

## Clean Water Certification

December 9 , 2010

The HRLA Board has been waiting (maybe too long) to post some news about the main issue affecting High Rock Lake; the Federal License that will define how our lake is maintained and operated for at least the next thirty years. Unfortunately, this post is basically reporting "no news". We are, however, reporting on serious concerns we have about actions occurring that are negatively affecting High Rock Lake.

Surely almost everyone interested in High Rock Lake has seen recent headlines proclaiming the State has revoked the Water Quality Certificate it issued to Alcoa in 2009. For some history, review the HRLA Spring 2010 Newsletter. On December 1, 2010 the North Carolina Department of Environmental and Natural Resources (NCDENR) issued a letter revoking the 401 Water Quality Certification. NCDENR justified this action on the claim of discovering evidence that Alcoa had not shared all of its internal communications with NCDENR as a part of Alcoa's application to NCDENR for the water quality permit.

On December 6, 2010 Alcoa notified the Federal Energy Regulatory Commission it believes the Notice of Revocation contains significant errors of fact and law, and Alcoa intends to take appropriate legal steps to contest the revocation.

So here we are, 2 ½ years after expiration of Alcoa's 1958 Federal License, expecting several more years of litigation before any new rules and regulations for High Rock Lake are put in place.

In our Spring Newsletter we spelled out reasons for the HRLA position on Relicensing, and all this legal wrangling has done nothing to change our reasons for supporting the Relicensing Settlement Agreement or the reasons we believe "special interests" are trying to give a proposed new State agency authority to acquire and operate the Yadkin Project.

All this latest episode with the water quality certification appears to be simply political in nature, carried out by Governor Perdue's handpicked appointee at NCDENR, Dee Freeman. Secretary Freeman was not around during the time from 2003 to 2008, when NCDENR staff and engineers worked on this project. NCDENR was an active participant in the entire relicensing process, and your tax dollars paid for many NCDENR professionals to spend thousands of man-hours in this participation. NCDENR, and its divisions including NCWRC and the Division of Water Quality had unlimited access to engineering data, EPA regulatory files and records, Alcoa's EPA compliance/violation records, water quality monitoring records, fish tissue sampling records, and anything else that could conceivably be needed to judge Alcoa's License Application and the Relicensing Settlement Agreement. At the end of the process, in 2007, NCDENR endorsed the License Application and Relicensing Settlement Agreement as being acceptable to the State of North Carolina. NCDENR is a signatory to the RSA, just like HRLA and many other parties. In addition, NCDENR's Division of Water Quality concluded its engineering review and issued a 401 Water Quality Certification in 2008.

For the current NCDENR Secretary to allow this State Agency to throw out the work product it developed over a six year period is simply unacceptable. This agency is charged by law to form an independent opinion and conclusion on Applications for Clean Water or Clean Air permits. NCDENR cannot rely on an applicant to provide hands-on guidance and assistance in how to do its job. During the relicensing process, HRLA representatives met most of the NCDENR staff assigned to the Yadkin Project, and we found them to be dedicated, honest, and capable professionals. We believe the 401 Water Quality Certification issued first in 2008 and again in May 2009 was the result of a thorough and complete examination of the Yadkin Project, and the process met the intent and purpose of the Federal Laws requiring such action by the State.

As the subject of water quality pertains directly to High Rock Lake, our members need to know the principle issue of a 401 Certification is directed at the measurement of DISSOLVED OXYGEN (DO) at the discharge of the dams. **For HIGH ROCK LAKE, the 401 Certification for Dissolved Oxygen is meaningless!** All other parts of the 401 Certificate mirrored operational parameters defined by the Relicensing Settlement Agreement.

During the relicensing negotiations with Alcoa and other stakeholders, the HRLA was adamant about issues affecting and improving water quality in High Rock. The State Agencies were equally adamant that water quality in High Rock was a function of the inflow and not an issue that could be addressed in the relicensing process. Ultimately, we believe that better water levels, less fluctuation, shoreline land conservation, and water conservation during times of drought measures we finally attained in the RSA will have a positive effect on High Rock Lake Water quality. Unfortunately, due to the State's position, we were unable to get help on other measures, such as removal of debris, shoreline stabilization measures, or more stringent upstream discharge permit regulations that could really help our lake.

Continued litigation and an indefinite date for relicensing means Alcoa will continue to operate under terms of the 1958 License. We all remember too well that those license terms permitted draining the lake on many occasions, the last time in 2002. We face this dilemma because of greedy politicians who want control of the water, and to have the ability to use it as they see fit.

We ask everyone reading this report to consider one major point. If the special interests should somehow prevail in gaining control of the Yadkin Project, the project will have to be operated under terms of a Federal License. Any Federal License will require a 401 Water Certification by the State of North Carolina (NCDENR). Here's the big question. **If NCDENR is technically capable of defining the terms of a Clean Water Certification for a new Yadkin Lakes Authority, then why are they presently unable to do the same for Alcoa?** We believe the answer is POLITICS, and that's not acceptable to the Board of Directors of the HRLA.

You should also wonder how NCDENR is addressing the DO/Water Quality issue for Progress Energy at the PE dams downstream of Alcoa; and Duke Energy on its Catawba River Project. There's no magic here, just good engineering on the part of NCDENR staff to apply the same design principles fairly to all.

If you want to see what happens when a public agency has control of a lake formed on a public river, here's link to see regulations in effect at Randleman Lake, a lake on Deep River near Greensboro, High Point and Randleman..... [www.randlemanlake.com](http://www.randlemanlake.com).

Some will say those highly restrictive regulations are needed because Randleman Lake is a source of drinking water. What will you say if the time comes that that reasoning is applied to High Rock?