| Total | \$ 72,500.00 | \$ 77,500.00 | \$ 77,500.00 |
| Revenues | | | |
| Membership Dues | \$ 72,500.00 | \$ 72,500.00 | \$ 72,500.00 |
| Fund Balance | 70,000.00 | 5,000.00 | 5,000.00 |
| Total | \$ 142,500.00 | \$ 77,500.00 | \$ 77,500.00 |
| Total for LNBA/NRCA | \$ 207,300.00 | \$ 212,300.00 | \$ 212,300.00 |

Lower Neuse Basin Association®

TO: Board Members

FROM: Water Sampling Contract Coordinator

SUBJECT: Sampling/Monitoring Report for November 02, 2017 Board Meeting

DATE: October 31, 2017

Work on the Lower Neuse River Monitoring Service Contract No. 5 with Environment I continues. All sampling was completed by Environment 1 in September and October, 2017. Data sets have been received through August, 2017 and loaded on the website. All invoices through September, 2017 have been processed and paid.

September, 2017 –

J2230000 (Smith Creek at Burlington Mill Road unable to sample due to road construction. Full sample collection on 9/25/17.

J5410000 (Mill Creek at Richardson Bridge Road near Bentonville). Unable to access due to bridge construction. J542000 (Mill Creek at Williford Road near Cox Mill was established as an alternate site and was sampled on 9/21/17. The September results are in data review.

October, 2017 -

All samples were collected and analyzed per MOA requirements. Analysis of these samples are in progress.


Johnston County

DEPARTMENT OF PUBLIC UTILITIES

POST OFFICE BOX 2263
SMITHFIELD, N.C. 27577
(919) 989-5075

MEMORANDUM

TO: Haywood Phthisic, III
LNBA/NRCA Executive Director

FROM: Chandra C. Farmer, PE 
Johnston County Director of Public Utilities

DATE: October 26, 2017

RE: **Nitrogen Lease Request**

As you are aware, Johnston County is seeking to expand the Central Johnston County Regional Wastewater Treatment Plant located in Smithfield. The existing plant is rated at 9.5 MGD. Johnston County currently has a nitrogen allocation of 71,477 lbs/year. Based on current plant operation and reclaimed water demand, the County should be able to meet the nitrogen mass limit until the average daily plant flow reaches approximately 11 – 11.5 MGD. However, due to projected growth and economies of scale related to construction, the proposed plant expansion project consists of a plan to add 4.0 MGD, which would rate the plant at 13.5 MGD.

The County will need an additional approximate 31,000 lbs/year to operate at 13.5 MGD. Therefore, in order to secure an operating permit and NPDES permit for a total discharge of 13.5 MGD, the County is evaluating options to comply with the nitrogen limit. These options include expansion of the County's reclaimed water system, nitrogen leases, nitrogen purchases and the evaluation of advanced technologies for nitrogen removal.

We have concluded that advanced technologies for nitrogen removal are cost prohibitive to be constructed with the initial plant expansion. However, an area on the proposed plant site will be reserved for the potential implementation of future advanced technologies, which will be re-evaluated periodically, particularly as the County nears an average daily flow of 11.0 MGD. The County plans to actively pursue evaluation of the reclaimed water system expansion, including high rate infiltration basins where suitable soils exist.

In addition, the County is seeking approval of nitrogen lease agreements. The County respectfully requests approval from the NRCA for a lease agreement with the Town of Benson. The proposed agreement would allow for the County to lease up to 10,000 lbs/year of nitrogen from Benson, as needed and as available. The current proposed agreement term is five years with automatic renewal in one year increments.

Furthermore, the County respectfully requests the NRCA to consider an agreement to lease up to 5,000 lbs/year to the County for an initial term of ten years.

Please let me know if you have any questions or need additional information. Thank you for your consideration.

cc: Tim Broome, PE
Dan Wall
Mary Sadler, PE, Hazen and Sawyer

17-2426

United States Court of Appeals
for the Second Circuit

26 CROWN STREET ASSOCIATES, LLC, 26 CROWN
MASTER TENANT, LLC, PMC PROPERTY GROUP,
INC.,

Plaintiffs-Appellants,

against

GREATER NEW HAVEN REGIONAL WATER
POLLUTION CONTROL AUTHORITY, CITY OF NEW
HAVEN,

Defendants-Appellees.

On Appeal from the United States District Court
for Connecticut (New Haven)

BRIEF FOR AMICUS CURIAE

HILARY MELTZER
CARRIE NOTEBOOM
SARAH KOGEL-SMUCKER
of Counsel

ZACHARY W. CARTER
*Corporation Counsel
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November 13, 2017

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TABLE OF CONTENTS

Page

TABLE OF AUTHORITIES.....

