Hearing Officer's Report

Water Quality Permitting Rules

Subchapter	Section or Rules	Description
02B	.0400 Section	Effluent Limitations
	.0500 Section	Surface Water Monitoring: Reporting
	.0601-.0608	Goose Creek WQ Management Plan
	.0720-.0724	Randleman Lake Water Supply Plan
	.0610-.0614, .0714-.0715, .0734-.0735	Riparian Buffer Rules (General, Neuse, Tar, Catawba)
02H	.0100 Section	Point Source Discharges To Surface Waters
	.0400 Section	Coastal Waste Treatment Disposal
	.0500 Section	Water Quality Certification
	.0900 Section	Local Pretreatment Programs
	.1200 Section	Special Orders
	.1300 Section	Discharges To Isolated Wetlands & Waters

March 14, 2019

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Water Quality Permitting Section

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Background

Purpose for Rulemaking
The purpose of this rulemaking is to readopt the Water Quality Permitting Rules (15A NCAC 02B .0400, 15A NCAC 02B .0500, 15A NCAC 02B .0601-.0608, 15A NCAC 02B .0610-.0614, 15A NCAC 02B.0714-.0715, 15A NCAC 02B .0720-.0724, 15A NCAC 02B.0734-.0735, 15A NCAC 02H .0100, 15A NCAC 02H .0400, 15A NCAC 02H .0500, 15A NCAC 02H .0900, 15A NCAC 02H .1200, and 15A NCAC 02H .1300) to meet G.S. 150B-21.3A "Periodic Review and Expiration of Existing Rules."

Description of Proposed Amendments
The majority of changes being proposed to these rules are technical in nature, and are intended to make the rules clearer and easier to navigate. These technical changes include:

- Update organization names and addresses, rules and statute citations;
- Corrected typographical errors and punctuation;
- Cited websites as sources of reference materials;
- Minor edits to provide clarity in rule language
- Updated rules to reflect current statutes and session laws and federal regulations
- Provide for use of electronic submittals

Below is a summary of key revisions by section:

<u>15A NCAC 02B .0400 – Effluent Limitations</u>

- Updated definitions (02B .0403)
- Updated requirement for staff to develop water quality-based limits (02B .0404)
- Moved restrictions on discharges to SA waters and Atlantic Ocean from 02H .0404 (02B .0404)
- Revised incorporation of federal treatment standards to include "subsequent amendments" (02B .0406)
- Added new rule to incorporate necessary federal regulations by reference (02B .0408)

<u>15A NCAC 02B .0500 – Surface Water Monitoring: Reporting</u>

- Clarified requirements for 'sufficiently sensitive methods' for analyses (02B .0505)
- Updated to include federal requirements for electronic reporting (02B .0506)
- Added new rule to incorporate other necessary federal regulations by reference (02B .0511, same as 02B .0408)

<u>15A NCAC 02B .0601-.0608 – Goose Creek WQ Management Plan</u>

- Update rule references for consistency with 02H Stormwater rules (02B .0602)

15A NCAC 02B .0720-.0724 – Randleman Lake Water Supply Plan

- Transferred to 02B .0720 section
- Reorganized for clarity and consistency with WSW rules, updated rule references for consistency with 02H Stormwater rules and struck language that is repetitive of WSW, buffer rules, statute (02B .0251)

15A NCAC 02B .0610-.0614, .0714-.0715, .0734-.0735 – Riparian Buffer Rules

- Revised language for consistency among rules
- Transferred to new sections in 02B .0600 and .0700
- Codified session laws and EMC Interpretative Ruling
- Definitions, forestry and approvals consolidated into 1 rule each
- New Category of Use – Allowable with Exception
- Made variance hardships easier to understand
- Delegated major variance decisions to the Division of Water Resources
- Removed "diffuse flow" requirement. Instead, provide options for stormwater
- Neuse, Tar-Pam, Randleman: added provisions for single family residences on existing lots: Zone 2 impacts – allowable (per SL's), Zone 1 impacts – allowable with mitigation, Impacts beyond necessary infrastructure – allowable with mitigation

15A NCAC 02H .0100 – Point Source Discharges to Surface Waters

- Updated application requirements – forms, fees, alternatives analyses, SEPA (02H .0105)
- Clarified language regarding site entry (02H .0107) and protection of confidential information (02H .0115)
- Provided for electronic submittal of permit applications (02H .0105) and design documents for ATC permits (02H .0138); and electronic distribution of documents and posting of public notices (02H .0109), when lawful
- Added new rule to incorporate necessary federal regulations by reference (02H .0143, same as 02B .0408 & 02B .0511)

15A NCAC 02H .0400 – Coastal Waste Treatment Disposal

- Section repealed:
  - Wastewater treatment design requirements are now established in Subchapters 02T and 02U
  - Restrictions on discharge to Class SA (shellfish nursery) waters (02H .0404(a)) and Atlantic Ocean (02H .0404(d)) are to be moved to 02B .0404
  - Remaining rules are out of date or otherwise not useful

15A NCAC 02H .0500 – Water Quality Certifications

- Reorganized to be more understandable
- Removed paper mailing list (email listserv) and newspaper for public notices
- Updated mitigation language, including referencing federal definitions, codifying trigger for stream impacts (per SLs), removing unused ratios and removing requirement for 1:1 restoration or creation (instead limit preservation)

15A NCAC 02H .0900 – Local Pretreatment Programs

- Updated definitions to more closely reflect federal regulations
- Revised to require the control authority to transmit copies of industrial user pretreatment permit 30 days in advance of the effective date (02H .0917)

15A NCAC 02H .1200 – Special Orders

- Makes discretionary the requirement that an evaluation of operations and low-cost improvements be prepared by an independent consultant (02H .1206)

15A NCAC 02H .1300 – Discharges to Isolated Wetlands & Waters

- Reorganized
- Removed paper mailing list (email listserv) and newspaper for public notices
- Updated mitigation language, including referencing federal definitions, codifying trigger for stream impacts (per SLs), removing unused ratios and removing requirement for 1:1 restoration or creation (instead limit preservation)
- Incorporated changes required in SL 2014-120 and SL 2015-286, including referencing the NC Wetland Assessment Method (NCWAM)

Costs and Benefits of Proposed Rulemaking

A Regulatory Impact Analysis was prepared in conjunction with this rulemaking per N.C. General Statute 150B-21.4. As measured from the baseline conditions, it was concluded that there are no quantifiable economic costs or benefits associated with this proposed rulemaking. In addition, the proposed amendments will maintain existing environmental protections at an equivalent level.

Permission to Proceed to Hearing

Permission to proceed to public notice and hearing with the proposed amendments to the Water Quality Permitting Rules was received from the Environmental Management Commission (EMC) on March 8, 2018. The Notice of Text for the public hearing was published on the North Carolina Office of Administrative Hearings website on May 1, 2018.

Public Hearing

Two public hearings for this permanent rulemaking action were conducted, one in Raleigh, NC on May 23, 2018 and one in Kernersville, NC on June 7, 2018. EMC Chairman J.D. Solomon served as the Hearing Officer for the proceedings. There were five attendees at the Raleigh hearing and five attendees at the Kernersville hearing. Both hearings were joint hearings for the Water Quality Permitting rules and the Water Supply Watershed rules.

Summary of Public Comments

GENERAL RIPARIAN BUFFER RULE COMMENTS (15A NCAC 02B .0600 & .0700)

General Forestry related

Please note that the Forest Practice Guidelines Related to Water Quality were re-codified in 2014 from subchapter 15A NCAC, to a new subchapter 02 NCAC 60C. It is recommended that DWR review all its rules and update the text as needed to cross-reference the correct Administrative Code. I did not find wrong text references during my review, but I did not review all of the Rules.

Response:
Rules have been reviewed and revised.

Streamlining and standardizing the Forest Harvest Requirements for all of the Buffer Rules is a welcomed improvement. The ability to have mechanized harvesting of trees from the Buffer will promote safer logging practices. In addition, allowing high-value timber to be harvested in the Goose Creek Watershed rules will allow woodland owners the opportunity to retain forestland through optimization of their financial investment via timber management. Standardization of the Forest Harvest Requirements should be applied to all of the State's Riparian Buffer Rules for the sake of consistency.

Response:
It is the EMC's intent to incorporate the Forest Harvest Requirements into the remaining buffer rules when they are revised.

The effort by DWR to engage stakeholders has been fruitful and is appreciated.

Response:
Thank you. No response necessary.

For determining applicable streams subject to the Buffer Rules, the limitations of the soil survey maps and topo quad maps are recognized and well-documented. However, the forestry community has largely become accustomed to referencing those maps, for purposes of these rules. Until such time that more accurate/detailed basinwide or watershed-wide maps can be developed, approved, published, printed, disseminated, and be made widely and freely available (in both a mobile-device-ready digital format and a printed paper format), it is recommended to continue using soil surveys and topo maps as is being proposed in the Rule revisions.

Response:
Thank you. No response necessary.

After nearly 20 years of administration, it has been observed that the forestry Buffer Rules in many respects continue to be a redundant overlap of regulatory governance of silvicultural activities. In fact, observations after harvests could lead to the conclusion that the rule's provisions may contradict the intent of protecting riparian zones, as a result of the prohibition of cutting trees that have primary roots in the streambank; and the resulting blow down of such trees after the harvest and disruption to the streambank's soil profile. Since 1990, forestry activities have been required to comply with the standards of the state's Forest Practice Guidelines Related to Water Quality (re-adopted April 2018), which requires the establishment of a protective Streamside Management Zone alongside any intermittent stream, any perennial stream and any perennial waterbody (regardless of mapped features). In addition, forestry activities are required to comply with several conditions spelled out in the federal Clean Water Act Section 404 program to minimize discharges to wetlands and waters. And, over the last 20-25 years, forestry Best Management Practices (BMPs) have largely been adopted as standard operating procedures across the forest industry as a result of independent, market-driven forest certification programs that undergo routine third-party auditing. There is generally accepted recognition that forested watersheds produce the highest quality water; and that impacts to water quality from forestry have a short temporal scale, are localized, and are not widespread pervasive contributors to degradation of waters or a loss-of-use.

Response:
While the Division and the EMC recognize the water quality protections afforded by the Forest Practice Guidelines, not all logging/forestry operations are subject to these rules and the NC Forest Service is not a regulatory agency. Therefore, the Forest Harvest Requirements will remain within the buffer rules to ensure water quality protection on sites that are not compliant with the Forest Practice Guidelines.

General Use of Maps

The GICC encourages application of the best available geospatial technology and data. While the soil survey may have helped identify streams to be evaluated for buffers years ago, it is not available for practical application to riparian buffers using current technology (online mapping applications or data download). Better quality sources are now available in digital format at scales comparable to hard copy soil survey maps. Therefore, the GICC recommends removing this source as a reference for identifying streams to be evaluated for buffers.
GICC Recommendation: Omit (A) as a reference

Response:
It has been observed by Division staff that a combination of the Soil Survey maps and USGS maps captures about 95% of streams. If the Soil Survey maps

were removed as a resource, there would be a significant reduction in stream feet with protected riparian buffers. This is not consistent with the purpose of the buffer rules (to protect existing buffers) or the nutrient management strategy. Therefore, the soil surveys will remain a reference in the buffer rules.

This reference to 1:24,000-scale maps is dated and should refer to the current digital version of the National Hydrography Dataset (NHD High Resolution). While the geometry of the data has changed little since the publication of the quadrangle topographic maps cited above, it is widely available as a download and on many online map viewers. This reference is also not the best available for depicting potential streams in all parts of North Carolina. The GICC is working with a wide range of stakeholders to improve and update this geospatial dataset or supersede these data with a better hydrography dataset that can work for all local, state, federal and private stakeholders. **GICC Language Recommendation:**
(B) The National Hydrography Dataset (NHD High Resolution) maintained by the United States Geological Survey (USGS) (website); or

Response:
The rules have been revised to reference the USGS National Map, which uses the National Hydrography Dataset.

The language above [referring to 15A NCAC 02B .0607 (c)(1)(C)] should reference Sub-Item (c)(1)(A) and (c)(1)(B) and not Sub-Item (c)(4)(A) and (c)(4)(B).

Response:
Citations have been corrected.

This part of the rule mentions a GICC approval process but unlike the EMC role there are no specifics on what the approval process would look like. There is no current GICC approval process for this data. The GICC, through the Center for Geographic Information and Analysis (CGIA), has had one inquiry from a local government in the past year to approve a stream map for its jurisdiction. The GICC did not take part in writing the rule language and has not been asked to approve any maps other than the one instance noted for purposes of implementing this part of the rule. It should also be made clear that the role of the EMC is to approve if a mapped stream should be used for implementation of the rule, and that the EMC's role is not to determine whether or not a stream should be mapped. Well-developed and documented hydrography data have many valuable uses in North Carolina outside the scope of this rule. This rule should not discourage or influence good stream mapping processes in North Carolina. GICC workgroups are working to improve the hydrography data

in the state. The GICC approval process would involve a governing body responsible for assuring proper documentation and maintenance of the hydrography.

GICC Language Recommendation:

(C) A hydrography dataset developed using hydrography specifications and standard metadata approved by the Geographic Information Coordinating Council (GICC) and maintained on a GICC list of the best available hydrography. Prior to approving a dataset under this sub-division, the GICC shall assure that edits, deletions and additions to the hydrography dataset follow approved standards and specifications (per stewardship governance). The EMC will make a determination as to whether riparian buffer rules shall apply to edits and additions to this hydrography dataset after a 30-day public notice and opportunity for comment. Hydrography developed by the approved standards and specifications under this sub-item shall not apply to projects that are existing and ongoing within the meaning of this Rule as set out in Item (6).

Response:

The Rules have been revised to incorporate the recommendations regarding the GICC approval process.

General "Table of Uses", Roads:

"Agriculture roads that are exempt from permitting from the U.S. Army Corps of Engineers per Section 404(f) of the federal Clean Water Act." (Deemed Allowable). This is a welcomed added clarification. However, please remove the word "Agriculture" and simply start this sentence with "Roads that are exempt….".

Justification: Section 404(f) exempts roads that are used for multiple specified purposes including agriculture, silviculture or mining (ie: not just for agriculture). This edit would align DWR rules text to match the text used in federal code [33 CFR Part 323.4(a)(6)] so as to avoid confusion.

Response:

Rules language modified to specifically match the language of Section 404(f)(E):

"Construction or maintenance of farm roads or forest roads…"

NCFB supports the new language stating that agricultural roads that are exempt from permitting by the US Army Corps of Engineers under Section 404(f) of the Clean Water Act are "Deemed Allowable". The language is located in the tables of uses under "Road, driveway or railroads" in NCAC 02B .0607(i)(3) – Goose Creek buffer rule, .0614(9)(b) – Catawba buffer rule, 0.714(10)(b) – Neuse buffer rule, .0724(10)(b) – Randleman Lake buffer rule, and .0734(10)(b) – Tar-Pamlico buffer rule. For farm roads to qualify for the Section 404(f) exemption they must meet several conditions, including minimizing impacts. This rule change will eliminate what has been a confusing

and unnecessary requirement. It is our understanding that agricultural roads and crossing that do not qualify for the Section 404(f) exemption will qualify in the same manner as three other crossings described under "Road, driveway or railroads". These three are based on the size of the impact. If our understanding is incorrect, then it should be made clear that agricultural roads that do not meet the Section 404(f) exemption can qualify as an "allowable" use in the same manner – based on the size of the impact. The proposed rule language describing the 404-exempt agricultural roads should not be the only circumstance under which agricultural roads can be "allowable".

Response:
Commenter's understanding is correct, non-exempt agricultural roads would fall under the general term of "roads".

General Stormwater related

Appears that stormwater discharges approved thru a primary SCM and approved by delegated local governments are deemed allowable thru the buffer. How do we handle any local government that is not currently using the MDC? There are currently a few out there. Does the cumulative impact of the outfalls play into quantification of avoidance and minimization when considering additional impacts from utility lines or crossings that need to go thru state review? Clarification to reduce back and forth.

Response:
The rules specifically state "New drainage conveyances from a Primary SCM, as defined in 15A NCAC 02H .1002,". 15A NCAC defines a Primary SCM: *"means a wet pond, stormwater wetland, infiltration system, sand filter, bioretention cell, permeable pavement, green roof, rainwater harvesting, or an approved new stormwater technology that is designed, constructed and maintained in accordance with the MDC."* Therefore, the MDC must be followed for a conveyance to meet this deemed allowable activity. Buffer impacts are not cumulative over a project.

Regarding primary and secondary SCM, is there consideration of using a treatment train using a series of secondary SCMs to mimic performance of primary SCM? Like disconnected impervious and dry detention to allow discharge to buffer downstream?

Response:
From the new Stormwater Design Manual: "*Currently, DEQ is not aware of any combinations of only Secondary SCMs that provide equal or better treatment as a primary SCM. However, per 15A NCAC .1003(6)(a), applicants may propose a plan to use Secondary SCMs in series if they provide technical justification based on engineering calculations and the results of research studies showing that the proposed design provides equal or better*

***stormwater control and equal or better protection of waters of the State than the Primary SCMs and that it shall function in perpetuity. The permitting authority shall have the option to require compliance with the MDC in the event that the alternative SCM design fails*.**"
For the proposed buffer rules, the option of Secondary SCMs in combination would most appropriately fall under the nutrient reduction criteria: *"(ii) New drainage conveyances when the drainage area to the conveyance is demonstrated via approved nutrient calculation methodologies to meet the nutrient loading goal of 3.6 pounds per acre per year of Nitrogen (N) outside of the Falls of the Neuse Reservoir Watershed. Within the Falls of the Neuse Reservoir Watershed, new drainage conveyances when the drainage area to the conveyance is demonstrated via approved nutrient calculation methodologies to meet the nutrient loading goal of 2.2 pounds per acre per year of Nitrogen (N) and 0.33 pounds per acre per year of Phosphorus (P); "*

Local Government delegation

In the current rules, there are 4 different versions of text used to spell-out the limits of delegated local government authority (i.e. which activities remain vested with DWR). The proposed addition of 'forestry' to the lists of activities is welcomed, for the sake of clarity. However, for consistency, it would be best if DWR uses the same delegated authority text in all 5 Buffer Rules.

Apply the text of the Catawba/Goose Creek rules to the other 3 Buffer Rules; or use a modified alternative version offered below for all 5 Buffer Rules: Proposed alternative replacement text: The Division retains vested authority, to the exclusion of local governments, to administer the requirements of this Rule for the following types of activities: Be careful about saying that DWR will "implement" the Rule; it is up to the regulated entity to actually implement the Rule's provisions. The DWR is administering and enforcing the Rule…but not necessarily "implementing" it; consider consulting with legal counsel to develop the best choice of language syntax.

Response:
Rule language has been modified to be consistent among all 5 buffer rules.

Government delegation

NCFB supports the language in revised rules that makes it clear that the Division of Water Resources, not local governments, has jurisdiction to implement the buffer rules for agricultural activities and forest harvest activities. Those rule revisions are found in15A NCAC 02B .0607(k)(4) – Goose Creek buffer rule, .0614(12)(b) – Catawba buffer rule, 0.714(f) – Neuse buffer rule, .0724(12)(b) – Randleman Lake buffer rule, and .0735(5) – Tar-Pamlico buffer rule.

Response:
Thank you. No response necessary.

Agricultural Ponds

NCFB supports the new language regarding the agricultural pond exemption from buffer requirements located in 15A NCAC 02B .0607(g) – Goose Creek buffer rule, .0614(6) – Catawba buffer rule, 0.714(7) – Neuse buffer rule, .0724(7) – Randleman Lake buffer rule, and .0734(7) – Tar-Pamlico buffer rule. These rule changes are required by Session Law 2013-413 [Section 52(a) – (f)] passed by the NC General Assembly.

Response:
Thank you. No response necessary.

Rule .0715(f)5) and Rule .0735(5)e) reference Rule .0706 but should be .0612.

Response:
Citations corrected as appropriate.

NCWRC: We understand that a Session Law is requiring changes to these statutes but wanted to ensure that you are aware that constructing and maintaining agricultural ponds within riparian zones can impact wildlife resources that need forested riparian corridors. Agricultural ponds do not have the same ecological value as a forested riparian buffer for nutrient, sediment, and other pollutant treatment, as well as other buffer benefits such as streambank stabilization and habitat for terrestrial wildlife species. In addition, a pond can impact downstream waters by increasing water temperature in the warm months; temperature increase can negatively impact native aquatic wildlife. We recommend that ponds not be constructed within riparian buffers. If pond construction is necessary, they should be located outside of riparian buffers to the extent practicable.

Response:
Session Law 2013-413 [Section 52(a) – (f)] does not allow modification to this exemption.

General Utilities related

I would like to state that I am not in favor of utilities being so close to streams; particularly when they are in a watershed with buffer rules. I would be in more support of utilities being close to streams if they were more proactive with the management of their sewer systems. In Forsyth County the Utilities Commission are reactive only when a pipe has burst and sewage is going into the stream. I would prefer if these Utility groups cannot maintain their systems properly for the benefit of the environment, then the actual pipes should be located farther from the creek itself. Thirty feet away would be great since that is what we typically impose on developers.

As you know creeks move over time and putting utilities within 10-15’ of the creek allows for quite a bit of erosion potential. Often these pipes are hanging

out of the water or are just below the water surface just waiting for an object or gravity to destroy the pipe. Mowers mow not just the easement super close to the ground but also just a bit beyond, encouraging turf grass to creep into these riparian areas. I understand why the Utilities and design engineers want to situate these pipes so close to the water but as a Town when we're trying to enforce Riparian Buffer Rules where deep-rooted vegetation must be established along the creek banks, they are **ruining** the example we need to show citizens of how to maintain their own buffers. We need some sort of happy medium in the way of plant choice as well that will hold the soil but could be mowed periodically and still grow back. Turf grass is not the solution as it is very shallow-rooted. I find it very frustrating that we are to tell citizens one thing as well as enforce rules and then government, particularly when it comes to NCDOT and Utility Commissions, does whatever without regard for the impression and example we are providing to the public.

Response:
Gravity sewerline installation is often most feasible adjacent to streams.

Regulatory Impact Analysis

The Regulatory Impact Analyses [hereinafter "RIA"], incorrectly assert that the amendments noticed for comments will result in a rule readoption that "will impose a less stringent burden on regulated persons." That is not the case as the proposed rules significantly narrow existing exemptions for public utility lines. That will necessarily result in more municipal utility lines being subject to the buffer rule requirements. That impact alone triggers the need for a fiscal note and requires republication of the rules to comply with the NC Administrative Process Act. The Department would be legally incorrect to assert that there is no new regulatory burden because the more stringent rule provisions mirror existing Department policy. State Statute prohibits the Department from imposing unpromulgated guidance/policies. N.C. Gen. Stat. §150B-18. Thus, legally, any existing Department guidance/policy is non-binding. Moving to incorporate such non-binding policies into regulation is a regulatory change that has an impact on local government that must be addressed in accordance with the NC APA.

Response:
The plain language of the current buffer rules provides limited descriptions within the Table of Uses. The current rule language has been susceptible to interpretation by the Division, regulated parties and other interested stakeholders that it applies broadly to many different uses. The proposed rule provides additional clarity to better pinpoint the scope of each category within the Table of Uses. These clarifying changes would not broaden the applicability of the current rule nor would they increase the stringency of the rule.

The table below provides comparison of sewer line activities with regards to language in the existing buffer rules and the text proposed in this report. The table demonstrates that when comparing the current rule (two left columns) to the proposed rule (three right columns), each use is either equivalent or less restrictive, therefore not impacting expenditures or revenues of local governments.

Current Rules		Proposed Rules		
Use within Table of Uses	**Category**	**Type of Use**	**Description**	**Category**
Non-electric utility lines: Impacts other than perpendicular crossings in Zone 1	Allowable with Mitigation Upon Authorization	Replacement/Rehabilitation of existing sewer lines within, or adjacent to, an existing right of way but outside of an existing utility line maintenance corridor	(i) Permanent maintenance corridor equal to or less than 30 feet wide provided there is no grading and/or grubbing within 10 feet of the top of bank when the sewer line is parallel to the stream	Deemed Allowable
			(ii) Grading and/or grubbing within 10 feet of the top of bank when the sewer line is parallel to the stream and permanent maintenance corridor equal to or less than 30 feet wide	Allowable Upon Authorization
			(iii) Permanent maintenance corridor greater than 30 feet wide. For impacts other than perpendicular crossings, mitigation is only required for Zone 1 impacts. For perpendicular crossings that disturb equal to or less than 40 linear feet, no mitigation is required. For perpendicular crossings that disturb greater than 40 linear feet, mitigation is only required for Zone 1 impacts.	Allowable (with Mitigation) Upon Authorization
		New Line Construction/Installation Activities – Impacts other than perpendicular crossings	(ii) Zone 1 impacts to less than 2,500 square feet when impacts are solely the result of tying into an existing utility line and when grubbing or grading within 10 feet immediately adjacent to the surface water is avoided	Allowable Upon Authorization
			(iii) Zone 1 impacts other than those listed above	Allowable with Mitigation Upon Authorization

New rules less stringent than current rules (yellow) **New rules the same as current rules (blue)**

Current Rules		Proposed Rules		
Use within Table of Uses	**Category**	**Type of Use**	**Description**	**Category**
Non-electric utility lines: impacts other than perpendicular crossings in Zone 2 only	Allowable Upon Authorization	Replacement/Rehabilitation of existing sewer lines within, or adjacent to, an existing right of way but outside of an existing utility line maintenance corridor	(i) Permanent maintenance corridor equal to or less than 30 feet wide provided there is no grading and/or grubbing within 10 feet of the top of bank when the sewer line is parallel to the stream	Deemed Allowable
			(ii) Grading and/or grubbing within 10 feet of the top of bank when the sewer line is parallel to the stream and permanent maintenance corridor equal to or less than 30 feet wide	Allowable Upon Authorization
			(iii) Permanent maintenance corridor greater than 30 feet wide. For impacts other than perpendicular crossings, mitigation is only required for Zone 1 impacts. For perpendicular crossings that disturb equal to or less than 40 linear feet, no mitigation is required. For perpendicular crossings that disturb greater than 40 linear feet, mitigation is only required for Zone 1 impacts.	Allowable (with Mitigation) Upon Authorization
		New Line Construction/Installation Activities – Impacts other than perpendicular crossings	(i) Zone 2 only	Deemed Allowable

New rules less stringent than current rules (yellow)

New rules the same as current rules (blue)

Current Rules		Proposed Rules		
Use within Table of Uses	**Category**	**Type of Use**	**Description**	**Category**
Non-electric utility: Perpendicular crossings that disturb equal to or less than 40 linear feet with a maintenance corridor equal to or less than 10 feet	Deemed Allowable	Replacement/Rehabilitation of existing sewer lines within, or adjacent to, an existing right of way but outside of an existing utility line maintenance corridor	(i) Permanent maintenance corridor equal to or less than 30 feet wide provided there is no grading and/or grubbing within 10 feet of the top of bank when the sewer line is parallel to the stream	Deemed Allowable
		New Line Construction/Installation Activities – Perpendicular crossings or perpendicular entry into the buffer	(i) Construction corridor of less than or equal to 40 linear feet and a permanent maintenance corridor that is equal to or less than 30 feet in width	Deemed Allowable

New rules less stringent than current rules (yellow)

New rules the same as current rules (blue)

Current Rules		Proposed Rules		
Use within Table of Uses	**Category**	**Type of Use**	**Description**	**Category**
Non-electric utility: Perpendicular crossings that disturb equal to or less than 40 linear feet with a maintenance corridor greater than 10 feet	Allowable Upon Authorization	Replacement/Rehabilitation of existing sewer lines within, or adjacent to, an existing right of way but outside of an existing utility line maintenance corridor	(i) Permanent maintenance corridor equal to or less than 30 feet wide provided there is no grading and/or grubbing within 10 feet of the top of bank when the sewer line is parallel to the stream	Deemed Allowable
			(ii) Grading and/or grubbing within 10 feet of the top of bank when the sewer line is parallel to the stream and permanent maintenance corridor equal to or less than 30 feet wide	Allowable Upon Authorization
			(iii) Permanent maintenance corridor greater than 30 feet wide. For impacts other than perpendicular crossings, mitigation is only required for Zone 1 impacts. For perpendicular crossings that disturb equal to or less than 40 linear feet, no mitigation is required. For perpendicular crossings that disturb greater than 40 linear feet, mitigation is only required for Zone 1 impacts.	Allowable (with Mitigation) Upon Authorization

Current Rules		Proposed Rules		
Use within Table of Uses	**Category**	**Type of Use**	**Description**	**Category**
		New Line Construction/Installation Activities – Perpendicular crossings or perpendicular entry into the buffer	(i) Construction corridor of less than or equal to 40 linear feet and a permanent maintenance corridor that is equal to or less than 30 feet in width	Deemed Allowable
			(iv) Permanent maintenance corridor greater than 30 feet wide. For impacts other than perpendicular crossings, mitigation is only required for Zone 1 impacts. For perpendicular crossings that disturb equal to or less than 40 linear feet, no mitigation is required. For perpendicular crossings that disturb greater than 40 linear feet, mitigation is only required for Zone 1 impacts.	(Allowable with Mitigation) Upon Authorization

New rules less stringent than current rules (yellow) **New rules the same as current rules (blue)**

Current Rules		Proposed Rules		
Use within Table of Uses	**Category**	**Type of Use**	**Description**	**Category**
Non-electric utility: Perpendicular crossings that disturb greater than 40 linear feet but equal to or less than 150 linear feet with a maintenance corridor equal to or less than 10 feet	Allowable Upon Authorization	Replacement/Rehabilitation of existing sewer lines within, or adjacent to, an existing right of way but outside of an existing utility line maintenance corridor	(i) Permanent maintenance corridor equal to or less than 30 feet wide provided there is no grading and/or grubbing within 10 feet of the top of bank when the sewer line is parallel to the stream	Deemed Allowable
		New Line Construction/Installation Activities – Perpendicular crossings or perpendicular entry into the buffer	(ii) Construction corridor of greater than 40 linear feet and less than or equal to 150 linear feet and a permanent maintenance corridor that is equal to or less than 30 feet in width	Allowable Upon Authorization

New rules less stringent than current rules (yellow)

New rules the same as current rules (blue)

Current Rules		Proposed Rules		
Use within Table of Uses	**Category**	**Type of Use**	**Description**	**Category**
Non-electric utility: Perpendicular crossings that disturb greater than 40 linear feet but equal to or less than 150 linear feet with a maintenance corridor greater than 10 feet	Allowable with Mitigation Upon Authorization	Replacement/Rehabilitation of existing sewer lines within, or adjacent to, an existing right of way but outside of an existing utility line maintenance corridor	(i) Permanent maintenance corridor equal to or less than 30 feet wide provided there is no grading and/or grubbing within 10 feet of the top of bank when the sewer line is parallel to the stream	Deemed Allowable
			(iii) Permanent maintenance corridor greater than 30 feet wide. For impacts other than perpendicular crossings, mitigation is only required for Zone 1 impacts. For perpendicular crossings that disturb equal to or less than 40 linear feet, no mitigation is required. For perpendicular crossings that disturb greater than 40 linear feet, mitigation is only required for Zone 1 impacts.	Allowable (with Mitigation) Upon Authorization
		New Line Construction/Installation Activities – Perpendicular crossings or perpendicular entry into the buffer	(ii) Construction corridor of greater than 40 linear feet and less than or equal to 150 linear feet and a permanent maintenance corridor that is equal to or less than 30 feet in width	Allowable Upon Authorization
			(iv) Permanent maintenance corridor greater than 30 feet wide. For impacts other than perpendicular crossings, mitigation is only required for Zone 1 impacts. For perpendicular crossings that disturb equal to or less than 40 linear feet, no mitigation is required. For perpendicular crossings that disturb greater than 40 linear feet, mitigation is only required for Zone 1 impacts.	Allowable (with Mitigation) Upon Authorization

New rules less stringent than current rules (yellow)

New rules the same as current rules (blue)

Current Rules		Proposed Rules		
Use within Table of Uses	**Category**	**Type of Use**	**Description**	**Category**
Non-electric utility: Perpendicular crossings that disturb greater than 150 linear feet	Allowable with Mitigation Upon Authorization	Replacement/Rehabilitation of existing sewer lines within, or adjacent to, an existing right of way but outside of an existing utility line maintenance corridor	(i) Permanent maintenance corridor equal to or less than 30 feet wide provided there is no grading and/or grubbing within 10 feet of the top of bank when the sewer line is parallel to the stream	Deemed Allowable
			(iii) Permanent maintenance corridor greater than 30 feet wide. For impacts other than perpendicular crossings, mitigation is only required for Zone 1 impacts. For perpendicular crossings that disturb equal to or less than 40 linear feet, no mitigation is required. For perpendicular crossings that disturb greater than 40 linear feet, mitigation is only required for Zone 1 impacts.	Allowable (with Mitigation) Upon Authorization
		New Line Construction/Installation Activities – Perpendicular crossings or perpendicular entry into the buffer	(iii) Construction corridor of greater than 150 linear feet and a permanent maintenance corridor that is equal to or less than 30 feet in width	Allowable with Mitigation Upon Authorization
			(iv) Permanent maintenance corridor greater than 30 feet wide. For impacts other than perpendicular crossings, mitigation is only required for Zone 1 impacts. For perpendicular crossings that disturb equal to or less than 40 linear feet, no mitigation is required. For perpendicular crossings that disturb greater than 40 linear feet, mitigation is only required for Zone 1 impacts.	Allowable (with Mitigation) Upon Authorization

New rules less stringent than current rules (yellow)

New rules the same as current rules (blue)

Current Rules		Proposed Rules		
Use within Table of Uses	**Category**	**Type of Use**	**Description**	**Category**
Streambank Stabilization -OR- Protection of existing structures	Allowable Upon Authorization	Streambank stabilization for the protection of publicly owned utility lines (not including new line installation)	(i) Less than 150 feet of streambank disturbance	Deemed Allowable
			(ii) Greater than 150 feet of streambank disturbance	Allowable Upon Authorization
		Sanitary Sewer Overflows:	(i) Emergency sanitary sewer overflow response activities, provided that the disturbed area within the buffer outside of the existing utility line maintenance corridor is the minimum necessary to respond to the emergency overflow, is restored to pre-construction topographic and hydrologic conditions, and is replanted with comparable vegetation (e.g. grass with grass, hardwoods with hardwoods) within two months of when disturbance is complete	Deemed Allowable
			(ii) Emergency sanitary sewer overflow response activities that do not meet the listing above. For any new proposed permanent impacts are not a "Deemed Allowable Activity", an application for an Authorization Certificate must be submitted to the Authority no later than 30 calendar days of conclusion of the emergency response activities	Allowable Upon Authorization

Current Rules		Proposed Rules		
Use within Table of Uses	**Category**	**Type of Use**	**Description**	**Category**
Streambank Stabilization -OR- Protection of existing structures (cont.)	Allowable Upon Authorization	Vegetation Maintenance Activities that remove forest vegetation from existing sewer utility right of ways (not including new line installation) outside of the existing utility line maintenance corridor:	(ii) Zone 1 impacts: For lines that have not been maintained, the vegetation can be mowed, cut or otherwise maintained without disturbance to the soil structure for a maintenance corridor that is equal to or less than 30 feet wide	Deemed Allowable
			(iii) Zone 1 impacts other than those listed above	Allowable Upon Authorization

New rules less stringent than current rules (yellow)

New rules the same as current rules (blue)

Current Rules		Proposed Rules		
Use within Table of Uses	**Category**	**Type of Use**	**Description**	**Category**
Grading and revegetation in Zone 2	Deemed Allowable	Vegetation Maintenance Activities that remove forest vegetation from existing sewer utility right of ways (not including new line installation) outside of the existing utility line maintenance corridor:	(i) Zone 2 impacts	Deemed Allowable

New rules less stringent than current rules (yellow)

New rules the same as current rules (blue)

Current Rules		Proposed Rules		
Use within Table of Uses	**Category**	**Type of Use**	**Description**	**Category**
A use shall be considered existing if it was present within the riparian buffer as of July 22, 1997… Only the portion of the riparian buffer that contains the footprint of the existing use is exempt from this Rule. Activities necessary to maintain uses are allowed provided that no additional vegetation is removed from Zone 1.	Existing Use	Vegetation Maintenance Activities within existing utility line maintenance corridor	Definition: "Existing utility line maintenance corridor" means the portion of a utility right of way that was established prior to the effective date of the rule, or was approved as a permanent maintenance corridor through an Authorization Certificate or Variance issued by the Authority, and in which the vegetation has been maintained (e.g. can be mowed without a chainsaw or bush-hog)	Existing Use
		Replacement/Rehabilitation of existing sewer lines within an existing utility line maintenance corridor	Includes those installed prior to July 22, 1997 AND those "deemed issued" AND those approved by an authorization or variance	Existing Use

New rules less stringent than current rules (yellow)

New rules the same as current rules (blue)

Regulatory Impact Analysis

In particular, the proposed rules for readoption impose at 15A NCAC 2B .0610(16) and 15A NCAC 2B .0714(6) new restrictions on the applicability of activities which are exempt from the rule's coverage. These restrictions will result in fewer public utility lines being exempt – which means substantial new fiscal burdens on local governments to comply with the rules that they are currently exempt from.

For example, as the Department's underlined proposed additions to (6)(a) show, the former rule only required that the use have been existing and present in the buffer as of July 22, 1997. The current rule expressly includes utility lines. The proposed rule for readoption adds two restrictions on the applicability of this exemption for utility lines; (A) it must now be deemed an allowable activity by the revised table of uses in Item (10) of the rule and (B) it was conducted and maintained pursuant to an Authorization Certificate or Variance issued by the Authority. By way of example of the significance of these new regulatory burdens, Raleigh Public Utilities staff documented 84 sewer maintenance projects in the past 36 months, with the need for such projects expected to increase. We estimate it will cost between $1,000 and $3,000 for each of these authorizations. These are substantial new regulatory costs that trigger the need for a fiscal impact statement and republication of the rule.

Response:

There are two additional types of uses that are proposed to be added to the category of existing use to account for uses that occurred after July 22, 1997. This is broadening the list of existing uses (which are exempt), not restricting it. The rule uses "or" not "and"; a use must meet one of the criteria not all of the criteria. To be more clear, the rule was modified to also add "or" after Subparagraph (i):

(6) EXEMPTION WHEN EXISTING USES ARE PRESENT AND ONGOING. This Rule shall not apply to portions of the riparian buffer where a use is existing and ongoing.

(a) A use shall be considered existing if:

(i) It was present within the riparian buffer as of July 22, 1997 and has continued to exist since that time; or

(ii) It was a deemed allowable activity as listed in Item (11) of this Rule; or

(iii) It was conducted and maintained pursuant to an Authorization Certificate or Variance issued by the Authority.

Increased regulatory burdens on local governments are also found in at least two additional changes to the rules. The first change is the addition of a new definition of "(16) Existing utility line maintenance corridor" which now appears in proposed rule 15A NCAC 2B .0610. That definition adds a critical limitation that to qualify as an existing corridor "the vegetation has been mowed, cut or otherwise maintained within the last 10 years."

Sewer lines operate to the extent practicable by gravity. Accordingly, they are located typically in the riparian buffer of streams and other regulated areas under this rule. When a local government utility repairs or replaces a sewer line, the repairs will necessarily occur in the utility easement. These easements will not have been mowed within the past 10 years because there was no regulatory requirement or public need to do so. Thus, these lines will no longer be exempt. This is a major change that will have substantial financial impact on public utilities.

Response:
To address comments related to 10 years, the definition of "existing utility line maintenance corridor" has been modified (see below).

The current language in the rule [15A NCAC 02B .0233 (3)(b)] states the exemption applies when certain uses are both "existing" and "ongoing". It further states that "*[a]ctivities necessary to maintain uses are allowed provided that no additional vegetation is removed from Zone 1*." Consistent with the current rule, the requirement for vegetation maintenance has been retained. Also to address comments, a new category in the Table of Uses has also been added that specifically authorizes vegetation maintenance activities; those uses are "deemed allowable" for Zone 2 impact and some Zone 1 impacts or "allowable upon authorization" for other Zone 1 impacts (see summary table above). This is less stringent than the current rule language, therefore not impacting expenditures or revenues of local governments.

The reference to an Authorization Certificate has been retained to ensure that utility line maintenance corridors as identified in an authorization certificate may continue to be maintained as an existing utility line maintenance corridor as originally approved. This will not impact expenditures or revenues of local governments.

Revised language [15A NCAC 02B .0610 (16)]:
"Existing utility line maintenance corridor" means the portion of a utility right of way that was established as a permanent maintenance corridor prior to the effective date of the rule, or was approved as a permanent maintenance corridor through an Authorization Certificate or Variance issued by the

Authority, and in which the vegetation has been ~~mowed, cut or otherwise~~ maintained (e.g. can be mowed without a chainsaw or bush-hog) ~~within the last 10 years~~."

The revised rule makes other substantive changes in Item (10) under the category "Utility – sewer lines." By those changes, a replacement or rehabilitation of an existing sewer line is for the first time defined to be within the term "New Sewer Line Construction Activities." The impact of these changes is significant and will have substantial economic impacts on affected local governments. For example, a local government is required to replant the area where an emergency repair occurs within two months with "comparable vegetation." It is unclear if "comparable vegetation" means fully mature trees, which if even possible will come at staggering costs. Moreover, the local government is required to make application for an Authorization Certificate. This requirement does not arise from the existing rule. Legally, it is a new regulatory requirement, irrespective of any pre-existing DEQ policy. The fact of the matter is that the new rule is indisputably more stringent than the existing rule and a proper regulatory impact analysis (with fiscal impact statement) is required.

The replacement and any necessary upsizing of sewer lines is likewise required by the Sewer Collection Permit issued by DEQ to sewer utilities statewide. To meet the proposed requirements for those projects, sewer utilities are required to leave vegetative root systems and stumps in place. If the disturbed area is more than 150 linear feet, mitigation is required to be provided by the local sewer utility. If the disturbed area is wider than 20 linear feet, mitigation is required as well. Larger trunk lines require a minimum trench width of 30 feet. Any impact not within the deemed allowable criteria in the revised rule also trigger mitigation requirements.

Response:

The current rule language does not distinguish between new sewer lines and replacement of existing lines. They are both "[n]on-electric utility lines", which means that replacement of existing lines outside an existing maintained corridor is the same as a new line in the current rule. The proposed rule language splits the category into "new" and "replacement/rehabilitation"; the requirements for both are the same or less stringent than the current rule (see table above), therefore not impacting expenditures or revenues of local governments.

Other changes have been made in the proposed rule in response to comments received during the public comment period. These revisions are also the same or less stringent compared to the current rule.

- **Language regarding leaving roots and stumps in place has been removed.**

- **Comparable vegetation is not required within the permanent maintenance corridor, only within temporarily disturbed construction areas beyond the maintained corridor. The term "comparable vegetation" has also been clarified.**

- **The permanent maintenance corridor width has been increased to 30 feet. Construction corridors can be wider than 30 feet; the rule allows for different construction corridor widths as needed for the project.**

15A NCAC 02B .0605 SITE SPECIFIC WATER QUALITY MANAGEMENT PLAN FOR THE GOOSE CREEK WATERSHED (YADKIN PEE-DEE RIVER BASIN): RIPARIAN BUFFER WIDTHS

Buffer definition

The language for riparian buffer widths for the Goose Creek watershed on page 2082 of the public notice deletes "undisturbed" from the description of riparian buffers and later defines it as "a vegetated are that is undisturbed…" A forested buffer provides additional benefits to a stream compared to a vegetated buffer, such as increase streambank stability, stream temperature moderation, and improved wildlife habitat. Including the term "forested" increases the overall benefit of the riparian buffer. We recommend keeping the word "undisturbed" in the description for riparian buffer for more clarity.

Response:
As stated above, the term "vegetated" is used currently in Neuse, Tar-Pamlico, Randleman and Jordan buffer rules. The intent of adding the term in Goose is to make it clear that the buffer protections apply to all subject riparian areas, not just those that are forested. The language further states that the buffer is undisturbed except for uses provided in the Table, so buffer areas that are forested will remain forested.

15A NCAC 02B .0607 SITE SPECIFIC WATER QUALITY MANAGEMENT PLAN FOR THE GOOSE CREEK WATERSHED (YADKIN PEE-DEE RIVER BASIN): BUFFER TYPES AND MANAGING ACTIVITIES WITHIN RIPARIAN BUFFERS

.0607 Table of Uses

The table on page 2092 of the public notice, indicates that for Goose Creek watershed, impacts to greater than 1/3 of an acre of riparian buffer are allowable upon authorization. This language appears to be an error because impacts to 1/10 to 1/3 of an acre of riparian buffer are also allowable upon authorization. We assume this impact instead should be categorized as

allowable with mitigation upon authorization; this change would make it consistent with the rules for other basins.

Response:
The typographical errors under the item "Road, driveway or railroad" within the Table of Uses has been corrected as noted.

.0607(i): Table of Uses

Wastewater collection system lines and forcemains must have 50% of the system cleaned annually – The state collections system permit and Charlotte Water's current collections system permit specify a cleaning requirement of 10% annually. A 50% requirement is burdensome, in direct conflict with state collection system permit requirement, and would unnecessarily result in major fiscal impacts to Charlotte Water customers.

As to cleaning 50 percent of the sewer system annually, again, this goes beyond the scope of the buffer rules and conflicts with the careful scheme established for sewer system operation and maintenance in the State's Collection System Permits.

Response:
This requirement has been removed.

Wastewater collection system utility lines and lift stations lines may impact the riparian zone if both gravity and forcemain collection systems are made of ductile iron – Charlotte Water questions whether these buffer rules are exceeding statutory authority by designating pipe composition material. Charlotte Water furthermore questions the selection of ductile iron over other pipeline material in regards to their ability to protect the environment. For example, Charlotte Water considers AWWA C900 DR-25 pressure-rated PVC or HDPE an equal material to ductile iron.

The rule purports to require that all sewer infrastructure be made of ductile iron pipe (both gravity and force mains) and that at least 50 percent of the sewer system be cleaned annually. Neither of these requirements are appropriate, especially in State buffer rules. We question the Department's authority to impose sewer pipe selection requirements on local engineers and public sewer utilities. This is completely inappropriate from an engineering perspective as well as a market competition approach.

Response:
This requirement has been removed.

Lift stations must have daily visitation 365 days/year – Charlotte Water maintains approximately 80 lift stations system wide. Again, this requirement

would be unnecessarily fiscally burdensome and does not align with the requirements of our current collection system permit.

We object to the requirement that lift stations have SCADA systems and must still be visited 365 days a year. This makes no sense unless the Department has data showing the failure of the SCADA systems to identify issues of concern that will be discovered through a visual inspection. Barring such compelling SCADA failure data, there is no reason to require daily lift stations visits by POTW staff. A more appropriate visitation schedule should be developed by each utility based upon the operational history of each lift station and its specific circumstances (such as wet well capacity; on-site storage, etc).

Response:
This requirement has been removed.

Collection system perpendicular stream crossings must be visited daily (365 days/year) and documentation kept for 3 years of the visitation that is available upon NCDEQ request – Again, Charlotte Water System includes approximately 4000 miles of pipeline. Charlotte Water has procedures in place to properly inspect our system. Our collections system permit provides requirements for inspections that we follow. The requirements here would not be possible and would require major increases in staff and equipment placing an unnecessary fiscal burden on our customers. Please also note that the wastewater crossings are installed multiple feet below the bottom of the creek as required by NCDEQ, to minimize the occurrence of exposure due to creek bank washouts by natural occurrences. Thus, daily visits do not seem to be a realistically based as wastewater lines are already designed and installed with protection in mind and would not be visible.

Response:
This requirement has been removed.

Please reference the table included in (15A NCC 02B .0607(i)) under the section for "Non-electric utility lines with impacts other than perpendicular crossings". The second bullet appears to indicate that wastewater lines are allowed outside of the inner 50 feet without mitigation. Upon discussion with NCDEQ staff, it was clarified that the second bullet is not intended to include sewer lines, only the 3rd and 4th bullets refer to wastewater lines and thus, mitigation is always required. Charlotte Water request that this section be presented more clearly to allow for proper budgeting of projects.

Response:
The utilities section has been revised to make sewer lines a separate use to provide more clarity.

Please reference the table included in (15A NCC 02B .0607(i)) under the section for "Non-electric utility lines with impacts other than perpendicular crossings". This section indicates that the wastewater lines will always require mitigation when located within the buffer. Public water and sewer utilities do not pay mitigation monies for any stream buffer in Mecklenburg County. Charlotte Water would not be opposed to paying mitigation fees within the 50 foot buffer, but paying mitigation fees for any gravity sewer line located within the 200 foot buffer effectively means that Charlotte Water will always pay for the entirety of permanent impacts (i.e. cleared maintenance easement). Gravity sewer trunk lines are typically always installed within 200 feet of a stream to allow for gravity flow to occur at reasonable depths for installation and maintenance. This represent an undue fiscal burden.

Response:
The Table of Uses has been updated to allow sewer lines outside of 50-feet to not always trigger mitigation.

Please reference the table included in (15A NCC 02B .0607(i)) under the section for "Non-electric perpendicular utility line crossings that are collection systems as defined in Rule 15A NCAC 02T .0300". This section indicates that all wastewater collection stream crossings must be installed by methods utilizing trenchless technology. For the reasons noted below, Charlotte Water requests that the requirement for trenchless technology for all perpendicular crossings be reconsidered:

- With proper Erosion and Sedimentation Control measures, open cut installation can minimize sediment and nutrient pollution equally as well as trenchless technologies.
- Trenchless technologies require equipment and personnel to be onsite much longer than open cut installation methods (months vs. days). Longer impacts to a site further elongate the possibility of a possible sedimentation impact.
- Many contractors will request to utilize a pump around for worker safety purposes while utilizing trenchless technology. This set up is almost entirely equal to that of an open cut.
- Trenchless technologies are significantly more expensive than open cut installation methods. This represents an undue fiscal burden.
- Related, under "Road crossings of streams and other surface waters subject to this rule" allows road crossings that impact equal to or less than 150 linear feet of riparian buffer and are perpendicular, without mitigation in the buffer. The allowance of a permanent roadway crossing would seem to be a greater impact than a temporary open cut stream crossing for wastewater pipeline installation. The lengths of impact would also be smaller.

Response:
This requirement has been removed.

15A NCAC 02B .0610 MANAGING ACTIVITIES WITHIN RIPARIAN BUFFERS: DEFINITIONS

.0610(16) We also object to the definition of "Existing utility line maintenance corridor." The definition makes a significant change to the existing rule which it is proposed to replace, i.e. 15A NCAC 2B .0233 NEUSE RIVER BUFFER: NUTRIENT MANAGEMENT STRATEGY: PROTECTION AND MAINTENCE OF EXSITING RIPARIAN BUFFERS. The current rule being readopted does not contain the definition nor the substance of the new requirement that the buffer have been "mowed, cut or otherwise maintained within the last 10 years." The current rule merely requires that the use have been in place by July 22, 1997 and that lawns be "maintained." In contrast, there is no requirement that a utility line be "maintained." See 15A NCAC 2B .0233(3)(b)(i) which reads in pertinent part: "A use shall be considered existing if it was present within the riparian buffer as of July 22, 1997. Existing uses shall include, but not be limited to, agriculture, buildings, industrial facilities, commercial areas, transportation facilities, maintained lawns, utility lines and on-site sanitary sewage systems." [Emphasis supplied]

Because this requirement that utility line easements be maintained is a significant change that will impose additional costs on local governments, the Commission is without authority to adopt the proposed rule change unless and until it submits a fiscal note, with appropriate notifications, and publishes the proposed rule thereafter in the Register. Local governments have thousands of miles of utility lines in the riparian buffers. Raleigh alone has over 2500 miles of sewer lines with most located in a riparian buffer. The combined total of sewer lines maintained by just the Neuse River Compliance Association members is in excess of 5,000 miles. The requirement to actively maintain those lines by vegetation maintenance necessarily imposes a negative fiscal impact on those (and other) utilities. The RIA for rule .0610(6) incorrectly and inexplicably concludes that the proposed rule amendments have no economic impact. We also object because this 10 year requirement is an arbitrarily backward-looking requirement rather than a regulation change that provides the regulated community with fair notice and a period of time to comply in order to maintain the existing exemption status.

Accordingly, unless the 10 year limitation is removed from the rule (our preference), we urge the Department to revise the definition to be a forward-looking requirement as follows: "(16) 'Existing utility maintenance corridor' means the portion of a utility right of way in which vegetation has been

mowed, cut or otherwise maintained within 10 years of the effective date of this rule." This approach will still impose significant new costs on public utilities but at least provides fair notice of this new regulatory requirement.

Response:

To address comments related to 10 years, the definition of "existing utility line maintenance corridor" has been modified.

The current language in the rule [15A NCAC 02B .0233 (3)(b)] states the exemption applies when certain uses are both "existing" and "ongoing". It further states that "*[a]ctivities necessary to maintain uses are allowed provided that no additional vegetation is removed from Zone 1*." Consistent with the current rule, the requirement for vegetation maintenance has been retained. Also to address comments, a new category in the Table of Uses has also been added that specifically authorizes vegetation maintenance activities; those uses are "deemed allowable" for Zone 2 impact and some Zone 1 impacts or "allowable upon authorization" for other Zone 1 impacts (see summary table above). This is less stringent than the current rule language, therefore not impacting expenditures or revenues of local governments.

Revised language [15A NCAC 02B .0610 (16)]:
"*Existing utility line maintenance corridor" means the portion of a utility right of way that was established as a permanent maintenance corridor prior to the effective date of the rule, or was approved as a permanent maintenance corridor through an Authorization Certificate or Variance issued by the Authority, and in which the vegetation has been ~~mowed, cut or otherwise~~ maintained (e.g. can be mowed without a chainsaw or bush-hog) ~~within the last 10 years~~.*"

The definitions rule does not include a definition for the term "utility line corridors" which is substituted for the former line "utility lines." See 15A NCAC 2B .0714(6)(b). In (6)(c) of the same rule, the exemption continues to be limited to the "footprint of the existing use." For utility lines, the rule should clarify that the term refers to the width of the easement which contains the utility line. The ambiguity is further complicated by the limitation in the Table of Uses in 15A NCAC 2B .0714(10) for "Utility – sewer lines." That limits the area that can be disturbed to 20 feet in width. Larger capacity sewer lines require a trench of 30 feet. Accordingly, the 20 foot limitation should be corrected to reference 30 feet. For both reasons, this rule should not move forward as noticed.

Response:
The term "utility line corridors" in 15A NCAC 02B .0714(6)(b) has been updated to match the term used in the definition, *existing utility line maintenance corridor*.

The language referring to the "footprint of the existing use" is not new language; that is in the current rule. By using the updated term "existing utility line maintenance corridor" instead of just "utility line", it is more clear that the footprint is not just the utility line itself but also the maintenance corridor. This clarifying change does not broaden the applicability of the current rule nor does it increase the stringency of the rule.

The permanent maintenance corridor width that triggers mitigation has been increased from 10 feet to 30 feet, which is less stringent than the current rule. Construction corridors can be wider than 30 feet; the rule allows for different construction corridor widths as needed for the project.

When providing repair or replacement of a sewer line, the repairs will necessarily occur in the utility easement. Under the Collection System Permit issued by DEQ, Permittees are required to immediately repair any breach in a sewer line resulting in a discharge of sewage. The same permit also requires sewer utilities to maintain and repair the lines to avoid failures resulting in overflows of untreated sewage. This proposed rule interferes with and requires, in some instances, mitigation for compliance with the Sewer Collection Permit.

Response:
The current rule language does not distinguish between new sewer lines and replacement of existing lines. They are both "[n]on-electric utility lines, which means that replacement of existing lines outside an existing maintained corridor is the same as a new line in the current rule. The proposed rule language splits the category into "new" and "replacement/rehabilitation", the requirements for both are the same or less stringent than the current rule (see table above), therefore not impacting expenditures or revenues of local governments.
The current rule language covers emergency overflow response/repairs as protection of existing structures, which always triggers written approval. The proposed rule language allows for immediate response without seeking prior written approval for buffer impacts. It adds a deemed allowable use and only requires a buffer authorization (after-the-fact) when the area outside of the maintenance corridor cannot be restored to pre-existing conditions. There is no mitigation triggered and there is no fee for buffer authorizations. In addition, there is also a new deemed allow able use for streambank stabilization up to 150 linear feet for the protection of publicly owned utility

lines. Again, in the current rules this is Allowable and always triggers written approval. The proposed rule language is the same or less stringent (see table above), therefore not impacting expenditures or revenues of local governments.

.0610(15) References activities listed in Rule .0724(15)(b), but no such subsection exists in the revised version.

Response:
Citation has been corrected.

15A NCAC 02B .0611 MANAGING ACTIVITIES WITHIN RIPARIAN BUFFERS: AUTHORIZATION CERTIFICATES

.0611(b) Introduces the term "Authorization Certificates" that would allow requests for certain activities to disturb riparian buffers upon authorization, upon authorization with mitigation, or with exception. However, while the term "variance" has been replaced with "exception", the language used is still that of a quasi-judicial procedures (i.e. practical difficulties, unnecessary hardships, etc). This could be construed as being too similar to the language used in .0623(6) for "variances" to other watershed protection rules, which will now be required to go before a quasi-judicial body (i.e. Board of Adjustment). The "exceptions" language should be made more distinct if it is not going to be a true quasi-judicial approach. With that said, we acknowledge that the disturbance of buffers needs to be treated more flexibly than seeking relief from other aspects of the watershed rules.

Response:
The "exception" process was taken from the NPDES Phase II program, authority given in 15A NCAC 02H .1017 and SL 2006-246. The exception process is different than the variance process (e.g. exceptions will be processed by the Division or delegated/designated local government while variances will be processed by the EMC pursuant to 15A NCAC 02B .0226 and G.S. 143-215.3(e)).

15A NCAC 02B .0612 MANAGING ACTIVITIES WITHIN RIPARIAN BUFFERS: FOREST HARVESTING REQUIREMENTS

.0612(a) The Division may want to consider clarifying the introductory language of this Rule, to avoid unintended confusion and to make it clear. If somebody wasn't thorough in reading the rules, they might mistakenly infer that the Forest Harvesting Requirements 'could' be applied to WS-designated Water Supply

Watersheds, because those rules will be a part of Section .0600 and .0700 of the new rules organization. Also, if you are going to make note of the Goose Creek exception, you should also make note of the Jordan Lake exception; or better yet, don't say anything about exceptions at all, and keep it simple.
Proposed alternative replacement text for Part (a):
(a) PURPOSE AND APPLICABILITY. The requirements of this Rule fulfill the provisions to protect and maintain riparian buffers in the areas specified herein, and this Rule shall apply to forest harvesting operations and forestry-related, land-disturbing activities only in the river basins and watersheds listed below:
(1) Catawba River basin and mainstem lakes as specified in rule 15A NCAC 02B .0614;
(2) Neuse River basin as specified in rule 15A NCAC 02B .0714;
(3) Randleman Lake watershed as specified in rule 15A NCAC 02B .0724; and,
(4) Tar-Pamlico River basin as specified in rule 15A NCAC 02B .0734.
Justification: Include the "forestry-related, land-disturbing" text, because some of these requirements are not directly related to harvesting (eg: burning, fertilizer, etc.); and this phrase is also used in the Sedimentation Pollution Control Act and FPGs (ie: be consistent with other state rules).

Response:
The Rule has been revised to clarify and incorporate suggested language.

.0612(c)(3) The rule text of Part (c)(3) reads awkwardly: "(3) Trees removed with the minimum disturbance to the soil and remaining vegetation;"
Proposed alternative replacement text is provided below:
(3) Trees are removed in a manner that minimizes disturbance to soil and remaining vegetation.

Response:
Reference has been modified as suggested

15A NCAC 02B .0614 CATAWBA RIVER BASIN: PROTECTION AND MAINTENANCE OF EXISTING RIPARIAN BUFFERS

.0614(7) For the Catawba River basin buffer rules on page 1976, there was a change in wording from "Zone 1 shall consist of a forested area that is undisturbed" to "Zone 1 shall consist of a vegetated area that is undisturbed". With this language change Zone 1 and Zone 2 do not have any functional difference. Zone 2 is noted as consisting of a "stable, vegetated area that is undisturbed". The distinction of a forested buffer for Zone 1 offers additional benefits to surface waters when compared to a vegetated buffer, such as increase streambank stability, stream temperature moderation, and improved wildlife

habitat. Changing the term from forested to vegetative will reduce the overall benefit, especially for wildlife, of the riparian buffer. We recommend maintaining the wildlife benefit in Zone 1 by keeping the "forested" distinction between Zone 1 and Zone 2.

Response:
The term "vegetated" is used currently in Neuse, Tar-Pamlico, Randleman and Jordan buffer rules. The intent of changing the term in Catawba is to make it clear that the buffer protections apply to all subject riparian areas, not just those that are forested. The language further states that Zone 1 is undisturbed except for uses provided in the Table, so buffer areas that are forested will remain forested.

15A NCAC 02B .0714 NEUSE RIVER BASIN: NUTRIENT SENSITIVE WATERS MANAGEMENT STRATEGY: PROTECTION AND MAINTENANCE OF EXISTING RIPARIAN BUFFERS
(note that some of these comments will be applicable to multiple buffer rules and all proposed modifications will be incorporated into other buffer rules as appropriate)

.0714(6) The proposed rule, 15A NCAC 2B .0714(6) reads:

~~(b)~~(6) EXEMPTION WHEN EXISTING USES ARE PRESENT AND ONGOING. This Rule shall no apply to portions of the riparian buffer where a use is existing and ~~ongoing according to the following:~~ ongoing.

~~(i)~~(a) A use shall be considered existing ~~if~~ if:

(i) ~~it~~ It was present within the riparian buffer as of July 22, ~~1997,~~ 1997 and has continued to exist since that time;

(ii) It was a deemed allowable activity as listed in Item (10) of this Rule; or

(iii) It was conducted and maintained pursuant to an Authorization Certificate or Variance issued by the Authority.

(b) Existing and ongoing uses shall include, but not be limited to, agriculture, buildings, industrial facilities, commercial areas, transportation facilities, maintained ~~lawns,~~ lawns (i.e. can be mowed without a chainsaw or bush-hog), maintained (i.e. vegetation management has occurred within the last ten years) utility ~~lines~~ line corridors and on-site sanitary sewage ~~systems,~~ systems, any of which involve either specific periodic management of vegetation or displacement of vegetation by structures or regular activity.

(c) Only the portion of the riparian buffer that contains the footprint of the existing and ongoing use is exempt from this Rule.

(d) Change of ownership through purchase or inheritance is not a change of use.

(e) Activities necessary to maintain existing and ongoing uses are allowed provided that ~~no additional vegetation is removed from Zone 1 except that grazed or trampled by livestock~~ the site remains similarly vegetated, no built upon area is added within the riparian buffer where it did not exist prior to July 22, 1997, and the site is in compliance with Item (9) of this Rule. ~~existing diffuse flow is maintained. Grading and revegetating Zone 2 is allowed provided that the health of the vegetation in Zone 1 is not compromised, the ground is stabilized and existing diffuse flow is maintained.~~

The highlighted portion of the proposed rule shows the substantive changes made which reduce the scope of the exemption as it applied to sewer lines in existences as of July 22, 1997. The narrower exemption for utility line corridors requires for the first time "specific periodic management of vegetation or displacement of vegetation." These changes are significant and therefore required notice to the appropriate representatives of local governments, as set out in N.C. Gen. Stat. §150B-21.4, and the preparation of Regulatory Impact Analyses.

Response:
There are two additional types of uses that are proposed to be added to the category of existing use to account for uses that occurred after July 22, 1997. This is broadening the list of existing uses (which are exempt) not restricting it. The rule uses "or" not "and"; a use must meet one of the criteria not all of the criteria. To be more clear, the rule was modified to also add "or" after Subparagraph (i).

To address comments related to 10 years, the definition of "existing utility line maintenance corridor" has been modified. The current language in the rule [15A NCAC 02B .0233 (3)(b)] states the exemption applies when certain uses are both "existing" and "ongoing". It further states that "*[a]ctivities necessary to maintain uses are allowed provided that no additional vegetation is removed from Zone 1*." Consistent with the current rule, the requirement for vegetation maintenance has been retained. Also to address comments, a new category in the Table of Uses has also been added that specifically authorizes vegetation maintenance activities; those uses are "deemed allowable" for Zone 2 impact and some Zone 1 impacts or "allowable upon authorization" for other Zone 1 impacts (see summary table above). This is less stringent than the current rule language, therefore not impacting expenditures or revenues of local governments.

By using the updated term "existing utility line maintenance corridor" instead of just "utility line", it is more clear that the footprint is not just the utility line itself but also the maintenance corridor. This clarifying change does not broaden the applicability of the current rule nor does it increase the stringency of the rule.

The language "specific periodic management of vegetation or displacement of vegetation by structures or regular activity" was added to expand the scope of existing uses that would be exempt under the rule. The proposed rule includes both vegetation management and structures, while the current rule language only includes structures.

The language in (e) was also changed to expand the scope of existing uses that would be exempt under the rule. The current rule does not allow for any removal of vegetation in Zone 1 while the proposed rule only requires the site to be similarly vegetated. Built upon area cannot be added under the current rule language or the proposed rule language; this is not a change. The proposed rule does not impact expenditures or revenues of local governments.

.0714(10)(b) The new "Allowable with Exception" category is curious. Is it meant to replace a variance procedure?

Response:
Yes

.0714(10)(b) The following new use has been added to this table: "Public Safety - publicly owned spaces where it has been determined by the head of the local law enforcement agency with jurisdiction over that area that the buffers pose a risk to public safety. The head of the local law enforcement agency shall notify the local government with land use jurisdiction over the publicly owned space and the Division of Water Resources of any such determination in writing."
o Comment: What exactly is the "use" that is being allowed in the buffer? Policemen stationed in the buffer 24/7? Cutting of vegetation in the buffer to increase visibility? The wording of this entry into the Table of Uses doesn't really define an activity or structure that is being allowed in the buffer.
o Comment: We suggest the following language (underline indicates added language): "Public Safety - publicly owned spaces where it has been determined by the head of the local law enforcement agency with jurisdiction over that area that the buffers pose a risk to public safety. The determination must be based on one or more documented cases of crime that were enabled by the buffer. The head of the local law enforcement agency shall notify the local government with land use jurisdiction over the publicly owned space and the Division of Water Resources of any such determination in writing."
There needs to be some threshold or criteria for determining whether or not a buffer is impeding public safety. Citizens' first reaction to vegetated stream buffers is to complain about the vegetated buffers being hiding places for criminals. However, crime maps for Durham reveal that there is no clustering of crime occurring in public places like parks with maintained stream buffers. If law enforcement wants to address citizen complaints about buffers with minimal effort and declares them "unsafe", buffers could be cleared without any real reason.

Response:
Session Law 2017-209 Section 9 does not allow modification to this exemption.

.0714(9)(b) This paragraph allows in the buffer "New drainage conveyances from a Primary SCM as defined in 15A NCAC 02H .1002 when the Primary SCM is provided to treat the drainage area to the conveyance but are not approved under a state stormwater program or a state-approved local government stormwater program."
Comment: The Department assumes that this is to allow drainage conveyances from voluntary SCMs to be allowed through the buffer. We suggest changing the wording "but are not approved" to "but are not

required to be approved". This would eliminate the possibility that a developer might skirt the review process for an SCM that is required by a local or state stormwater program.

Response:
Rule language modified:

New drainage conveyances from a Primary SCM as defined in 15A NCAC 02H .1002 when the Primary SCM is provided to treat the drainage area to the conveyance but are not required to be approved under a state stormwater program or a state-approved local government stormwater program

.0714(9)(b)(iii) This paragraph allows in the buffer "New drainage conveyances when the drainage area to the conveyance is demonstrated via approved nutrient calculation methodologies to meet the nutrient loading goal of 3.6 pounds per acre per year of Nitrogen (N) outside of the Falls of the Neuse Reservoir Watershed. Within the Falls of the Neuse Reservoir Watershed, new drainage conveyances when the drainage area to the conveyance is demonstrated via approved nutrient calculation methodologies to meet the nutrient loading goal of 2.2 pounds per acre per year of Nitrogen (N) and 0.33 pounds per acre per year of Phosphorus (P)".
Question: Does this rule allow for the purchase of offsite nutrient credits to achieve the target loading rates? In other words: If the new drainage conveyance does not achieve the target loading goal with its design, can the owner purchase offsite nutrient credits in order to achieve compliance with the rule?

Response:
There are no provisions for offsite nutrient credit purchasing for meeting this requirement.

.0714(9)(b)(iii) This paragraph allows in the buffer "New drainage conveyances when the flow rate of the conveyance is less than 0.5 cubic feet per second during the peak flow from the 0.75 inch per hour storm".
Comment: Per "Options for Meeting Diffuse Flow Provisions of the Stormwater and Riparian Buffer Protection Programs" Letter from NC DEQ dated March 7, 2014: Diffuse flow to the buffer is designed using the 1 inch per hour storm or the water quality event when a stormwater control measure is installed upstream. Flow from larger events should be discharged through the buffer so long as they are non-erosive. This guidance seem to be in conflict with the proposed provisions of 15A NCAC 02B .0714(10)(b)(iii).
Comment: In order to more broadly enforce a peak flow of 0.5 cubic feet per second, an *equivalent rainfall event* is needed to use in the NRCS Curve

Number Method. The rainfall event of 0.75 in/hr is used in the Rational Method to calculate a flow rate (cubic feet per second). However, when a stormwater control measure is constructed upstream of a proposed new conveyance, the Rational Method is not an adequate method for calculating the flow rate as there is not a "free outfall." The industry standard is to use the NRCS Curve Number Method for calculating peak flows when a stormwater control measure is used. The NRCS Curve Number Method needs an annual reoccurrence interval and storm duration (or precipitation depth in inches) to determine a peak flow (cubic feet per second). Based on current National Oceanic and Atmospheric Administration (NOAA) precipitation data, there is no widely-used equivalent to a 0.75 inch per hour storm.
Question: How was the 0.75 inch per hour storm event chosen for this requirement? We were unable to locate a precedent for this storm event and how it will impact development

Response:
This item is meant to capture sites with small flows where no stormwater control measure is provided. This storm event of 0.75 inch per hour is consistent with 15A NCAC 02H .1061 Minimum Design Criteria for a Treatment Swale.

15A NCAC 02B .0724 RANDLEMAN LAKE WATER SUPPLY WATERSHED: PROTECTION AND MAINTENANCE OF EXISTING RIPARIAN BUFFERS
(note that some of these comments will be applicable to multiple buffer rules and all proposed modifications will be incorporated into other buffer rules as appropriate)

.0724(12)(f) Incorrect reference to "Neuse" should be "Randleman"

Response:
Rule corrected.

.0724(6) Including a timeline (10 years) for existing uses may restrict the ability to maintain utilities and may create financial hardships for sewer system maintenance.

Response:
See comment/response under Definitions.

Allowing a reduction in stream buffer impacts (in exchange for existing impacts) at a new location provides flexibility for development and when designed and implemented correctly would ensure better water quality results compared to the existing impact.

Response:
While an "exchange" program exists in some nutrient reduction and stormwater programs, it is not appropriate for the buffer rules. Replacement of mature vegetation within an existing buffer with a restored buffer of new/young vegetation does not provide for the same nutrient removal protections.

.0724(12)(a)(ii) Requiring the municipality to appoint a single Program Administrator adds additional responsibilities to a single position and increases costs for the municipality. Larger municipalities may have multiple staff members that are certified to perform on-site determinations. In those cases, the intent of the rule is being meet, however the proposed rule requires a single person to be completely responsible for the implementation of the program. We propose that the municipality should be able to submit a program plan to handle the implementation of the program to NCDEQ.

Response:
Language modified to indicate that there may be more than one administrator responsible for rule implementation.

.0724(12)(c) Please provide additional information on the requirements of the Audit.

Response:
An audit would consist of a review of local government activities under the appropriate Buffer Rules and review of documentation associated with such activities. The language in the Rules have been expanded to include a second sentence: "*The audit shall consist of a review of all local government activities with regards to implementation of the Rules*."

15A NCAC 02B .0734 TAR-PAMLICO RIVER BASIN: NUTRIENT SENSITIVE WATERS MANAGEMENT STRATEGY: PROTECTION AND MAINTENANCE OF EXISTING RIPARIAN BUFFERS
(note that some of these comments will be applicable to multiple buffer rules and all proposed modifications will be incorporated into other buffer rules as appropriate)

.0734(10)(b) In the table of uses, under "Road, driveway or railroads: perpendicular crossings…" it refers to "driveway crossings in a subdivision" but the term "subdivision should be defined as being the states definition in NCGS 160A-376, or otherwise be more clearly defined as to what is intended. For example, does this refer only to residential subdivision, or would an industrial subdivision also be included?

Response:
Citation has been modified to use specify "residential" subdivision.

15A NCAC 02H .0127 GENERAL PERMITS

Overview

Two commenters expressed concerns that the General Permits rule and, by extension, the NCG55 &/or NCG57 general permits for single-family residences (SFRs) do not sufficiently regulate nutrient discharges from SFR wastewater systems in the Falls Lake watershed. They recommend that the rule be modified to address these concerns. One commenter proposes rule text to be added to address these concerns.

Consistency with federal regulations

Comment: The General Permits rule fails to conform to federal regulations that approved state NPDES programs are required to administer. In particular, 40 CFR 122.4, Prohibitions, and 122.28, General Permits, specify that no permit may be issued to a new discharger if the discharge will contribute to the violation of water quality standards. Changes in the rule are needed to comply with these requirements.

Response:

The Division continues to administer the federal regulations specified in 40 CFR 123.25 as required, even those not included or referenced in the state's rules. The NPDES rules package now proposed for readoption includes a new Rule 02H .0143 that specifically incorporates by reference all of the required federal regulations.

Item (c) of the existing General Permits rule specifically prohibits any provision of a general permit that would allow a permittee to violate water quality standards.

No modifications were made in response to this comment.

Deficiencies in the Falls Lake nutrient strategy

Comment: SFR discharges are numerous in the Falls Lake watershed and are a potentially significant source of nutrients to Falls Lake. Reducing their nutrient contributions is a challenge.

The current Falls Lake rule treats SFR systems as nonpoint sources rather than setting NPDES nutrient limits for their discharges. This can add to the nutrient reduction burdens of local governments in the watershed. DWR must establish a nutrient reduction goal for SFRs as it has for larger dischargers.

Response:

The Falls Lake wastewater rule (15A NCAC 02B.0279) sets nutrient discharge limits for NPDES dischargers ranging in size from 0.1 to 20.0 MGD capacity. SFR systems are limited to 0.001 MGD, so their individual nutrient contributions are more effectively addressed in the nonpoint provisions of the strategy. Local governments can generate credits by connecting or upgrading SFR systems and apply those credits toward their Existing Development or other reduction requirements. This approach can be effective in reducing nutrients from SFR systems and is not to add to the local governments' burdens.

No modifications were made in response to these comments.

Nutrient controls in the General Permits rule

Comment: DWR should require existing, permitted SFRs and failed septic systems to install nutrient treatment. Items (c) and (e) of the General Permit rule should be revised to require that discharges to nutrient-impaired waters be assigned nutrient allocations and discharge limits, with a compliance schedule for meeting the limits. These changes would bring the rule into compliance with federal regulations for general permits.

If the proposed changes are not made, the rule should be removed from the readoption process and a stakeholder input process reactivated to develop a version that addresses these nutrient management needs.

Response:

The suggested changes in the rule text are not necessary for the effective administration of the general permits program, as those authorities exist elsewhere. However, the changes would substantially modify provisions of the Falls Lake nutrient strategy by requiring an added system of allocations and limits for SFR systems. The Falls Lake strategy is already under review by the N.C. Policy Collaboratory pursuant to S.L. 2016-94 and S.L. 2018-5, and readoption of the Falls Lake rules is on hold until the mandated studies are completed, or until December 31, 2024, whichever is earlier. It would be inappropriate to make the suggested changes in the general permit rule before the legislatively mandated review is completed.

The suggested additions to the rule would also have unintended consequences. The changes, as written, would impose the same allocations-and-limits requirements in all watersheds or river basins with nutrient impacts regardless of the significance of SFR discharges in those areas.

In addition, the changes are directed at just two parameters (nitrogen and phosphorus) in two permits (NCG55 & NCG57) in one watershed, whereas the DWR's responsibilities under the general permits rule are much broader.

No modifications were made in response to these comments.

15A NCAC 02H .0500 WATER QUALITY CERTIFICATION

Further staff review of this section prompted revisions. None of these changes are substantive, they are for clarity or correction to errors during drafting. An explanation of each change is provided below.

.0501 (a)	Deleted language was added back in and edited to match language in Section 401 of the Clean Water Act. Added statute citation for enforcement authority to Department.
.0501 (b)(2)	Edited for clarity
.0501 (c)(1) and (4)	Added definition for "Certification" and "Department".
.0501 (c)(10)	The use of "but for" in the definition for secondary impact was confusing and would be hard to implement. Instead used wording of indirect effects from federal NEPA definition.
.0501 Authority	Corrected citation.
.0502 (a)	Clarifications and cleaning up wording. Clarified where to submit applications, how many copies, and how to submit electronically.
.0502 (a)(2)	Clarification of information needed.
.0502 (a)(3)	Clarification of information needed.
.0502 (a)(9)	Cleaned up wording to be consistent with previous bullets.
.0502 (a)(10)	Added "and" for clarity.
.0502 (a)(11)	Modified signatory requirements to be consistent with federal requirements.
.0502 (c)	Moved this to .0507.
.0502 Authority	Corrected citation.
.0503 (a)	Added wording for clarity.
.0503 (c)	Added wording for clarity and citation re payment for public records
.0503 (f)	Edited wording for clarity. Also clarified that notice of hearing could be combined with notice of application. Clarified the record remains open to receive public comments.

.0503 (g)	Changed "name" to "email address".
.0503 (h)	Clarified wording.
.0503 Authority	Corrected citation.
.0506 (a)	Added additional language to clarify the process when written concurrence is not required.
.0506 (b)(3)	Removed "downstream" as secondary impacts could occur upstream.
.0506(c)(9)	Clarified what is meant by providing mitigation for class SWL wetlands.
.0506(c)(10)	Corrected citation.
.0506 Authority	Corrected citation.
.0507 (a) and (b)	Moved language from .0502 re the review period when additional information is requested. Removed address information as it is already provided in .0502.
.0507 (c)	Reinstated deleted language and deleted proposed language as referencing Section 401 in this part created circular authority. Also clarified that who the conditions of a certifications are enforceable by and added statutory authority.
.0507 (d)	Clarified who can revoke or modify a certification and that revocation/modification can be triggered by violation of state law (which implement the federally listed laws)
.0507(f)	Updated language to be consistent with the statute that allows for administrative review of agency actions.
.0507 Authority	Corrected citation.

15A NCAC 02H .1301 SCOPE AND PURPOSE (ISOLATED WETLAND RULES)

.1301 Upon review of the proposed changes to the wetland rules in 15A NCAC 02H .1300, and the proposed revision to the definition of "Wetlands" in the Triennial Review rulemaking package at 15A NCAC 02B .0202(61), NCFB has an issue with the proposed rules that we believe must be addressed.

Because of the new proposed definition at 15A NCAC 02B .0202(61) of "Wetlands" in the Triennial Review rulemaking package, there would be no ability to conduct an activity that deposits dredged or fill material in a non-WOTUS wetland that is not a Basin Wetland or Bog without violating the wetland standards in Rule 15A NCAC 02B .0231.

This is because 15A NCAC 02H .1300 only authorizes the Department to issue permits for impacts to Basin Wetlands or Bogs. Rule 15A NCAC 02H .1301 (d) specifically states that discharges resulting from permitted activities shall not

be considered to remove existing uses of the isolated wetland. However, there is no similar allowance for impacts to non-WOTUS wetlands that are not Basin Wetlands or Bogs.

If the proposed "Wetlands" definition is adopted, NCFB requests that the proposed rules be revised to clarify that deposition of dredged or fill material in non-WOTUS wetlands that are not Basin Wetlands or Bogs do not require a permit in 15A NCAC 02H .1300, and that such activities do not remove wetland uses or violate the wetland standards in 15A NCAC 02B .0231.

Response:
15A NCAC 02H .1301 (e), which lists exempt activities, has been revised to include non-WOTUS wetlands that are not Basin Wetlands or Bogs.

Hearing Officer's Final Recommendation

After careful consideration, the Hearing Officer recommends that the Environmental Management Commission:

- **Adopt** 15A NCAC 02B .0408, 15A NCAC 02B .0511, 15A NCAC 02B .0610-.0612, 15A NCAC 02H .0143, 15A NCAC 02H .1306;

- **Readopt with substantive changes** 15A NCAC 02B .0403-.0404, 15A NCAC 02B .0406, 15A NCAC 02B .0503, 15A NCAC 02B .0505-.0506, 15A NCAC 02B .0508, 15A NCAC 02B .0602, 15A NCAC 02B .0605-.0608, 15A NCAC 02H .0101-.0103, 15A NCAC 02H .0105-.0109, 15A NCAC 02H .0111-.0112, 15A NCAC 02H .0114-.0118, 15A NCAC 02H .0124-.0125, 15A NCAC 02H .0127, 15A NCAC 02H .0138-.0139, 15A NCAC 02H .0501-.0503, 15A NCAC 02H .0506-.0507, 15A NCAC 02H .0901-.0903, 15A NCAC 02H .0908, 15A NCAC 02H .0916-.0917, 15A NCAC 02H .1206, 15A NCAC 02H .1301-.1305;

- **Readopt with substantive changes and transfer** 15A NCAC 02B .0233 (transfer to 02B .0714), 15A NCAC 02B .0241 (transfer to 02B .0715), 15A NCAC 02B .0243 (transfer to 02B .0614), 15A NCAC 02B .0248-.0251 (transfer to 02B .0720-.0724), 15A NCAC 02B .0259 (transfer to 02B .0734), 15A NCAC 02B .0261 (transfer to 02B .0735),

- **Readopt without substantive changes** 15A NCAC 02B .0402, 15A NCAC 02B .0407, 15A NCAC 02B .0501-0502, 15A NCAC 02B .0504, 15A NCAC 02B .0601, 15A NCAC 02B .0603-.0604, 15A NCAC 02H .0113, 15A NCAC 02H .0120-.0121, 15A NCAC 02H .0140-.0141, 15A NCAC 02H .0904-.0907, 15A NCAC 02H .0909-.0910, 15A NCAC 02H .0912-.0915, 15A NCAC 02H .0918-.0919, 15A NCAC 02H .0921-.0922, 15A NCAC 02H .1201-.1205; and

- **Repeal** 15A NCAC 02H .0142, 15A NCAC 02H .0401-.0407, 15A NCAC 02H .0504, 15A NCAC 02H .0920,

as written in Appendix E (Hearing Officer's recommended rule language).