The Neuse River Compliance Association (NRCA), a 501 c (3) non profit corporation, is comprised of local government and private corporations that hold major NPDES discharge permits into the Neuse River basin. The local governments also hold state issued permits for the operation of sewage collection system. The NRCA was formed to comply with the Neuse Management Strategy implemented in 1998 pursuant to a TMDL to control nitrogen delivered to the Neuse Estuary, within the Neuse River basin, by point and non point sources. The NRCA has invested over \$400 million in facility improvements to meet and exceed the required nitrogen reductions. The impaired waters are not improved despite these reductions and the local governments are confronted with the potential for future extremely expensive additional nitrogen reduction requirements and need to conserve resources for that anticipated financial burden on their consumers.

H Phthisic

From: Erica Spitzig <espitzig@nacwa.mmsend.com> on behalf of Erica Spitzig <espitzig@nacwa.org>
Sent: Tuesday, October 24, 2017 9:37 AM
To: hmp3rd@aol.com
Subject: NACWA Clean Water Exchange Special Edition



Dear Haywood:

I am writing to solicit support from state and regional clean water groups to participate in an important Clean Water Act litigation matter currently pending in the U.S. Court of Appeals for the Second Circuit. A brief description of the case is below, and a more detailed summary can be found [here](#).

The New York City Department of Environmental Protection is drafting an amicus curiae brief, also known as a "friend of the court" brief, to provide a critical public clean water agency perspective to this case from clean water organizations and utilities across the country.

As described below, the outcome of this case could set national legal precedent that will directly impact the liability of municipalities and public clean water agencies under the Clean Water Act. The goal of this amicus brief effort is to gather as many different national, state, and regional clean water organizations as signatories to the brief to help the federal appeals court understand what a significant issue this case presents for all public clean water agencies. In addition, negative precedent could unnecessarily and exponentially expand the NPDES permitting program placing a significant burden on state regulatory agencies.

There is no cost to join the brief as a signatory, and this is an excellent opportunity for your state or regional group to get involved on a legal advocacy effort of national importance. If you would like to receive a confidential version of the draft for review, subject to common interest privilege, please contact [Hilary Meltzer](#) by email.

26 Crown Associates, LLC v. Greater New Haven Regional Water Pollution Control Authority, US Court of Appeals for the Second Circuit, Case No. 17-2426

Nature of Suit: Appeal by landowner of district court [decision](#) on basement backups.

Briefing schedule: *Amici* need to file a brief in support of the Appellees by **November 13, 2017**.

Summary: Plaintiffs, who own, lease, and manage an apartment building in downtown New Haven, sued the City of New Haven and its water authority, alleging that New Haven's combined sewer system resulted in continuing and chronic backflows of sewage into the basement of 26 Crown Street and releases of untreated sewage directly into the Long Island Sound. Plaintiff argues wastewater seeps into groundwater and then migrates

into navigable waters resulting in a violation of the Clean Water Act (CWA). Pursuant to this theory of liability, a release of pollutants into groundwater that migrates to hydrologically-connected navigable waters violates the CWA. It is popping up in CWA litigation across the country with alarming regularity with many courts confusing the Waters of the United States (WOTUS) jurisdiction test with the CWA point source test.

If the Second Circuit overturns the lower district court decision, the precedent could potentially require a permit for any source that may release pollutants to groundwater that is hydrologically connected to navigable waters, which would result in a significant and impractical expansion of the CWA 402 program and increase citizen suit exposure.

NACWA, along with several agencies and organizations representing the clean water sector, intends to sign on to the brief. Several other entities—including states, national and regional organizations, and municipalities—are also considering participation. We encourage you to consider participating on the brief as well, and to share this opportunity with your member agencies.

If you have any questions, do not hesitate to contact me or Hilary.

Erica Spitzig
Deputy General Counsel
National Association of Clean Water Agencies (NACWA)

National Association of Clean Water Agencies
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www.nacwa.org

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Neuse – 03020201 (HUC): \$21.34 per lb. of nitrogen (these rates are valid until December 31, 2017).

Neuse - 03020202, 03020203, 03020204 (HUCs): \$13.22 per pound of nitrogen.

Neuse – Falls Lake Watershed: \$12.78 per pound of nitrogen.

Neuse – Falls Lake Watershed: \$200.00 per pound of phosphorous.

Based on the current rule a point source (new or expanding facility) would pay the following for 1 pound of nitrogen in HUC 03020201:

1 lb. of TN x 30 years x 200% x \$21.34 lb./TN = \$1,280.40 per lb. of TN

If a facility wanted to expand its permitted capacity by 10 Million Gallons then the cost would be:

10 MG x 3.0 mg/L (TN) x 8.34 x 365 days/year = 91,323 lbs. of nitrogen required

91,323 lbs. x \$1,280.40 per lb. of TN = **\$116,929.960 in offset payments**