Appendix A:
Table of Uses – Neuse – Proposed Rule Text (clean)

	Deemed Allowable	Allowable Upon Authorization	Allowable with Mitigation Upon Authorization	Prohibited
(a) Airport facilities:				
(i) Vegetation removal activities necessary to comply with Federal Aviation Administration requirements (e.g. line of sight requirements) provided the disturbed areas are stabilized and revegetated	X			
(ii) Airport facilities that impact equal to or less than one-third of an acre of riparian buffer		X		
(iii) Airport facilities that impact greater than one-third of an acre of riparian buffer			X	
(b) Archaeological activities	X			
(c) Bridges:				
(i) Impact equal to or less than one-tenth of an acre of riparian buffer	X			
(ii) Impact greater than one-tenth of an acre of riparian buffer		X		
(d) Dam maintenance activities:				
(i) Dam maintenance activities that do not cause additional riparian buffer disturbance beyond the footprint of the existing dam	X			
(ii) Dam maintenance activities that do cause additional riparian buffer disturbance beyond the footprint of the existing dam		X		
(e) Drainage of a pond subject to Item (3) of this Rule provided that a new riparian buffer is established by natural regeneration or planting, within 50 feet of any stream which naturally forms or is constructed within the drained pond area. Drained ponds shall be allowed to naturalize for a minimum of six months from completion of the draining activity before a stream determination is conducted pursuant to Item (4) of this Rule	X			
(f) Fences:				
(i) Fencing livestock out of surface waters	X			
(ii) Installation does not result in removal of trees from Zone 1	X			
(iii) Installation results in removal of trees from Zone 1		X		
(g) Fertilizer application:				
(i) One-time fertilizer application at agronomic rates in the riparian buffer to establish replanted vegetation. No runoff from this one-time application in the riparian buffer is allowed in the applicable surface water	X			
(ii) Ongoing fertilizer application				X
(h) Forest harvesting - see Rule .0612 of this Subchapter				
(i) Grading only in Zone 2 provided that the health of existing vegetation in Zone 1 is not compromised, Item (9) of this Rule is complied with, and disturbed areas are stabilized and revegetated	X			
(j) Greenways, trails, sidewalks or linear pedestrian/bicycle transportation systems:				

	Deemed Allowable	Allowable Upon Authorization	Allowable with Mitigation Upon Authorization	Prohibited
(i) In Zone 2 provided that no built upon area is added within the riparian buffer	X			
(ii) In Zone 1 provided that no built upon area is added within the riparian buffer and the installation does not result in the removal of tree(s)	X			
(iii) When built upon area is added to the riparian buffer, equal to or less than 10 feet wide with 2 foot wide shoulders. Shall be located outside Zone 1 unless there is no practical alternative		X		
(iv) When built upon area is added to the riparian buffer, greater than 10 feet wide with 2 foot wide shoulders. Shall be located outside Zone 1 unless there is no practical alternative			X	
(k) Historic preservation	X			
(l) New Landfills as defined by G.S. 130A-290				X
(m) Maintenance access on modified natural streams or canals: a grassed travelway on one side of the waterbody when less impacting alternatives are not practical. The width and specifications of the travel way shall be only that needed for equipment access and operation. The travel way shall be located to maximize stream shading		X		
(n) Mining activities:				
(i) Mining activities that are covered by the Mining Act provided that new riparian buffers that meet the requirements of Items (8) and (9) of this Rule are established adjacent to any relocated channels		X		
(ii) Mining activities that are not covered by the Mining Act OR where new riparian buffers that meet the requirements or Items (8) and (9) of this Rule are not established			X	
(iii) Wastewater or mining dewatering wells with approved NPDES permit	X			
(o) On-site sanitary sewage systems - new ones that use ground absorption				X
(p) Pedestrian access trail and associated steps leading to a surface water, dock, canoe or kayak access, fishing pier, boat ramp or other water dependent structure:				
(i) Equal to or less than six feet wide that does not result in the removal of tree(s) within the riparian buffer and does not result in the addition of built upon area to the riparian buffer	X			
(ii) Equal to or less than six feet wide that results in the removal of tree(s) or the addition of built upon area to the riparian buffer		X		
(iii) Greater than six feet wide			X	
(q) Playground equipment:				
(i) Playground equipment on single-family lots provided that installation and use does not result in removal of vegetation	X			

	Deemed Allowable	Allowable Upon Authorization	Allowable with Mitigation Upon Authorization	Prohibited
(ii) Playground equipment on single-family lots where installation or use results in the removal of vegetation		X		
(iii) Playground equipment installed on lands other than single-family lots		X		
(r) Ponds created or modified by impounding streams subject to riparian buffers pursuant to Item (3) of this Rule and not used as stormwater control measures (SCMs):				
(i) New ponds provided that a riparian buffer that meets the requirements of Items (8) and (9) of this Rule is established adjacent to the pond		X		
(ii) New ponds where a riparian buffer that meets the requirements of Items (8) and (9) of this Rule is NOT established adjacent to the pond			X	
(s) Protection of existing structures and facilities when this requires additional disturbance to the riparian buffer		X		
(t) Public Safety - publicly owned spaces where it has been determined by the head of the local law enforcement agency with jurisdiction over that area that the riparian buffers pose a risk to public safety. The head of the local law enforcement agency shall notify the local government with land use jurisdiction over the publicly owned space and the Division of Water Resources of any such determination in writing	X			
(u) Removal of previous fill or debris provided that Item (9) of this Rule is complied with and any vegetation removed is restored	X			
(v) Residential Properties: Where application of this Rule would preclude construction or expansion of a single-family residence and necessary infrastructure, the single-family residence may encroach in the riparian buffer if all of the following conditions are met: (1) the residence is set back the maximum feasible distance from the top of the bank, rooted herbaceous vegetation, normal high-water level, or normal water level, whichever is applicable, on the existing lot; (2) the residence is designed to minimize encroachment into the riparian buffer; (3) the residence complies with Item (9) of this Rule; and (4) if the residence will be served by an on-site wastewater system, no part of the septic tank or drainfield may encroach into the riparian buffer:				
(i) The residence or necessary infrastructure only impact Zone 2		X		
(ii) The residence or necessary infrastructure impact Zone 1			X	
(iii) Impacts other than the residence or necessary infrastructure			X	

	Deemed Allowable	Allowable Upon Authorization	Allowable with Mitigation Upon Authorization	Prohibited
(w) Restoration or enhancement (wetland, stream) as defined in 33 CFR Part 332 available free of charge on the internet at: http://water.epa.gov/lawsregs/guidance/wetlands/wetlandsmitigation_index.cfm:				
(i) Wetland or stream restoration that is part of a compensatory mitigation bank, nutrient offset bank or the In Lieu Fee program	X			
(ii) Wetland or stream restoration other than those listed above		X		
(x) Road, driveway or railroad - impacts other than perpendicular crossings of streams and other surface waters subject to this Rule			X	
(y) Road, driveway or railroad - perpendicular crossings of streams and other surface waters subject to this Rule:				
(i) Impact equal to or less than one-tenth of an acre of riparian buffer	X			
(ii) Impact greater than one-tenth of an acre but equal to or less than one-third of an acre of riparian buffer		X		
(iii) Impact greater than one-third of an acre of riparian buffer			X	
(iv) Driveway crossings in a residential subdivision that cumulatively impact equal to or less than one-third of an acre of riparian buffer		X		
(v) Driveway crossings in a residential subdivision that cumulatively impact greater than one-third of an acre of riparian buffer			X	
(vi) Farm roads and forest roads that are exempt from permitting from the U.S. Army Corps of Engineers per Section 404(f) of the Federal Clean Water Act	X			
(z) Road relocation of existing private access roads associated with public road projects where necessary for public safety:				
(i) Less than or equal to 2,500 square feet of riparian buffer impact		X		
(ii) Greater than 2,500 square feet of riparian buffer impact			X	
(aa) Scientific studies and stream gauging	X			
(bb) Slatted uncovered decks, including steps and support posts, which are associated with a dwelling, provided that it meets the requirements of Items (8) and (9) of this Rule and:				
(i) Installation does not result in removal of vegetation in Zone 1		X		
(ii) Installation results in removal of vegetation in Zone 1			X	
(cc) Stormwater Control Measure (SCM) as defined in 15A NCAC 02H .1002:				
(i) In Zone 2 if Item (9) of this Rule is complied with		X		
(ii) In Zone 1			X	

	Deemed Allowable	Allowable Upon Authorization	Allowable with Mitigation Upon Authorization	Prohibited
(dd) Streambank or shoreline stabilization		X		
(ee) Temporary roads, provided that the disturbed area is restored to pre-construction topographic and hydrologic conditions and replanted with comparable vegetation within two months of when construction is complete. Tree planting may occur during the dormant season. At the end of five years, any restored wooded riparian buffer shall comply with the restoration criteria in Rule .0295(i) of this Subchapter:				
(i) Less than or equal to 2,500 square feet of riparian buffer disturbance	X			
(ii) Greater than 2,500 square feet of riparian buffer disturbance		X		
(iii) Associated with culvert installation or bridge construction or replacement		X		
(ff) Temporary sediment and erosion control devices provided that the disturbed area is restored to preconstruction topographic and hydrologic conditions and replanted with comparable vegetation within two months of when construction is complete. Tree planting may occur during the dormant season. At the end of five years, any restored wooded riparian buffer shall comply with the restoration criteria in Rule .0295(i) of this Subchapter:				
(i) In Zone 2 provided that ground cover is established within the timeframes required by the Sedimentation and Erosion Control Act, vegetation in Zone 1 is not compromised, and that discharge is released in accordance with Item (9) of this Rule	X			
(ii) In Zones 1 and 2 to control impacts associated with uses identified in this Table or uses that have received an Authorization Certificate with Exception provided that sediment and erosion control for upland areas is addressed outside the riparian buffer		X		
(iii) In-stream temporary erosion and sediment control measures for work within a stream channel that is authorized under Sections 401 and 404 of the Federal Clean Water Act	X			
(gg) Utility Lines - Streambank stabilization for the protection of publicly owned utility lines (not including new line installation):				
(i) Less than 150 feet of streambank disturbance	X			
(ii) Greater than 150 feet of streambank disturbance		X		
(hh) Utility - Sewer Lines – Sanitary Sewer Overflows:				

	Deemed Allowable	Allowable Upon Authorization	Allowable with Mitigation Upon Authorization	Prohibited
(i) Emergency sanitary sewer overflow response activities, provided that the disturbed area within the riparian buffer outside of the existing utility line maintenance corridor is the minimum necessary to respond to the emergency overflow, is restored to pre-construction topographic and hydrologic conditions, and is replanted with comparable vegetation (e.g. grass with grass, hardwoods with hardwoods) within two months of when disturbance is complete	X			
(ii) Emergency sanitary sewer overflow response activities that do not meet the listing above. For any new proposed permanent impacts that are not a "Deemed Allowable Activity", an application for an Authorization Certificate must be submitted to the Authority no later than 30 calendar days of conclusion of the emergency response activities		X		
(ii) Utility - Sewer Lines – Vegetation maintenance activities that remove forest vegetation from existing sewer utility right of ways (not including new line installation) outside of the existing utility line maintenance corridor:				
(i) Zone 2 impacts	X			
(ii) Zone 1 impacts: For lines that have not been maintained, the vegetation can be mowed, cut or otherwise maintained without disturbance to the soil structure for a maintenance corridor that is equal to or less than 30 feet wide	X			
(iii) Zone 1 impacts other than those listed above		X		
(jj) Utility - Sewer Lines –Replacement/Rehabilitation of existing sewer lines within, or adjacent to, an existing right of way but outside of an existing utility line maintenance corridor provided that comparable vegetation (e.g. grass with grass, hardwoods with hardwoods) is allowed to regenerate in disturbed riparian buffers outside of the permanent maintenance corridor and riparian buffers outside of the permanent maintenance corridor are not maintained:				
(i) Permanent maintenance corridor equal to or less than 30 feet wide provided there is no grading and/or grubbing within 10 feet of the top of bank when the sewer line is parallel to the stream	X			
(ii) Grading and/or grubbing within 10 feet of the top of bank when the sewer line is parallel to the stream and permanent maintenance corridor equal to or less than 30 feet wide		X		

	Deemed Allowable	Allowable Upon Authorization	Allowable with Mitigation Upon Authorization	Prohibited
(iii) Permanent maintenance corridor greater than 30 feet wide. For impacts other than perpendicular crossings, mitigation is only required for Zone 1 impacts. For perpendicular crossings that disturb equal to or less than 40 linear feet, no mitigation is required. For perpendicular crossings that disturb greater than 40 linear feet, mitigation is only required for Zone 1 impacts			X	
(kk) Utility - Sewer Lines – New Line Construction/Installation Activities – Perpendicular crossings of streams and other surface waters subject to this Rule or perpendicular entry into the riparian buffer that does not cross a stream or other surface water subject to this Rule provided that vegetation is allowed to regenerate in disturbed areas outside of the permanent maintenance corridor:				
(i) Construction corridor of less than or equal to 40 linear feet wide and a permanent maintenance corridor that is equal to or less than 30 feet wide	X			
(ii) Construction corridor of greater than 40 linear feet wide and less than or equal to 150 linear feet wide and a permanent maintenance corridor that is equal to or less than 30 feet wide		X		
(iii) Construction corridor of greater than 150 linear feet wide and a permanent maintenance corridor that is equal to or less than 30 feet wide			X	
(iv) Permanent maintenance corridor greater than 30 linear feet wide. For impacts other than perpendicular crossings, mitigation is only required for Zone 1 impacts. For perpendicular crossings that disturb equal to or less than 40 linear feet, no mitigation is required. For perpendicular crossings that disturb greater than 40 linear feet, mitigation is only required for Zone 1 impacts			X	
(ll) Utility - Sewer Lines – New Line Construction/Installation Activities – Impacts other than perpendicular crossings provided that vegetation is allowed to regenerate in disturbed areas outside of the permanent maintenance corridor:				
(i) Zone 2 impacts	X			
(ii) Zone 1 impacts to less than 2,500 square feet when impacts are solely the result of tying into an existing utility line and when grubbing or grading within 10 feet immediately adjacent to the surface water is avoided		X		
(iii) Zone 1 impacts other than those listed above			X	
(mm) Utility – Non-Sewer Underground Lines – Vegetation maintenance activities that remove forest vegetation from existing utility right of ways (not including new line installation) outside of the existing utility line maintenance corridor:				

	Deemed Allowable	Allowable Upon Authorization	Allowable with Mitigation Upon Authorization	Prohibited
(i) Zone 2 impacts	X			
(ii) Zone 1 impacts: For lines that have not been maintained, the vegetation can be mowed, cut or otherwise maintained without disturbance to the soil structure for a maintenance corridor that is equal to or less than 30 feet wide	X			
(iii) Zone 1 impacts other than those listed above		X		
(nn) Utility – Non-Sewer Underground Lines – Perpendicular crossings of streams and other surface waters subject to this Rule or perpendicular entry into the riparian buffer that does not cross a stream or other surface water subject to this Rule provided that vegetation is allowed to regenerate in disturbed areas outside of the permanent maintenance corridor:				
(i) Construction corridor of less than or equal to 50 linear feet wide and a permanent maintenance corridor that is equal to or less than 30 feet wide	X			
(ii) Construction corridor of greater than 50 linear feet wide and less than or equal to 150 linear feet wide and a permanent maintenance corridor that is equal to or less than 30 feet wide		X		
(iii) Construction corridor of greater than 150 linear feet wide and a permanent maintenance corridor that is equal to or less than 30 feet wide			X	
(iv) Permanent maintenance corridor that is greater than 30 linear feet wide (mitigation is required only for Zone 1 impacts)			X	
(oo) Utility – Non-Sewer Underground Lines – Impacts other than perpendicular crossings provided that vegetation is allowed to regenerate in disturbed areas outside of the permanent maintenance corridor:				
(i) Zone 2 impacts	X			
(ii) Zone 1 impacts to less than 2,500 square feet when impacts are solely the result of tying into an existing utility line and when grubbing or grading within 10 feet immediately adjacent to the surface water is avoided		X		
(iii) Zone 1 impacts other than those listed above			X	
(pp) Utility – Non-Sewer Aerial Lines – Perpendicular crossings of streams and other surface waters subject to this Rule or perpendicular entry into the riparian buffer that does not cross a stream or other surface water subject to this Rule:				

	Deemed Allowable	Allowable Upon Authorization	Allowable with Mitigation Upon Authorization	Prohibited
(i) Disturb equal to or less than 150 linear feet wide of riparian buffer provided that a minimum zone of 10 feet wide immediately adjacent to the waterbody is managed such that only vegetation that poses a hazard or has the potential to grow tall enough to interfere with the line is removed, that no land grubbing or grading is conducted in Zone 1, and that that poles or aerial infrastructure are not installed within 10 feet of a waterbody	X			
(ii) Disturb greater than 150 linear feet wide of riparian buffer		X		
(qq) Utility – Non-Sewer Aerial Lines – Impacts other than perpendicular crossings of streams and other surface waters subject to this Rule or perpendicular entry into the riparian buffer that does not cross a stream or other surface water subject to this Rule:				
(i) Impacts in Zone 2 only	X			
(ii) Impacts in Zone 1 provided that a minimum zone of 10 feet wide immediately adjacent to the waterbody is managed such that only vegetation that poses a hazard or has the potential to grow tall enough to interfere with the line is removed, that no land grubbing or grading is conducted in Zone 1, and that that poles or aerial infrastructure are not installed within 10 feet of a waterbody		X		
(rr) Vegetation management:				
(i) Emergency fire control measures provided that topography is restored	X			
(ii) Periodic mowing and harvesting of plant products only in Zone 2	X			
(iii) Placement of mulch ring around restoration plantings for a period of five years from the date of planting	X			
(iv) Planting non-invasive vegetation to enhance the riparian buffer	X			
(v) Pruning forest vegetation provided that the health and function of the forest vegetation is not compromised	X			
(vi) Removal of individual trees, branches or limbs which are in danger of causing damage to dwellings, existing utility lines, other structures or human life, or are imminently endangering stability of the streambank provided that the stumps are left or ground in place without causing additional land disturbance	X			
(vii) Removal of individual trees that are dead, diseased or damaged	X			

	Deemed Allowable	Allowable Upon Authorization	Allowable with Mitigation Upon Authorization	Prohibited
(viii) Removal of poison ivy, oak or sumac. Removal can include application of pesticides within the riparian buffer if the pesticides are certified by EPA for use in or near aquatic sites and are applied in accordance with the manufacturer's instructions. If removal is significant, then the riparian buffer shall be replanted with non-invasive species	X			
(ix) Removal of understory nuisance vegetation as defined in: Smith, Cherri L. 2008. Invasive Plants of North Carolina. Dept. of Transportation. Raleigh, NC (available at http://portal.ncdenr.org/c/document_library/get_file?uuid=0acc6377-ea07-42dc-bb27-45a78d1c7ebe&groupId=38364). Removal can include application of pesticides within the riparian buffer is the pesticides are certified by EPA for use in or near aquatic sites and are applied in accordance with the manufacturer's instructions. If removal is significant then the riparian buffer shall be replanted with non-invasive species	X			
(x) Removal of woody vegetation in Zone 1 provided that Item (9) of this Rule is complied with			X	
(ss) Vehicle access roads and boat ramps (excluding parking areas) leading to surface water, docks, fishing piers, and other water dependent activities:				
(i) Single vehicular access road and boat ramp to the surface water but not crossing the surface water that are restricted to the minimum width practicable not to exceed 15 feet wide		X		
(ii) Vehicular access roads and boat ramps to the surface water but not crossing the surface water that are restricted to the minimum width practicable and exceed 15 feet wide			X	
(tt) Water dependent structures (except for boat ramps) as defined in Rule .0202 of this Subchapter		X		
(uu) Water supply reservoirs:				
(i) New reservoirs provided that a riparian buffer that meets the requirements of Items (8) and (9) of this Rule is established adjacent to the reservoir		X		
(ii) New reservoirs where a riparian buffer that meets the requirements of Items (8) and (9) of this Rule is NOT established adjacent to the reservoir			X	
(vv) Water wells	X			
(ww) Wildlife passage structures		X		

Appendix B:
Notice of Text of Proposed Rulemaking

TITLE 15A – DEPARTMENT OF ENVIRONMENTAL QUALITY

Notice *is hereby given in accordance with G.S. 150B-21.2 and G.S. 150B-21.3A(c)(2)g. that the Environmental Management Commission intends to adopt the rules cited as 15A NCAC 02B .0408, .0511, .0610-.0612, .0620-.0624; 02H .0143, .1306, readopt with substantive changes the rules cited as 15A NCAC 02B .0233, .0241, .0243, .0248-.0251, .0259, .0261, .0403-.0404, .0406, .0503, .0505-.0506, .0508, .0602, .0605-.0608; 02H .0101-.0103, .0105-.0109, .0111-.0112, .0114-.0118, .0124-.0125, .0127, .0138-.0139, .0142, .0401-.0407, .0501-.0504, .0506-.0507, .0901-.0903, .0908, .0916-.0917, .0920, .1206, .1301-1305 and readopt without substantive changes the rules cited as 15A NCAC 02B .0402, .0407, .0501-.0502, .0504, .0601, .0603-.0604; 02H .0113, .0120-.0121, .0140-.0141, .0904-.0907, .0909-.0910, .0912-.0915, .0918-.0919, .0921-.0922 and .1201-.1205.*

Pursuant to G.S. 150B-21.2(c)(1), the text of the rule(s) proposed for readoption without substantive changes are not required to be published. The text of the rules are available on the OAH website: http://reports.oah.state.nc.us/ncac.asp.

Link to agency website pursuant to G.S. 150B-19.1(c): *https://deq.nc.gov/news/events/public-notices-hearings*

Proposed Effective Date: *January 1, 2019*

Public Hearing:
Date: *May 23, 2018*
Time: *6:00 p.m.*
Location: *Ground Floor Hearing Room, Archdale Building, 512 N. Salisbury Street, Raleigh, NC 27604*

Date: *June 7, 2018*
Time: *6:00 p.m.*
Location: *Piedmont Triad Regional Council, 1398 Carrollton Crossing Drive, Kernersville, NC 27284*

Reason for Proposed Action: *This package of rules has been proposed by the Environmental Management Commission to meet the requirements of G.S. 150B-21.3A "Periodic Review and Expiration of Existing Rules."*

The content of 15A NCAC 02B .0620-.0624 were previously codified in 15A NCAC 02B .0104, .0202 and 02B .0212-.0218. See attached table for cross references. 15A NCAC 02B .0104, .0202 and .0212-.0218 will be published at a later date. The Commission specifically requests comment on 15A NCAC 02B .0622(4), 02B .0624(3)(h) and .0624(12)(a)(iv) regarding the efficacy of the 10-foot vegetated setback requirement for agricultural activities. Comment is also specifically requested on the cumulative environmental impact of all the proposed changes to 15A NCAC 02B .0620-.0624.

The content of 15A NCAC 02B .0610-.0612, .0614, .0714-.0715, .0720-.0724, and .0734-.0735 were previously codified in 15A NCAC 02B .0233, .0241, .0243, .0248-.0251, .0259 and .0261. The content of 15A NCAC 02B .0606(b) was previously codified in 15A NCAC 02B .0607(e). See attached table for cross references.

CURRENT CITATION		NEW CITATION		Description
Rule Citation	Rule Title	Rule Citation	Rule Title	
15A NCAC 02B .0233	NEUSE RIVER BASIN: PROTECTION AND MAINTENANCE OF EXISTING RIPARIAN BUFFERS	15A NCAC 02B .0714	NEUSE RIVER BASIN: PROTECTION AND MAINTENANCE OF EXISTING RIPARIAN BUFFERS	Transfer Rule

CURRENT CITATION		NEW CITATION		Description
Rule Citation	**Rule Title**	**Rule Citation**	**Rule Title**	
15A NCAC 02B .0233 (2)	NEUSE RIVER BASIN: PROTECTION AND MAINTENANCE OF EXISTING RIPARIAN BUFFERS	15A NCAC 02B .0610	MANAGING ACTIVITIES WITHIN RIPARIAN BUFFERS: DEFINITIONS	Definitions
15A NCAC 02B .0233 (8) & (9)	NEUSE RIVER BASIN: PROTECTION AND MAINTENANCE OF EXISTING RIPARIAN BUFFERS	15A NCAC 02B .0611	MANAGING ACTIVITIES WITHIN RIPARIAN BUFFERS: AUTHORIZATION CERTIFICATES	Buffer Authorizations and Variances
15A NCAC 02B .0233 (11)	NEUSE RIVER BASIN: PROTECTION AND MAINTENANCE OF EXISTING RIPARIAN BUFFERS	15A NCAC 02B .0612	MANAGING ACTIVITIES WITHIN RIPARIAN BUFFERS: FOREST HARVESTING REQUIREMENTS	Buffer - Forestry
15A NCAC 02B .0241	NEUSE RIVER BASIN: DELEGATION OF AUTHORITY FOR THE PROTECTION AND MAINTENANCE OF EXISTING RIPARIAN BUFFERS	15A NCAC 02B .0715	NEUSE RIVER BASIN: DELEGATION OF AUTHORITY FOR THE PROTECTION AND MAINTENANCE OF EXISTING RIPARIAN BUFFERS	Transfer Rule
15A NCAC 02B .0243	CATAWBA RIVER BASIN: PROTECTION AND MAINTENANCE OF EXISTING RIPARIAN BUFFERS	15A NCAC 02B .0614	CATAWBA RIVER BASIN: PROTECTION AND MAINTENANCE OF EXISTING RIPARIAN BUFFERS	Transfer Rule
15A NCAC 02B .0243 (2)	CATAWBA RIVER BASIN: PROTECTION AND MAINTENANCE OF EXISTING RIPARIAN BUFFERS	15A NCAC 02B .0610	MANAGING ACTIVITIES WITHIN RIPARIAN BUFFERS: DEFINITIONS	Definitions
15A NCAC 02B .0243 (8) & (9)	CATAWBA RIVER BASIN: PROTECTION AND MAINTENANCE OF EXISTING RIPARIAN BUFFERS	15A NCAC 02B .0611	MANAGING ACTIVITIES WITHIN RIPARIAN BUFFERS: AUTHORIZATION CERTIFICATES	Buffer Authorizations and Variances
15A NCAC 02B .0243 (11)	CATAWBA RIVER BASIN: PROTECTION AND MAINTENANCE OF EXISTING RIPARIAN BUFFERS	15A NCAC 02B .0612	MANAGING ACTIVITIES WITHIN RIPARIAN BUFFERS: FOREST HARVESTING REQUIREMENTS	Buffer - Forestry
15A NCAC 02B .0248	RANDLEMAN LAKE: NUTRIENT MANAGEMENT STRATEGY	15A NCAC 02B .0720	RANDLEMAN STRATEGY: PURPOSE AND SCOPE	Transfer Rule
15A NCAC 02B .0249	RANDLEMAN LAKE: WASTEWATER DISCHARGE REQUIREMENTS	15A NCAC 02B .0722	RANDLEMAN LAKE: WASTEWATER DISCHARGE REQUIREMENTS	Transfer Rule

CURRENT CITATION		NEW CITATION		Description
Rule Citation	Rule Title	Rule Citation	Rule Title	
15A NCAC 02B .0250	RANDLEMAN LAKE: PROTECTION AND MAINTENANCE OF EXISTING RIPARIAN BUFFERS	15A NCAC 02B .0724	RANDLEMAN LAKE: PROTECTION AND MAINTENANCE OF EXISTING RIPARIAN BUFFERS	Transfer Rule
15A NCAC 02B .0250 (2)	RANDLEMAN LAKE: PROTECTION AND MAINTENANCE OF EXISTING RIPARIAN BUFFERS	15A NCAC 02B .0610	MANAGING ACTIVITIES WITHIN RIPARIAN BUFFERS: DEFINITIONS	Definitions
15A NCAC 02B .0250 (11) & (12)	RANDLEMAN LAKE: PROTECTION AND MAINTENANCE OF EXISTING RIPARIAN BUFFERS	15A NCAC 02B .0611	MANAGING ACTIVITIES WITHIN RIPARIAN BUFFERS: AUTHORIZATION CERTIFICATES	Buffer Authorizations and Variances
15A NCAC 02B .0250 (16)	RANDLEMAN LAKE: PROTECTION AND MAINTENANCE OF EXISTING RIPARIAN BUFFERS	15A NCAC 02B .0612	MANAGING ACTIVITIES WITHIN RIPARIAN BUFFERS: FOREST HARVESTING REQUIREMENTS	Buffer - Forestry
15A NCAC 02B .0251	RANDLEMAN LAKE WATER SUPPLY WATERSHED: STORMWATER REQUIREMENTS	15A NCAC 02B .0721	RANDLEMAN LAKE WATER SUPPLY WATERSHED: STORMWATER REQUIREMENTS	Transfer Rule
15A NCAC 02B .0259	TAR-PAMLICO RIVER BASIN: PROTECTION AND MAINTENANCE OF EXISTING RIPARIAN BUFFERS	15A NCAC 02B .0734	TAR-PAMLICO RIVER BASIN: PROTECTION AND MAINTENANCE OF EXISTING RIPARIAN BUFFERS	Transfer Rule
15A NCAC 02B .0259 (2)	TAR-PAMLICO RIVER BASIN: PROTECTION AND MAINTENANCE OF EXISTING RIPARIAN BUFFERS	15A NCAC 02B .0610	MANAGING ACTIVITIES WITHIN RIPARIAN BUFFERS: DEFINITIONS	Definitions
15A NCAC 02B .0259 (8) & (9)	TAR-PAMLICO RIVER BASIN: PROTECTION AND MAINTENANCE OF EXISTING RIPARIAN BUFFERS	15A NCAC 02B .0611	MANAGING ACTIVITIES WITHIN RIPARIAN BUFFERS: AUTHORIZATION CERTIFICATES	Buffer Authorizations and Variances
15A NCAC 02B .0259 (11)	TAR-PAMLICO RIVER BASIN: PROTECTION AND MAINTENANCE OF EXISTING RIPARIAN BUFFERS	15A NCAC 02B .0612	MANAGING ACTIVITIES WITHIN RIPARIAN BUFFERS: FOREST HARVESTING REQUIREMENTS	Buffer - Forestry
15A NCAC 02B .0261	TAR-PAMLICO RIVER BASIN: DELEGATION OF AUTHORITY FOR THE PROTECTION AND MAINTENANCE OF EXISTING RIPARIAN BUFFERS	15A NCAC 02B .0735	TAR-PAMLICO RIVER BASIN: DELEGATION OF AUTHORITY FOR THE PROTECTION AND MAINTENANCE OF EXISTING RIPARIAN BUFFERS	Transfer Rule

CURRENT CITATION		NEW CITATION		Description
Rule Citation	**Rule Title**	**Rule Citation**	**Rule Title**	
15A NCAC 02B .0607 (e)	WATER QUALITY MANAGEMENT PLAN FOR THE GOOSE CREEK WATERSHED: VARIANCE FOR ACTIVITIES WITHIN RIPARIAN BUFFERS	15A NCAC 02B .0606 (b)	WATER QUALITY MANAGEMENT PLAN FOR THE GOOSE CREEK WATERSHED: BUFFER TYPES AND MANAGING ACTIVITIES WITHIN RIPARIAN BUFFERS	Buffer Authorizations

15A NCAC 02B .0200 *Old reference*		**15A NCAC 02B .0600** *New reference*
02B .0104 Considerations/Assigning/Implementing Water Supply Classifications	02B .0104 (b) Local gov'ts shall adopt ordinances; EMC approval	02B .0623 (1); .0623 (3)
	02B .0104 (e) Required copies of ordinances	02B .0623 (3)
	02B .0104 (f) Local gov'ts responsible for O&M of stormwater controls; civil penalties	02B .0623 (8) Clarify that local govt's may require owners of SCMs to conduct inspections; specify which laws give local government authority to impose civil penalties.
	02B .0104 (g) wet detention ponds; alternative stormwater controls,85% TSS	02B .0624 (7) Allow more types of SCMs; 85% TSS replaced w/ allowance to meet basic treatment or runoff volume match when designed in accordance with minimum design criteria in 2H rules
	02B .0104 (m) DOT	02B .0622 (2)
	02B .0104 (o) Local gov'ts delineate backwaters, adopt map, map approval by EMC	02B .0623 (4)
	02B .0104 (p) Agricultural activities	02B .0622 (4); .0624 (3)(h); .0624(12)(a)(iv)
	02B .0104 (q) Existing Development, redevelopment, family subdivision	02B .0624 (3) and (5)(b)
	02B .0104 (r) Variance procedures	02B .0623 (6)
	02B .0104 (r) Submit annual report on variances	02B .0623 (7) Replaced submission req't w/ 'furnish upon request'
	02B .0104 (s) Cluster development	02B .0624 (9)
	02B .0104 (t) tracking high-density single-family development by dwelling unit	02B .0624 (8)(e)
	02B .0104 (u) Averaging on watershed basis	02B .0624 (8)(d)
	02B .0104 (v) Silviculture activities	02B .0622 (3) and .0624(3)(g)
	02B .0104 (w) Local gov'ts shall develop nonpoint source control programs	02B .0623 (9)
	02B .0104 (x) EMC approves local permits when assume program	02B .0623 (10)

15A NCAC 02B .0200 *Old reference*		15A NCAC 02B .0600 *New reference*
	02B .0104 (z) Where to request a copy of model ordinance	02B .0623 (1)
	02B .0104 (aa) Delegation of variance approvals, civil penalties to Director	02B .0623 (11)
02B .0202 Definitions	02B .0202 (13) Built-upon area	02B .0621 (2)
	02B .0202 (16) Cluster development	02B. 0621 (3)
	02B .0202 (20) Critical Area	02B .0202 (19); Local gov't extension of CA in 02B .0623 (4)
	02B .0202 (29) Existing development	02B. 0621 (11)
	02B .0202 (32) Family subdivision	02B. 0621 (12)
	02B .0202 (42) & (43) Minor and Major variances	02B. 0621 (15) & (17) Codify method for calculating percent variation for vegetated setback variance
	02B .0202 (46) Nonconforming lot of record	02B. 0621 (18)
	02B .0202 (53) Protected Area	02B .0202 (45); Local gov't extension of PA in 02B .0623 (4)
		Additional definitions added: "Balance of Watershed," "Common plan of development," "Curb outlet system," "Dispersed flow," "Geotextile fabric," "Perennial stream," "Perennial waterbody," "Primary SCM," "Project," "Required storm depth," "Runoff treatment," "Runoff volume match," "Secondary SCM," "Stormwater control measure," "Vegetated setback," "Vegetated conveyance"
02B .0214 WS-II	02B .0214 (3)(b)(i)(A) Low density option for WS-II watershed	02B .0624 (4),(5) & (6) Add option to allow single-family residential development to meet built-upon area criteria; clarify what is meant by stormwater shall be transported by vegetated conveyance to the "maximum extent practicable;" specify design req'ts for vegetative conveyances; allow curb outlet swales in lieu of vegetated conveyances
	02B .0214 (3)(b)(i)(B) High density option for WS-II watershed	02B .0624 (4)(5) & (7) Add option to meet runoff volume match as alternative to basic treatment
	02B .0214 (3)(b)(i)(C) Density of existing development does not exceed density req't at time of classification	Deleted – No longer needed
	02B .0214 (3)(b)(i)(D) Cluster development	02B .0624 (9)
	02B .0214 (3)(b)(i)(E) 10/70 Option	02B .0624 (8)(c) Clarify what 10/70 option is and how to implement
	02B .0214 (3)(b)(i)(F) Local gov'ts assume ultimate responsibility for O&M	02B .0624 (11)
	02B .0214 (3)(b)(i)(G) Vegetated buffer	Renamed vegetated "setback"; 02B .0624 (12)
	02B .0214 (3)(b)(i)(H) No new development in buffer	02B .0624 (12)(d)

15A NCAC 02B .0200 *Old reference*		15A NCAC 02B .0600 *New reference*
	02B .0214 (3)(b)(ii)(A) Low density option in WS-II CA	02B .0624 (4),(5) & (6) Add option to allow single-family residential development to meet built-upon area criteria; clarify what is meant by stormwater shall be transported by vegetated conveyance to the "maximum extent practicable;" specify design req'ts for vegetative conveyances; allow curb outlet swales in lieu of vegetated conveyances
	02B .0214 (3)(b)(ii)(B) High density option in WS-II CA	02B .0624 (4)(5) & (7) Add option to meet runoff volume match as alternative to basic treatment
02B .0215 WS-III	02B .0215 (3)(b)(i)(A) Low density option for WS-III watershed	02B .0624 (4),(5) & (6) Add option to allow single-family residential development to meet built-upon area criteria; clarify what is meant by stormwater shall be transported by vegetated conveyance to the "maximum extent practicable;" specify design req'ts for vegetative conveyances; allow curb outlet swales in lieu of vegetated conveyances
	02B .0215 (3)(b)(i)(B) High density option for WS-III watershed	02B .0624 (4)(5) & (7) Add option to meet runoff volume match as alternative to basic treatment
	02B .0215 (3)(b)(i)(C) Density of existing development does not exceed density req't at time of classification	Deleted – No longer needed
	02B .0215 (3)(b)(i)(D) Cluster development	02B .0624 (9)
	02B .0215 (3)(b)(i)(E) 10/70 Option	02B .0624 (8)(c) Clarify what 10/70 option is and how to implement
	02B .0215 (3)(b)(i)(F) Local gov'ts assume ultimate responsibility for O&M	02B .0624 (11)
	02B .0215 (3)(b)(i)(G) Vegetated buffer	Renamed vegetated "setback"; 02B .0624 (12)
	02B .0215 (3)(b)(i)(H) No new development in buffer	02B .0624 (12)(d)
	02B .0215 (3)(b)(ii)(A) Low density option for WS-III critical area	02B .0624 (4),(5) & (6) Add option to allow single-family residential development to meet built-upon area criteria; clarify what is meant by stormwater shall be transported by vegetated conveyance to the "maximum extent practicable;" specify design req'ts for vegetative conveyances; allow curb outlet swales in lieu of vegetated conveyances
	02B .0215 (3)(b)(ii)(B) High density option for WS-III critical area	02B .0624 (4)(5) & (7) Add option to meet runoff volume match as alternative to basic treatment
02B .0216 WS-IV	02B .0216 (3)(b)(i)(A) Low density option for WS-IV protected area	02B .0624 (4),(5) & (6) Add option to allow single-family residential development to meet built-upon area criteria; clarify what is meant by stormwater shall be transported by vegetated conveyance to the "maximum extent practicable;" specify design req'ts for vegetative conveyances; allow curb outlet swales in lieu of vegetated conveyances
	02B .0216 (3)(b)(i)(B) High density option for WS-IV protected area	02B .0624 (4)(5) & (7) Add option to meet runoff volume match as alternative to basic treatment
	02B .0216 (3)(b)(i)(C) Density of existing development does not exceed density req't at time of classification	Deleted – No longer needed

15A NCAC 02B .0200 *Old reference*		15A NCAC 02B .0600 *New reference*
	02B .0216 (3)(b)(i)(D) Cluster development	02B .0624 (9)
	02B .0216 (3)(b)(i)(E) Local gov'ts assume ultimate responsibility for O&M	02B .0624 (11)
	02B .0216 (3)(b)(i)(F) Vegetated buffer	Renamed vegetated "setback"; 02B .0624 (12)
	02B .0216 (3)(b)(i)(G) No new development in buffer	02B .0624 (12)(d)
	02B .0216 (3)(b)(i)(H) 10/70 Option	02B .0624 (8)(c) Clarify what 10/70 option is and how to implement
	02B .0216 (3)(b)(ii)(A) Low density option for WS-IV critical area	02B .0624 (4),(5) & (6) Add option to allow single-family residential development to meet built-upon area criteria; clarify what is meant by stormwater shall be transported by vegetated conveyance to the "maximum extent practicable;" specify design req'ts for vegetative conveyances; allow curb outlet swales in lieu of vegetated conveyances
	02B .0216 (3)(b)(ii)(B) High density option for WS-IV critical area	02B .0624 (4)(5) & (7) Add option to meet runoff volume match as alternative to basic treatment

Comments may be submitted to: *Julie Ventaloro, NCDEQ-DEMLR-Stormwater Permitting Program, 1612 Mail Service Center, Raleigh, NC 27699-1612; email publiccomments@ncdenr.gov (please include rule number in email's subject line)*

Comment period ends: *July 2, 2018*

Procedure for Subjecting a Proposed Rule to Legislative Review: If an objection is not resolved prior to the adoption of the rule, a person may also submit written objections to the Rules Review Commission after the adoption of the Rule. If the Rules Review Commission receives written and signed objections after the adoption of the Rule in accordance with G.S. 150B-21.3(b2) from 10 or more persons clearly requesting review by the legislature and the Rules Review Commission approves the rule, the rule will become effective as provided in G.S. 150B-21.3(b1). The Commission will receive written objections until 5:00 p.m. on the day following the day the Commission approves the rule. The Commission will receive those objections by mail, delivery service, hand delivery, or facsimile transmission. If you have any further questions concerning the submission of objections to the Commission, please call a Commission staff attorney at 919-431-3000.

The following rules are automatically subject to legislative review:

Rule Name	Rule Citation	Session Law	Description of Change
Neuse Buffer Rule	15A NCAC 02B .0233	SL 2011-394 (17)	Single Family Residence Use
Neuse Buffer Rule	15A NCAC 02B .0233	SL 2013-413 (52)	Exempt ag ponds
Neuse Buffer Rule	15A NCAC 02B .0233	SL 2017-209 (9)	Exemption for public safety
Catawba Buffer Rule	15A NCAC 02B .0243	SL 2013-413 (52)	Exempt ag ponds
Catawba Buffer Rule	15A NCAC 02B .0243	SL 2017-209 (10)	Exemption for public walking trails
Catawba Buffer Rule	15A NCAC 02B .0243	SL 2017-209 (9)	Exemption for public safety
Randleman Buffer Rule	15A NCAC 02B .0250	SL 2013-413 (52)	Exempt ag ponds

Randleman Buffer Rule	15A NCAC 02B .0250	SL 2017-209 (9)	Exemption for public safety
Tar-Pam Buffer Rule	15A NCAC 02B .0259	SL 2011-394 (17)	Single Family Residence Use
Tar-Pam Buffer Rule	15A NCAC 02B .0259	SL 2013-413 (52)	Exempt ag ponds
Tar-Pam Buffer Rule	15A NCAC 02B .0259	SL 2017-209 (9)	Exemption for public safety
Goose Buffer Rule	15A NCAC 02B .0607	SL 2013-413 (52)	Exempt ag ponds
Goose Buffer Rule	15A NCAC 02B .0607	SL 2017-209 (9)	Exemption for public safety
401 Certification Rule	15A NCAC 02H .0506	SL 2017-10 (3.11)	Prohibit stormwater control
Isolated Wetland Rule	15A NCAC 02H .1305	SL 2015-286 (4.18) & SL 2014-120 (54)	Change requirements for isolated wetlands, permitting and mitigation

Fiscal impact (check all that apply).

☐ **State funds affected**
☐ **Environmental permitting of DOT affected**
Analysis submitted to Board of Transportation
☐ **Local funds affected**
☐ **Substantial economic impact (≥$1,000,000)**
☐ **Approved by OSBM**
☐ **No fiscal note required by G.S. 150B-21.4**
☒ **No fiscal note required by G.S. 150B-21.3A(d)(2)**

Appendix C:
Regulatory Impact Analyses

Regulatory Impact Analysis

Rule Citation Number: 15A NCAC 02B, Sections .0402 to .0404 and .0406 to .0408

Rule Topic: Revision of Rules 02B - Classifications and Water Quality Standards Applicable to Surface Waters and Wetlands of North Carolina

DEQ Division: Divisions of Water Resources (DWR)

Staff Contact: Mike Templeton, Engineer, DWR
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(919) 807-6402

Jucilene Hoffmann: Economist II, DWR
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Impact Summary:

State government:	No
Local government:	No
Private entities:	No
Substantial Impact:	No
Federal government:	No

Necessity: N.C. Gen. Stat. §150B-21.3A requires state agencies to review existing rules every 10 years, determine which rules are still necessary, and either re-adopt or repeal each rule as appropriate. The proposed rulemaking satisfies these requirements for a portion of the Department's rules.

1. Summary

The Divisions of Water Resources reviewed its Section .0400 - Effluent Limitations rules in accordance with G.S. §150B-21.3A and proposes to re-adopt all the rules.

The Division identified necessary technical changes in some rules, including:

- Correction of agency names and addresses;
- Correction of cross-references and other regulatory citations;
- Correction of spelling and typographical errors;
- Topographical correction;
- Minor clarifications; and
- Removal or modification of provisions superseded by statutes and session laws.

As measured from the baseline conditions, there are no economic costs associated with these proposed rules review. G.S. §150B-21.3A (d)(2) states: "If a rule is readopted without substantive change, or if the rule is amended to impose a less stringent burden on regulated persons, the agency is not required to prepare a fiscal note as provided by G.S. 150B-21.4." As such, a fiscal note has not been prepared for this rulemaking package.

2. Background

G.S. §150B-21.3A requires the Department to evaluate each of its existing rules and make an initial determination as to whether the rules are:

1. Necessary with substantive public interest – the agency has received public comment on the rule within the past two years or the rule affects the property interest of the regulated public, and the agency knows or suspects that any person may object to the rule.
2. Necessary without substantive public interest – the agency determines that the rule is needed, and the rule has not had public comment in the last two years. This category includes rules that identify information that is readily available to the public, such as an address or telephone number.
3. Unnecessary – the agency determines that the rule is obsolete, redundant or otherwise not needed.

The Department must then determine which rules are still necessary and propose to re-adopt, with or without modifications, or to repeal each rule as appropriate.

The Division categorized all the subject rules as 'Necessary with substantive public interest.' The Rules Review Commission reviewed and approved these determinations, as did the General Assembly's Joint Legislative of Administrative Procedure Oversight Committee (JLAPO), and the Review Process was completed in December 2014.

The Division prepared draft rules and solicited input on the proposed actions from stakeholders in outreach meetings on April 7, 2015 and April 26, 2017. The meetings gave the stakeholders the opportunity to review the Division's draft rules and an opportunity to submit comments on the proposed rules. The draft rules were posted on the Division's webpage at least 30 days prior to this meeting. Stakeholders voiced and submitted comments to the Division on/before the meeting.

3. Economic Impact Analysis

The following tables briefly describe the proposed rule changes and summarize the anticipated impact of each change.

3.1: Subchapter 02B – Classifications and Water Quality Standards Applicable to Surface Waters and Wetlands of North Carolina

Section .0400 – Effluent Limitations

Rule	Proposed Change	Source of Change	Economic Impact	Environment Impact
15A NCAC 02B .0402 Scope	Added reference.	Staff Review	None	None
15A NCAC 02B .0403 Definition of Terms	Removed unnecessary language; updated reference; and technical corrections.	Staff Review and public comments	None	None
15A NCAC 02B .0404 Effluent Limitations in Water Quality Limited Segments	Changed title; removed unnecessary language; and revised language for consistence with other State and Federal regulations.	Staff Review and public comments	None	None
15A NCAC 02B .0406 Effluent Limits in Effluent Limited Segments	Changed title; removed unnecessary language; updated reference; made technical corrections; and revised language for consistence with other State and Federal regulations.	Staff Review and public comments	None	None
15A NCAC 02B .0407 Guidance for Determining a New Source	None	Staff Review and public comments	None	None
15A NCAC 02B .0408 Incorporation by Reference	Added reference and made technical corrections.	Staff Review and public comments	None	None

3.2 Costs and Benefits Analysis

State Government, Local Government, Regulated Community, and the Environment

The proposed revision of Rule 15A NCAC 02B, Section .0400, will not require members of the State Government, Local Government, Private Entities, and Federal Government to deviate from current practices; as such, there will be neither a direct or indirect cost as a result of this proposed rules revision. No new adverse environmental impacts or new environmental benefits are anticipated to result from the revised rule.

Administrative changes are mainly organizational in nature for the purpose of providing clarity to the regulated community thereby making the rule easier to understand. This should translate into less time spent by the development community on the permit application process as well as less time spent by regulatory staff providing technical assistance. The amount of time saved will be negligible and will not provide a significant financial benefit; however, it is noted here for completeness.

These changes will not affect environmental permitting of NC Department of Transportation (NCDOT); as such, there should be no economic impact to NCDOT.

Lastly, as measured from the baseline conditions, the proposed changes will maintain existing environmental protections at an equivalent level with no cost or benefit to the environment.

4. Total Economic Impact

As measured from the baseline conditions, there are no economic costs associated with these proposed rules review. Some of the language removed or added have the intent to reduce burden to the applicants; some of the language reviewed has the intent to be in accordance with current General Statutes and Rules or Federal Regulation. While some of those revisions could have a positive economic impact to some of the applicants, those impacts are not monetarily quantifiable here. Consequently, no new economic & environmental impacts or environmental & economic benefits are anticipated to result from these proposed rules review.

Regulatory Impact Analysis

Rule Citation Number: 15A NCAC 02B, Sections .0501 - .0506, .0508. and .0511

Rule Topic: Revision of Rules 02B - Surface Water and Wetland Standards

DEQ Division: Divisions of Water Resources (DWR)

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Jucilene Hoffmann: Economist II, DWR
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Impact Summary:

State government:	No
Local government:	No
Private entities:	No
Substantial Impact:	No
Federal government:	No

Necessity: N.C. Gen. Stat. §150B-21.3A requires state agencies to review existing rules every 10 years, determine which rules are still necessary, and either re-adopt or repeal each rule as appropriate. The proposed rulemaking satisfies these requirements for a portion of the Department's rules.

1. Summary

The Divisions of Water Resources reviewed its Section .0500 - Surface Water Monitoring Reporting rules in accordance with G.S. §150B-21.3A and proposes to re-adopt all the rules.

The Division identified necessary technical changes in some rules, including:

- Correction of agency names and addresses;
- Correction of cross-references and other regulatory citations;
- Correction of spelling and typographical errors;
- Topographical correction;
- Minor clarifications; and
- Removal or modification of provisions superseded by statutes and session laws.

As measured from the baseline conditions, these proposed rule readoptions will impose a less stringent burden on regulated persons. G.S. §150B-21.3A (d)(2) states: "If a rule is readopted without substantive change, or if the rule is amended to impose a less stringent burden on regulated persons, the agency is not required to prepare a fiscal note as provided by G.S. 150B-21.4." As such, a fiscal note has not been prepared for this rulemaking package.

2. Background

G.S. §150B-21.3A requires the Department to evaluate each of its existing rules and make an initial determination as to whether the rules are:

1. Necessary with substantive public interest – the agency has received public comment on the rule within the past two years or the rule affects the property interest of the regulated public, and the agency knows or suspects that any person may object to the rule.
2. Necessary without substantive public interest – the agency determines that the rule is needed, and the rule has not had public comment in the last two years. This category includes rules that identify information that is readily available to the public, such as an address or telephone number.
3. Unnecessary – the agency determines that the rule is obsolete, redundant or otherwise not needed.

The Department must then determine which rules are still necessary and propose to re-adopt, with or without modifications, or to repeal each rule as appropriate.

The Division categorized all the subject rules as 'Necessary with substantive public interest.' The Rules Review Commission reviewed and approved these determinations, as did the General Assembly's Joint Legislative of Administrative Procedure Oversight Committee (JLAPO), and the Review Process was completed in December 2014.

The Division prepared draft rules and solicited input on the proposed actions from stakeholders in outreach meetings on April 7, 2015 and April 26, 2017. The meetings gave the stakeholders the opportunity to review the Division's draft rules and an opportunity to submit comments on the proposed rules. The draft rules were posted on the Division's webpage at least 30 days prior to this meeting. Stakeholders voiced and submitted comments to the Division on/before the meeting.

3. Economic Impact Analysis

The following tables briefly describe the proposed rule changes and summarize the anticipated impact of each change.

3.1: Subchapter 02B – Surface Water and Wetland Standards

Section .0500 – Surface Water Monitoring Reporting

Rule	Proposed Change	Source of Change	Economic Impact	Environment Impact
15A NCAC 02B .0501 Purpose	Typographical correction.	Staff Review	None	None
15A NCAC 02B .0502 Scope	Typographical correction.	Staff Review	None	None
15A NCAC 02B .0503 Definitions	Technical corrections.	Staff Review and public comments	None	None
15A NCAC 02B .0504 Classification of Waste Sources	Technical corrections.	Staff Review and public comments	None	None
15A NCAC 02B .0505 Monitoring Requirements	Technical corrections.	Staff Review and public comments	None	None
15A NCAC 02B .0506 Reporting Requirements	Technical corrections.	Staff Review and public comments	None	None
15A NCAC 02B .0508 Tests and Measurements Applicable to SICS	Technical corrections.	Staff Review and public comments	None	None
15A NCAC 02B .0511 Incorporation by Reference	Technical corrections.	Staff Review and public comments	None	None

3.2 Costs and Benefits Analysis

State Government, Local Government, Regulated Community, and the Environment

The proposed revision of Rule 15A NCAC 02B, Section .0500, will not require members of the State Government, Local Government, Private Entities, and Federal Government to deviate from current practices; as such, there will be neither a direct or indirect cost as a result of this proposed rules revision. No new adverse environmental impacts or new environmental benefits are anticipated to result from the revised rule.

Administrative changes are mainly organizational in nature for the purpose of providing clarity to the regulated community thereby making the rule easier to understand. This should translate into less time spent by the development community on the permit application process as well as less time spent by regulatory staff providing technical assistance. The amount of time saved will be negligible and will not provide a significant financial benefit; however, it is noted here for completeness.

These changes will not affect environmental permitting of NC Department of Transportation (NCDOT); as such, there should be no economic impact to NCDOT.

Lastly, as measured from the baseline conditions, the proposed changes will maintain existing environmental protections at an equivalent level with no cost or benefit to the environment.

4. Total Economic Impact

As measured from the baseline conditions, there are no economic costs associated with these proposed rules review. Some of the language removed or added have the intend to reduce burden to the applicants; some of the language reviewed has the intend to be in accordance with current General Statutes and Rules. While some of those revisions could have a positive economic impact to some of the applicants, those impacts are not monetarily quantifiable here. Consequently, no new economic & environmental impacts or environmental & economic benefits are anticipated to result from these proposed rules review.

Regulatory Impact Analysis

Rule Citation Number: 15A NCAC 02B, Sections .0601 - .0614 and .0620 - .0624

Rule Topic: Revision of Rules 02B - Water Quality Management Plans

DEQ Division: Divisions of Water Resources (DWR) & Energy, Mineral, and Land Resources (DEMLR)

Staff Contact:

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Impact Summary:

State government:	No
Local government:	No
Private entities:	No
Substantial Impact:	No
Federal government:	No

Necessity: N.C. Gen. Stat. §150B-21.3A requires state agencies to review existing rules every 10 years, determine which rules are still necessary, and either re-adopt or repeal each rule as appropriate. The proposed rulemaking satisfies these requirements for a portion of the Department's rules.

1. **Summary**

The Divisions of Water Resources and Energy, Mineral and Land Resources reviewed its Goose Creek Watershed and Water Supply Watershed Protection rules in accordance with G.S. §150B-21.3A and proposes to re-adopt all the rules. The portions of the Water Supply Watershed Protection rules addressed in this analysis are proposed to be relocated from 15A NCAC 02B .0100 and .0200 to 15A NCAC 02B .0600. The portions of the Riparian Buffer Protection Rules addressed in this analysis except the Goose Creek rules are proposed to be relocated from 15A NCAC 02B .0200.

The Division identified necessary technical changes in some rules, including:

- Correction of agency names and addresses;
- Correction of cross-references and other regulatory citations;
- Correction of spelling and typographical errors;
- Topographical correction;

- Minor clarifications; and
- Removal or modification of provisions superseded by statutes and session laws.

As measured from the baseline conditions, these proposed rule readoptions will impose a less stringent burden on regulated persons. G.S. §150B-21.3A (d)(2) states: "If a rule is readopted without substantive change, or if the rule is amended to impose a less stringent burden on regulated persons, the agency is not required to prepare a fiscal note as provided by G.S. 150B-21.4." As such, a fiscal note has not been prepared for this rulemaking package.

2. Background

G.S. §150B-21.3A requires the Department to evaluate each of its existing rules and make an initial determination as to whether the rules are:

1. Necessary with substantive public interest – the agency has received public comment on the rule within the past two years or the rule affects the property interest of the regulated public, and the agency knows or suspects that any person may object to the rule.
2. Necessary without substantive public interest – the agency determines that the rule is needed, and the rule has not had public comment in the last two years. This category includes rules that identify information that is readily available to the public, such as an address or telephone number.
3. Unnecessary – the agency determines that the rule is obsolete, redundant or otherwise not needed.

The Department must then determine which rules are still necessary and propose to re-adopt, with or without modifications, or to repeal each rule as appropriate.

The Division categorized all the subject rules as 'Necessary with substantive public interest.' The Rules Review Commission reviewed and approved these determinations, as did the General Assembly's Joint Legislative of Administrative Procedure Oversight Committee (JLAPO), and the Review Process was completed in December 2014.

The Division prepared draft rules and solicited input on the proposed actions from stakeholders in outreach meetings on April 7, 2015 and April 26, 2017. The meetings gave the stakeholders the opportunity to review the Division's draft rules and an opportunity to submit comments on the proposed rules. The draft rules were posted on the Division's webpage at least 30 days prior to these meetings. Stakeholders voiced and submitted comments to the Division on/before the meeting.

3. Economic Impact Analysis

The following tables briefly describe the proposed rule changes and summarize the anticipated impact of each change.

3.1: Subchapter 02B – Surface Water and Wetland Standards

Section .0600 – Water Quality Management Plans

Rule	Proposed Change	Source of Change	Economic Impact	Environment Impact
15A NCAC 02B .0601 Site Specific Water Quality Management Plan for the Goose Creek Watershed (Yadkin Pee-Dee River Basin): Purpose	Added a section to rule reference for clarity and repealed Rule 609.	Staff Review	None	None
15A NCAC 02B .0602 Site Specific Water Quality Management Plan for the Goose Creek Watershed (Yadkin Pee-Dee River Basin): Stormwater Control Requirements	Updated reference to NCDOT and reference to 02H stormwater rules	Staff Review	None	None
15A NCAC 02B .0603 Site Specific Water Quality Management Plan for the Goose Creek Watershed (Yadkin Pee-Dee River Basin): Wastewater Control Requirements	Updated name.	Staff Review	None	None
15A NCAC 02B .0604 Site Specific Water Quality Management Plan for the Goose Creek Watershed (Yadkin Pee-Dee River Basin): Control Toxicity Including Ammonia	Formatting change for rule reference.	Staff Review	None	None
15A NCAC 02B .0605 Site Specific Water Quality Management Plan for the Goose Creek Watershed (Yadkin Pee-Dee River Basin): Riparian Buffer Widths	Clarification and reorganization.	Staff Review	None	None
15A NCAC 02B .0606 Site Specific Water Quality Management Plan for the Goose Creek Watershed (Yadkin Pee-Dee River Basin): Variance for Activities Within Riparian Buffers	Updated terminology; moved authorization certificate language from .0607 into this Rule; clarification and simplifying language; changed hardships;	Staff Review and public comments	None	None
15A NCAC 02B .0607 Site Specific Water Quality Management Plan for the Goose Creek Watershed (Yadkin Pee-Dee River Basin): Buffer Types and Managing Activities Within Riparian Buffers	Clarification; grammar revision; reorganization; updated terminology and reference; added new uses; codifying policy; and added new language to be consistent with other rules;	Staff Review and public comments	None	None
15A NCAC 02B .0608 Site Specific Water Quality Management Plan for the Goose Creek Watershed (Yadkin Pee-Dee River Basin): Forest Harvesting Requirements	Clarification; updated reference; reorganization; grammar revision; and removing requirement for consistency.	Staff Review and public comments	None	None
15A NCAC 02B .0609	Repealed Eff. October 24, 2014	Staff Review	None	None

15A NCAC 02B .0610 Managing Activities within Riparian Buffers: Definitions	Moved definitions from .0233, .0243 .0250, .0259, and .0607 into this new Rule; clarification and simplifying language	Staff Review and public comments	None	None
15A NCAC 02B .0611 Managing Activities within Riparian Buffers: Authorization Certificates	Updated terminology; moved authorization certificate language from .0233, .0243, .0250 and .0259 into this Rule; clarification and simplifying language; changed hardships;	Staff Review and public comments	None	None
15A NCAC 02B .0612 Managing Activities within Riparian Buffers: Forest Harvesting Requirements	Clarification; updated reference; reorganization; grammar revision; and removing requirement for consistency.	Staff Review and public comments	None	None
15A NCAC 02B .0613	Reserved for Future Codification	Staff Review	None	None
15A NCAC 02B .0614 Catawba River Basin: Protection and Maintenance of Existing Riparian Buffers	Clarification; grammar revision; reorganization; updated terminology and reference; added new uses; codifying policy; and added new language to be consistent with other rules;	Staff Review and public comments	None	None
15A NCAC 02B .0615 - .0619	Reserved for Future Codification	Staff Review	None	None
15A NCAC 02B .0620 Water Supply Watershed Protection Program: Purpose	Added statement of purpose	Staff Review	None	None
15A NCAC 02B .0621 Water Supply Watershed Protection Program: Definitions	Added definitions for clarification and for consistency with 15A NCAC 02H stormwater rules Changed definition of term "built-upon area" to match stormwater statute G.S. 143-214.7 which allows areas of #57 stone to be considered pervious ***(less stringent)***.	Staff Review	None	None
15A NCAC 02B .0622 Water Supply Watershed Protection Program: Applicability and Effective Dates	Updated references to NCDOT permit and NC Forest Service Guidelines	Staff review	None	None
15A NCAC 02B .0623 Water Supply Watershed Protection Program: Program Administration	Provide detail about sources of information that can be used to approximate normal pool elevation Clarify process for local government ordinance and map approval and recordkeeping requirements Clarify that local governments may require owners of stormwater control measures (SCMs) to inspect SCMs rather than the local governments themselves Eliminate requirement that variance information be submitted to Division on an annual basis; instead,	Staff review	None	None

	local governments must provide upon request ***(less stringent)***. Specify which laws give local government authority to impose civil penalties			
15A NCAC 02B .0624 Water Supply Watershed Protection Program: Nonpoint Source and Stormwater Pollution Control	Condense density and setbacks into one rule for all WS classifications***)***. Update terminology to match 15A NCAC 02H stormwater rules Clarify how to calculate project density***).*** Clarify meaning of term "maximum extent practicable" New option to allow low density projects to use dispersed flow or curb outlet swales instead of traditional vegetated conveyances ***(less stringent)***. Allow SCMs other than wet ponds ***(less stringent)***. Allow SCMs to achieve runoff volume match as an alternative to basic treatment (one-inch storm) ***(less stringent)***. Update reference to 15A NCAC 02H design requirements for all SCMs ***(*** Allow built-upon area to be used instead of dwelling unit per acre or minimum lot size for single-family residential development ***(less stringent)***. Allow local governments to offer both the 10/70 option and the high density option in a WS-IV ***(less stringent)***. Codify NCGS reference to density averaging of noncontiguous parcels***).*** Clarify process for stream determinations where USGS topographic maps do not distinguish between perennial and intermittent streams Clarify that the vegetated setback under the 10/70 option is 100 feet***).***	Staff review	None	None

3.2 Costs and Benefits Analysis

State Government, Local Government, Regulated Community, and the Environment

Changes to the subject rules represent an overall relaxation of the rules and, in some cases, provide additional flexibility to the regulated community. All substantive changes are a relaxation of a rule and impose a less stringent burden on the regulated community. None of these changes will require DEQ or local governments to revise their existing procedures or to procure additional staff; as such, there should be no economic cost to state agencies or local governments.

Administrative changes are mainly organizational in nature for the purpose of providing clarity to the regulated community thereby making the rule easier to understand. This should translate into less time spent by the development community on the permit application process as well as less time spent by regulatory staff providing technical assistance. The amount of time saved will be negligible and will not provide a significant financial benefit; however, it is noted here for completeness.

These changes will not affect environmental permitting of NC Department of Transportation (NCDOT); as such, there should be no economic impact to NCDOT.

Lastly, as measured from the baseline conditions, the proposed changes will maintain existing environmental protections at an equivalent level with no cost or benefit to the environment.

4. Total Economic Impact

As measured from the baseline conditions, there are no economic costs associated with these proposed rules review. Some of the language removed or added have the intent to reduce burden to the applicants; some of the language reviewed has the intent to be in accordance with current General Statutes and Rules. While some of those revisions could have a positive economic impact to some of the applicants, those impacts are not monetarily quantifiable here. Consequently, no new economic & environmental impacts or environmental & economic benefits are anticipated to result from these proposed rules review.

Appendix

Public Comments and Response to Comments related to Regulatory Impact Analyses for 15A NCAC 02B .0600 & 15A NCAC 02B .0600.0700

GENERAL RIPARIAN BUFFER RULE COMMENTS (15A NCAC 02B .0600 & .0700)

Regulatory Impact Analysis

Comment:
The Regulatory Impact Analyses [hereinafter "RIA"], incorrectly assert that the amendments noticed for comments will result in a rule readoption that "will impose a less stringent burden on regulated persons." That is not the case as the proposed rules significantly narrow existing exemptions for public utility lines. That will necessarily result in more municipal utility lines being subject to the buffer rule requirements. That impact alone triggers the need for a fiscal note and requires republication of the rules to comply with the NC Administrative Process Act. The Department would be legally incorrect to assert that there is no new regulatory burden because the more stringent rule provisions mirror existing Department policy. State Statute prohibits the Department from imposing unpromulgated guidance/policies. N.C. Gen. Stat. §150B-18. Thus, legally, any existing Department guidance/policy is non-binding. Moving to incorporate such non-binding policies into regulation is a regulatory change that has an impact on local government that must be addressed in accordance with the NC APA.

Response:
The plain language of the current buffer rules provides limited descriptions within the Table of Uses. The current rule language has been susceptible to interpretation by the Division, regulated parties and other interested stakeholders that it applies broadly to many different uses. The proposed rule provides additional clarity to better pinpoint the scope of each category within the Table of Uses. These clarifying changes would not broaden the applicability of the current rule nor would they increase the stringency of the rule.

The table below provides comparison of sewer line activities with regards to language in the existing buffer rules and the text proposed in this report. The table demonstrates that when comparing the current rule (two left columns) to the proposed rule (three right columns), each use is either equivalent or less restrictive, therefore not impacting expenditures or revenues of local governments.

Current Rules		Proposed Rules		
Use within Table of Uses	**Category**	**Type of Use**	**Description**	**Category**
Non-electric utility lines: Impacts other than perpendicular crossings in Zone 1	Allowable with Mitigation Upon Authorization	Replacement/Rehabilitation of existing sewer lines within, or adjacent to, an existing right of way but outside of an existing utility line maintenance corridor	(i) Permanent maintenance corridor equal to or less than 30 feet wide provided there is no grading and/or grubbing within 10 feet of the top of bank when the sewer line is parallel to the stream	Deemed Allowable
			(ii) Grading and/or grubbing within 10 feet of the top of bank when the sewer line is parallel to the stream and permanent maintenance corridor equal to or less than 30 feet wide	Allowable Upon Authorization
			(iii) Permanent maintenance corridor greater than 30 feet wide. For impacts other than perpendicular crossings, mitigation is only required for Zone 1 impacts. For perpendicular crossings that disturb equal to or less than 40 linear feet, no mitigation is required. For perpendicular crossings that disturb greater than 40 linear feet, mitigation is only required for Zone 1 impacts.	Allowable (with Mitigation) Upon Authorization
		New Line Construction/Installation Activities – Impacts other than perpendicular crossings	(ii) Zone 1 impacts to less than 2,500 square feet when impacts are solely the result of tying into an existing utility line and when grubbing or grading within 10 feet immediately adjacent to the surface water is avoided	Allowable Upon Authorization
			(iii) Zone 1 impacts other than those listed above	Allowable with Mitigation Upon Authorization

New rules less stringent than current rules (yellow) **New rules the same as current rules (blue)**

Current Rules		Proposed Rules		
Use within Table of Uses	**Category**	**Type of Use**	**Description**	**Category**
Non-electric utility lines: impacts other than perpendicular crossings in Zone 2 only	Allowable Upon Authorization	Replacement/Rehabilitation of existing sewer lines within, or adjacent to, an existing right of way but outside of an existing utility line maintenance corridor	(i) Permanent maintenance corridor equal to or less than 30 feet wide provided there is no grading and/or grubbing within 10 feet of the top of bank when the sewer line is parallel to the stream	Deemed Allowable
			(ii) Grading and/or grubbing within 10 feet of the top of bank when the sewer line is parallel to the stream and permanent maintenance corridor equal to or less than 30 feet wide	Allowable Upon Authorization
			(iii) Permanent maintenance corridor greater than 30 feet wide. For impacts other than perpendicular crossings, mitigation is only required for Zone 1 impacts. For perpendicular crossings that disturb equal to or less than 40 linear feet, no mitigation is required. For perpendicular crossings that disturb greater than 40 linear feet, mitigation is only required for Zone 1 impacts.	Allowable (with Mitigation) Upon Authorization
		New Line Construction/Installation Activities – Impacts other than perpendicular crossings	(i) Zone 2 only	Deemed Allowable

New rules less stringent than current rules (yellow)

New rules the same as current rules (blue)

Current Rules		Proposed Rules		
Use within Table of Uses	**Category**	**Type of Use**	**Description**	**Category**
Non-electric utility: Perpendicular crossings that disturb equal to or less than 40 linear feet with a maintenance corridor equal to or less than 10 feet	Deemed Allowable	Replacement/Rehabilitation of existing sewer lines within, or adjacent to, an existing right of way but outside of an existing utility line maintenance corridor	(i) Permanent maintenance corridor equal to or less than 30 feet wide provided there is no grading and/or grubbing within 10 feet of the top of bank when the sewer line is parallel to the stream	Deemed Allowable
		New Line Construction/Installation Activities – Perpendicular crossings or perpendicular entry into the buffer	(i) Construction corridor of less than or equal to 40 linear feet and a permanent maintenance corridor that is equal to or less than 30 feet in width	Deemed Allowable

New rules less stringent than current rules (yellow)

New rules the same as current rules (blue)

Current Rules		Proposed Rules		
Use within Table of Uses	**Category**	**Type of Use**	**Description**	**Category**
Non-electric utility: Perpendicular crossings that disturb equal to or less than 40 linear feet with a maintenance corridor greater than 10 feet	Allowable Upon Authorization	Replacement/Rehabilitation of existing sewer lines within, or adjacent to, an existing right of way but outside of an existing utility line maintenance corridor	(i) Permanent maintenance corridor equal to or less than 30 feet wide provided there is no grading and/or grubbing within 10 feet of the top of bank when the sewer line is parallel to the stream	Deemed Allowable
			(ii) Grading and/or grubbing within 10 feet of the top of bank when the sewer line is parallel to the stream and permanent maintenance corridor equal to or less than 30 feet wide	Allowable Upon Authorization
			(iii) Permanent maintenance corridor greater than 30 feet wide. For impacts other than perpendicular crossings, mitigation is only required for Zone 1 impacts. For perpendicular crossings that disturb equal to or less than 40 linear feet, no mitigation is required. For perpendicular crossings that disturb greater than 40 linear feet, mitigation is only required for Zone 1 impacts.	Allowable (with Mitigation) Upon Authorization

Current Rules		Proposed Rules		
Use within Table of Uses	**Category**	**Type of Use**	**Description**	**Category**
		New Line Construction/Installation Activities – Perpendicular crossings or perpendicular entry into the buffer	(i) Construction corridor of less than or equal to 40 linear feet and a permanent maintenance corridor that is equal to or less than 30 feet in width	Deemed Allowable
			(iv) Permanent maintenance corridor greater than 30 feet wide. For impacts other than perpendicular crossings, mitigation is only required for Zone 1 impacts. For perpendicular crossings that disturb equal to or less than 40 linear feet, no mitigation is required. For perpendicular crossings that disturb greater than 40 linear feet, mitigation is only required for Zone 1 impacts.	(Allowable with Mitigation) Upon Authorization

New rules less stringent than current rules (yellow) **New rules the same as current rules (blue)**

Current Rules		Proposed Rules		
Use within Table of Uses	**Category**	**Type of Use**	**Description**	**Category**
Non-electric utility: Perpendicular crossings that disturb greater than 40 linear feet but equal to or less than 150 linear feet with a maintenance corridor equal to or less than 10 feet	Allowable Upon Authorization	Replacement/Rehabilitation of existing sewer lines within, or adjacent to, an existing right of way but outside of an existing utility line maintenance corridor	(i) Permanent maintenance corridor equal to or less than 30 feet wide provided there is no grading and/or grubbing within 10 feet of the top of bank when the sewer line is parallel to the stream	Deemed Allowable
		New Line Construction/Installation Activities – Perpendicular crossings or perpendicular entry into the buffer	(ii) Construction corridor of greater than 40 linear feet and less than or equal to 150 linear feet and a permanent maintenance corridor that is equal to or less than 30 feet in width	Allowable Upon Authorization

New rules less stringent than current rules (yellow)

New rules the same as current rules (blue)

Current Rules		Proposed Rules		
Use within Table of Uses	**Category**	**Type of Use**	**Description**	**Category**
Non-electric utility: Perpendicular crossings that disturb greater than 40 linear feet but equal to or less than 150 linear feet with a maintenance corridor greater than 10 feet	Allowable with Mitigation Upon Authorization	Replacement/Rehabilitation of existing sewer lines within, or adjacent to, an existing right of way but outside of an existing utility line maintenance corridor	(i) Permanent maintenance corridor equal to or less than 30 feet wide provided there is no grading and/or grubbing within 10 feet of the top of bank when the sewer line is parallel to the stream	Deemed Allowable
			(iii) Permanent maintenance corridor greater than 30 feet wide. For impacts other than perpendicular crossings, mitigation is only required for Zone 1 impacts. For perpendicular crossings that disturb equal to or less than 40 linear feet, no mitigation is required. For perpendicular crossings that disturb greater than 40 linear feet, mitigation is only required for Zone 1 impacts.	Allowable (with Mitigation) Upon Authorization
		New Line Construction/Installation Activities – Perpendicular crossings or perpendicular entry into the buffer	(ii) Construction corridor of greater than 40 linear feet and less than or equal to 150 linear feet and a permanent maintenance corridor that is equal to or less than 30 feet in width	Allowable Upon Authorization
			(iv) Permanent maintenance corridor greater than 30 feet wide. For impacts other than perpendicular crossings, mitigation is only required for Zone 1 impacts. For perpendicular crossings that disturb equal to or less than 40 linear feet, no mitigation is required. For perpendicular crossings that disturb greater than 40 linear feet, mitigation is only required for Zone 1 impacts.	Allowable (with Mitigation) Upon Authorization

New rules less stringent than current rules (yellow)

New rules the same as current rules (blue)

Current Rules		Proposed Rules		
Use within Table of Uses	**Category**	**Type of Use**	**Description**	**Category**
Non-electric utility: Perpendicular crossings that disturb greater than 150 linear feet	Allowable with Mitigation Upon Authorization	Replacement/Rehabilitation of existing sewer lines within, or adjacent to, an existing right of way but outside of an existing utility line maintenance corridor	(i) Permanent maintenance corridor equal to or less than 30 feet wide provided there is no grading and/or grubbing within 10 feet of the top of bank when the sewer line is parallel to the stream	Deemed Allowable
			(iii) Permanent maintenance corridor greater than 30 feet wide. For impacts other than perpendicular crossings, mitigation is only required for Zone 1 impacts. For perpendicular crossings that disturb equal to or less than 40 linear feet, no mitigation is required. For perpendicular crossings that disturb greater than 40 linear feet, mitigation is only required for Zone 1 impacts.	Allowable (with Mitigation) Upon Authorization
		New Line Construction/Installation Activities – Perpendicular crossings or perpendicular entry into the buffer	(iii) Construction corridor of greater than 150 linear feet and a permanent maintenance corridor that is equal to or less than 30 feet in width	Allowable with Mitigation Upon Authorization
			(iv) Permanent maintenance corridor greater than 30 feet wide. For impacts other than perpendicular crossings, mitigation is only required for Zone 1 impacts. For perpendicular crossings that disturb equal to or less than 40 linear feet, no mitigation is required. For perpendicular crossings that disturb greater than 40 linear feet, mitigation is only required for Zone 1 impacts.	Allowable (with Mitigation) Upon Authorization

New rules less stringent than current rules (yellow)

New rules the same as current rules (blue)

Current Rules		Proposed Rules		
Use within Table of Uses	**Category**	**Type of Use**	**Description**	**Category**
Streambank Stabilization -OR- Protection of existing structures	Allowable Upon Authorization	Streambank stabilization for the protection of publicly owned utility lines (not including new line installation)	(i) Less than 150 feet of streambank disturbance	Deemed Allowable
			(ii) Greater than 150 feet of streambank disturbance	Allowable Upon Authorization
		Sanitary Sewer Overflows:	(i) Emergency sanitary sewer overflow response activities, provided that the disturbed area within the buffer outside of the existing utility line maintenance corridor is the minimum necessary to respond to the emergency overflow, is restored to pre-construction topographic and hydrologic conditions, and is replanted with comparable vegetation (e.g. grass with grass, hardwoods with hardwoods) within two months of when disturbance is complete	Deemed Allowable
			(ii) Emergency sanitary sewer overflow response activities that do not meet the listing above. For any new proposed permanent impacts are not a "Deemed Allowable Activity", an application for an Authorization Certificate must be submitted to the Authority no later than 30 calendar days of conclusion of the emergency response activities	Allowable Upon Authorization

Current Rules		Proposed Rules		
Use within Table of Uses	**Category**	**Type of Use**	**Description**	**Category**
Streambank Stabilization -OR- Protection of existing structures (cont.)	Allowable Upon Authorization	Vegetation Maintenance Activities that remove forest vegetation from existing sewer utility right of ways (not including new line installation) outside of the existing utility line maintenance corridor:	(ii) Zone 1 impacts: For lines that have not been maintained, the vegetation can be mowed, cut or otherwise maintained without disturbance to the soil structure for a maintenance corridor that is equal to or less than 30 feet wide	Deemed Allowable
			(iii) Zone 1 impacts other than those listed above	Allowable Upon Authorization

New rules less stringent than current rules (yellow)

New rules the same as current rules (blue)

Current Rules		Proposed Rules		
Use within Table of Uses	Category	Type of Use	Description	Category
Grading and revegetation in Zone 2	Deemed Allowable	Vegetation Maintenance Activities that remove forest vegetation from existing sewer utility right of ways (not including new line installation) outside of the existing utility line maintenance corridor:	(i) Zone 2 impacts	Deemed Allowable

New rules less stringent than current rules (yellow)

New rules the same as current rules (blue)

Current Rules		Proposed Rules		
Use within Table of Uses	**Category**	**Type of Use**	**Description**	**Category**
A use shall be considered existing if it was present within the riparian buffer as of July 22, 1997… Only the portion of the riparian buffer that contains the footprint of the existing use is exempt from this Rule. Activities necessary to maintain uses are allowed provided that no additional vegetation is removed from Zone 1.	Existing Use	Vegetation Maintenance Activities within existing utility line maintenance corridor	Definition: "Existing utility line maintenance corridor" means the portion of a utility right of way that was established prior to the effective date of the rule, or was approved as a permanent maintenance corridor through an Authorization Certificate or Variance issued by the Authority, and in which the vegetation has been maintained (e.g. can be mowed without a chainsaw or bush-hog)	Existing Use
		Replacement/Rehabilitation of existing sewer lines within an existing utility line maintenance corridor	Includes those installed prior to July 22, 1997 AND those "deemed issued" AND those approved by an authorization or variance	Existing Use

New rules less stringent than current rules (yellow)

New rules the same as current rules (blue)

Regulatory Impact Analysis

Comment:
In particular, the proposed rules for readoption impose at 15A NCAC 2B .0610(16) and 15A NCAC 2B .0714(6) new restrictions on the applicability of activities which are exempt from the rule's coverage. These restrictions will result in fewer public utility lines being exempt – which means substantial new fiscal burdens on local governments to comply with the rules that they are currently exempt from.

For example, as the Department's underlined proposed additions to (6)(a) show, the former rule only required that the use have been existing and present in the buffer as of July 22, 1997. The current rule expressly includes utility lines. The proposed rule for readoption adds two restrictions on the applicability of this exemption for utility lines; (A) it must now be deemed an allowable activity by the revised table of uses in Item (10) of the rule and (B) it was conducted and maintained pursuant to an Authorization Certificate or Variance issued by the Authority. By way of example of the significance of these new regulatory burdens, Raleigh Public Utilities staff documented 84 sewer maintenance projects in the past 36 months, with the need for such projects expected to increase. We estimate it will cost between $1,000 and $3,000 for each of these authorizations. These are substantial new regulatory costs that trigger the need for a fiscal impact statement and republication of the rule.

Response:
There are two additional types of uses that are proposed to be added to the category of existing use to account for uses that occurred after July 22, 1997. This is broadening the list of existing uses (which are exempt), not restricting it. The rule uses "or" not "and"; a use must meet one of the criteria not all of the criteria. To be more clear, the rule was modified to also add "or" after Subparagraph (i):

(6) EXEMPTION WHEN EXISTING USES ARE PRESENT AND ONGOING. This Rule shall not apply to portions of the riparian buffer where a use is existing and ongoing.
- *(a) A use shall be considered existing if:*
  - *(i) It was present within the riparian buffer as of July 22, 1997 and has continued to exist since that time; or*
  - *(ii) It was a deemed allowable activity as listed in Item (11) of this Rule; or*
  - *(iii) It was conducted and maintained pursuant to an Authorization Certificate or Variance issued by the Authority.*

Comment:
Increased regulatory burdens on local governments are also found in at least two additional changes to the rules. The first change is the addition of a new definition of "(16) Existing utility line maintenance corridor" which now appears in proposed rule 15A NCAC 2B .0610. That definition adds a critical limitation that to qualify as an existing corridor "the vegetation has been mowed, cut or otherwise maintained within the last 10 years."

Sewer lines operate to the extent practicable by gravity. Accordingly, they are located typically in the riparian buffer of streams and other regulated areas under this rule. When a local government utility repairs or replaces a sewer line, the repairs will necessarily occur in the utility easement. These easements will not have been mowed within the past 10 years because there was no regulatory requirement or public need to do so. Thus, these lines will no longer be exempt. This is a major change that will have substantial financial impact on public utilities.

Response:
To address comments related to 10 years, the definition of "existing utility line maintenance corridor" has been modified (see below).

The current language in the rule [15A NCAC 02B .0233 (3)(b)] states the exemption applies when certain uses are both "existing" and "ongoing". It further states that "[a]ctivities necessary to maintain uses are allowed provided that no additional vegetation is removed from Zone 1." Consistent with the current rule, the requirement for vegetation maintenance has been retained. Also to address comments, a new category in the Table of Uses has also been added that specifically authorizes vegetation maintenance activities; those uses are "deemed allowable" for Zone 2 impact and some Zone 1 impacts or "allowable upon authorization" for other Zone 1 impacts (see summary table above). This is less stringent than the current rule language, therefore not impacting expenditures or revenues of local governments.

The reference to an Authorization Certificate has been retained to ensure that utility line maintenance corridors as identified in an authorization certificate may continue to be maintained as an existing utility line maintenance corridor as originally approved. This will not impact expenditures or revenues of local governments.

Revised language [15A NCAC 02B .0610 (16)]:
"Existing utility line maintenance corridor" means the portion of a utility right of way that was established as a permanent maintenance corridor prior to the effective date of the rule, or was approved as a permanent maintenance corridor through an Authorization Certificate or Variance issued by the

Authority, and in which the vegetation has been ~~mowed, cut or otherwise~~ maintained (e.g. can be mowed without a chainsaw or bush-hog) ~~within the last 10 years~~."

Comment:
The revised rule makes other substantive changes in Item (10) under the category "Utility – sewer lines." By those changes, a replacement or rehabilitation of an existing sewer line is for the first time defined to be within the term "New Sewer Line Construction Activities." The impact of these changes is significant and will have substantial economic impacts on affected local governments. For example, a local government is required to replant the area where an emergency repair occurs within two months with "comparable vegetation." It is unclear if "comparable vegetation" means fully mature trees, which if even possible will come at staggering costs. Moreover, the local government is required to make application for an Authorization Certificate. This requirement does not arise from the existing rule. Legally, it is a new regulatory requirement, irrespective of any pre-existing DEQ policy. The fact of the matter is that the new rule is indisputably more stringent than the existing rule and a proper regulatory impact analysis (with fiscal impact statement) is required.

The replacement and any necessary upsizing of sewer lines is likewise required by the Sewer Collection Permit issued by DEQ to sewer utilities statewide. To meet the proposed requirements for those projects, sewer utilities are required to leave vegetative root systems and stumps in place. If the disturbed area is more than 150 linear feet, mitigation is required to be provided by the local sewer utility. If the disturbed area is wider than 20 linear feet, mitigation is required as well. Larger trunk lines require a minimum trench width of 30 feet. Any impact not within the deemed allowable criteria in the revised rule also trigger mitigation requirements.

Response:
The current rule language does not distinguish between new sewer lines and replacement of existing lines. They are both "[n]on-electric utility lines", which means that replacement of existing lines outside an existing maintained corridor is the same as a new line in the current rule. The proposed rule language splits the category into "new" and "replacement/rehabilitation"; the requirements for both are the same or less stringent than the current rule (see table above), therefore not impacting expenditures or revenues of local governments.

Other changes have been made in the proposed rule in response to comments received during the public comment period. These revisions are also the same or less stringent compared to the current rule.

- *Language regarding leaving roots and stumps in place has been removed.*

- *Comparable vegetation is not required within the permanent maintenance corridor, only within temporarily disturbed construction areas beyond the maintained corridor. The term "comparable vegetation" has also been clarified.*

- *The permanent maintenance corridor width has been increased to 30 feet. Construction corridors can be wider than 30 feet; the rule allows for different construction corridor widths as needed for the project.*

15A NCAC 02B .0610 MANAGING ACTIVITIES WITHIN RIPARIAN BUFFERS: DEFINITIONS

.0610(16) Comment:

We also object to the definition of "Existing utility line maintenance corridor." The definition makes a significant change to the existing rule which it is proposed to replace, i.e. 15A NCAC 2B .0233 NEUSE RIVER BUFFER: NUTRIENT MANAGEMENT STRATEGY: PROTECTION AND MAINTENCE OF EXSITING RIPARIAN BUFFERS. The current rule being readopted does not contain the definition nor the substance of the new requirement that the buffer have been "mowed, cut or otherwise maintained within the last 10 years." The current rule merely requires that the use have been in place by July 22, 1997 and that lawns be "maintained." In contrast, there is no requirement that a utility line be "maintained." See 15A NCAC 2B .0233(3)(b)(i) which reads in pertinent part: "A use shall be considered existing if it was present within the riparian buffer as of July 22, 1997. Existing uses shall include, but not be limited to, agriculture, buildings, industrial facilities, commercial areas, transportation facilities, maintained lawns, utility lines and on-site sanitary sewage systems." [Emphasis supplied]

Because this requirement that utility line easements be maintained is a significant change that will impose additional costs on local governments, the Commission is without authority to adopt the proposed rule change unless and until it submits a fiscal note, with appropriate notifications, and publishes the proposed rule thereafter in the Register. Local governments have thousands of miles of utility lines in the riparian buffers. Raleigh alone has over 2500 miles of sewer lines with most located in a riparian buffer. The combined total of sewer lines maintained by just the Neuse River Compliance Association members is in excess of 5,000 miles. The requirement to actively maintain those lines by vegetation maintenance necessarily imposes a negative fiscal impact on those (and other) utilities. The RIA for rule .0610(6) incorrectly and inexplicably

concludes that the proposed rule amendments have no economic impact. We also object because this 10 year requirement is an arbitrarily backward-looking requirement rather than a regulation change that provides the regulated community with fair notice and a period of time to comply in order to maintain the existing exemption status.

Accordingly, unless the 10 year limitation is removed from the rule (our preference), we urge the Department to revise the definition to be a forward-looking requirement as follows: "(16) 'Existing utility maintenance corridor' means the portion of a utility right of way in which vegetation has been mowed, cut or otherwise maintained within 10 years of the effective date of this rule." This approach will still impose significant new costs on public utilities but at least provides fair notice of this new regulatory requirement.

Response:
To address comments related to 10 years, the definition of "existing utility line maintenance corridor" has been modified.

The current language in the rule [15A NCAC 02B .0233 (3)(b)] states the exemption applies when certain uses are both "existing" and "ongoing". It further states that "[a]ctivities necessary to maintain uses are allowed provided that no additional vegetation is removed from Zone 1." Consistent with the current rule, the requirement for vegetation maintenance has been retained. Also to address comments, a new category in the Table of Uses has also been added that specifically authorizes vegetation maintenance activities; those uses are "deemed allowable" for Zone 2 impact and some Zone 1 impacts or "allowable upon authorization" for other Zone 1 impacts (see summary table above). This is less stringent than the current rule language, therefore not impacting expenditures or revenues of local governments.

Revised language [15A NCAC 02B .0610 (16)]:
"Existing utility line maintenance corridor" means the portion of a utility right of way that was established as a permanent maintenance corridor prior to the effective date of the rule, or was approved as a permanent maintenance corridor through an Authorization Certificate or Variance issued by the Authority, and in which the vegetation has been ~~mowed, cut or otherwise~~ maintained (e.g. can be mowed without a chainsaw or bush-hog) ~~within the last 10 years~~."

Comment:
The definitions rule does not include a definition for the term "utility line corridors" which is substituted for the former line "utility lines." See 15A NCAC 2B .0714(6)(b). In (6)(c) of the same rule, the exemption continues to be limited to the "footprint of the existing use." For utility lines, the rule should clarify that

the term refers to the width of the easement which contains the utility line. The ambiguity is further complicated by the limitation in the Table of Uses in 15A NCAC 2B .0714(10) for "Utility – sewer lines." That limits the area that can be disturbed to 20 feet in width. Larger capacity sewer lines require a trench of 30 feet. Accordingly, the 20 foot limitation should be corrected to reference 30 feet. For both reasons, this rule should not move forward as noticed.

Response:
The term "utility line corridors" in 15A NCAC 02B .0714(6)(b) has been updated to match the term used in the definition, existing utility line maintenance corridor.

The language referring to the "footprint of the existing use" is not new language; that is in the current rule. By using the updated term "existing utility line maintenance corridor" instead of just "utility line", it is more clear that the footprint is not just the utility line itself but also the maintenance corridor. This clarifying change does not broaden the applicability of the current rule nor does it increase the stringency of the rule.

The permanent maintenance corridor width that triggers mitigation has been increased from 10 feet to 30 feet, which is less stringent than the current rule. Construction corridors can be wider than 30 feet; the rule allows for different construction corridor widths as needed for the project.

Comment:
When providing repair or replacement of a sewer line, the repairs will necessarily occur in the utility easement. Under the Collection System Permit issued by DEQ, Permittees are required to immediately repair any breach in a sewer line resulting in a discharge of sewage. The same permit also requires sewer utilities to maintain and repair the lines to avoid failures resulting in overflows of untreated sewage. This proposed rule interferes with and requires, in some instances, mitigation for compliance with the Sewer Collection Permit.

Response:
The current rule language does not distinguish between new sewer lines and replacement of existing lines. They are both "[n]on-electric utility lines, which means that replacement of existing lines outside an existing maintained corridor is the same as a new line in the current rule. The proposed rule language splits the category into "new" and "replacement/rehabilitation", the requirements for both are the same or less stringent than the current rule (see table above), therefore not impacting expenditures or revenues of local governments.

The current rule language covers emergency overflow response/repairs as protection of existing structures, which always triggers written approval. The proposed rule language allows for immediate response without seeking prior written approval for buffer impacts. It adds a deemed allowable use and only requires a buffer authorization (after-the-fact) when the area outside of the maintenance corridor cannot be restored to pre-existing conditions. There is no mitigation triggered and there is no fee for buffer authorizations. In addition, there is also a new deemed allow able use for streambank stabilization up to 150 linear feet for the protection of publicly owned utility lines. Again, in the current rules this is Allowable and always triggers written approval. The proposed rule language is the same or less stringent (see table above), therefore not impacting expenditures or revenues of local governments.

15A NCAC 02B .0714 NEUSE RIVER BASIN: NUTRIENT SENSITIVE WATERS MANAGEMENT STRATEGY: PROTECTION AND MAINTENANCE OF EXISTING RIPARIAN BUFFERS
(note that some of these comments will be applicable to multiple buffer rules and all proposed modifications will be incorporated into other buffer rules as appropriate)

.0714(6) Comment:

The proposed rule, 15A NCAC 2B .0714(6) reads:

~~(b)~~(6) EXEMPTION WHEN EXISTING USES ARE PRESENT AND ONGOING. This Rule shall no apply to portions of the riparian buffer where a use is existing and ~~ongoing according to the following:~~ ongoing.

~~(i)~~(a) A use shall be considered existing ~~if~~ if:

(i) ~~it~~ It was present within the riparian buffer as of July 22, ~~1997,~~ 1997 and has continued to exist since that time;

(ii) It was a deemed allowable activity as listed in Item (10) of this Rule; or

(iii) It was conducted and maintained pursuant to an Authorization Certificate or Variance issued by the Authority.

(b) Existing and ongoing uses shall include, but not be limited to, agriculture, buildings, industrial facilities, commercial areas, transportation facilities, maintained ~~lawns,~~ lawns (i.e. can be mowed without a chainsaw or bush-hog), maintained (i.e. vegetation management has occurred within the last ten years) utility ~~lines~~ line corridors and on-site sanitary sewage ~~systems.~~ systems, any of which involve either specific periodic management of vegetation or displacement of vegetation by structures or regular activity.

(c) Only the portion of the riparian buffer that contains the footprint of the existing and ongoing use is exempt from this Rule.

(d) Change of ownership through purchase or inheritance is not a change of use.

(e) Activities necessary to maintain existing and ongoing uses are allowed provided that ~~no additional vegetation is removed from Zone 1 except that grazed or trampled by livestock~~ the site remains similarly vegetated, no built upon area is added within the riparian buffer where it did not exist prior to July 22, 1997, and the site is in compliance with Item (9) of this Rule. ~~existing diffuse flow is maintained. Grading and revegetating Zone 2 is allowed provided that the health of the vegetation in Zone 1 is not compromised, the ground is stabilized and existing diffuse flow is maintained.~~

The highlighted portion of the proposed rule shows the substantive changes made which reduce the scope of the exemption as it applied to sewer lines in existences as of July 22, 1997. The narrower exemption for utility line corridors requires for the first time "specific periodic management of vegetation or displacement of vegetation." These changes are significant and therefore required notice to the appropriate representatives of local governments, as set out in N.C. Gen. Stat. §150B-21.4, and the preparation of Regulatory Impact Analyses.

<u>Response:</u>
There are two additional types of uses that are proposed to be added to the category of existing use to account for uses that occurred after July 22, 1997. This is broadening the list of existing uses (which are exempt) not restricting it. The rule uses "or" not "and"; a use must meet one of the criteria not all of the criteria. To be more clear, the rule was modified to also add "or" after Subparagraph (i).

To address comments related to 10 years, the definition of "existing utility line maintenance corridor" has been modified. The current language in the rule [15A NCAC 02B .0233 (3)(b)] states the exemption applies when certain uses are both "existing" and "ongoing". It further states that "[a]ctivities necessary to maintain uses are allowed provided that no additional vegetation is removed from Zone 1." Consistent with the current rule, the requirement for vegetation maintenance has been retained. Also to address comments, a new category in the Table of Uses has also been added that specifically authorizes vegetation maintenance activities; those uses are "deemed allowable" for Zone 2 impact and some Zone 1 impacts or "allowable upon authorization" for other Zone 1 impacts (see summary table above). This is less stringent than the current rule language, therefore not impacting expenditures or revenues of local governments.

By using the updated term "existing utility line maintenance corridor" instead of just "utility line", it is more clear that the footprint is not just the utility line itself but also the maintenance corridor. This clarifying change does not broaden the applicability of the current rule nor does it increase the stringency of the rule.

The language "specific periodic management of vegetation or displacement of vegetation by structures or regular activity" was added to expand the scope of existing uses that would be exempt under the rule. The proposed rule includes both vegetation management and structures, while the current rule language only includes structures.

The language in (e) was also changed to expand the scope of existing uses that would be exempt under the rule. The current rule does not allow for any removal of vegetation in Zone 1 while the proposed rule only requires the site to be similarly vegetated. Built upon area cannot be added under the current rule language or the proposed rule language; this is not a change. The proposed rule does not impact expenditures or revenues of local governments.

15A NCAC 02B .0724 RANDLEMAN LAKE WATER SUPPLY WATERSHED: PROTECTION AND MAINTENANCE OF EXISTING RIPARIAN BUFFERS

(note that some of these comments will be applicable to multiple buffer rules and all proposed modifications will be incorporated into other buffer rules as appropriate)

.0724(12)(a)(ii) Comment:

Requiring the municipality to appoint a single Program Administrator adds additional responsibilities to a single position and increases costs for the municipality. Larger municipalities may have multiple staff members that are certified to perform on-site determinations. In those cases, the intent of the rule is being meet, however the proposed rule requires a single person to be completely responsible for the implementation of the program. We propose that the municipality should be able to submit a program plan to handle the implementation of the program to NCDEQ.

Response:

Language modified to indicate that there may be more than one administrator responsible for rule implementation.

Regulatory Impact Analysis

Rule Citation Number: 15A NCAC 02B, Rules .0714 - .0715; .0720 - .0724; and .0734 - .0735

Rule Topic: Revision of Rules 02B - Nutrient Strategies: Randleman Lake, Neuse Riparian Buffers, Tar-Pamlico Riparian Buffers

DEQ Division: Divisions of Water Resources (DWR) & Energy, Mineral, and Land Resources (DEMLR)

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Impact Summary:

State government:	No
Local government:	No
Private entities:	No
Substantial Impact:	No
Federal government:	No

Necessity: N.C. Gen. Stat. §150B-21.3A requires state agencies to review existing rules every 10 years, determine which rules are still necessary, and either re-adopt or repeal each rule as appropriate. The proposed rulemaking satisfies these requirements for a portion of the Department's rules.

1. **Summary**

The Divisions of Water Resources and Energy, Mineral and Land Resources reviewed its Randleman Lake Nutrient Strategy rules, Neuse riparian buffer rules, and Tar-Pamlico riparian buffer rules in accordance with G.S. §150B-21.3A and proposes to re-adopt all the rules. The rules addressed in this analysis are proposed to be relocated from 15A NCAC 02B .0200 to 15A NCAC 02B .0700.

The Division identified necessary technical changes in some rules, including:

- Correction of agency names and addresses;
- Correction of cross-references and other regulatory citations;
- Correction of spelling and typographical errors;
- Topographical correction;

- Minor clarifications; and
- Removal or modification of provisions superseded by statutes and session laws.

As measured from the baseline conditions, these proposed rule readoptions will impose a less stringent burden on regulated persons. G.S. §150B-21.3A (d)(2) states: "If a rule is readopted without substantive change, or if the rule is amended to impose a less stringent burden on regulated persons, the agency is not required to prepare a fiscal note as provided by G.S. 150B-21.4." As such, a fiscal note has not been prepared for this rulemaking package.

2. Background

G.S. §150B-21.3A requires the Department to evaluate each of its existing rules and make an initial determination as to whether the rules are:

1. Necessary with substantive public interest – the agency has received public comment on the rule within the past two years or the rule affects the property interest of the regulated public, and the agency knows or suspects that any person may object to the rule.
2. Necessary without substantive public interest – the agency determines that the rule is needed, and the rule has not had public comment in the last two years. This category includes rules that identify information that is readily available to the public, such as an address or telephone number.
3. Unnecessary – the agency determines that the rule is obsolete, redundant or otherwise not needed.

The Department must then determine which rules are still necessary and propose to re-adopt, with or without modifications, or to repeal each rule as appropriate.

The Division categorized all the subject rules as 'Necessary with substantive public interest.' The Rules Review Commission reviewed and approved these determinations, as did the General Assembly's Joint Legislative of Administrative Procedure Oversight Committee (JLAPO), and the Review Process was completed in December 2014.

The Division prepared draft rules and solicited input on the proposed actions from stakeholders in outreach meetings on April 7, 2015, April 26, 2017 and October 18, 2017. The meetings gave the stakeholders the opportunity to review the Division's draft rules and an opportunity to submit comments on the proposed rules. The draft rules were posted on the Division's webpage at least 30 days prior to this meeting. Stakeholders voiced and submitted comments to the Division on/before the meeting.

3. Economic Impact Analysis

The following tables briefly describe the proposed rule changes and summarize the anticipated impact of each change.

3.1: Subchapter 02B – Surface Water and Wetland Standards

Section .0700 – Nutrient Strategies

Rule	Proposed Change	Source of Change	Economic Impact	Environment Impact
15A NCAC 02B .0714 Neuse River Basin: Nutrient Sensitive Waters: Protection and Maintenance of Existing Riparian Buffers	Clarification; grammar revision; reorganization; moved definitions to .0610; updated terminology and reference; added new uses; codifying policy; removed diffuse flow requirement; instead provide options for stormwater discharges; and added new language to be consistent with other rules;	Staff Review and public comments	None	None
15A NCAC 02B .0715 Neuse River Basin: Nutrient Sensitive Waters Management Strategy: Delegation of Authority for the Protection and Maintenance of Existing Riparian Buffers	Clarification; grammar revision; reorganization; updated terminology and reference; and added new language to be consistent with other rules;	Staff Review and public comments	None	None
15A NCAC 02B .0720 Randleman Lake: Nutrient Strategy: Purpose and Scope	Added purpose statement for clarification; Added scope and limitation language to clarify scope of EMC's rule; and Updated rule references.	Staff Review	None	None
15A NCAC 02B .0721 Randleman Lake Water Supply Watershed: Stormwater Requirements	Reorganized for clarification and consistency with 2B water supply watershed rules; Updated terminology to match 15A NCAC 2H stormwater; Updated rule references; Removed provisions that are redundant to Randleman buffer rule and water supply rules.	Staff Review	None	None
15A NCAC 02B .0722 Randleman Lake Water Supply Watershed: Wastewater Discharge Requirements	Reorganization and updated reference to affected facility.	Staff Review	None	None
15A NCAC 02B .0723	Reserved for Future Codification			
15A NCAC 02B .0724 Randleman Lake Water Supply Watershed: Protection and Maintenance of Existing Riparian Buffers	Clarification; grammar revision; moved definitions to 0.0610; reorganization; updated terminology and reference; added new uses; codifying policy; removed diffuse flow requirement; instead provide options for stormwater discharges; and added new language to be consistent with other rules;	Staff Review	None	None
15A NCAC 02B .0734 Tar-Pamlico River Basin: Nutrient Sensitive Waters Management Strategy: Protection and Maintenance of Existing Riparian Buffers	Clarification; grammar revision; reorganization; updated terminology and reference; removed unnecessary language; added new uses; excluded Ocracoke Island from the buffer rules as it's downstream of the impairment; codifying policy;	Staff Review and public comments	None	None

	removed diffuse flow requirement; instead provide options for stormwater discharges; and added new language to be consistent with other rules;			
15A NCAC 02B .0735 Tar-Pamlico River Basin: Nutrient Sensitive Waters Management Strategy: Delegation of Authority for the Protection and Maintenance of Existing Riparian Buffers	Clarification; grammar revision; reorganization; updated terminology and reference; and added new language to be consistent with other rules;	Staff Review and public comments	None	None

3.2 Costs and Benefits Analysis

State Government, Local Government, Regulated Community, and the Environment

Changes to these rules represent an overall relaxation of the rules and, in some cases, provide additional flexibility to the regulated community. All substantive changes are a relaxation of a rule and impose a less stringent burden on the regulated community. None of these changes will require DEQ or local governments to revise their existing procedures or to procure additional staff; as such, there should be no economic cost to state agencies or local governments.

Administrative changes are mainly organizational in nature for the purpose of providing clarity to the regulated community thereby making the rule easier to understand. This should translate into less time spent by the development community on the permit application process as well as less time spent by regulatory staff providing technical assistance. The amount of time saved will be negligible and will not provide a significant financial benefit; however, it is noted here for completeness.

These changes will not affect environmental permitting of NC Department of Transportation (NCDOT); as such, there should be no economic impact to NCDOT.

Lastly, as measured from the baseline conditions, the proposed changes will maintain existing environmental protections at an equivalent level with no cost or benefit to the environment.

4. Total Economic Impact

As measured from the baseline conditions, there are no economic costs associated with these proposed rules review. Some of the language removed or added have the intent to reduce burden to the applicants; some of the language reviewed has the intent to be in accordance with current General Statutes and Rules. While some of those revisions could have a positive economic impact to some of the applicants, those impacts are not monetarily quantifiable here. Consequently, no new economic & environmental impacts or environmental & economic benefits are anticipated to result from these proposed rules review.

Appendix

Public Comments and Response to Comments related to Regulatory Impact Analyses for 15A NCAC 02B .0600 & 15A NCAC 02B .0600.0700

GENERAL RIPARIAN BUFFER RULE COMMENTS (15A NCAC 02B .0600 & .0700)

Regulatory Impact Analysis

Comment:
The Regulatory Impact Analyses [hereinafter "RIA"], incorrectly assert that the amendments noticed for comments will result in a rule readoption that "will impose a less stringent burden on regulated persons." That is not the case as the proposed rules significantly narrow existing exemptions for public utility lines. That will necessarily result in more municipal utility lines being subject to the buffer rule requirements. That impact alone triggers the need for a fiscal note and requires republication of the rules to comply with the NC Administrative Process Act. The Department would be legally incorrect to assert that there is no new regulatory burden because the more stringent rule provisions mirror existing Department policy. State Statute prohibits the Department from imposing unpromulgated guidance/policies. N.C. Gen. Stat. §150B-18. Thus, legally, any existing Department guidance/policy is non-binding. Moving to incorporate such non-binding policies into regulation is a regulatory change that has an impact on local government that must be addressed in accordance with the NC APA.

Response:
The plain language of the current buffer rules provides limited descriptions within the Table of Uses. The current rule language has been susceptible to interpretation by the Division, regulated parties and other interested stakeholders that it applies broadly to many different uses. The proposed rule provides additional clarity to better pinpoint the scope of each category within the Table of Uses. These clarifying changes would not broaden the applicability of the current rule nor would they increase the stringency of the rule.

The table below provides comparison of sewer line activities with regards to language in the existing buffer rules and the text proposed in this report. The table demonstrates that when comparing the current rule (two left columns) to the proposed rule (three right columns), each use is either equivalent or less restrictive, therefore not impacting expenditures or revenues of local governments.

Current Rules		Proposed Rules		
Use within Table of Uses	**Category**	**Type of Use**	**Description**	**Category**
Non-electric utility lines: Impacts other than perpendicular crossings in Zone 1	Allowable with Mitigation Upon Authorization	Replacement/Rehabilitation of existing sewer lines within, or adjacent to, an existing right of way but outside of an existing utility line maintenance corridor	(i) Permanent maintenance corridor equal to or less than 30 feet wide provided there is no grading and/or grubbing within 10 feet of the top of bank when the sewer line is parallel to the stream	Deemed Allowable
			(ii) Grading and/or grubbing within 10 feet of the top of bank when the sewer line is parallel to the stream and permanent maintenance corridor equal to or less than 30 feet wide	Allowable Upon Authorization
			(iii) Permanent maintenance corridor greater than 30 feet wide. For impacts other than perpendicular crossings, mitigation is only required for Zone 1 impacts. For perpendicular crossings that disturb equal to or less than 40 linear feet, no mitigation is required. For perpendicular crossings that disturb greater than 40 linear feet, mitigation is only required for Zone 1 impacts.	Allowable (with Mitigation) Upon Authorization
		New Line Construction/Installation Activities – Impacts other than perpendicular crossings	(ii) Zone 1 impacts to less than 2,500 square feet when impacts are solely the result of tying into an existing utility line and when grubbing or grading within 10 feet immediately adjacent to the surface water is avoided	Allowable Upon Authorization
			(iii) Zone 1 impacts other than those listed above	Allowable with Mitigation Upon Authorization

New rules less stringent than current rules (yellow) **New rules the same as current rules (blue)**

Current Rules		Proposed Rules		
Use within Table of Uses	**Category**	**Type of Use**	**Description**	**Category**
Non-electric utility lines: impacts other than perpendicular crossings in Zone 2 only	Allowable Upon Authorization	Replacement/Rehabilitation of existing sewer lines within, or adjacent to, an existing right of way but outside of an existing utility line maintenance corridor	(i) Permanent maintenance corridor equal to or less than 30 feet wide provided there is no grading and/or grubbing within 10 feet of the top of bank when the sewer line is parallel to the stream	Deemed Allowable
			(ii) Grading and/or grubbing within 10 feet of the top of bank when the sewer line is parallel to the stream and permanent maintenance corridor equal to or less than 30 feet wide	Allowable Upon Authorization
			(iii) Permanent maintenance corridor greater than 30 feet wide. For impacts other than perpendicular crossings, mitigation is only required for Zone 1 impacts. For perpendicular crossings that disturb equal to or less than 40 linear feet, no mitigation is required. For perpendicular crossings that disturb greater than 40 linear feet, mitigation is only required for Zone 1 impacts.	Allowable (with Mitigation) Upon Authorization
		New Line Construction/Installation Activities – Impacts other than perpendicular crossings	(i) Zone 2 only	Deemed Allowable

New rules less stringent than current rules (yellow)

New rules the same as current rules (blue)

Current Rules		Proposed Rules		
Use within Table of Uses	**Category**	**Type of Use**	**Description**	**Category**
Non-electric utility: Perpendicular crossings that disturb equal to or less than 40 linear feet with a maintenance corridor equal to or less than 10 feet	Deemed Allowable	Replacement/Rehabilitation of existing sewer lines within, or adjacent to, an existing right of way but outside of an existing utility line maintenance corridor	(i) Permanent maintenance corridor equal to or less than 30 feet wide provided there is no grading and/or grubbing within 10 feet of the top of bank when the sewer line is parallel to the stream	Deemed Allowable
		New Line Construction/Installation Activities – Perpendicular crossings or perpendicular entry into the buffer	(i) Construction corridor of less than or equal to 40 linear feet and a permanent maintenance corridor that is equal to or less than 30 feet in width	Deemed Allowable

New rules less stringent than current rules (yellow)

New rules the same as current rules (blue)

Current Rules		Proposed Rules		
Use within Table of Uses	**Category**	**Type of Use**	**Description**	**Category**
Non-electric utility: Perpendicular crossings that disturb equal to or less than 40 linear feet with a maintenance corridor greater than 10 feet	Allowable Upon Authorization	Replacement/Rehabilitation of existing sewer lines within, or adjacent to, an existing right of way but outside of an existing utility line maintenance corridor	(i) Permanent maintenance corridor equal to or less than 30 feet wide provided there is no grading and/or grubbing within 10 feet of the top of bank when the sewer line is parallel to the stream	Deemed Allowable
			(ii) Grading and/or grubbing within 10 feet of the top of bank when the sewer line is parallel to the stream and permanent maintenance corridor equal to or less than 30 feet wide	Allowable Upon Authorization
			(iii) Permanent maintenance corridor greater than 30 feet wide. For impacts other than perpendicular crossings, mitigation is only required for Zone 1 impacts. For perpendicular crossings that disturb equal to or less than 40 linear feet, no mitigation is required. For perpendicular crossings that disturb greater than 40 linear feet, mitigation is only required for Zone 1 impacts.	Allowable (with Mitigation) Upon Authorization

Current Rules		Proposed Rules		
Use within Table of Uses	**Category**	**Type of Use**	**Description**	**Category**
		New Line Construction/Installation Activities – Perpendicular crossings or perpendicular entry into the buffer	(i) Construction corridor of less than or equal to 40 linear feet and a permanent maintenance corridor that is equal to or less than 30 feet in width	Deemed Allowable
			(iv) Permanent maintenance corridor greater than 30 feet wide. For impacts other than perpendicular crossings, mitigation is only required for Zone 1 impacts. For perpendicular crossings that disturb equal to or less than 40 linear feet, no mitigation is required. For perpendicular crossings that disturb greater than 40 linear feet, mitigation is only required for Zone 1 impacts.	(Allowable with Mitigation) Upon Authorization

New rules less stringent than current rules (yellow) **New rules the same as current rules (blue)**

Current Rules		Proposed Rules		
Use within Table of Uses	**Category**	**Type of Use**	**Description**	**Category**
Non-electric utility: Perpendicular crossings that disturb greater than 40 linear feet but equal to or less than 150 linear feet with a maintenance corridor equal to or less than 10 feet	Allowable Upon Authorization	Replacement/Rehabilitation of existing sewer lines within, or adjacent to, an existing right of way but outside of an existing utility line maintenance corridor	(i) Permanent maintenance corridor equal to or less than 30 feet wide provided there is no grading and/or grubbing within 10 feet of the top of bank when the sewer line is parallel to the stream	Deemed Allowable
		New Line Construction/Installation Activities – Perpendicular crossings or perpendicular entry into the buffer	(ii) Construction corridor of greater than 40 linear feet and less than or equal to 150 linear feet and a permanent maintenance corridor that is equal to or less than 30 feet in width	Allowable Upon Authorization

New rules less stringent than current rules (yellow)

New rules the same as current rules (blue)

Current Rules		Proposed Rules		
Use within Table of Uses	**Category**	**Type of Use**	**Description**	**Category**
Non-electric utility: Perpendicular crossings that disturb greater than 40 linear feet but equal to or less than 150 linear feet with a maintenance corridor greater than 10 feet	Allowable with Mitigation Upon Authorization	Replacement/Rehabilitation of existing sewer lines within, or adjacent to, an existing right of way but outside of an existing utility line maintenance corridor	(i) Permanent maintenance corridor equal to or less than 30 feet wide provided there is no grading and/or grubbing within 10 feet of the top of bank when the sewer line is parallel to the stream	Deemed Allowable
			(iii) Permanent maintenance corridor greater than 30 feet wide. For impacts other than perpendicular crossings, mitigation is only required for Zone 1 impacts. For perpendicular crossings that disturb equal to or less than 40 linear feet, no mitigation is required. For perpendicular crossings that disturb greater than 40 linear feet, mitigation is only required for Zone 1 impacts.	Allowable (with Mitigation) Upon Authorization
		New Line Construction/Installation Activities – Perpendicular crossings or perpendicular entry into the buffer	(ii) Construction corridor of greater than 40 linear feet and less than or equal to 150 linear feet and a permanent maintenance corridor that is equal to or less than 30 feet in width	Allowable Upon Authorization
			(iv) Permanent maintenance corridor greater than 30 feet wide. For impacts other than perpendicular crossings, mitigation is only required for Zone 1 impacts. For perpendicular crossings that disturb equal to or less than 40 linear feet, no mitigation is required. For perpendicular crossings that disturb greater than 40 linear feet, mitigation is only required for Zone 1 impacts.	Allowable (with Mitigation) Upon Authorization

New rules less stringent than current rules (yellow)

New rules the same as current rules (blue)

Current Rules		Proposed Rules		
Use within Table of Uses	**Category**	**Type of Use**	**Description**	**Category**
Non-electric utility: Perpendicular crossings that disturb greater than 150 linear feet	Allowable with Mitigation Upon Authorization	Replacement/Rehabilitation of existing sewer lines within, or adjacent to, an existing right of way but outside of an existing utility line maintenance corridor	(i) Permanent maintenance corridor equal to or less than 30 feet wide provided there is no grading and/or grubbing within 10 feet of the top of bank when the sewer line is parallel to the stream	Deemed Allowable
			(iii) Permanent maintenance corridor greater than 30 feet wide. For impacts other than perpendicular crossings, mitigation is only required for Zone 1 impacts. For perpendicular crossings that disturb equal to or less than 40 linear feet, no mitigation is required. For perpendicular crossings that disturb greater than 40 linear feet, mitigation is only required for Zone 1 impacts.	Allowable (with Mitigation) Upon Authorization
		New Line Construction/Installation Activities – Perpendicular crossings or perpendicular entry into the buffer	(iii) Construction corridor of greater than 150 linear feet and a permanent maintenance corridor that is equal to or less than 30 feet in width	Allowable with Mitigation Upon Authorization
			(iv) Permanent maintenance corridor greater than 30 feet wide. For impacts other than perpendicular crossings, mitigation is only required for Zone 1 impacts. For perpendicular crossings that disturb equal to or less than 40 linear feet, no mitigation is required. For perpendicular crossings that disturb greater than 40 linear feet, mitigation is only required for Zone 1 impacts.	Allowable (with Mitigation) Upon Authorization

New rules less stringent than current rules (yellow)

New rules the same as current rules (blue)

Current Rules		Proposed Rules		
Use within Table of Uses	**Category**	**Type of Use**	**Description**	**Category**
Streambank Stabilization -OR- Protection of existing structures	Allowable Upon Authorization	Streambank stabilization for the protection of publicly owned utility lines (not including new line installation)	(i) Less than 150 feet of streambank disturbance	Deemed Allowable
			(ii) Greater than 150 feet of streambank disturbance	Allowable Upon Authorization
		Sanitary Sewer Overflows:	(i) Emergency sanitary sewer overflow response activities, provided that the disturbed area within the buffer outside of the existing utility line maintenance corridor is the minimum necessary to respond to the emergency overflow, is restored to pre-construction topographic and hydrologic conditions, and is replanted with comparable vegetation (e.g. grass with grass, hardwoods with hardwoods) within two months of when disturbance is complete	Deemed Allowable
			(ii) Emergency sanitary sewer overflow response activities that do not meet the listing above. For any new proposed permanent impacts are not a "Deemed Allowable Activity", an application for an Authorization Certificate must be submitted to the Authority no later than 30 calendar days of conclusion of the emergency response activities	Allowable Upon Authorization

Current Rules		Proposed Rules		
Use within Table of Uses	**Category**	**Type of Use**	**Description**	**Category**
Streambank Stabilization -OR- Protection of existing structures (cont.)	Allowable Upon Authorization	Vegetation Maintenance Activities that remove forest vegetation from existing sewer utility right of ways (not including new line installation) outside of the existing utility line maintenance corridor:	(ii) Zone 1 impacts: For lines that have not been maintained, the vegetation can be mowed, cut or otherwise maintained without disturbance to the soil structure for a maintenance corridor that is equal to or less than 30 feet wide	Deemed Allowable
			(iii) Zone 1 impacts other than those listed above	Allowable Upon Authorization

New rules less stringent than current rules (yellow)

New rules the same as current rules (blue)

Current Rules		Proposed Rules		
Use within Table of Uses	Category	Type of Use	Description	Category
Grading and revegetation in Zone 2	Deemed Allowable	Vegetation Maintenance Activities that remove forest vegetation from existing sewer utility right of ways (not including new line installation) outside of the existing utility line maintenance corridor:	(i) Zone 2 impacts	Deemed Allowable

New rules less stringent than current rules (yellow)

New rules the same as current rules (blue)

Current Rules		Proposed Rules		
Use within Table of Uses	**Category**	**Type of Use**	**Description**	**Category**
A use shall be considered existing if it was present within the riparian buffer as of July 22, 1997… Only the portion of the riparian buffer that contains the footprint of the existing use is exempt from this Rule. Activities necessary to maintain uses are allowed provided that no additional vegetation is removed from Zone 1.	Existing Use	Vegetation Maintenance Activities within existing utility line maintenance corridor	Definition: "Existing utility line maintenance corridor" means the portion of a utility right of way that was established prior to the effective date of the rule, or was approved as a permanent maintenance corridor through an Authorization Certificate or Variance issued by the Authority, and in which the vegetation has been maintained (e.g. can be mowed without a chainsaw or bush-hog)	Existing Use
		Replacement/Rehabilitation of existing sewer lines within an existing utility line maintenance corridor	Includes those installed prior to July 22, 1997 AND those "deemed issued" AND those approved by an authorization or variance	Existing Use

New rules less stringent than current rules (yellow)

New rules the same as current rules (blue)

Regulatory Impact Analysis

Comment:
In particular, the proposed rules for readoption impose at 15A NCAC 2B .0610(16) and 15A NCAC 2B .0714(6) new restrictions on the applicability of activities which are exempt from the rule's coverage. These restrictions will result in fewer public utility lines being exempt – which means substantial new fiscal burdens on local governments to comply with the rules that they are currently exempt from.

For example, as the Department's underlined proposed additions to (6)(a) show, the former rule only required that the use have been existing and present in the buffer as of July 22, 1997. The current rule expressly includes utility lines. The proposed rule for readoption adds two restrictions on the applicability of this exemption for utility lines; (A) it must now be deemed an allowable activity by the revised table of uses in Item (10) of the rule and (B) it was conducted and maintained pursuant to an Authorization Certificate or Variance issued by the Authority. By way of example of the significance of these new regulatory burdens, Raleigh Public Utilities staff documented 84 sewer maintenance projects in the past 36 months, with the need for such projects expected to increase. We estimate it will cost between $1,000 and $3,000 for each of these authorizations. These are substantial new regulatory costs that trigger the need for a fiscal impact statement and republication of the rule.

Response:
There are two additional types of uses that are proposed to be added to the category of existing use to account for uses that occurred after July 22, 1997. This is broadening the list of existing uses (which are exempt), not restricting it. The rule uses "or" not "and"; a use must meet one of the criteria not all of the criteria. To be more clear, the rule was modified to also add "or" after Subparagraph (i):

(6) EXEMPTION WHEN EXISTING USES ARE PRESENT AND ONGOING. This Rule shall not apply to portions of the riparian buffer where a use is existing and ongoing.
- *(a) A use shall be considered existing if:*
  - *(i) It was present within the riparian buffer as of July 22, 1997 and has continued to exist since that time; or*
  - *(ii) It was a deemed allowable activity as listed in Item (11) of this Rule; or*
  - *(iii) It was conducted and maintained pursuant to an Authorization Certificate or Variance issued by the Authority.*

Comment:
Increased regulatory burdens on local governments are also found in at least two additional changes to the rules. The first change is the addition of a new definition of "(16) Existing utility line maintenance corridor" which now appears in proposed rule 15A NCAC 2B .0610. That definition adds a critical limitation that to qualify as an existing corridor "the vegetation has been mowed, cut or otherwise maintained within the last 10 years."

Sewer lines operate to the extent practicable by gravity. Accordingly, they are located typically in the riparian buffer of streams and other regulated areas under this rule. When a local government utility repairs or replaces a sewer line, the repairs will necessarily occur in the utility easement. These easements will not have been mowed within the past 10 years because there was no regulatory requirement or public need to do so. Thus, these lines will no longer be exempt. This is a major change that will have substantial financial impact on public utilities.

Response:
To address comments related to 10 years, the definition of "existing utility line maintenance corridor" has been modified (see below).

The current language in the rule [15A NCAC 02B .0233 (3)(b)] states the exemption applies when certain uses are both "existing" and "ongoing". It further states that "[a]ctivities necessary to maintain uses are allowed provided that no additional vegetation is removed from Zone 1." Consistent with the current rule, the requirement for vegetation maintenance has been retained. Also to address comments, a new category in the Table of Uses has also been added that specifically authorizes vegetation maintenance activities; those uses are "deemed allowable" for Zone 2 impact and some Zone 1 impacts or "allowable upon authorization" for other Zone 1 impacts (see summary table above). This is less stringent than the current rule language, therefore not impacting expenditures or revenues of local governments.

The reference to an Authorization Certificate has been retained to ensure that utility line maintenance corridors as identified in an authorization certificate may continue to be maintained as an existing utility line maintenance corridor as originally approved. This will not impact expenditures or revenues of local governments.

Revised language [15A NCAC 02B .0610 (16)]:
"Existing utility line maintenance corridor" means the portion of a utility right of way that was established as a permanent maintenance corridor prior to the effective date of the rule, or was approved as a permanent maintenance corridor through an Authorization Certificate or Variance issued by the

Authority, and in which the vegetation has been ~~mowed, cut or otherwise~~ maintained (e.g. can be mowed without a chainsaw or bush-hog) ~~within the last 10 years~~."

Comment:
The revised rule makes other substantive changes in Item (10) under the category "Utility – sewer lines." By those changes, a replacement or rehabilitation of an existing sewer line is for the first time defined to be within the term "New Sewer Line Construction Activities." The impact of these changes is significant and will have substantial economic impacts on affected local governments. For example, a local government is required to replant the area where an emergency repair occurs within two months with "comparable vegetation." It is unclear if "comparable vegetation" means fully mature trees, which if even possible will come at staggering costs. Moreover, the local government is required to make application for an Authorization Certificate. This requirement does not arise from the existing rule. Legally, it is a new regulatory requirement, irrespective of any pre-existing DEQ policy. The fact of the matter is that the new rule is indisputably more stringent than the existing rule and a proper regulatory impact analysis (with fiscal impact statement) is required.

The replacement and any necessary upsizing of sewer lines is likewise required by the Sewer Collection Permit issued by DEQ to sewer utilities statewide. To meet the proposed requirements for those projects, sewer utilities are required to leave vegetative root systems and stumps in place. If the disturbed area is more than 150 linear feet, mitigation is required to be provided by the local sewer utility. If the disturbed area is wider than 20 linear feet, mitigation is required as well. Larger trunk lines require a minimum trench width of 30 feet. Any impact not within the deemed allowable criteria in the revised rule also trigger mitigation requirements.

Response:
The current rule language does not distinguish between new sewer lines and replacement of existing lines. They are both "[n]on-electric utility lines", which means that replacement of existing lines outside an existing maintained corridor is the same as a new line in the current rule. The proposed rule language splits the category into "new" and "replacement/rehabilitation"; the requirements for both are the same or less stringent than the current rule (see table above), therefore not impacting expenditures or revenues of local governments.

Other changes have been made in the proposed rule in response to comments received during the public comment period. These revisions are also the same or less stringent compared to the current rule.

- *Language regarding leaving roots and stumps in place has been removed.*

- *Comparable vegetation is not required within the permanent maintenance corridor, only within temporarily disturbed construction areas beyond the maintained corridor. The term "comparable vegetation" has also been clarified.*

- *The permanent maintenance corridor width has been increased to 30 feet. Construction corridors can be wider than 30 feet; the rule allows for different construction corridor widths as needed for the project.*

15A NCAC 02B .0610 MANAGING ACTIVITIES WITHIN RIPARIAN BUFFERS: DEFINITIONS

.0610(16) Comment:

We also object to the definition of "Existing utility line maintenance corridor." The definition makes a significant change to the existing rule which it is proposed to replace, i.e. 15A NCAC 2B .0233 NEUSE RIVER BUFFER: NUTRIENT MANAGEMENT STRATEGY: PROTECTION AND MAINTENCE OF EXSITING RIPARIAN BUFFERS. The current rule being readopted does not contain the definition nor the substance of the new requirement that the buffer have been "mowed, cut or otherwise maintained within the last 10 years." The current rule merely requires that the use have been in place by July 22, 1997 and that lawns be "maintained." In contrast, there is no requirement that a utility line be "maintained." See 15A NCAC 2B .0233(3)(b)(i) which reads in pertinent part: "A use shall be considered existing if it was present within the riparian buffer as of July 22, 1997. Existing uses shall include, but not be limited to, agriculture, buildings, industrial facilities, commercial areas, transportation facilities, maintained lawns, utility lines and on-site sanitary sewage systems." [Emphasis supplied]

Because this requirement that utility line easements be maintained is a significant change that will impose additional costs on local governments, the Commission is without authority to adopt the proposed rule change unless and until it submits a fiscal note, with appropriate notifications, and publishes the proposed rule thereafter in the Register. Local governments have thousands of miles of utility lines in the riparian buffers. Raleigh alone has over 2500 miles of sewer lines with most located in a riparian buffer. The combined total of sewer lines maintained by just the Neuse River Compliance Association members is in excess of 5,000 miles. The requirement to actively maintain those lines by vegetation maintenance necessarily imposes a negative fiscal impact on those (and other) utilities. The RIA for rule .0610(6) incorrectly and inexplicably

concludes that the proposed rule amendments have no economic impact. We also object because this 10 year requirement is an arbitrarily backward-looking requirement rather than a regulation change that provides the regulated community with fair notice and a period of time to comply in order to maintain the existing exemption status.

Accordingly, unless the 10 year limitation is removed from the rule (our preference), we urge the Department to revise the definition to be a forward-looking requirement as follows: "(16) 'Existing utility maintenance corridor' means the portion of a utility right of way in which vegetation has been mowed, cut or otherwise maintained within 10 years of the effective date of this rule." This approach will still impose significant new costs on public utilities but at least provides fair notice of this new regulatory requirement.

Response:
To address comments related to 10 years, the definition of "existing utility line maintenance corridor" has been modified.

The current language in the rule [15A NCAC 02B .0233 (3)(b)] states the exemption applies when certain uses are both "existing" and "ongoing". It further states that "[a]ctivities necessary to maintain uses are allowed provided that no additional vegetation is removed from Zone 1." Consistent with the current rule, the requirement for vegetation maintenance has been retained. Also to address comments, a new category in the Table of Uses has also been added that specifically authorizes vegetation maintenance activities; those uses are "deemed allowable" for Zone 2 impact and some Zone 1 impacts or "allowable upon authorization" for other Zone 1 impacts (see summary table above). This is less stringent than the current rule language, therefore not impacting expenditures or revenues of local governments.

Revised language [15A NCAC 02B .0610 (16)]:
"Existing utility line maintenance corridor" means the portion of a utility right of way that was established as a permanent maintenance corridor prior to the effective date of the rule, or was approved as a permanent maintenance corridor through an Authorization Certificate or Variance issued by the Authority, and in which the vegetation has been ~~mowed, cut or otherwise~~ maintained (e.g. can be mowed without a chainsaw or bush-hog) ~~within the last 10 years~~."

Comment:
The definitions rule does not include a definition for the term "utility line corridors" which is substituted for the former line "utility lines." See 15A NCAC 2B .0714(6)(b). In (6)(c) of the same rule, the exemption continues to be limited to the "footprint of the existing use." For utility lines, the rule should clarify that

the term refers to the width of the easement which contains the utility line. The ambiguity is further complicated by the limitation in the Table of Uses in 15A NCAC 2B .0714(10) for "Utility – sewer lines." That limits the area that can be disturbed to 20 feet in width. Larger capacity sewer lines require a trench of 30 feet. Accordingly, the 20 foot limitation should be corrected to reference 30 feet. For both reasons, this rule should not move forward as noticed.

Response:
The term "utility line corridors" in 15A NCAC 02B .0714(6)(b) has been updated to match the term used in the definition, existing utility line maintenance corridor.

The language referring to the "footprint of the existing use" is not new language; that is in the current rule. By using the updated term "existing utility line maintenance corridor" instead of just "utility line", it is more clear that the footprint is not just the utility line itself but also the maintenance corridor. This clarifying change does not broaden the applicability of the current rule nor does it increase the stringency of the rule.

The permanent maintenance corridor width that triggers mitigation has been increased from 10 feet to 30 feet, which is less stringent than the current rule. Construction corridors can be wider than 30 feet; the rule allows for different construction corridor widths as needed for the project.

Comment:
When providing repair or replacement of a sewer line, the repairs will necessarily occur in the utility easement. Under the Collection System Permit issued by DEQ, Permittees are required to immediately repair any breach in a sewer line resulting in a discharge of sewage. The same permit also requires sewer utilities to maintain and repair the lines to avoid failures resulting in overflows of untreated sewage. This proposed rule interferes with and requires, in some instances, mitigation for compliance with the Sewer Collection Permit.

Response:
The current rule language does not distinguish between new sewer lines and replacement of existing lines. They are both "[n]on-electric utility lines, which means that replacement of existing lines outside an existing maintained corridor is the same as a new line in the current rule. The proposed rule language splits the category into "new" and "replacement/rehabilitation", the requirements for both are the same or less stringent than the current rule (see table above), therefore not impacting expenditures or revenues of local governments.

The current rule language covers emergency overflow response/repairs as protection of existing structures, which always triggers written approval. The proposed rule language allows for immediate response without seeking prior written approval for buffer impacts. It adds a deemed allowable use and only requires a buffer authorization (after-the-fact) when the area outside of the maintenance corridor cannot be restored to pre-existing conditions. There is no mitigation triggered and there is no fee for buffer authorizations. In addition, there is also a new deemed allow able use for streambank stabilization up to 150 linear feet for the protection of publicly owned utility lines. Again, in the current rules this is Allowable and always triggers written approval. The proposed rule language is the same or less stringent (see table above), therefore not impacting expenditures or revenues of local governments.

15A NCAC 02B .0714 NEUSE RIVER BASIN: NUTRIENT SENSITIVE WATERS MANAGEMENT STRATEGY: PROTECTION AND MAINTENANCE OF EXISTING RIPARIAN BUFFERS
(note that some of these comments will be applicable to multiple buffer rules and all proposed modifications will be incorporated into other buffer rules as appropriate)

.0714(6) Comment:

The proposed rule, 15A NCAC 2B .0714(6) reads:

~~(b)~~(6) EXEMPTION WHEN EXISTING USES ARE PRESENT AND ONGOING. This Rule shall no apply to portions of the riparian buffer where a use is existing and ~~ongoing according to the following:~~ ongoing.

~~(i)~~(a) A use shall be considered existing ~~if~~ if:

(i) ~~it~~ It was present within the riparian buffer as of July 22, ~~1997,~~ 1997 and has continued to exist since that time;

(ii) It was a deemed allowable activity as listed in Item (10) of this Rule; or

(iii) It was conducted and maintained pursuant to an Authorization Certificate or Variance issued by the Authority.

(b) Existing and ongoing uses shall include, but not be limited to, agriculture, buildings, industrial facilities, commercial areas, transportation facilities, maintained ~~lawns,~~ lawns (i.e. can be mowed without a chainsaw or bush-hog), maintained (i.e. vegetation management has occurred within the last ten years) utility ~~lines~~ line corridors and on-site sanitary sewage ~~systems.~~ systems, any of which involve either specific periodic management of vegetation or displacement of vegetation by structures or regular activity.

(c) Only the portion of the riparian buffer that contains the footprint of the existing and ongoing use is exempt from this Rule.

(d) Change of ownership through purchase or inheritance is not a change of use.

(e) Activities necessary to maintain existing and ongoing uses are allowed provided that ~~no additional vegetation is removed from Zone 1 except that grazed or trampled by livestock~~ the site remains similarly vegetated, no built upon area is added within the riparian buffer where it did not exist prior to July 22, 1997, and the site is in compliance with Item (9) of this Rule. ~~existing diffuse flow is maintained. Grading and revegetating Zone 2 is allowed provided that the health of the vegetation in Zone 1 is not compromised, the ground is stabilized and existing diffuse flow is maintained.~~

The highlighted portion of the proposed rule shows the substantive changes made which reduce the scope of the exemption as it applied to sewer lines in existences as of July 22, 1997. The narrower exemption for utility line corridors requires for the first time "specific periodic management of vegetation or displacement of vegetation." These changes are significant and therefore required notice to the appropriate representatives of local governments, as set out in N.C. Gen. Stat. §150B-21.4, and the preparation of Regulatory Impact Analyses.

<u>Response:</u>
There are two additional types of uses that are proposed to be added to the category of existing use to account for uses that occurred after July 22, 1997. This is broadening the list of existing uses (which are exempt) not restricting it. The rule uses "or" not "and"; a use must meet one of the criteria not all of the criteria. To be more clear, the rule was modified to also add "or" after Subparagraph (i).

To address comments related to 10 years, the definition of "existing utility line maintenance corridor" has been modified. The current language in the rule [15A NCAC 02B .0233 (3)(b)] states the exemption applies when certain uses are both "existing" and "ongoing". It further states that "[a]ctivities necessary to maintain uses are allowed provided that no additional vegetation is removed from Zone 1." Consistent with the current rule, the requirement for vegetation maintenance has been retained. Also to address comments, a new category in the Table of Uses has also been added that specifically authorizes vegetation maintenance activities; those uses are "deemed allowable" for Zone 2 impact and some Zone 1 impacts or "allowable upon authorization" for other Zone 1 impacts (see summary table above). This is less stringent than the current rule language, therefore not impacting expenditures or revenues of local governments.

By using the updated term "existing utility line maintenance corridor" instead of just "utility line", it is more clear that the footprint is not just the utility line itself but also the maintenance corridor. This clarifying change does not broaden the applicability of the current rule nor does it increase the stringency of the rule.

The language "specific periodic management of vegetation or displacement of vegetation by structures or regular activity" was added to expand the scope of existing uses that would be exempt under the rule. The proposed rule includes both vegetation management and structures, while the current rule language only includes structures.

The language in (e) was also changed to expand the scope of existing uses that would be exempt under the rule. The current rule does not allow for any removal of vegetation in Zone 1 while the proposed rule only requires the site to be similarly vegetated. Built upon area cannot be added under the current rule language or the proposed rule language; this is not a change. The proposed rule does not impact expenditures or revenues of local governments.

15A NCAC 02B .0724 RANDLEMAN LAKE WATER SUPPLY WATERSHED: PROTECTION AND MAINTENANCE OF EXISTING RIPARIAN BUFFERS

(note that some of these comments will be applicable to multiple buffer rules and all proposed modifications will be incorporated into other buffer rules as appropriate)

.0724(12)(a)(ii) Comment:

Requiring the municipality to appoint a single Program Administrator adds additional responsibilities to a single position and increases costs for the municipality. Larger municipalities may have multiple staff members that are certified to perform on-site determinations. In those cases, the intent of the rule is being meet, however the proposed rule requires a single person to be completely responsible for the implementation of the program. We propose that the municipality should be able to submit a program plan to handle the implementation of the program to NCDEQ.

Response:

Language modified to indicate that there may be more than one administrator responsible for rule implementation.

Regulatory Impact Analysis

Rule Citation Number: 15A NCAC 02H, Section .0100

Rule Topic: Revision of Rules 02H - NPDES Wastewater Permitting Rules

DEQ Division: Division of Water Resources

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Impact Summary:

State government:	No
Local government:	No
Private entities:	No
Substantial Impact:	No
Federal government:	No

Necessity: N.C. Gen. Stat. §150B-21.3A requires state agencies to review existing rules every 10 years, determine which rules are still necessary, and either re-adopt or repeal each rule as appropriate. The proposed rulemaking satisfies these requirements for a portion of the Department's rules.

1. Summary

The Division of Water Resources reviewed its NPDES wastewater permitting rules in accordance with G.S. §150B-21.3A and proposes to re-adopt all of the rules but one, which it proposes to repeal.

The Division identified necessary technical changes in some rules, including:

- Correction of agency names and addresses;
- Correction of cross-references and other regulatory citations;
- Correction of spelling and typographical errors;
- Minor clarifications; and
- Removal or modification of provisions superseded by statutes.

As measured from the baseline conditions, these proposed rule readoptions will impose a slightly less stringent burden on regulated persons. G.S. §150B-21.3A (d)(2) states: "If a rule is readopted without substantive change, or if the rule is amended to impose a less stringent burden on regulated persons, the agency is not required to prepare a fiscal note as provided by G.S. 150B-21.4." As such, a fiscal note has not been prepared for this rulemaking package.

2. Background

G.S. §150B-21.3A requires the Department to evaluate each of its existing rules and make an initial determination as to whether the rules are:

1. Necessary with substantive public interest – the agency has received public comment on the rule within the past two years or the rule affects the property interest of the regulated public, and the agency knows or suspects that any person may object to the rule.
2. Necessary without substantive public interest – the agency determines that the rule is needed, and the rule has not had public comment in the last two years. This category includes rules that identify information that is readily available to the public, such as an address or telephone number.
3. Unnecessary – the agency determines that the rule is obsolete, redundant or otherwise not needed.

The Department must then determine which rules are still necessary and propose to re-adopt, with or without modifications, or to repeal each rule as appropriate.

The Division categorized all but one of the subject rules as 'Necessary with substantive public interest'; the one exception, Rule 2H .0142, was categorized as 'Unnecessary'. The Rules Review Commission reviewed and approved these determinations, as did the General Assembly's Joint Legislative Administrative Procedure Oversight Committee (JLAPOC), and the Review Process was completed in December 2014.

The Division prepared draft rules and solicited input on the proposed actions from stakeholders in outreach meetings on April 7, 2015 and April 26, 2017. The meetings gave the stakeholders the opportunity to review the Division's draft rules and an opportunity to submit comments on the proposed rules. The draft rules were posted on the Division's webpage at least 30 days prior to this meeting. Stakeholders voiced and submitted comments to the Division on/before the meeting.

3. Economic Impact Analysis

The following tables briefly describe the proposed rule changes and summarize the anticipated impact of each.

3.2: Subchapter 02H – Procedures for Permits: Approvals

Section .0100 - Point Source Discharges to the Surface Waters

Rule	Proposed Change	Source of Change	Economic Impact	Environment Impact
15A NCAC 02H .0101 Purpose	Updated organizational names and addresses. Added website address as source of reference materials. Re-organized Paragraph (a).	Staff review	None	None
15A NCAC 02H .0102 Scope	Corrected grammar and sentence structure.	Staff review	None	None
15A NCAC 02H .0103 Definitions of Terms	Updated organizational names and sources of reference materials. Updated certain definitions. Revised grammar and punctuation.	Staff review	None	None
15A NCAC 02H .0105 Application, Permit Fees: Assessment for new sources	Updated cross-reference to design flows, now found in the 2T rules. Updated thresholds for environmental assessments.	Staff review	None	None
15A NCAC 02H .0106 Filing Applications	Updated Division name and Clarified procedural requirements.	Staff review	None	None
15A NCAC 02H .0107 Staff Review and Evaluation	Updated organizational names. Updated and clarified procedural requirements.	Staff review	None	None
15A NCAC 02H .0108 Fact Sheets	Clarified required elements of fact sheets.	Staff review	None	None
15A NCAC 02H .0109 Public Notice	Updated organizational names. Provided for electronic submittals.	Staff review	None	None
15A NCAC 02H .0111 Public Hearings	Replaced 'meeting' with 'hearing' throughout.	Staff review	None	None
15A NCAC 02H .0112 Final Action of Permit Applications	Revised punctuation. Clarified procedural requirements. Replaced 'meeting' with 'hearing' throughout.	Staff review	None	None
15A NCAC 02H .0113 Notification of Applicants	None	Staff review	None	None
15A NCAC 02H .0114 Modification and Revocation of Permits	Removed reference to obsolete fee requirement. Clarified provisions for site entry.	Staff review	None	None
15A NCAC 02H .0115 Public Access	Clarified standards for requesting confidentiality of information and for handling of such information.	Staff review	None	None
15A NCAC 02H .0117 Investigations: Monitoring and Reporting	Corrected Department name. Clarified provisions for site entry (moved from 02H .0114).	Staff review	None	None
15A NCAC 02H .0118 Effluent Limitations and Standards	Updated organizational names and sources of reference materials.	Staff review	None	None
15A NCAC 02H .0120 Limitation on Delegation	None	Staff review	None	None
15A NCAC 02H .0121 Suspension of	None	Staff review	None	None

Requirement for State NPDES Permits				
15A NCAC 02H .0124 Reliability	Updated cross-references from 8A to 08G rules. Corrected spelling.	Staff review	None	None
15A NCAC 02H .0125 Permit Requirements for Peat Mining	Updated Division name.	Staff review	None	None
15A NCAC 02H .0127 General Permits	Corrected grammar and organizational names.	Staff review	None	None
15A NCAC 02H .0138 Authorization to construct permits	Modified applicability of the rule. Updated cross-references to the 2H .0200 rules (now moved to 2Ts). Deleted Paragraph (c) regarding ATC fees, which are no longer required, per G.S. 143-215.3D. Updated organizational names and sources of reference materials. Provided for electronic submittals.	Staff review	None	None
15A NCAC 02H .0139 Minimum Design Requirements	Updated cross-reference to the 2H .0200 rules (now moved to 2Ts).	Staff review	None	None
15A NCAC 02H .0140 Certification of Completion	None	Staff review	None	None
15A NCAC 02H .0141 Operational Agreements	Updated Division name.	Staff review	None	None
15A NCAC 02H .0142 Use/Wastewater Trtmt Works Emgcy Main: Oper/Repair Fund	Repealed the rule, consistent with S.L. 2005-454, s8.	Staff review	None	None
15A NCAC 02H .0143 Incorporation by Reference	Incorporated required federal requirements by reference.	Staff review	None	None

3.2 Costs and Benefits Analysis

State Government, Local Government, Regulated Community, and the Environment

The proposed revision of Rule 15A NCAC 02H, Section .0100, will not require members of the State Government, Local Government, Private Entities, and Federal Government to deviate from current practices; as such, there will be neither a direct or indirect cost as a result of this proposed rules revision. No new adverse environmental impacts or new environmental benefits are anticipated to result from the revised rule.

Administrative changes are mainly organizational in nature for the purpose of providing clarity to the regulated community thereby making the rule easier to understand. This should translate into less time spent by the development community on the permit application process as well as less time spent by regulatory staff providing technical assistance. The amount of time saved will be negligible and will not provide a significant financial benefit; however, it is noted here for completeness.

These changes will not affect environmental permitting of NC Department of Transportation (NCDOT); as such, there should be no economic impact to NCDOT.

Lastly, as measured from the baseline conditions, the proposed changes will maintain existing environmental protections at an equivalent level with no cost or benefit to the environment.

4. Total Economic Impact

As measured from the baseline conditions, there are no economic costs associated with these proposed rules review. Some of the language removed or added have the intent to reduce burden to the applicants; some of the language revised has the intent to be in accordance with current General Statutes and Rules. While some of those revisions could have a positive economic impact to some of the applicants, those impacts are not monetarily quantifiable here. Consequently, no new economic & environmental impacts or environmental & economic benefits are anticipated to result from these proposed rules review.

Regulatory Impact Analysis

Rule Citation Number: 15A NCAC 02H, Sections .0401 - .0407

Rule Topic: Revision of Rules 02H - Procedures for Permits: Approvals

DEQ Division: Divisions of Water Resources (DWR)

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Impact Summary:

State government:	No
Local government:	No
Private entities:	No
Substantial Impact:	No
Federal government:	No

Necessity: N.C. Gen. Stat. §150B-21.3A requires state agencies to review existing rules every 10 years, determine which rules are still necessary, and either re-adopt or repeal each rule as appropriate. The proposed rulemaking satisfies these requirements for a portion of the Department's rules.

1. Summary

The Divisions of Water Resources reviewed its Section .0400 - Coastal Waste Treatment Disposal rules in accordance with G.S. §150B-21.3A and proposes to re-adopt all the rules.

The Division identified necessary technical changes in some rules, including:

- Correction of agency names and addresses;
- Correction of cross-references and other regulatory citations;
- Correction of spelling and typographical errors;
- Topographical correction;
- Minor clarifications; and
- Removal or modification of provisions superseded by statutes and session laws.

As measured from the baseline conditions, these proposed rule readoptions will impose a less stringent burden on regulated persons. G.S. §150B-21.3A (d)(2) states: "If a rule is readopted without substantive change, or if the rule is amended to impose a less stringent burden on regulated persons, the agency is not required to prepare a fiscal note as provided by G.S. 150B-21.4." As such, a fiscal note has not been prepared for this rulemaking package.

2. Background

G.S. §150B-21.3A requires the Department to evaluate each of its existing rules and make an initial determination as to whether the rules are:

1. Necessary with substantive public interest – the agency has received public comment on the rule within the past two years or the rule affects the property interest of the regulated public, and the agency knows or suspects that any person may object to the rule.
2. Necessary without substantive public interest – the agency determines that the rule is needed, and the rule has not had public comment in the last two years. This category includes rules that identify information that is readily available to the public, such as an address or telephone number.
3. Unnecessary – the agency determines that the rule is obsolete, redundant or otherwise not needed.

The Department must then determine which rules are still necessary and propose to re-adopt, with or without modifications, or to repeal each rule as appropriate.

The Division categorized all the subject rules as 'Necessary with substantive public interest.' The Rules Review Commission reviewed and approved these determinations, as did the General Assembly's Joint Legislative of Administrative Procedure Oversight Committee (JLAPO), and the Review Process was completed in December 2014.

The Division prepared draft rules and solicited input on the proposed actions from stakeholders in outreach meetings on April 7, 2015 and April 26, 2017. The meetings gave the stakeholders the opportunity to review the Division's draft rules and an opportunity to submit comments on the proposed rules. The draft rules were posted on the Division's webpage at least 30 days prior to this meeting. Stakeholders voiced and submitted comments to the Division on/before the meeting.

3. Economic Impact Analysis

The following tables briefly describe the proposed rule changes and summarize the anticipated impact of each change.

3.1: Subchapter 02H – Procedures for Permits: Approvals

Section .0400 – Coastal Waste Treatment Disposal

Rule	Proposed Change	Source of Change	Economic Impact	Environment Impact
15A NCAC 02H .0401 Statement of Policy	Moved to 02H .0400 rules.	Staff Review	None	None
15A NCAC 02H .0402 Applicability	Eliminated, unnecessary rule.	Staff Review	None	None
15A NCAC 02H .0403 Definition of Coastal Areas	Eliminated, unnecessary rule.	Staff Review and public comments	None	None
15A NCAC 02H .0404 Facility Location and Design	Consolidated non-discharge requirements in Subchapters 02T and 02U; and discharge requirements in Subchapter 02H. Item D on was consolidated with similar requirements in Section 02H .0100.	Staff Review and public comments	None	None
15A NCAC 02H .0405 Privately Owned Installations	Eliminated, unnecessary rule.	Staff Review and public comments	None	None
15A NCAC 02H .0406 Publicly Owned Sewerage Facilities	Eliminated, unnecessary rule.	Staff Review and public comments	None	None
15A NCAC 02H .0407 Exception from Requirements	Eliminated, unnecessary rule.	Staff Review and public comments	None	None

3.2 Costs and Benefits Analysis

State Government, Local Government, Regulated Community, and the Environment

The proposed revision of Rule 15A NCAC 02H, Section .0400, will not require members of the State Government, Local Government, Private Entities, and Federal Government to deviate from current practices; as such, there will be neither a direct or indirect cost as a result of this proposed rules revision. No new adverse environmental impacts or new environmental benefits are anticipated to result from the revised rule.

Administrative changes are mainly organizational in nature for the purpose of providing clarity to the regulated community thereby making the rule easier to understand. This should translate into less time spent by the development community on the permit application process as well as less time spent by regulatory staff providing technical assistance. The amount of time saved will be negligible and will not provide a significant financial benefit; however, it is noted here for completeness.

These changes will not affect environmental permitting of NC Department of Transportation (NCDOT); as such, there should be no economic impact to NCDOT.

Lastly, as measured from the baseline conditions, the proposed changes will maintain existing environmental protections at an equivalent level with no cost or benefit to the environment.

4. Total Economic Impact

As measured from the baseline conditions, there are no economic costs associated with these proposed rules review. Some of the language removed or added have the intend to reduce burden to the applicants; some of the language reviewed has the intend to be in accordance with current General Statutes and Rules. While some of those revisions could have a positive economic impact to some of the applicants, those impacts are not monetarily quantifiable here. Consequently, no new economic & environmental impacts or environmental & economic benefits are anticipated to result from these proposed rules review.

Regulatory Impact Analysis

Rule Citation Number: 15A NCAC 02H, Sections .0501 - .0504, .0506 - .0507

Rule Topic: Revision of Rules 02H - Procedures for Permits: Approvals

DEQ Division: Divisions of Water Resources (DWR)

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Impact Summary:

State government:	No
Local government:	No
Private entities:	No
Substantial Impact:	No
Federal government:	No

Necessity: N.C. Gen. Stat. §150B-21.3A requires state agencies to review existing rules every 10 years, determine which rules are still necessary, and either re-adopt or repeal each rule as appropriate. The proposed rulemaking satisfies these requirements for a portion of the Department's rules.

1. Summary

The Divisions of Water Resources reviewed its Section .0500 - Water Quality Certification rules in accordance with G.S. §150B-21.3A and proposes to re-adopt all the rules.

The Division identified necessary technical changes in some rules, including:

- Correction of agency names and addresses;
- Correction of cross-references and other regulatory citations;
- Correction of spelling and typographical errors;
- Topographical correction;
- Minor clarifications; and
- Removal or modification of provisions superseded by statutes and session laws.

As measured from the baseline conditions, these proposed rule readoptions will impose a less stringent burden on regulated persons. G.S. §150B-21.3A (d)(2) states: "If a rule is readopted without substantive change, or if the rule is amended to impose a less stringent burden on regulated persons, the agency is not required to prepare a fiscal note as provided by G.S. 150B-21.4." As such, a fiscal note has not been prepared for this rulemaking package.

2. Background

G.S. §150B-21.3A requires the Department to evaluate each of its existing rules and make an initial determination as to whether the rules are:

1. Necessary with substantive public interest – the agency has received public comment on the rule within the past two years or the rule affects the property interest of the regulated public, and the agency knows or suspects that any person may object to the rule.
2. Necessary without substantive public interest – the agency determines that the rule is needed, and the rule has not had public comment in the last two years. This category includes rules that identify information that is readily available to the public, such as an address or telephone number.
3. Unnecessary – the agency determines that the rule is obsolete, redundant or otherwise not needed.

The Department must then determine which rules are still necessary and propose to re-adopt, with or without modifications, or to repeal each rule as appropriate.

The Division categorized all the subject rules as 'Necessary with substantive public interest.' The Rules Review Commission reviewed and approved these determinations, as did the General Assembly's Joint Legislative of Administrative Procedure Oversight Committee (JLAPO), and the Review Process was completed in December 2014.

The Division prepared draft rules and solicited input on the proposed actions from stakeholders in outreach meetings on April 7, 2015 and April 26, 2017. The meetings gave the stakeholders the opportunity to review the Division's draft rules and an opportunity to submit comments on the proposed rules. The draft rules were posted on the Division's webpage at least 30 days prior to this meeting. Stakeholders voiced and submitted comments to the Division on/before the meeting.

3. Economic Impact Analysis

The following tables briefly describe the proposed rule changes and summarize the anticipated impact of each change.

3.1: Subchapter 02H – Procedures for Permits: Approvals

Section .0500 – Water Quality Certification

Rule	Proposed Change	Source of Change	Economic Impact	Environment Impact
15A NCAC 02H .0501 Purpose	Removed unnecessary language; updated reference; added rule moved from other section; and technical corrections.	Staff Review	None	None
15A NCAC 02H .0502 Application	Removed unnecessary language; updated reference; reordered some items; revised language for consistence with other State and Federal regulations; and technical corrections.	Staff Review	None	None
15A NCAC 02H .0503 Public Notice	Removed unnecessary language; revised language for consistence with other State and Federal regulations; updated reference; reordered some items; Removed requirement to publish in newspaper; and technical corrections.	Staff Review and public comments	None	None
15A NCAC 02H .0504 Hearing	Moved to .0503	Staff Review and public comments	None	None
15A NCAC 02H .0506 Review of Applications	Removed unnecessary language; revised language for consistence with other State and Federal regulations; updated reference; reordered some items; Removed requirement to publish in newspaper; and technical corrections.	Staff Review and public comments	None	None
15A NCAC 02H .0507 Exception from Requirements	Removed unnecessary language; updated reference; reordered some items; Removed requirement to publish in newspaper; and technical corrections.	Staff Review and public comments	None	None

3.2 Costs and Benefits Analysis

State Government, Local Government, Regulated Community, and the Environment

The proposed revision of Rule 15A NCAC 02H, Section .0500, will not require members of the State Government, Local Government, Private Entities, and Federal Government to deviate from current practices; as such, there will be neither a direct or indirect cost as a result of this proposed rules revision. No new adverse environmental impacts or new environmental benefits are anticipated to result from the revised rule.

Administrative changes are mainly organizational in nature for the purpose of providing clarity to the regulated community thereby making the rule easier to understand. This should translate into less time spent by the development community on the permit application process as well as less time spent by regulatory staff providing technical assistance. The amount of time saved will be negligible and will not provide a significant financial benefit; however, it is noted here for completeness.

These changes will not affect environmental permitting of NC Department of Transportation (NCDOT); as such, there should be no economic impact to NCDOT.

Lastly, as measured from the baseline conditions, the proposed changes will maintain existing environmental protections at an equivalent level with no cost or benefit to the environment.

4. Total Economic Impact

As measured from the baseline conditions, there are no economic costs associated with these proposed rules review. Some of the language removed or added have the intend to reduce burden to the applicants; some of the language reviewed has the intend to be in accordance with current General Statutes and Rules or Federal Regulation. While some of those revisions could have a positive economic impact to some of the applicants, those impacts are not monetarily quantifiable here. Consequently, no new economic & environmental impacts or environmental & economic benefits are anticipated to result from these proposed rules review.

Regulatory Impact Analysis

Rule Citation Number: 15A NCAC 02H, Sections .0901 - .0922

Rule Topic: Revision of Rules 02H - Procedures for Permits: Approvals

DEQ Division: Divisions of Water Resources (DWR)

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Impact Summary:

State government:	No
Local government:	No
Private entities:	No
Substantial Impact:	No
Federal government:	No

Necessity: N.C. Gen. Stat. §150B-21.3A requires state agencies to review existing rules every 10 years, determine which rules are still necessary, and either re-adopt or repeal each rule as appropriate. The proposed rulemaking satisfies these requirements for a portion of the Department's rules.

1. Summary

The Divisions of Water Resources reviewed its Section .0900 - Local Pretreatment Program rules in accordance with G.S. §150B-21.3A and proposes to re-adopt all the rules.

The Division identified necessary technical changes in some rules, including:

- Correction of agency names and addresses;
- Correction of cross-references and other regulatory citations;
- Correction of spelling and typographical errors;
- Topographical correction;
- Minor clarifications; and
- Removal or modification of provisions superseded by statutes and session laws.

As measured from the baseline conditions, these proposed rule readoptions will impose a less stringent burden on regulated persons. G.S. §150B-21.3A (d)(2) states: "If a rule is readopted without substantive change, or if the rule is amended to impose a less stringent burden on regulated persons, the agency is not required to prepare a fiscal note as provided by G.S. 150B-21.4." As such, a fiscal note has not been prepared for this rulemaking package.

2. Background

G.S. §150B-21.3A requires the Department to evaluate each of its existing rules and make an initial determination as to whether the rules are:

1. Necessary with substantive public interest – the agency has received public comment on the rule within the past two years or the rule affects the property interest of the regulated public, and the agency knows or suspects that any person may object to the rule.
2. Necessary without substantive public interest – the agency determines that the rule is needed, and the rule has not had public comment in the last two years. This category includes rules that identify information that is readily available to the public, such as an address or telephone number.
3. Unnecessary – the agency determines that the rule is obsolete, redundant or otherwise not needed.

The Department must then determine which rules are still necessary and propose to re-adopt, with or without modifications, or to repeal each rule as appropriate.

The Division categorized all the subject rules as 'Necessary with substantive public interest.' The Rules Review Commission reviewed and approved these determinations, as did the General Assembly's Joint Legislative of Administrative Procedure Oversight Committee (JLAPO), and the Review Process was completed in December 2014.

The Division prepared draft rules and solicited input on the proposed actions from stakeholders in outreach meetings on April 7, 2015 and April 26, 2017. The meetings gave the stakeholders the opportunity to review the Division's draft rules and an opportunity to submit comments on the proposed rules. The draft rules were posted on the Division's webpage at least 30 days prior to this meeting. Stakeholders voiced and submitted comments to the Division on/before the meeting.

3. Economic Impact Analysis

The following tables briefly describe the proposed rule changes and summarize the anticipated impact of each change.

3.1: Subchapter 02H – Procedures for Permits: Approvals

Section .0900 – Local Pretreatment Program

Rule	Proposed Change	Source of Change	Economic Impact	Environment Impact
15A NCAC 02H .0901 Purpose	Updated name and address; updated reference.	Staff Review	None	None
15A NCAC 02H .0902 Scope	Made technical corrections.	Staff Review	None	None
15A NCAC 02H .0903 Definition of Terms	Revised language for consistence with other State and Federal regulations; removed unnecessary language; updated reference; and made technical corrections.	Staff Review and public comments	None	None
15A NCAC 02H .0904 Required Pretreatment Programs	Updated reference.	Staff Review and public comments	None	None
15A NCAC 02H .0905 POTW Pretreatment Program Implementation Requirements	Updated reference.	Staff Review and public comments	None	None
15A NCAC 02H .0906 Submission for Pretreatment Program Approval	Updated reference.; and made technical corrections	Staff Review and public comments	None	None
15A NCAC 02H .0907 Procedures for Pretreatment Program Approval, Revision and Withdrawal	Updated name and address; updated reference and made technical corrections.	Staff Review	None	None
15A NCAC 02H .0908 Reporting/Record Keeping Requirements for POTWS/Industrial Users	Updated reference and made technical corrections.	Staff Review	None	None
15A NCAC 02H .0909 National Pretreatment Standards: Prohibited Discharges	Updated reference.	Staff Review and public comments	None	None
15A NCAC 02H .0910 National Pretreatment Standards: Categorical Standards	Updated reference.	Staff Review and public comments	None	None
15A NCAC 02H .0911 Revision to Reflect POTW Removal of Pollutant	None.	Staff Review and public comments	None	None
15A NCAC 02H .0912 Adjustments for Fundamentally Different Factors	Updated reference.	Staff Review and public comments	None	None
15A NCAC 02H .0913 Public Access to Information	None.	Staff Review and public comments	None	None

15A NCAC 02H .0914 Upset Provision	Updated reference.	Staff Review and public comments	None	None
15A NCAC 02H .0915 Net/Gross Calculation	Updated reference.	Staff Review and public comments	None	None
15A NCAC 02H .0916 Pretreatment Permits	Revised language for consistence with GS; removed unnecessary language; and made technical corrections	Staff Review and public comments	None	None
15A NCAC 02H .0917 Pretreatment Permit Submission and Review	Revised language and made technical corrections.	Staff Review	None	None
15A NCAC 02H .0918 Local Law	None.	Staff Review	None	None
15A NCAC 02H .0919 Bypass	Updated reference.	Staff Review and public comments	None	None
15A NCAC 02H .0920 National Pretreatment Standards: Categorical Standards	Deleted unnecessary language.	Staff Review and public comments	None	None
15A NCAC 02H .0921 Revision to Reflect POTW Removal of Pollutant	Updated reference.	Staff Review and public comments	None	None
15A NCAC 02H .0922 Adjustments for Fundamentally Different Factors	None.	Staff Review and public comments	None	None

3.2 Costs and Benefits Analysis

State Government, Local Government, Regulated Community, and the Environment

The proposed revision of Rule 15A NCAC 02H, Section .0900, will not require members of the State Government, Local Government, Private Entities, and Federal Government to deviate from current practices; as such, there will be neither a direct or indirect cost as a result of this proposed rules revision. No new adverse environmental impacts or new environmental benefits are anticipated to result from the revised rule.

Administrative changes are mainly organizational in nature for the purpose of providing clarity to the regulated community thereby making the rule easier to understand. This should translate into less time spent by the development community on the permit application process as well as less time spent by regulatory staff providing technical assistance. The amount of time saved will be negligible and will not provide a significant financial benefit; however, it is noted here for completeness.

These changes will not affect environmental permitting of NC Department of Transportation (NCDOT); as such, there should be no economic impact to NCDOT.

Lastly, as measured from the baseline conditions, the proposed changes will maintain existing environmental protections at an equivalent level with no cost or benefit to the environment.

4. Total Economic Impact

As measured from the baseline conditions, there are no economic costs associated with these proposed rules review. Some of the language removed or added have the intend to reduce burden to the applicants; some of the language reviewed has the intend to be in accordance with current General Statutes and Rules or Federal Regulation. While some of those revisions could have a positive economic impact to some of the applicants, those impacts are not monetarily quantifiable here. Consequently, no new economic & environmental impacts or environmental & economic benefits are anticipated to result from these proposed rules review.

Regulatory Impact Analysis

Rule Citation Number: 15A NCAC 02H, Sections .1201 - .1206

Rule Topic: Revision of Rules 02H - Procedures for Permits: Approvals

DEQ Division: Divisions of Water Resources (DWR)

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Impact Summary:

State government:	No
Local government:	No
Private entities:	No
Substantial Impact:	No
Federal government:	No

Necessity: N.C. Gen. Stat. §150B-21.3A requires state agencies to review existing rules every 10 years, determine which rules are still necessary, and either re-adopt or repeal each rule as appropriate. The proposed rulemaking satisfies these requirements for a portion of the Department's rules.

1. Summary

The Divisions of Water Resources reviewed its Section .1200 - Special Orders rules, in accordance with G.S. §150B-21.3A and proposes to re-adopt all the rules.

The Division identified necessary technical changes in some rules, including:

- Correction of agency names and addresses;
- Correction of cross-references and other regulatory citations;
- Correction of spelling and typographical errors;
- Topographical correction;
- Minor clarifications; and
- Removal or modification of provisions superseded by statutes and session laws.

As measured from the baseline conditions, these proposed rule readoptions will impose a less stringent burden on regulated persons. G.S. §150B-21.3A (d)(2) states: "If a rule is readopted without substantive change, or if the rule is amended to impose a less stringent burden on regulated persons, the agency is not required to prepare a fiscal note as provided by G.S. 150B-21.4." As such, a fiscal note has not been prepared for this rulemaking package.

2. Background

G.S. §150B-21.3A requires the Department to evaluate each of its existing rules and make an initial determination as to whether the rules are:

1. Necessary with substantive public interest – the agency has received public comment on the rule within the past two years or the rule affects the property interest of the regulated public, and the agency knows or suspects that any person may object to the rule.
2. Necessary without substantive public interest – the agency determines that the rule is needed, and the rule has not had public comment in the last two years. This category includes rules that identify information that is readily available to the public, such as an address or telephone number.
3. Unnecessary – the agency determines that the rule is obsolete, redundant or otherwise not needed.

The Department must then determine which rules are still necessary and propose to re-adopt, with or without modifications, or to repeal each rule as appropriate.

The Division categorized all the subject rules as 'Necessary with substantive public interest.' The Rules Review Commission reviewed and approved these determinations, as did the General Assembly's Joint Legislative of Administrative Procedure Oversight Committee (JLAPO), and the Review Process was completed in December 2014.

The Division prepared draft rules and solicited input on the proposed actions from stakeholders in outreach meetings on April 7, 2015 and April 26, 2017. The meetings gave the stakeholders the opportunity to review the Division's draft rules and an opportunity to submit comments on the proposed rules. The draft rules were posted on the Division's webpage at least 30 days prior to this meeting. Stakeholders voiced and submitted comments to the Division on/before the meeting.

3. Economic Impact Analysis

The following tables briefly describe the proposed rule changes and summarize the anticipated impact of each change.

3.1: Subchapter 02H – Procedures for Permits: Approvals

Section .1200 – Special Orders

Rule	Proposed Change	Source of Change	Economic Impact	Environment Impact
15A NCAC 02H .1201 Purpose	Technical correction.	Staff Review	None	None
15A NCAC 02H .1202 Definitions	Updated reference.	Staff Review	None	None
15A NCAC 02H .1203 Public Notice	Technical correction.	Staff Review	None	None
15A NCAC 02H .1204 Final Action on Special Orders by Consent	Technical correction.	Staff Review	None	None
15A NCAC 02H .1205 Action on Special Orders Issued without Consent	Technical correction.	Staff Review	None	None
15A NCAC 02H .1206 Publicly Owned Sewerage Facilities	Simplify rule and Technical correction.	Staff Review	None	None

3.2 Costs and Benefits Analysis

State Government, Local Government, Regulated Community, and the Environment

The proposed revision of Rule 15A NCAC 02H, Section .1200, will not require members of the State Government, Local Government, Private Entities, and Federal Government to deviate from current practices; as such, there will be neither a direct or indirect cost as a result of this proposed rules revision. No new adverse environmental impacts or new environmental benefits are anticipated to result from the revised rule.

Administrative changes are mainly organizational in nature for the purpose of providing clarity to the regulated community thereby making the rule easier to understand. This should translate into less time spent by the development community on the permit application process as well as less time spent by regulatory staff providing technical assistance. The amount of time saved will be negligible and will not provide a significant financial benefit; however, it is noted here for completeness.

These changes will not affect environmental permitting of NC Department of Transportation (NCDOT); as such, there should be no economic impact to NCDOT.

Lastly, as measured from the baseline conditions, the proposed changes will maintain existing environmental protections at an equivalent level with no cost or benefit to the environment.

4. Total Economic Impact

As measured from the baseline conditions, there are no economic costs associated with these proposed rules review. Some of the language removed or added have the intend to reduce burden to the applicants; some of the language reviewed has the intend to be in accordance with current General Statutes and Rules. While some of those revisions could have a positive economic impact to some of the applicants, those impacts are not monetarily quantifiable here. Consequently, no new economic & environmental impacts or environmental & economic benefits are anticipated to result from these proposed rules review.

Regulatory Impact Analysis

Rule Citation Number: 15A NCAC 02H, Sections .1301 - .1306

Rule Topic: Revision of Rules 02H - Procedures for Permits: Approvals

DEQ Division: Divisions of Water Resources (DWR)

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Impact Summary:

State government:	No
Local government:	No
Private entities:	No
Substantial Impact:	No
Federal government:	No

Necessity: N.C. Gen. Stat. §150B-21.3A requires state agencies to review existing rules every 10 years, determine which rules are still necessary, and either re-adopt or repeal each rule as appropriate. The proposed rulemaking satisfies these requirements for a portion of the Department's rules.

1. Summary

The Divisions of Water Resources reviewed its Section .1300 - Discharges to Isolated Wetlands and Isolated Waters rules, in accordance with G.S. §150B-21.3A and proposes to re-adopt all the rules.

The Division identified necessary technical changes in some rules, including:

- Correction of agency names and addresses;
- Correction of cross-references and other regulatory citations;
- Correction of spelling and typographical errors;
- Topographical correction;
- Minor clarifications; and
- Removal or modification of provisions superseded by statutes and session laws.

As measured from the baseline conditions, these proposed rule readoptions will impose a less stringent burden on regulated persons. G.S. §150B-21.3A (d)(2) states: "If a rule is readopted without substantive change, or if the rule is amended to impose a less stringent burden on regulated persons, the agency is not required to prepare a fiscal note as provided by G.S. 150B-21.4." As such, a fiscal note has not been prepared for this rulemaking package.

2. Background

G.S. §150B-21.3A requires the Department to evaluate each of its existing rules and make an initial determination as to whether the rules are:

1. Necessary with substantive public interest – the agency has received public comment on the rule within the past two years or the rule affects the property interest of the regulated public, and the agency knows or suspects that any person may object to the rule.
2. Necessary without substantive public interest – the agency determines that the rule is needed, and the rule has not had public comment in the last two years. This category includes rules that identify information that is readily available to the public, such as an address or telephone number.
3. Unnecessary – the agency determines that the rule is obsolete, redundant or otherwise not needed.

The Department must then determine which rules are still necessary and propose to re-adopt, with or without modifications, or to repeal each rule as appropriate.

The Division categorized all the subject rules as 'Necessary with substantive public interest.' The Rules Review Commission reviewed and approved these determinations, as did the General Assembly's Joint Legislative of Administrative Procedure Oversight Committee (JLAPO), and the Review Process was completed in December 2014.

The Division prepared draft rules and solicited input on the proposed actions from stakeholders in outreach meetings on April 7, 2015 and April 26, 2017. The meetings gave the stakeholders the opportunity to review the Division's draft rules and an opportunity to submit comments on the proposed rules. The draft rules were posted on the Division's webpage at least 30 days prior to this meeting. Stakeholders voiced and submitted comments to the Division on/before the meeting.

3. Economic Impact Analysis

The following tables briefly describe the proposed rule changes and summarize the anticipated impact of each change.

3.1: Subchapter 02H – Procedures for Permits: Approvals

Section .1300 – Discharges to Isolated Wetlands and Isolated Waters

Rule	Proposed Change	Source of Change	Economic Impact	Environment Impact
15A NCAC 02H .1301 Scope and Purpose	Removed unnecessary language; updated reference; revised language for consistence with other State and Federal regulations; reordered some items; made technical corrections; and added definitions for clarity.	Staff Review and public comments	None	None
15A NCAC 02H .1302 Application process	Removed unnecessary language; updated reference; revised language for consistence with other State and Federal regulations; reordered some items; allowed paperless application; made technical corrections; and added definitions for clarity.	Staff Review and public comments	None	None
15A NCAC 02H .1303 Public Notice and Public Hearing	Removed unnecessary language; revised language for consistence with other State and Federal regulations; updated reference; reordered some items; removed requirement to publish in newspaper; and technical corrections.	Staff Review and public comments	None	None
15A NCAC 02H .1304 Decision on Application for Permits or Certificates of Coverage	Removed unnecessary language; revised language for consistence with other State and Federal regulations; updated reference; reordered some items; made technical corrections; and removed requirement to send denial by certified mail.	Staff Review and public comments	None	None
15A NCAC 02H .1305 Review of Applications	Removed unnecessary language; revised language for consistence with other State and Federal regulations; updated reference; reordered some items; removed hierarchy of preference for mitigation types; and made technical corrections.	Staff Review and public comments	None	None
15A NCAC 02H .1306 Soil Series	Added new rule to correspond with requirement in Subparagraph (a)(3) in Rule .1305, categorization of soil series.	Staff Review and public comments	None	None

3.2 Costs and Benefits Analysis

State Government, Local Government, Regulated Community, and the Environment

The proposed revision of Rule 15A NCAC 02H, Section .1300, will not require members of the State Government, Local Government, Private Entities, and Federal Government to deviate from current practices; as such, there will be neither a direct or indirect cost as a result of this proposed rules revision. No new adverse environmental impacts or new environmental benefits are anticipated to result from the revised rule.

Administrative changes are mainly organizational in nature for the purpose of providing clarity to the regulated community thereby making the rule easier to understand. This should translate into less time spent by the development community on the permit application process as well as less time spent by regulatory staff providing technical assistance. The amount of time saved will be negligible and will not provide a significant financial benefit; however, it is noted here for completeness.

These changes will not affect environmental permitting of NC Department of Transportation (NCDOT); as such, there should be no economic impact to NCDOT.

Lastly, as measured from the baseline conditions, the proposed changes will maintain existing environmental protections at an equivalent level with no cost or benefit to the environment.

4. Total Economic Impact

As measured from the baseline conditions, there are no economic costs associated with these proposed rules review. Some of the language removed or added have the intend to reduce burden to the applicants; some of the language reviewed has the intend to be in accordance with current General Statutes and Rules or Federal Regulation. While some of those revisions could have a positive economic impact to some of the applicants, those impacts are not monetarily quantifiable here. Consequently, no new economic & environmental impacts or environmental & economic benefits are anticipated to result from these proposed rules review.

Appendix D:
Public Comments Received
During Public Comment Period

Re-Adoption of NCDWR Buffer Rules and Water Supply Watershed Rules
Draft Rules for Public Comments due July 2, 2018
Comments prepared and submitted on behalf of North Carolina Forest Service.

Contact: Tom Gerow, Jr. | Water Resources Staff Forester | tom.a.gerow@ncagr.gov | 919-857-4824

General Comments

1. Please note that the *Forest Practice Guidelines Related to Water Quality* were re-codified in 2014 from subchapter 15A NCAC, to a new subchapter 02 NCAC 60C. It is recommended that DWR review all its rules and update the text as needed to cross-reference the correct Administrative Code. I did not find wrong text references during my review, but I did not review all of the Rules.
2. Streamlining and standardizing the Forest Harvest Requirements for all of the Buffer Rules is a welcomed improvement. The ability to have mechanized harvesting of trees from the Buffer will promote safer logging practices. In addition, allowing high-value timber to be harvested in the Goose Creek Watershed rules will allow woodland owners the opportunity to retain forestland through optimization of their financial investment via timber management. Standardization of the Forest Harvest Requirements should be applied to all of the State's Riparian Buffer Rules for the sake of consistency.
3. The effort by DWR to engage stakeholders has been fruitful and is appreciated.
4. For determining applicable streams subject to the Buffer Rules, the limitations of the soil survey maps and topo quad maps are recognized and well-documented. However, the forestry community has largely become accustomed to referencing those maps, for purposes of these rules. Until such time that more accurate/detailed basinwide or watershed-wide maps can be developed, approved, published, printed, disseminated, and be made widely and freely available (in both a mobile-device-ready digital format and a printed paper format), it is recommended to continue using soil surveys and topo maps as is being proposed in the Rule revisions.
5. After nearly 20 years of administration, it has been observed that the forestry Buffer Rules in many respects continue to be a redundant overlap of regulatory governance of silvicultural activities. In fact, observations after harvests could lead to the conclusion that the rule's provisions may contradict the intent of protecting riparian zones, as a result of the prohibition of cutting trees that have primary roots in the streambank; and the resulting blow down of such trees after the harvest and disruption to the streambank's soil profile. Since 1990, forestry activities have been required to comply with the standards of the state's Forest Practice Guidelines Related to Water Quality (re-adopted April 2018), which requires the establishment of a protective Streamside Management Zone alongside any intermittent stream, any perennial stream and any perennial waterbody (regardless of mapped features). In addition, forestry activities are required to comply with several conditions spelled out in the federal Clean Water Act Section 404 program to minimize discharges to wetlands and waters. And, over the last 20-25 years, forestry Best Management Practices (BMPs) have largely been adopted as standard operating procedures across the forest industry as a result of independent, market-driven forest certification programs that undergo routine third-party auditing. There is generally accepted recognition that forested watersheds produce the highest quality water; and that impacts to water quality from forestry have a short temporal scale, are localized, and are not widespread pervasive contributors to degradation of waters or a loss-of-use.

Specific Comments

Item A: **In all 5 Buffer Rules, "Table of Uses", Roads:**

Proposed Text: "Agriculture roads that are exempt from permitting from the U.S. Army Corps of Engineers per Section 404(f) of the federal Clean Water Act." (Deemed Allowable)

NCFS Comment #1: This is a welcomed added clarification. However, please remove the word "Agriculture" and simply start this sentence with "Roads that are exempt...."

- Justification: Section 404(f) exempts roads that are used for multiple specified purposes including agriculture, silviculture or mining (*ie: not just for agriculture*). This edit would align DWR rules text to match the text used in federal code [33 CFR Part 323.4(a)(6)] so as to avoid confusion.

++

Item B: **Limits of Local Government Authority.**

Following are 2 typo corrections that are needed:

Neuse Rule .0715(f)(5) and Tar-Pamlico Rule .0735(5)(e)....LIMITS OF DELEGATED LOCAL AUTHORITY:

"Forest harvesting activities described in Rule .0706 of this Section; and"

NCFS Comment #2: The correct forest harvest rule code will be **.0612**, not .0706.

In the current rules, there are 4 different versions of text used to spell-out the limits of delegated local government authority (ie: which activities remain vested with DWR). **The proposed addition of 'forestry' to the lists of activities is welcomed, for the sake of clarity.**

However, for consistency, it would be best if DWR uses the same delegated authority text in all 5 Buffer Rules. The different text currently used in each Buffer Rule is excerpted below for your reference:

Catawba: "The Division has jurisdiction to the exclusion of local governments to implement the requirements of this Rule for the following types of activities:"

Goose Creek: "The Division has jurisdiction to the exclusion of local governments to implement the requirements of this Rule for the following types of activities:"

Neuse: "The Division shall have jurisdiction to the exclusion of local governments to implement the State's riparian buffer protection requirements for the following types of activities:"

Randleman: "The Division shall implement applicable requirements in lieu of local governments for:"

Tar-Pamlico: "The Division shall have jurisdiction to the exclusion of local governments to implement the Tar-Pamlico Basin riparian buffer protection requirements for the following types of activities:"

NCFS Comment #3: Apply the text of the Catawba/Goose Creek rules to the other 3 Buffer Rules; or use a modified alternative version offered below for all 5 Buffer Rules:

Proposed alternative replacement text:
The Division retains vested authority, to the exclusion of local governments, to administer the requirements of this Rule for the following types of activities:

Be careful about saying that DWR will "implement" the Rule; it is up to the regulated entity to actually *implement* the Rule's provisions. The DWR is *administering* and *enforcing* the Rule...but not necessarily "implementing" it; consider consulting with legal counsel to develop the best choice of language syntax.

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Item C: Proposed Standardized Forest Harvesting Requirements, 15A NCAC 02B .0612.

NCFS Comment #4: The Division may want to consider clarifying the introductory language of this Rule, to avoid unintended confusion and to make it clear. If somebody wasn't thorough in reading the rules, they might mistakenly infer that the Forest Harvesting Requirements 'could' be applied to WS-designated Water Supply Watersheds, because those rules will be a part of Section .0600 and .0700 of the new rules organization.

Also, if you are going to make note of the Goose Creek exception, you should also make note of the Jordan Lake exception; or better yet, *don't say anything about exceptions at all*, and keep it simple.

Proposed alternative replacement text for Part (a):

(a) PURPOSE AND APPLICABILITY. The requirements of this Rule fulfill the provisions to protect and maintain riparian buffers in the areas specified herein, and this Rule shall apply to forest harvesting operations and forestry-related, land-disturbing activities only in the river basins and watersheds listed below:

(1) Catawba River basin and mainstem lakes as specified in rule 15A NCAC 02B .0614;
(2) Neuse River basin as specified in rule 15A NCAC 02B .0714;
(3) Randleman Lake watershed as specified in rule 15A NCAC 02B .0724; and,
(4) Tar-Pamlico River basin as specified in rule 15A NCAC 02B .0734.

- Justification: Include the "forestry-related, land-disturbing" text, because some of these requirements are not directly related to harvesting (eg: burning, fertilizer, etc.); and this phrase is also used in the Sedimentation Pollution Control Act and FPGs (ie: be consistent with other state rules).

NCFS Comment #5: The rule text of Part (c)(3) reads awkwardly:

"(3) Trees removed with the minimum disturbance to the soil and remaining vegetation;"

Proposed alternative replacement text is provided below:

(3) Trees are removed in a manner that minimizes disturbance to soil and remaining vegetation.

Thank you for the opportunity to contribute to the process of refining these rules.

NORTH CAROLINA
FARM BUREAU FEDERATION, INC.

PO Box 27766, Raleigh, NC 27611 Phone: 919-782-1705 Fax: 919-783-3593 www.ncfb.org

June 29, 2018

Julie Ventaloro
NCDEQ-DEMLR
Stormwater Permitting Program
1612 Mail Service Center
Raleigh, NC 27699-1612

Via email: publiccomments@ncdenr.gov

Dear Ms. Ventaloro,

The North Carolina Farm Bureau Federation (NCFB) is North Carolina's largest general farm organization, representing the interests of farm and rural people in our state. This letter is to comment on the rules proposed for revision in 15A NCAC 02B and 15A NCAC 02H that were published in the May 1, 2018 issue of the NC Register.

NCFB appreciates the opportunities to participate in stakeholder meetings and to meet with NC DEQ staff regarding these proposed rules and the Triennial Review rule revision package that is being considered in a separate rulemaking procedure.

The following are comments on several of the rule proposals.

Exemptions from buffer requirements around agricultural ponds:

NCFB supports the new language regarding the agricultural pond exemption from buffer requirements located in 15A NCAC 02B .0607(g) - Goose Creek buffer rule, .0614(6) - Catawba buffer rule, .0714(7) - Neuse buffer rule, .0724(7) - Randleman Lake buffer rule, and .0734(7) - Tar-Pamlico buffer rule. These rule changes are required by Session Law 2013-413 [Section 52 (a) – (f)] passed by the NC General Assembly.

Limits of delegated local authority to implement buffer rules:

NCFB supports the language in the revised rules that makes it clear that the Division of Water Resources, not local governments, has jurisdiction to implement the buffer rules for agricultural activities and forest harvest activities. Those rule revisions are found in 15A NCAC 02B .0607(k)(4) - Goose Creek buffer rule, .0614(12)(b) - Catawba buffer rule, .0715(f) - Neuse buffer rule, .0724(12)(b) - Randleman Lake buffer rule, and .0735(5) - Tar-Pamlico buffer rule.

Exemption from buffer requirements for agricultural roads that are exempt from Clean Water Act Section 404 requirements:

NCFB supports the new language stating that agricultural roads that are exempt from permitting by the US Army Corps of Engineers under Section 404(f) of the Clean Water Act are "Deemed Allowable." The language is located in the tables of uses under "Road, driveway or railroads" in 15A NCAC 02B .0607(i)(3) - Goose Creek buffer rule, .0614(9)(b) - Catawba buffer rule, .0714(10)(b) - Neuse buffer rule, .0724(10)(b) - Randleman Lake buffer rule, and .0734(10)(b) - Tar-Pamlico buffer rule. For farm roads to qualify for the Section 404(f) exemption they must meet several conditions, including minimizing impacts. This rule change will eliminate what has been a confusing and unnecessary requirement.

It is our understanding that agricultural roads and crossings that do not qualify for the Section 404(f) exemption will qualify in the same manner as three other crossings described under "Road, driveway or railroads." These three are based on the size of the impact.

If our understanding is incorrect, then it should be made clear that agricultural roads that do not meet the Section 404(f) exemption can qualify as an "allowable" use in the same manner -- based on the size of the impact. The proposed rule language describing the 404-exempt agricultural roads should not be the only circumstance under which agricultural roads can be "allowable."

Water Supply Watershed proposed rule revisions related to agricultural activities:

The Environmental Management Commission has specifically requested comment on the proposed 15A NCAC 02B .0622(4), .0624(3)(h) and .0624(12)(a)(iv) rules.

NCFB supports the language included in the rule 02B .0622(4) that retains the designation of the NC Soil and Water Conservation Commission as the designated agency for administration of the applicable water supply watershed protection requirements for agricultural activities. This proposed rule language is similar to part of the current rule [02B .0104 (p)]. Some of that existing rule language has been reorganized into three different parts of the proposed .0624 rule and some has been retained in 02B .0104.

The existing rule language was written to address G.S. 143-214.5 (a) and (d1). The statute directs in (a) that the reduction of agricultural nonpoint source impacts shall be accomplished primarily through the North Carolina Agriculture Cost Share Program for Nonpoint Source Pollution Control. That Program is administered by the NC Soil and Water Conservation Commission. Therefore, it is appropriate that the NC Soil and Water Conservation Commission be the designated agency to administer the minimum statewide water supply watershed management requirements applicable to agriculture as described in G.S. 143-214.5 (d1).

The language in 02B .0622(4) also retains the current rule language from 02B .0104(p) that designates the water supply watershed areas where the agricultural requirements are to be implemented -- all of WS-I and in the critical areas of WS-II, III and IV watersheds. We feel that these currently designated areas are sufficient to protect water supplies and would not support expansion of these areas.

Regarding 02B .0624(3)(h), among the list of exclusions to the .0624 rule requirements is the exclusion for agricultural activities except as provided in .0624(12)(a)(iv). That rule [(12)(a)(iv)] requires vegetated setbacks of 10 feet along perennial waterbodies and perennial streams in the designated areas of the water supply watersheds. This is the current requirement in 02B .0104(p).

Because agriculture is an ongoing activity, this requirement was/is imposed on existing agricultural land uses while no similar requirement is imposed on other existing land uses, such as existing development [.0624(3)]. NCFB feels that the 10-foot vegetated setback is effective and opposes a wider setback requirement for agricultural activities in these rules. It should be noted that animal operations already have more stringent vegetated setback requirements specified in the 15A NCAC 02T .1300 rules.

Wetlands proposed rule changes:

Upon review of the proposed changes to the wetlands rules in 15A NCAC 02H .1300, and the proposed revision to the definition of "Wetlands" in the Triennial Review rulemaking package at 15A NCAC 02B.0202(61), NCFB has an issue with the proposed rules that we believe must be addressed.

NCFB appreciates the opportunity that we had to meet with NC DEQ staff members Karen Higgins and Jeff Manning to discuss this issue that affects activities conducted in certain wetlands that are not "waters of the United States" (WOTUS). NCFB offers the following comments on the issue and a suggested rule revision to address it.

This issue is created by the proposed "Wetlands" definition [15A NCAC 2B.0202(61)] that removes the existing language that states that "Wetlands classified as waters of the state are restricted to waters of the United States as defined by 33 CFR 328.3 and 40 CFR 230.3."

Because of the new proposed definition at 15A NCAC 02B.0202(61) of "Wetlands" in the Triennial Review rulemaking package, there would be no ability to conduct an activity that deposits dredged or fill material in a non-WOTUS wetland that is not a Basin Wetland or Bog without violating the wetland standards in Rule 15A NCAC 02B.0231.

This is because 15A NCAC 02H.1300 only authorizes the Department to issue permits for impacts to Basin Wetlands and Bogs. Rule 15A NCAC 02H.1301(d) specifically states that discharges resulting from permitted activities shall not be considered to remove existing uses of the isolated wetland. However, there is no similar allowance for impacts to non-WOTUS wetlands that are not Basin Wetlands or Bogs.

If the proposed "Wetlands" definition is adopted, NCFB requests that the proposed rules be revised to clarify that deposition of dredged or fill material in non-WOTUS wetlands that are not Basin Wetlands or Bogs do not require a permit in 15A NCAC 02H.1300, and that such activities do not remove wetland uses or violate the wetland standards in 15A NCAC 02B.0231. Suggested language to correct this issue is below.

Create a new 15A NCAC 02H.1301(e)(7) as follows:

02H.1301(e)(7): Discharges of dredged or fill material to wetlands that are not regulated under Section 404 of the Clean Water Act and are not Basin Wetlands or Bogs as described in the North Carolina Wetland Assessment User Manual prepared by the North Carolina Wetland Functional Assessment Team, version 4.1, October 2010. These activities shall not be considered to remove existing uses of the wetland under 15A NCAC 02B.0231.

NCFB appreciates the opportunity to comment on the proposed rule changes. If you have any questions, please contact Anne Coan or Keith Larick at NC Farm Bureau at 919-782-1705.

Sincerely,

Anne Coan

Anne Coan, Environmental Affairs Director

Keith O. Larick

Keith Larick, Natural Resources Director

CHARLOTTE WATER

TO: publiccomments@ncdenr.gov

FROM: Charlotte Water

CC: Julie Ventaloro, DEMLR julie.ventaloro@ncdenr.gov

DATE: July 2, 2018

Subject: 15A NCAC 02B.0607 Proposed Rule changes – Site Specific Water Quality Management Plan for the Goose Creek Watershed (Yadkin Pee-Dee River Basin): Buffer Types and Managing Activities within Riparian Buffers

Charlotte Water has reviewed the proposed rules changes and has the following comments:
Under section **(I) Riparian buffers along surface waters in this watershed shall be maintained.**

There are several requirements for non – electric utility lines that Charlotte Water believes are not scientifically based, and may be arbitrary, excessive, and/or fiscally burdensome. Examples are:

1. Wastewater collection system lines and forcemains must have 50% of the system cleaned annually - ***The state collections system permit and Charlotte Water's current collections system permit specify a cleaning requirement of 10% annually. A 50% requirement is burdensome, in direct conflict with state collection system permit requirements, and would unnecessarily result in major fiscal impacts to Charlotte Water customers.***

2. Wastewater collection system utility lines and lift stations lines may impact the riparian zone if both gravity and force main collections systems are made of ductile iron – ***Charlotte Water questions whether these buffer rules are exceeding statutory authority by designating pipe composition material. Charlotte Water furthermore questions the selection of ductile iron over other pipeline material in regards to their ability to protect the environment. For example, Charlotte Water considers AWWA C900 DR -25 pressure-rated PVC or HDPE an equal material to ductile iron.***

3. Lift stations must have daily visitation 365 days/year – ***Charlotte Water maintains approximately 80 lift stations system wide. Again, this requirement would be unnecessarily fiscally burdensome and does not align with the requirements of our current collections system permit.***

4. Collection system perpendicular stream crossings must be visited daily (365 days/year) and documentation kept for 3 years of the visitations that is available upon NCDEQ request - ***Again, Charlotte Water System includes approximately 4000 miles of pipeline. Charlotte Water has procedures in place to properly inspect our system. Our collections system permit provides requirements for inspections that we follow. The requirements here would not be possible and***

CHARLOTTE WATER

would require major increases in staff and equipment placing an unnecessary fiscal burden on our customers.

Please also note that the wastewater crossings are installed multiple feet below the bottom of the creek as required by NCDEQ, to minimize the occurrence of exposure due to creek bank washouts by natural occurrences. Thus, daily visits do not seem to be realistically based as wastewater lines are already designed and installed with protection in mind and would not be visible.

5. Please reference the table included in (15 A NCAC 02B .0607 (l) under the section for "Non-electric utility lines with impacts other than perpendicular crossings". The second bullet appears to indicate that wastewater lines are allowed outside of the inner 50 feet without mitigation. ***Upon discussion with NCDEQ staff, it was clarified that the second bullet is not intended to include sewer lines, only the 3rd and 4th bullets refer to wastewater lines and thus, mitigation is always required. Charlotte Water request that this section be presented more clearly to allow for proper budgeting of projects.***

6. Please reference the table included in (15 A NCAC 02B .0607 (l) under the section for "Non-electric utility lines with impacts other than perpendicular crossings". This section indicates that wastewater lines will always require mitigation when located within the buffer. ***Public water and sewer utilities do not pay mitigation monies for any stream buffer in Mecklenburg County. Charlotte Water would not be opposed to paying mitigation fees within the 50 foot buffer, but paying mitigation fees for any gravity sewer line located within the 200 foot buffer effectively means that Charlotte Water will always pay for the entirety of permanent impacts (i.e. cleared maintenance easement). Gravity sewer trunk lines are typically always installed within 200 feet of a stream to allow for gravity flow to occur at reasonable depths for installation and maintenance. This represents an undue fiscal burden.***

7. Please reference the table included in (15 A NCAC 02B .0607 (l) under the section for "Non-electric perpendicular utility line crossings that are collections systems as defined in Rule 15A NCAC 02T .0300". This section indicates that all wastewater collection stream crossings must be installed by methods utilizing trenchless technology. ***For the reasons noted below, Charlotte Water requests that the requirement for trenchless technology for all perpendicular crossings be reconsidered:***
   - ***With proper Erosion and Sedimentation Control measures, open cut installation can minimize sediment and nutrient pollution equally as well as trenchless technologies.***
   - ***Trenchless technologies require equipment and personnel to be onsite much longer than open cut installation methods (months vs days). Longer impacts to a site further elongate the possibility of possible sedimentation impact.***
   - ***Many contractors will request to utilize a pump around for worker safety purposes while utilizing trenchless technology. This set up is almost entirely equal to that of an open cut.***
   - ***Trenchless technologies are significantly more expensive than open cut installation methods. This represents an undue fiscal burden.***

CHARLOTTE WATER

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   - ***Trenchless technologies are significantly more expensive than open cut installation methods. This represents an undue fiscal burden.***

WATER MANAGEMENT
CITY OF DURHAM

July 2, 2018

Attn:
Karen Higgins, 401 & Buffer Permitting Branch Supervisor, NCDEQ-DWR
Julie Ventaloro, NCDEQ-DEMLR-Stormwater Permitting Program
1612 Mail Service Center
Raleigh, NC 27699-1612
publiccomments@ncdenr.gov

RE: Comments on Proposed Changes to 15A NCAC 02B .0610 and 15A NCAN 2B .0714(6)

Dear Ms. Higgins & Ms. Ventaloro:

The City of Durham, Department of Water Management (DWM) is responsible for providing safe drinking water to more than 270,000 residents of Durham and Durham County, as well as ensuring that wastewater from the City's two water reclamation facilities is treated to meet stringent NPDES permit limits prior to discharge into the environment. Additionally, DWM maintains approximately 1,400 miles of distribution system pipeline and approximately 1,100 miles of collection system line; the City's Collection System Permit is WQCS00005. Our mission is to deliver these services in a cost-effective way to our rate-payers.

DWM has concerns regarding the noted rules for readoption, 15A NCAC 2B .0610(16) and 15A NCAC 2B .0714(6), and their potential adverse impacts on the operations and maintenance of our collection system. As proposed, these rules contain a number of changes to how a project is or can become exempted from rule coverage. Prior definitions in the rule did not include the term "(16) Existing utility line maintenance corridor" which now appears in proposed rule 15A NCAC 2B .0610. It is defined as "the portion of a utility right of way in which the vegetation has been mowed, cut or otherwise maintained within the last 10 years." Additionally, the proposed rule for readoption adds two requirements; (A) if is now deemed an allowable activity by the revised table of uses in Item (10) of the rule and (B) it was conducted and maintained by pursuant to an Authorization Certificate or Variance issued by the Authority. The City Durham has undertaken a number of sewer maintenance projects in recent years to ensure the integrity of the collection system and given age of the system and increasing growth, those activities will continue to increase. Based on our understanding of the rule requirements as proposed, there will likely be extended time frames to obtain Authorization potentially delaying work and significantly increasing the cost of these necessary activities. DWM opposes the inclusion of this definition and the requirements laid out in 02B .0611.

Generally, collection/sewer systems utilize gravity sewers wherever possible. This is a practical approach and it also helps minimize the potential for Sanitary Sewer Overflows due to pump issues within lift stations located strategically throughout the system. As a result of this approach, sewer collection lines are often located in the riparian buffer of streams and other waters regulated under this rule. When providing repair or replacement of a sewer line, the repairs will necessarily occur in the utility easement. Under the Collection System Permit issued

by DEQ, DWM is required to immediately repair any breach in a sewer line resulting in a discharge of sewage. The same permit also requires sewer utilities to maintain and repair the lines to avoid failures resulting in overflows of untreated sewage. This proposed rule interferes with and requires, in some instances, mitigation for compliance with the Sewer Collection Permit.

The revised rule makes other critical changes in .0714(10)(b) under the category "Utility – sewer lines." As required under (10) these proposed changes, a replacement or rehabilitation of an existing sewer line is now defined to be within the term "New Sewer Line Construction Activities." This has substantial and real cost impacts. The proposal requires that a local government replant the area where an emergency repair occurs within two months with "comparable vegetation" yet there is no definition of what type of vegetation is "comparable." This requirement could result in the need for planting of mature plants, at very high cost.

In order to maintain capacity and meet system needs, older sewers that need to be replaced may also need to be upsized. Under the proposed requirements in the rules offered for these type projects, sewer utilities are required to leave vegetative root systems and stumps in place. In many cases, an underlying cause or contributor to the sewer line failure can be attributed to root infiltration. Further, as the Collection System Permit requires that the City ensure adequate access to the sewer line for emergency response, stumps should be removed for safety reasons. If the stumps are obscured by vegetative growth, mowing equipment can be damaged and even overturned, creating a safety hazard for employees.

Lastly, we have concerns that the proposed changes to the rules have not been properly evaluated and the fiscal impacts have not been fully considered. Before DEQ proceeds with making recommendations to the EMC and before the EMC acts, the rules should be modified to a "no impact" condition or that the rules be reopened for additional evaluation and coordination with the stakeholders.

Sincerely,

Vicki Westbrook

Vicki Westbrook, Assistant Director

Attachments

Cc: Donald F. Greeley, Director, Water Management
Donald O'Toole, Senior Assistant City Attorney
Reginald Hicks, Environmental Programs Administrator, Water Management

UPPER NEUSE RIVER BASIN ASSOCIATION

Unrba

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Town of Butner

City of Creedmoor

City of Durham

Durham County

Franklin County

Granville County

Town of Hillsborough

Orange County

Person County

City of Raleigh

Town of Stem

Wake County

Town of Wake Forest

South Granville Water and Sewer Authority

Soil and Water Conservation Districts

July 2, 2018

TO: publiccomments@ncdenr.gov

FROM: Forrest Westall, Executive Director, UNRBA

CC: Karen Higgins, DEMLR karen.higgins@ncdenr.gov
Julie Ventaloro, DEMLR julie.ventaloro@ncdenr.gov
Jucilene Hoffman, DWR jucilene.hoffman@ncdenr.gov

Subject: Buffer Rules, 15A NCAC 2B, Rules .0610 and .0714

The UNRBA membership includes several water and sewer system owners that own and operate distribution and collection systems. As a result, the UNRBA offers the following comments for your consideration.

Regulatory Impact Analysis

The UNRBA has concerns about the Regulatory Impact Analyses (RIA) provided for this set of rules. As presented, the RIA contends that the amendments noticed for comments "will impose a less stringent burden on regulated persons." There are several practical impacts that have not been evaluated and this has created issues related to this determination. However, the most basic issue is that the rules as revised will, if adopted, result in more stringent requirements on local governments that own and operate water and sewer utilities with line locations in the buffer area. Also, the agency does not address whether the amendments are "without substantive change." The agency position on noticing these referenced rules without properly assessing the potential impacts of proposed changes, is an important procedural deviation, subject to challenge and could invalidate further consideration of the changes. The failure to properly reflect the potential impacts makes consideration of the proposed changes inappropriate for consideration at this time. The UNRBA believes that either the agency needs to restore the rules to a true "no impact" condition that is consistent with its current RIA or take the rules off of the current schedule, reengage the stakeholders impacted, and evaluate accurately the "real" impacts of the rules it plans to send forward for readoption.

Specific Issues with the Revisions Proposed

The noted rules for readoption, 15A NCAC 2B .0610(16) and 15A NCAC 2B .0714(6), contain a number of changes to how a project is or can become exempted from rule coverage. The proposed conditions for exemption impose substantial and new fiscal burdens on local governments relative to projects that are exempt under current rules. The proposed modifications to (6)(a) changes the date that qualifies for exemption. The current rule for exemption only requires that the use has been existing and present in the buffer as of July 22, 1997. The current rule specifically includes utility lines. The proposed rule for readoption adds two requirements for exemption; (A) if is now deemed an allowable activity by the revised table of uses

in Item (10) of the rule and (B) it was conducted and maintained pursuant to an Authorization Certificate or Variance issued by the Authority. This will place some jurisdictions at risk of having to deal with projects previously exempted. Member jurisdictions are filing more detailed comments on this point, but the UNRBA certainly recommends maintain the way the current rule operates.

Prior definitions in the rule did not include the term "(16) Existing utility line maintenance corridor" which now appears in proposed rule 15A NCAC 2B .0610. It includes important term of limitation that in order to meet the definition "the vegetation has been mowed, cut or otherwise maintained within the last 10 years." This provision should not be included in the rule.

Sewer systems utilize gravity sewers wherever possible. This is a practical approach and it also helps minimize the potential for Sanitary Sewer Overflows due to pump issues. As a result of this approach, sewer collection lines are often located in the riparian buffer of streams and other regulated waters under this rule. When providing repair or replacement of a sewer line, the repairs will necessarily occur in the utility easement. The statutory and DEQ-issued Sewer Collection Permit issued by DEQ, requires immediate repair any breach in a line resulting in a discharge of sewage. The collection system permit and the General Statues (for smaller system owners) also requires sewer utilities to maintain and repair the lines to avoid failures resulting in overflows of untreated sewage. The proposed rule conflicts with and requires, and in some instances, requires the sewer system owner to provide mitigation for hat is a compliance requirement of the Sewer Collection Permit.

The revised rule makes other critical changes in Item (10) under the category "Utility – sewer lines." As required under these proposed changes, a replacement or rehabilitation of an existing sewer line is for the first time defined to be within the term "New Sewer Line Construction Activities." This is a substantial and real impact cost. The proposal includes that a local government is required to replant the area where an emergency repair occurs within two months with "comparable vegetation." What type of vegetation is "comparable." This requirement could result in the need for planting of mature plants, at very high cost.

In order to maintain capacity and meet system needs, older sewers that need to be replaced may also need to be upsized. Under the proposed requirements in the rules offered for these type projects, sewer utilities are required to leave vegetative root systems and stumps in place. If the disturbed area is more than 150 linear feet, mitigation is required to be provided by the sewer utility. Mitigation is also triggered if the disturbed area is wider than 20 linear feet. This is a big concern for main interceptor lines.

There are a number of changes to 15A NCAC 2B .0610 MANAGING ACTIVITIES WITHIN RIPARIAN BUFFERS: DEFINITIONS that need to be revised. Because there seems to have been little coordination of these changes with affected utilities, the UNRBA recommends that if the agency would like to seek changes to these provisions that the rules be removed from consideration and better coordinated with the utility owners. As noted, if the rules are returned to a true "no impact" status, then future changes can be taken up when the rules are up for later review.

The proposed changes to the rules have not been properly evaluated and the impact considered. The cost of managing water and sewer utilities are a huge part of these utility activities for several of the jurisdictions in the UNRBA. Before DEQ proceeds with making recommendations to the EMC and

before the EMC acts, the rules should be modified to a "no impact" condition or that the rules be reopened for additional evaluation and coordination with the stakeholders.

Thank you for the opportunity to comment on these rules. If you have any questions, please let me know.

UPPER NEUSE RIVER BASIN ASSOCIATION

Unrba

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City of Creedmoor

City of Durham

Durham County

Franklin County

Granville County

Town of Hillsborough

Orange County

Person County

City of Raleigh

Town of Stem

Wake County

Town of Wake Forest

South Granville Water and Sewer Authority

Soil and Water Conservation Districts

TO: publiccomments@ncdenr.gov

FROM : Forrest Westall, Executive Director, UNRBA

DATE: July 2, 2018

Copy: Karen Higgins, DEMLR
Julie Ventaloro, DEMLR
Jucilene Hoffman, DEMLR

SUBJECT: Comments on proposed rule 15A NCAC 2H .0127, Reference the General NPDES Permit (GP) for Single Family Resident (SFR) Discharges.

The Upper Neuse River Basin Association and its membership continue to follow DEQ's efforts to readopt its regulations and to comment on those that have implications for the implementation of the Falls Lake Rules or that related to the Association's objectives relative to its reexamination of these requirements. We believe that 15 NCAC 2H .0127 as currently exists or as it is proposed for readoption doesn't properly address NPDES sources that can add to the nutrient reduction burden our member local governments face.

Within Chapter 2H, the agency's rule that provides for the use of NPDES General Permits (GP) as specifically applied to the Falls Lake watershed has the potential to increase nutrient loading and place additional reduction requirements on local government. The Falls Rules have placed on the local government organizations in the Falls Lake watershed the most restrictive nutrient reduction requirements in NC. One the provisions of the Falls Rules requires local jurisdictions to "offset" a significant percentage of the N (total nitrogen) and P (total phosphorus) loading coming from existing development.

There are a significant number of existing discharging SFR systems in the watershed. Many of these systems were put in service under permitting that did not comply with NPDES requirements under the Federal Clean Water Act (CWA) and NC Law. These systems were not designed to remove or reduce nutrients, and many are not functioning properly. N and P represent the pollutants of interest under CWA Section 303 listings of Falls Lake. As a result, the UNRBA believes that DEQ must address this issue specifically in the GP Rule. This will clarify how these type discharges are managed and will allow for more effective nutrient management in the Falls

watershed. Changes to the GP rule are needed to comply with both federal and state legal requirements. We understand that at least one of our members has submitted detailed comments on the legal issues with the GP rule and that these points should be considered by DEQ before proceeding with readoption of 2H .0127.

The loading from this source should be dealt with under the state's NPDES program for management. However, DEQ hasn't addressed this loading and it essentially represents "existing loading" and, as a result, ends up falling under the reduction requirements for local governments in the Rules. SFR GP procedures as related to the Falls Lake watershed has the following permitting situations that must be considered in revising this rule before it goes forward for readoption:

* SFR systems that continue to operate without a permit.

* SFR systems currently permitted.

* New SRF system permitting for new home construction.

* Use of the SFR permit for replacement of failing on-site subsurface disposal.

Unlike some of the categories that are covered by GPs, SFR discharges represent a potentially significant component of the loading to Falls Lake (however, there are other GP sources that could impact nutrient loading). This is particularly important considering the level of reduction required under Stage II of the Falls Lake Rules. The management of SFR wastewater is an important responsibility and the local health department program for on-site management is certainly an essential role in this effort. This is made more difficult by some of the restrictive the soil conditions within the watershed. However, wastewater permitting for sites with limited on-site options, needs to be looked at in relation to other options that result in more effective nutrient management (for replacement of failing on-site or discharging systems as well as new discharges). Even where treatment is provided for nutrient reduction, SFR discharging technology represents a practice with a huge variation in operational attention. A discharging system may not be the appropriate action for meeting overall health and environmental goals. The UNRBA seeks a GP program for SFR systems that provides for a careful consideration of the most environmentally sound, economically-viable option available for all categories of SFR NPDES wastewater permitting decisions listed above. The general authorization for GP use under 2H .0127 should reflect the need for nutrient management in nutrient sensitive situations and for looking, with a high level of intensity, for all options for management of new, existing or renewal of discharging SFR systems. permitted or renewed before a permitting decision is made.

Another consideration that must be a part of this SFR permitting process is the goal of making nutrient reductions. DWR has been working on a nutrient credit for SFR discharging systems and for the management of failing on-site systems. The alternatives analysis for SFR discharges to replace existing systems for failing on-site systems should include a provision for evaluating how nutrient reduction credit factors into the recommended decision.

The UNRBA recommends, if the agency intends to move forward with readoption of this rule, that it be modified to address the points made in this communication. Alternatively, if these changes are not achieved, this rule should be removed from this process and a stakeholder input process reactivated to develop a version that will properly reflect the nutrient management program in the Falls Lake watershed.

We will continue to be engaged in the SFR GP process. The current GPs for SFR systems are up for expiration this year. Once these are noticed, the UNRBA will weigh in on that action to address the issues raised here.

Thank you for the opportunity to comment on this rule readoption proposal. If you have any questions, please let me know.

Planning & Development

HIGH POINT
NORTH CAROLINA'S INTERNATIONAL CITY

July 2, 2018

Julie Ventaloro
NCDEQ-DEMLR-Stormwater Permitting Program
1612 Mail Service Center
Raleigh, NC 27699-1612

Ms. Ventaloro:

As requested in your public comment period announcement on May 1, 2018, please find below comments from the City of High Point regarding proposed changes to the Water Supply Watershed Protection Rules, specifically sections 15A NCAC 02B .0600 and .0700.

1. 15A 02B .0610 – Definition (15) "Existing lot" – References activities listed in Rule .0724(15)(b), but no such subsection exists in the revised version.
2. 15A 02B .0611 – Introduces the term "Authorization Certificates" that would allow requests for certain activities to disturb riparian buffers upon authorization, upon authorization with mitigation, or with exception. However, while the term "variance" has been replaced with "exception," the language used is still that of quasi-judicial procedures (i.e. practical difficulties, unnecessary hardships, etc.). This could be construed as being too similar to the language used in .0623(6) for "variances" to other watershed protection rules, which will now be required to go before a quasi-judicial body (i.e. Board of Adjustment). The "exceptions" language should be made more distinct if it is not going to be a true quasi-judicial approach. With that said, we acknowledge that the disturbance of buffers needs to be treated more flexibly than seeking relief from other aspects of the watershed rules.
3. 15A 02B .0622 (1) & .0623 (2) – There appears to be an incorrect reference, because 15A 02B .0104(d) does not have any effective dates. Looks like it should be (e) instead.
4. 15A 02B .0724 (12)(f) – Incorrect reference to "Neuse" should be "Randleman."
5. 15A 02B .0734 (10)(b) – In the table of uses, under "Road, driveway or railroads: perpendicular crossings…" it refers to "driveway crossings in a subdivision," but the term "subdivision" should be defined as being the state's definition in N.C G.S. 160A-376, or otherwise be more clearly defined as to what is intended. For example, does this refer only to residential subdivisions, or would an industrial subdivision also be included?

Administration 336.883.3328 | Planning Services 336.883.3328 | Development Services 336.883.3328 | Inspection Services 336.883.3151

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If you have any questions about these comments, please feel free to contact me by phone at (336) 883-3328 or by email at: lee.burnette@highpointnc.gov.

Thank you for the opportunity to provide feedback, and we look forward to receiving future updates on these proposed changes, as well as direction about how to proceed with implementation of the finalized rules in the future.

Sincerely,

G. Lee Burnette, AICP
Planning & Development Director
City of High Point

TO: publiccomments@ncdenr.gov

FROM: North Carolina Water Quality Association

CC: Karen Higgins, DEMLR karen.higgins@ncdenr.gov
Julie Ventaloro, DEMLR julie.ventaloro@ncdenr.gov
Jucilene Hoffman, DWR jucilene.hoffman@ncdenr.gov

DATE: July 2, 2018

RE: Incorrect Regulatory Impact Analyses
15A NCAC 2B, Rules .0610 and .0714 and supporting Regulatory Impact Analyses

I. STATEMENT OF INTEREST

These comments are submitted on behalf of the NC Water Quality Association. The NCWQA comprises public water, sewer, and stormwater utilities statewide. As public utilities, we support affordable and cost-effective regulatory requirements. We are compelled to comment because we think the Department's regulatory impact analyses associated with the buffer rules are incorrect. We also believe that, among other concerns, the rules would inappropriately narrow the exemption for public utility lines from buffer rule requirements. We see no compelling reason to impose additional buffer-related costs on public utility lines. We urge the Department to maintain the current exemption language.

II. OBJECTION TO REGULATORY IMPACT ANALYSES

The Regulatory Impact Analyses [hereinafter "RIA"], incorrectly assert that the amendments noticed for comments will result in a rule readoption that "will impose a less stringent burden on regulated persons." That is not the case as the proposed rules significantly narrow existing exemptions for public utility lines. That will necessarily result in more municipal utility lines being subject to the buffer rule requirements. That impact alone triggers the need for a fiscal note and requires republication of the rules to comply with the NC Administrative Process Act.

The Department would be legally incorrect to assert that there is no new regulatory burden because the more stringent rule provisions mirror existing Department policy. State Statute prohibits the Department from imposing unpromulgated guidance/policies. N.C. Gen. Stat. §150B-18. Thus,

legally, any existing Department guidance/policy is non-binding. Moving to incorporate such non-binding policies into regulation is a regulatory change that has an impact on local government that must be addressed in accordance with the NC APA.

Consequently, the proposed rules must be returned to the Environmental Management Commission for compliance with the statutes applicable to the readoption of rules including appropriate and complete Regulatory Impact Analyses.

In particular, the proposed rules for readoption impose at 15A NCAC 2B .0610(16) and 15A NCAC 2B .0714(6) new restrictions on the applicability of activities which are exempt from the rule's coverage. These restrictions will result in fewer public utility lines being exempt – which means substantial new fiscal burdens on local governments to comply with the rules that they are currently exempt from.

For example, as the Department's underlined proposed additions to (6)(a) show, the former rule only required that the use have been existing and present in the buffer as of July 22, 1997. The current rule expressly includes utility lines. The proposed rule for readoption <u>adds</u> two restrictions on the applicability of this exemption for utility lines; (A) it must now be deemed an allowable activity by the revised table of uses in Item (10) of the rule <u>and</u> (B) it was conducted and maintained pursuant to an Authorization Certificate or Variance issued by the Authority. By way of example of the significance of these new regulatory burdens, Raleigh Public Utilities staff documented 84 sewer maintenance projects in the past 36 months, with the need for such projects expected to increase. We estimate it will cost between $1,000 and $3,000 for each of these authorizations. These are substantial new regulatory costs that trigger the need for a fiscal impact statement and republication of the rule.

Increased regulatory burdens on local governments are also found in at least two additional changes to the rules. The first change is the addition of a new definition of "(16) Existing utility line maintenance corridor" which now appears in proposed rule 15A NCAC 2B .0610. That definition adds a critical limitation that to qualify as an existing corridor "the vegetation has been mowed, cut or otherwise maintained within the last 10 years."

Sewer lines operate to the extent practicable by gravity. Accordingly, they are located typically in the riparian buffer of streams and other regulated areas under this rule. When a local government utility repairs or replaces a sewer line, the repairs will necessarily occur in the utility easement. These easements will not have been mowed within the past 10 years because there was no regulatory requirement or public need to do so. Thus, these lines will no longer be exempt. This is a major change that will have substantial financial impact on public utilities.

We note that many utilities have miles of easements within riparian buffers that were purchased anticipating future infrastructure would be installed and the easement width would be required for future use. Until these utilities are installed, there is no need to mow the vegetation for the full width of the corridor. In some areas such as river crossings the vegetation will not have been maintained, but the lack of maintenance should not prohibit use as an exempt utility corridor.

Also many utility easements are provided by developers in conformance with community/utility long term masterplans, over and above what may be needed to serve the specific current

development. These easements would not be maintained until infrastructure is installed. Nevertheless, they should remain exempt in the final rules.

The revised rule makes other substantive changes in Item (10) under the category "Utility – sewer lines." By those changes, a replacement or rehabilitation of an existing sewer line is for the first time defined to be within the term "New Sewer Line Construction Activities." The impact of these changes is significant and will have substantial economic impacts on affected local governments. For example, a local government is required to replant the area where an emergency repair occurs within two months with "comparable vegetation." It is unclear if "comparable vegetation" means fully mature trees, which if even possible will come at staggering costs. Moreover, the local government is required to make application for an Authorization Certificate. This requirement does not arise from the existing rule. Legally, it is a new regulatory requirement, irrespective of any pre-existing DEQ policy. The fact of the matter is that the new rule is indisputably more stringent than the existing rule and a proper regulatory impact analysis (with fiscal impact statement) is required.

The replacement and any necessary upsizing of sewer lines is likewise required by the Sewer Collection Permit issued by DEQ to sewer utilities statewide. To meet the proposed requirements for those projects, sewer utilities are required to leave vegetative root systems and stumps in place. If the disturbed area is more than 150 linear feet, mitigation is required to be provided by the local sewer utility. If the disturbed area is wider than 20 linear feet, mitigation is required as well. Larger trunk lines require a minimum trench width of 30 feet. Any impact not within the deemed allowable criteria in the revised rule also trigger mitigation requirements.

The Regulatory Impact Analyses are flawed. The process set forth in N.C. Gen. Stat. §150B-21.4(b) was ignored. The objections set forth above were regularly raised by public utilities in prior comment periods during the stakeholder process and before the rules were approved for notice and comment by the Environmental Management Commission. The rule will clearly "affect the expenditures or revenues of a unit of local government," yet no fiscal note was provided to the North Carolina League of Municipalities. Consequently, the proposed rules were not eligible for notice and publication in the North Carolina Register.

In the Regulatory Impact Analyses, the Impact Summary incorrectly shows no impact on local government. In the summary, we disagree that the proposed rule "will impose a less stringent burden on regulated persons." This ignores the impacts on local governments noted above and the requirements of N.C. Gen. Stat. §150B-21.4(b). This proposed rule contains substantive changes that will negatively impact local funds.

Should the Environmental Management Commission restore the text of the rule to a true "no impact" status by returning to the language in the current rule, then the rule readoption can proceed, consistent with the statute. Otherwise it must be returned to the EMC for the development of a proper regulatory impact analysis.

III. 15A NCAC 2B .0610 MANAGING ACTIVITIES WITHIN RIPARIAN BUFFERS: DEFINITIONS

We also object to the definition of "Existing utility line maintenance corridor." The definition makes a significant change to the existing rule which it is proposed to replace, i.e. 15A NCAC 2B .0233 NEUSE

RIVER BUFFER: NUTRIENT MANAGEMENT STRATEGY: PROTECTION AND MAINTENCE OF EXSITING RIPARIAN BUFFERS. The current rule being readopted does not contain the definition nor the substance of the new requirement that the buffer have been "mowed, cut or otherwise maintained within the last 10 years." The current rule merely requires that the use have been in place by July 22, 1997 and that lawns be "maintained." In contrast, there is no requirement that a utility line be "maintained." See 15A NCAC 2B .0233(3)(b)(i) which reads in pertinent part: "A use shall be considered existing if it was present within the riparian buffer as of July 22, 1997. Existing uses shall include, but not be limited to, agriculture, buildings, industrial facilities, commercial areas, transportation facilities, maintained lawns, utility lines and on-site sanitary sewage systems." [Emphasis supplied]

Because this requirement that utility line easements be maintained is a significant change that will impose additional costs on local governments, the Commission is without authority to adopt the proposed rule change unless and until it submits a fiscal note, with appropriate notifications, and publishes the proposed rule thereafter in the Register. Local governments have thousands of miles of utility lines in the riparian buffers. Raleigh alone has over 2500 miles of sewer lines with most located in a riparian buffer. The combined total of sewer lines maintained by just the Neuse River Compliance Association members is in excess of 5,000 miles. The requirement to actively maintain those lines by vegetation maintenance necessarily imposes a negative fiscal impact on those (and other) utilities. The RIA for rule .0610(6) incorrectly and inexplicably concludes that the proposed rule amendments have no economic impact. We also object because this 10 year requirement is an arbitrarily backward-looking requirement rather than a regulation change that provides the regulated community with fair notice and a period of time to comply in order to maintain the existing exemption status.

Accordingly, unless the 10 year limitation is removed from the rule (our preference), we urge the Department to revise the definition to be a forward-looking requirement as follows: "(16) 'Existing utility maintenance corridor' means the portion of a utility right of way in which vegetation has been mowed, cut or otherwise maintained within 10 years of the effective date of this rule." This approach will still impose significant new costs on public utilities but at least provides fair notice of this new regulatory requirement.

In the RIA, the agency asserted the changes merely moved existing definitions from existing rules and made clarifying and simplifying language. That is not the case.

The definitions rule does not include a definition for the term "utility line corridors" which is substituted for the former line "utility lines." See 15A NCAC 2B .0714(6)(b). In (6)(c) of the same rule, the exemption continues to be limited to the "footprint of the existing use." For utility lines, the rule should clarify that the term refers to the width of the easement which contains the utility line. The ambiguity is further complicated by the limitation in the Table of Uses in 15A NCAC 2B .0714(10) for "Utility – sewer lines." That limits the area that can be disturbed to 20 feet in width. Larger capacity sewer lines require a trench of 30 feet. Accordingly, the 20 foot limitation should be corrected to reference 30 feet. For both reasons, this rule should not move forward as noticed.

IV. 15A NCAC 2B .0714 NEUSE RIVER BASIN: NUTRIENT SENSITIVE WATERS MANAGEMENT STRATEGY: PROTECTION AND MAINTENACE OF EXISTING RIPARIAN BUFFERS

The NRCA objects to this rule as it was amended and expanded to include policies of DEQ which have never been adopted as rules and which cause the prior rule to have significant change. In particular, the NRCA objects to changes made in (6) of the rule, a subsection titled "EXEMPTION WHEN EXISTING USES ARE PRESENT AND ONGOING."

The current rule, 15A NCAC 2B .0233(3)(b) provides:

(b) EXEMPTION WHEN EXISTING USES ARE PRESENT AND ONGOING. This Rule shall not apply to portions of the riparian buffer where a use is existing and ongoing according to the following:

(i) A use shall be considered existing if it was present within the riparian buffer as of July 22, 1997. Existing uses shall include, but not be limited to, agriculture, buildings, industrial facilities, commercial areas, transportation facilities, maintained lawns, utility lines and on-site sanitary sewage systems. Only the portion of the riparian buffer that contains the footprint of the existing use is exempt from this Rule. Activities necessary to maintain uses are allowed provided that no additional vegetation is removed from Zone 1 except that grazed or trampled by livestock and existing diffuse flow is maintained. Grading and revegetating Zone 2 is allowed provided that the health of the vegetation in Zone 1 is not compromised, the ground is stabilized and existing diffuse flow is maintained.

(ii) At the time an existing use is proposed to be converted to another use, this Rule shall apply. An existing use shall be considered to be converted to another use if any of the following applies:

(A) Impervious surface is added to the riparian buffer in locations where it did not exist previously.

(B) An agricultural operation within the riparian buffer is converted to a non-agricultural use.

(C) A lawn within the riparian buffer ceases to be maintained.

The proposed rule, 15A NCAC 2B .0714(6) reads:

~~(b)~~(6) EXEMPTION WHEN EXISTING USES ARE PRESENT AND ONGOING. This Rule shall not apply to portions of the riparian buffer where a use is existing and ~~ongoing according to the following:~~ ongoing.

~~(i)~~(a) A use shall be considered existing ~~if~~ if:

(i) ~~it~~ It was present within the riparian buffer as of July 22, ~~1997.~~ 1997 and has continued to exist since that time;

(ii) It was a deemed allowable activity as listed in Item (10) of this Rule; or

(iii) It was conducted and maintained pursuant to an Authorization Certificate or Variance issued by the Authority.

(b) Existing and ongoing uses shall include, but not be limited to, agriculture, buildings, industrial facilities, commercial areas, transportation facilities, maintained ~~lawns,~~ lawns (i.e. can be mowed without a chainsaw or bush-hog), maintained (i.e. vegetation management has occurred within the last ten years) utility ~~lines~~ line corridors and on-site sanitary sewage ~~systems.~~ systems, any of which involve either specific periodic management of vegetation or displacement of vegetation by structures or regular activity.

(c) Only the portion of the riparian buffer that contains the footprint of the existing and ongoing use is exempt from this Rule.

(d) Change of ownership through purchase or inheritance is not a change of use.

(e) Activities necessary to maintain existing and ongoing uses are allowed provided that ~~no additional vegetation is removed from Zone 1 except that grazed or trampled by livestock~~ the site remains similarly vegetated, no built upon area is added within the riparian buffer

where it did not exist prior to July 22, 1997, and the site is in compliance with Item (9) of this Rule. ~~existing diffuse flow is maintained. Grading and revegetating Zone 2 is allowed provided that the health of the vegetation in Zone 1 is not compromised, the ground is stabilized and existing diffuse flow is maintained.~~

(f) This Rule shall apply at the time an existing and ongoing use is changed to another use. Change of use shall involve the initiation of any activity not defined as existing and ongoing in Sub-Items (6)(a) through (6)(e) of this Rule.

(ii) ~~At the time an existing use is proposed to be converted to another use, this Rule shall apply. An existing use shall be considered to be converted to another use if any of the following applies:~~

(A) ~~Impervious surface is added to the riparian buffer in locations where it did not exist previously.~~

~~(B) An agricultural operation within the riparian buffer is converted to a non-agricultural use.~~

~~(C) A lawn within the riparian buffer ceases to be maintained.~~

The highlighted portion of the proposed rule shows the substantive changes made which reduce the scope of the exemption as it applied to sewer lines in existences as of July 22, 1997. The narrower exemption for utility line corridors requires for the first time "specific periodic management of vegetation or displacement of vegetation." These changes are significant and therefore required notice to the appropriate representatives of local governments, as set out in N.C. Gen. Stat. §150B-21.4, and the preparation of Regulatory Impact Analyses.

We propose that the rule be revised to read:

(6) EXEMPTION WHEN EXISTING USES ARE PRESENT AND ONGOING. This Rule shall not apply to portions of the riparian buffer where a use was present on July 22, 1997 and the use has continued to exist since that time. Existing uses ongoing on July 22, 1997 shall include, but not be limited, agriculture, buildings, industrial facilities, commercial areas, transportation facilities, maintained lawns, utility lines within the easement including replacement and rehabilitation and on-site sanitary sewage systems. Only the portion of the riparian buffer that contains the footprint of the existing use is exempt from this Rule. Activities necessary to maintain uses are allowed provided that no additional vegetation is removed from Zone 1 except that grazed or trampled by livestock or that removed to allow for the replacement or rehabilitation of utility lines and existing diffuse flow is maintained. Grading and revegetating Zone 2 is allowed provided that the health of the vegetation in Zone 1 is not compromised, the ground is stabilized and existing diffuse flow is maintained. This Rule shall apply at the time an existing and ongoing use is changed to another use.

We also object to (10) Table of Uses as it is proposed to apply to the maintenance of existing and ongoing utility lines in the riparian buffer. The present rule does not contain the following: "(including replacement/rehabilitation that does not meet the criteria of existing use in Item (6) of this Rule)." See New Sewer Line Construction Activities in proposed rule 2B .0714(10). The additional restriction is in conflict with the Exemption provision in (6) of the rule, as it does not exclude from the exemption the replacement or rehabilitation of the existing sewer line. Instead, it merely bars the addition of new impervious surface in the utility line corridor: "no built upon area is added within the riparian buffer where it did not exist prior to July 22, 1997." At 2B .0610(5), "built upon area" is defined to by the statute at N.C. Gen. Stat.§143-214.7(b2). The term built upon area is restricted to new

impervious surface of certain specific qualities. A replacement or rehabilitation sewer line does not include any new impervious surface, so accordingly it is exempted by (6)(e) of the rule, and then added to the rule by (10) Table of Uses, New Sewer Line Construction Activities. These two provisions in the same rule are at best ambiguous and unclear, if not directly in conflict. This conflict in the rule provisions should be removed by deleting the phrase "(including replacement/rehabilitation that does not meet the criteria of existing use in Item (6) of this Rule)". Nowhere in Item (6) is replacement/rehabilitation of a sewer line recognized as an exemption.

Moreover, the effect of this significant change in the rule is to subject the ongoing and existing use of sewer lines which require rehabilitation or replacement in the riparian buffer to the mitigation requirements of the riparian buffer rule. Our sewer systems are constantly undergoing rehabilitation and replacement to maintain service and accommodate growth and redevelopment of areas previously provided sewer service. It is physically impossible to move these lines outside of Zone 1 of the riparian buffer and thus mitigation will likely be required. This is an important new fiscal impact that will first appear in the rules by this proposed change. Accordingly, absent the EMC making the changes we suggest to return to the substantive requirements of the existing rule, the RIA wrongly asserts no economic impact from this rule change.

We also object to provisions in (10) Table of Uses for Utility -sewer lines which will frustrate or give rise to mitigation for addressing sewer overflows that are caused by roots. Our members have hundreds of sewer overflows caused by root intrusion. Two provisions create problems; the requirement for a disturbed area to be "replanted with comparable vegetation" and the requirement to "leave vegetative root systems and stumps intact to maintain the soil integrity except in the trench when trees are cut." "Comparable vegetation" is not a defined term in 2B .0610.

Sewers contain nutrients. Roots relentlessly seek out nutrients. Accordingly, the removed vegetation may be inappropriate to restore in particular if it caused or contributed to a sewer line rupture or it is simply too burdensome. For example, bamboo and willow both infiltrate the sewer lines with roots. A repeated line break from roots is subject to civil penalty or other enforcement action under the sewer Collection System permit. It would be inconsistent with that DEQ program to replant with a plant which is known to contribute to spills. A preferable term would be "appropriate vegetation for control of stormwater runoff." That approach will achieve the underlying purpose of the rule while avoiding ill-advised mitigation requirements.

Likewise, the requirement to leave in place root systems and stumps for species which will regenerate and again penetrate and open the sewer lines to spills is inconsistent with the preventive measures required by the Collection System permit. Those provisions should be removed.

The Table of Uses in the present rule for sewer lines, and other non-electric utility lines, is <u>four words</u> long: "Non-electric utility lines." In the proposed rule, the text is <u>one page long</u> and makes numerous additions to the rule. It requires mitigation if the Zone 1 impact is 2,500 square feet or greater and any grubbing or grading to replace an existing and ongoing use utility line comes within 10 feet of the adjacent surface water. While these provisions may, again, in DEQ's view result from the codification of existing <u>policies</u>, the provisions constitute a significant change to the <u>rules</u> within the meaning of N.C. Gen. Stat.§150B-21.3A.

Clearly, these are significant changes that add new regulatory burdens. These burdens were not appropriately disclosed or address in the regulatory impact analyses. The rule should be revised to retain the current regulatory language or the rule should be sent back for the preparation of corrected regulatory impact analyses and the appropriate notifications and further regulatory steps required under law.

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TO: publiccomments@ncdenr.gov

FROM: North Carolina Water Quality Association

CC: Karen Higgins, DEMLR karen.higgins@ncdenr.gov
Julie Ventaloro, DEMLR julie.ventaloro@ncdenr.gov
Jucilene Hoffman, DWR jucilene.hoffman@ncdenr.gov

DATE: July 2, 2018

RE: **Incorrect Regulatory Impact Analyses & Request for Specific Regulatory Changes 15A NCAC 02B .0607 Site Specific Water Quality Management Plan for the Goose Creek Watershed: Buffer Types and Managing Activities Within Riparian Buffers**

I. STATEMENT OF INTEREST

These comments are submitted on behalf of the NC Water Quality Association. The NCWQA comprises public water, sewer, and stormwater utilities statewide. As public utilities, we support affordable and cost-effective regulatory requirements. We are compelled to comment because we think the Department's regulatory impact analyses associated with the buffer rules are incorrect in their assertion that there are no new or more stringent regulatory requirements.

For example, among other concerns, the rules would inappropriately narrow the exemption for public utility lines from buffer rule requirements. We see no compelling reason to impose additional buffer-related costs on public utility lines. Accordingly, we urge the Department to maintain the current exemption language. We also question the legal authority for the Department to specify the type of sewer pipe to be used by public utilities as well as the sewer system cleaning and other system operational requirements that are imposed in these buffer rules.

II. OBJECTION TO REGULATORY IMPACT ANALYSES

The Regulatory Impact Analyses [hereinafter "RIA"], incorrectly assert for the amendments noticed for public comment: "All substantive changes are a relaxation of a rule and impose a less stringent burden on the regulated community." That is not the case as the proposed rules significantly narrow existing exemptions for public utility lines. That will necessarily result in more municipal utility

lines being subject to the buffer rule requirements. That impact alone triggers the need for a fiscal note and requires republication of the rules to comply with the NC Administrative Process Act.

The Department would be legally incorrect to assert that there is no new regulatory burden because the more stringent rule provisions mirror existing Department policy. State Statute prohibits the Department from imposing unpromulgated guidance/policies. N.C. Gen. Stat. §150B-18. Thus, legally, any existing Department guidance/policy is non-binding. Moving to incorporate such non-binding policies into regulation is a regulatory change that has an impact on local government that must be addressed in accordance with the NC APA.

Consequently, the proposed rules must be returned to the Environmental Management Commission for compliance with the statutes applicable to the readoption of rules including appropriate and complete Regulatory Impact Analyses.

In particular, the proposed rules for readoption impose at 15A NCAC 2B .0607 new restrictions on the applicability of activities which are currently exempt from the rule's coverage. These restrictions will result in fewer public utility lines being exempt – which means substantial new fiscal burdens on local governments to comply with the rules that they are currently exempt from.

In particular, we object to the following changes/requirements:

Ductile Iron Pipe and Cleaning Frequency. The rule purports to require that all sewer infrastructure be made of ductile iron pipe (both gravity and force mains) and that at least 50 percent of the sewer system be cleaned annually. Neither of these requirements are appropriate, especially in State buffer rules. We question the Department's authority to impose sewer pipe selection requirements on local engineers and public sewer utilities. This is completely inappropriate from an engineering perspective as well as a market competition approach.

As to cleaning 50 percent of the sewer system annually, again, this goes beyond the scope of the buffer rules and conflicts with the careful scheme established for sewer system operation and maintenance in the State's Collection System Permits.

For these reasons, the mandates to use ductile iron pipe (in applications it may be unsuitable for) and to clean 50 percent of the sewer system annually are legally invalid and beyond the scope of the rules. They must be removed from the final rule.

Keeping Roots From Sewers. We also object to the requirement that we have to revegetate areas following sewer overflows with the same type of vegetation. In many cases, that vegetation may have caused sewer issues (such as root blockages). The last thing we want to do is to replant trees and other vegetation that have damaged our sewers.

Daily Lift Station Inspections Despite SCADA. We object to the requirement that lift stations have SCADA systems and must still be visited 365 days a year. This makes no sense unless the Department has data showing the failure of the SCADA systems to identify issues of concern that will be discovered through a visual inspection.

Barring such compelling SCADA failure data, there is no reason to require daily lift stations visits by POTW staff. A more appropriate visitation schedule should be developed by each utility based upon the operational history of each lift station and its specific circumstances (such as wet well capacity; on-site storage, etc).

Restrictions on Existing Uses. For example the rule used to exempt grandfathered public utility lines. Now proposes to add two restrictions on the applicability of this exemption for utility lines; (A) it must now be deemed an allowable activity by the revised table of uses and (B) it was conducted and maintained pursuant to an Authorization Certificate or Variance issued by the Authority. These are substantial new regulatory costs that trigger the need for a fiscal impact statement and republication of the rule.

Increased regulatory burdens on local governments are also found in at least two additional changes to the rules. The first change is the addition of a new definition of "(16) Existing utility line maintenance corridor" which now appears in proposed rule 15A NCAC 2B .0610. That definition adds a critical limitation that to qualify as an existing corridor "the vegetation has been mowed, cut or otherwise maintained within the last 10 years."

Sewer lines operate to the extent practicable by gravity. Accordingly, they are located typically in the riparian buffer of streams and other regulated areas under this rule. When a local government utility repairs or replaces a sewer line, the repairs will necessarily occur in the utility easement. These easements will not have been mowed within the past 10 years because there was no regulatory requirement or public need to do so. Thus, these lines will no longer be exempt. This is a major change that will have substantial financial impact on public utilities.

We note that many utilities have miles of easements within riparian buffers that were purchased anticipating future infrastructure would be installed and the easement width would be required for future use. Until these utilities are installed, there is no need to mow the vegetation for the full width of the corridor. In some areas such as river crossings the vegetation will not have been maintained, but the lack of maintenance should not prohibit use as an exempt utility corridor.

Also many utility easements are provided by developers in conformance with community/utility long term masterplans, over and above what may be needed to serve the specific current development. These easements would not be maintained until infrastructure is installed. Nevertheless, they should remain exempt in the final rules.

The revised rule makes other substantive changes in Item (10) under the category "Utility – sewer lines." By those changes, a replacement or rehabilitation of an existing sewer line is for the first time defined to be within the term "New Sewer Line Construction Activities." The impact of these changes is significant and will have substantial economic impacts on affected local governments. For example, a local government is required to replant the area where an emergency repair occurs within two months with "comparable vegetation." It is unclear if "comparable vegetation" means fully mature trees, which if even possible will come at staggering costs. Moreover, the local government is required to make application for an Authorization Certificate. This requirement does not arise from the existing rule. Legally, it is a new regulatory requirement, irrespective of any pre-existing DEQ policy. The fact of the matter is that the new rule is indisputably more stringent than the existing rule and a proper regulatory impact analysis (with fiscal impact statement) is required.

The replacement and any necessary upsizing of sewer lines is likewise required by the Sewer Collection Permit issued by DEQ to sewer utilities statewide. To meet the proposed requirements for those projects, sewer utilities are required to leave vegetative root systems and stumps in place. If the disturbed area is more than 150 linear feet, mitigation is required to be provided by the local sewer utility. If the disturbed area is wider than 20 linear feet, mitigation is required as well. Larger trunk lines require a minimum trench width of 30 feet. Any impact not within the deemed allowable criteria in the revised rule also trigger mitigation requirements.

The Regulatory Impact Analyses are flawed. The process set forth in N.C. Gen. Stat. §150B-21.4(b) was ignored. The objections set forth above were regularly raised by public utilities in prior comment periods during the stakeholder process and before the rules were approved for notice and comment by the Environmental Management Commission. The rule will clearly "affect the expenditures or revenues of a unit of local government," yet no fiscal note was provided to the North Carolina League of Municipalities. Consequently, the proposed rules were not eligible for notice and publication in the North Carolina Register.

In the Regulatory Impact Analyses, the Impact Summary incorrectly shows no impact on local government. In the summary, we disagree that the proposed rule "will impose a less stringent burden on regulated persons." This ignores the impacts on local governments noted above and the requirements of N.C. Gen. Stat. §150B-21.4(b). This proposed rule contains substantive changes that will negatively impact local funds.

Should the Environmental Management Commission restore the text of the rule to a true "no impact" status by returning to the language in the current rule, then the rule readoption can proceed, consistent with the statute. Otherwise it must be returned to the EMC for the development of a proper regulatory impact analysis.

III. 15A NCAC 2B .0610 MANAGING ACTIVITIES WITHIN RIPARIAN BUFFERS: DEFINITIONS

We also object to the definition of "Existing utility line maintenance corridor." The definition makes a significant change to the existing rule which it is proposed to replace, i.e. 15A NCAC 2B .0233 NEUSE RIVER BUFFER: NUTRIENT MANAGEMENT STRATEGY: PROTECTION AND MAINTENCE OF EXSITING RIPARIAN BUFFERS. The current rule being readopted does not contain the definition nor the substance of the new requirement that the buffer have been "mowed, cut or otherwise maintained within the last 10 years." The current rule merely requires that the use have been in place by July 22, 1997 and that lawns be "maintained." In contrast, there is no requirement that a utility line be "maintained."

Because this requirement that utility line easements be maintained is a significant change that will impose additional costs on local governments, the Commission is without authority to adopt the proposed rule change unless and until it submits a fiscal note, with appropriate notifications, and publishes the proposed rule thereafter in the Register. Local governments have thousands of miles of utility lines in the riparian buffers. The requirement to actively maintain those lines by vegetation maintenance necessarily imposes a negative fiscal impact on those (and other) utilities. The RIA for rule 15A NCAC 02B .0607 incorrectly and inexplicably concludes that the proposed rule amendments have no economic impact. We also object because this 10 year

requirement is an arbitrarily backward-looking requirement rather than a regulation change that provides the regulated community with fair notice and a period of time to comply in order to maintain the existing exemption status.

Accordingly, unless the 10 year limitation is removed from the rule (our preference), we urge the Department to revise the definition to be a forward-looking requirement as follows: "(16) 'Existing utility maintenance corridor' means the portion of a utility right of way in which vegetation has been mowed, cut or otherwise maintained within 10 years of the effective date of this rule." This approach will still impose significant new costs on public utilities but at least provides fair notice of this new regulatory requirement.

In the RIA, the agency asserted the changes merely moved existing definitions from existing rules and made clarifying and simplifying language. We do not believe that is not the case.

Clearly, these are significant changes that add new regulatory burdens. These burdens were not appropriately disclosed or address in the regulatory impact analyses. The rule should be revised to retain the current regulatory language or the rule should be sent back for the preparation of corrected regulatory impact analyses and the appropriate notifications and further regulatory steps required under law. In other areas (specification for Ductile Iron Pipe and 50 percent annual sewer cleaning requirement) the rule imposes requirements that are unlawfully beyond the scope of the rule and/or unlawful.

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TO: publiccomments@ncdenr.gov

FROM: Daniel F. McLawhorn, Chair
Haywood M. Phthisic, Executive Director
Neuse River Compliance Association

CC: Karen Higgins, DEMLR karen.higgins@ncdenr.gov
Julie Ventaloro, DEMLR julie.ventaloro@ncdenr.gov
Jucilene Hoffman, DWR jucilene.hoffman@ncdenr.gov

DATE: June 26, 2018

RE: 15A NCAC 2B, Rules .0610 and .0714 and supporting Regulatory Impact Analyses

I. OBJECTION TO REGULATORY IMPACT ANALYSES

In the Regulatory Impact Analyses [hereinafter "RIA"], DEMLR wrongly asserts that the amendments noticed for comments will result in a rule readoption that "will impose a less stringent burden on regulated persons." The agency does not address whether the amendments are "without substantive change." Later in the RIA for 2B .0714, DEMLR acknowledged that the rule changes include "codifying policy." No such acknowledgement was made in the RIA for 2B .0610 despite the addition of numerous new definitions. Pursuant to N.C. Gen. Stat. §150B-18, DEMLR is barred from implementing or enforcing "against any person a policy, guideline, or other interpretative statement that meets the definition of a rule contained in G.S. 150B-2(8a) if the policy, guideline, or other interpretative statement has not been adopted as a rule in accordance with this Article." That express limitation on agency authority was first enacted in 2011. It was a clarification of a prohibition also reflected in the definition of a rule under the Administrative Procedure Act. See *Okale v N.C. HHS,* 153 N.C. App. 475, 478-479 (2002).

The addition of policies being enforced by the agency, without the benefit of a supporting rule or statute, to this rule constitutes a substantive change within the meaning of N.C. Gen. Stat. §150B-21.2A. Consequently, the Regulatory Impact Analyses show that the Environmental Management Commission did not comply with the statutes applicable to the readoption of rules and that this process should be returned to the Commission for appropriate and complete Regulatory Impact Analyses.

In particular, the proposed rules for readoption add at 15A NCAC 2B .0610(16) and 15A NCAC 2B .0714(6) numerous changes to the circumstances that are exempted from the rule's coverage. These circumstances impose substantial and new fiscal burdens on local governments. As the underlined additions to (6)(a) show, the former rule only required that the use have been existing and present in the buffer as of July 22, 1997. The current rule expressly includes utility lines. The proposed rule for readoption adds two requirements; (A) if is now deemed an allowable activity by the revised table of uses in Item (10) of the rule and (B) it was conducted and maintained by pursuant to an Authorization Certificate or Variance issued by the Authority. Raleigh Public Utilities staff documented 84 sewer maintenance projects in the past 36 months, with the need to undertake such work rising. Staff estimates that it will cost between $1,000 and $3,000 for each authorization it must obtain.

The impact of these changes is found in two additional changes to the rules. The first set of changes arises from the definitions. The prior definitions did not include the term "(16) Existing utility line maintenance corridor" which now appears in proposed rule 15A NCAC 2B .0610. It adds the important term of limitation that to meet the definition "the vegetation has been mowed, cut or otherwise maintained within the last 10 years." This limitation on the scope of the exemption was a creature of DEMLR policy, not a prior rule. Sewer lines operate to the extent practicable by gravity. Accordingly, they are located typically in the riparian buffer of streams and other regulated areas under this rule. When a local government utility, including the members of the Neuse River Compliance Association repair or replace a sewer line, the repairs will necessarily occur in the utility easement. Under the Sewer Collection Permit issued by DEQ, sewer utilities are required to immediately repair any breach in a sewer line resulting in a discharge of sewage. The same permit also requires sewer utilities to maintain and repair the lines to avoid failures resulting in overflows of untreated sewage. This proposed rule interferes with and requires, in some instances, mitigation for compliance with the Sewer Collection Permit.

The revised rule makes other substantive changes in Item (10) under the category "Utility – sewer lines." By those changes, a replacement or rehabilitation of an existing sewer line is for the first time defined to be within the term "New Sewer Line Construction Activities." The impact of these changes is significant and will have substantial economic impacts on local governments in the Neuse basin. For example, a local government is required to replant the area where an emergency repair occurs within two months with "comparable vegetation." That does not take into consideration the type or size of the vegetation so it includes fully mature trees, which if even possible will come at staggering costs. Moreover, the local government is required to make application for an Authorization Certificate. This requirement does not arise from the existing rule, instead it was created by DEQ policy in the intervening years since the rule was first adopted in 1999.

The replacement and any necessary upsizing of sewer lines is likewise required by the Sewer Collection Permit issued by DEQ. To meet the proposed requirements for those projects, sewer utilities are required to leave vegetative root systems and stumps in place. If the disturbed area is more than 150 linear feet, mitigation is required to be provided by the local sewer utility. If the disturbed area is wider than 20 linear feet, mitigation is required as well. Larger trunk lines require a minimum trench width of 30 feet. Any impact not within the deemed allowable criteria in the revised rule also requires mitigation.

The Regulatory Impact Analyses are fatally flawed. The process set forth in N.C. Gen. Stat. §150B-21.4(b) was ignored. The objections set forth above were regularly raised in prior comment periods during the stakeholder process and before the rules were approved for notice and comment by the Environmental Management Commission. The rule will clearly "affect the expenditures or revenues of a unit of local government," yet no fiscal note was provided to the North Carolina League of Municipalities. Consequently, the proposed rules were not eligible for notice and publication in the North Carolina Register.

In the Regulatory Impact Analyses, the Impact Summary shows no impact on local government. In the summary, it is asserted that the proposed rule "will impose a less stringent burden on regulated persons." This summary ignores the impacts on local governments and the duty to comply with N.C. Gen. Stat. §150B-21.4(b). The agency has failed to meet the requirement set forth in N.C. Gen. Stat. §150B-21.3A(d)(2): "If a rule is readopted without substantial change or if the rule is amended to impose

a less stringent burden on regulated persons, the agency is not required to prepare a fiscal note as provided in G.S. 150B-21.4." The proposed rules contain substantive change and they will impact the use of local funds.

Should the Environmental Management Commission restore the rules to a no impact status consistent with exemption language in the current rule, then this objection will be met and the rule readoption will be consistent with the statute.

II. 15A NCAC 2B .0610 MANAGING ACTIVITIES WITHIN RIPARIAN BUFFERS: DEFINITIONS

The NRCA objects to (16) "Existing utility line maintenance corridor." The definition makes a significant change to the existing rule which is proposed to replace, i.e. 15A NCAC 2B .0233 NEUSE RIVER BUFFER: NUTRIENT MANAGEMENT STRATEGY: PROTECTION AND MAINTENCE OF EXSITING RIPARIAN BUFFERS. The current rule, being readopted, does not contain the definition nor the substance of the new requirement that requires the buffer to have been "mowed, cut or otherwise maintained within the last 10 years." Rather the current rule merely requires that the use have been in place by July 22, 1997 and that lawns be "maintained." In contrast, there is no requirement that a utility line be "maintained." See 15A NCAC 2B .0233(3)(b)(i) which reads in pertinent part: "A use shall be considered existing if it was present within the riparian buffer as of July 22, 1997. Existing uses shall include, but not be limited to, agriculture, buildings, industrial facilities, commercial areas, transportation facilities, maintained lawns, utility lines and on-site sanitary sewage systems." [Emphasis supplied]

Because this will constitute a significant change and impact local governments by additional costs, the Commission is without authority to adopt the proposed rule change unless and until it submits a fiscal note, with appropriate notifications, and publishes the proposed rule thereafter in the Register. Local governments in the Neuse basin have thousands of miles of utility lines in the riparian buffers. Raleigh alone has over 2600 miles of sewer lines with most located in a riparian buffer. The combined total of sewer lines maintained by NRCA members is in excess of 5,000 miles. The requirement to actively maintain those lines by vegetation maintenance necessarily imposes a negative fiscal impact on the members of the NRCA. The RIA for rule .0610(6) wrongly states this duty, first codified in the proposed rule amendments, has no economic impact.

The NRCA proposes that the rule be revised to say: "(16) 'Existing utility maintenance corridor' means the portion of a utility right of way in which vegetation has been mowed, cut or otherwise maintained within 10 years of the effective date of this rule." In the RIA, the agency wrongly asserted the changes merely moved existing definitions from existing rules and made clarifying and simplifying language.

The definitions rule does not include a definition for the term "utility line corridors" which is substituted for the former line "utility lines." See 15A NCAC 2B .0714(6)(b). In (6)(c) of the same rule, the exemption continues to be limited to the "footprint of the existing use." For utility lines, it is unclear if the term refers to the width of the inground pipe or the width of the easement which contains the utility line. The ambiguity is further complicated by the limitation in the Table of Uses in 15A NCAC 2B .0714(10) for "Utility – sewer lines." That limits the area that can be disturbed to 20 feet in width. Larger capacity sewer lines require a trench of 30 feet and are placed within sewer easements of a 30 foot width. The failure to address this term by definition creates both an ambiguous rule and a new and

significant impact by limiting the disturbed area for line replacement and repair to a 20 foot width. For both reasons, this rule should not move forward as noticed.

III. 15A NCAC 2B .0714 NEUSE RIVER BASIN: NUTRIENT SENSITIVE WATERS MANAGEMENT STRATEGY: PROTECTION AND MAINTENACE OF EXISTING RIPARIAN BUFFERS

The NRCA objects to this rule as it was amended and expanded to include policies of DEQ which have never been adopted as rules and which cause the prior rule to have significant change. In particular, the NRCA objects to changes made in (6) of the rule, a subsection titled "EXEMPTION WHEN EXISTING USES ARE PRESENT AND ONGOING."

The current rule, 15A NCAC 2B .0233(3)(b) provides:

(b) EXEMPTION WHEN EXISTING USES ARE PRESENT AND ONGOING. This Rule shall not apply to portions of the riparian buffer where a use is existing and on going according to the following:

(i) A use shall be considered existing if it was present within the riparian buffer as of July 22, 1997. Existing uses shall include, but not be limited to, agriculture, buildings, industrial facilities, commercial areas, transportation facilities, maintained lawns, utility lines and on-site sanitary sewage systems. Only the portion of the riparian buffer that contains the footprint of the existing use is exempt from this Rule. Activities necessary to maintain uses are allowed provided that no additional vegetation is removed from Zone 1 except that grazed or trampled by livestock and existing diffuse flow is maintained. Grading and revegetating Zone 2 is allowed provided that the health of the vegetation in Zone 1 is not compromised, the ground is stabilized and existing diffuse flow is maintained.

(ii) At the time an existing use is proposed to be converted to another use, this Rule shall apply. An existing use shall be considered to be converted to another use if any of the following applies:

(A) Impervious surface is added to the riparian buffer in locations where it did not exist previously.

(B) An agricultural operation within the riparian buffer is converted to a non-agricultural use.

(C) A lawn within the riparian buffer ceases to be maintained.

The proposed rule, 15A NCAC 2B .0714(6) reads:

~~(b)~~(6) EXEMPTION WHEN EXISTING USES ARE PRESENT AND ONGOING. This Rule shall not apply to portions of the riparian buffer where a use is existing and ~~ongoing according to the following:~~ ongoing.

~~(i)~~(a) A use shall be considered existing ~~if~~ if:

(i) ~~it~~ It was present within the riparian buffer as of July 22, ~~1997.~~ 1997 and has continued to exist since that time;

(ii) It was a deemed allowable activity as listed in Item (10) of this Rule; or

(iii) It was conducted and maintained pursuant to an Authorization Certificate or Variance issued by the Authority.

(b) Existing and ongoing uses shall include, but not be limited to, agriculture, buildings, industrial facilities, commercial areas, transportation facilities, maintained ~~lawns,~~ lawns (i.e. can be mowed without a chainsaw or bush-hog), maintained (i.e. vegetation management has

occurred within the last ten years) utility lines line corridors and on-site sanitary sewage systems. systems, any of which involve either specific periodic management of vegetation or displacement of vegetation by structures or regular activity.

(c) Only the portion of the riparian buffer that contains the footprint of the existing and ongoing use is exempt from this Rule.

(d) Change of ownership through purchase or inheritance is not a change of use.

(e) Activities necessary to maintain existing and ongoing uses are allowed provided that no additional vegetation is removed from Zone 1 except that grazed or trampled by livestock the site remains similarly vegetated, no built upon area is added within the riparian buffer where it did not exist prior to July 22, 1997, and the site is in compliance with Item (9) of this Rule. existing diffuse flow is maintained. Grading and revegetating Zone 2 is allowed provided that the health of the vegetation in Zone 1 is not compromised, the ground is stabilized and existing diffuse flow is maintained.

(f) This Rule shall apply at the time an existing and ongoing use is changed to another use. Change of use shall involve the initiation of any activity not defined as existing and ongoing in Sub-Items (6)(a) through (6)(e) of this Rule.

(ii) At the time an existing use is proposed to be converted to another use, this Rule shall apply. An existing use shall be considered to be converted to another use if any of the following applies:

(A) Impervious surface is added to the riparian buffer in locations where it did not exist previously.

(B) An agricultural operation within the riparian buffer is converted to a non-agricultural use.

(C) A lawn within the riparian buffer ceases to be maintained.

The highlighted portion of the proposed rule shows the substantive changes made which reduce the scope of the exemption as it applied to sewer lines in existences as of July 22, 1997. These changes are significant and therefore required notice to the appropriate representatives of local governments, as set out in N.C. Gen. Stat. §150B-21.4, and the preparation of a Regulatory Impact Analysis.

The NRCA proposes that the rule be revised to read:

(6) EXEMPTION WHEN EXISTING USES ARE PRESENT AND ONGOING. This Rule shall not apply to portions of the riparian buffer where a use was present an ongoing on July 22, 1997 and the use has continued to exist since that time. Existing uses ongoing on July 22, 1997 shall include, but not be limited, agriculture, buildings, industrial facilities, commercial areas, transportation facilities, maintained lawns, utility lines within the easement including replacement and rehabilitation and on-site sanitary sewage systems. Only the portion of the riparian buffer that contains the footprint of the existing use is exempt from this Rule. Activities necessary to maintain uses are allowed provided that no additional vegetation is removed from Zone 1 except that grazed or trampled by livestock or that removed to allow for the replacement or rehabilitation of utility lines and existing diffuse flow is maintained. Grading and revegetating Zone 2 is allowed provided that the health of the vegetation in Zone 1 is not compromised, the ground is stabilized and existing diffuse flow is maintained. This Rule shall apply at the time an existing and ongoing use is changed to another use.

The NRCA objects to (10) Table of Uses as it is proposed to apply to the maintenance of existing and ongoing utility lines in the riparian buffer. The present rule does not contain the following: "(including replacement/rehabilitation that does not meet the criteria of existing use in Item (6) of this

Rule)." See New Sewer Line Construction Activities in proposed rule 2B .0714(10). The additional restriction is in conflict with the Exemption provision in (6) of the rule, as it does not exclude from the exemption the replacement or rehabilitation of the existing sewer line. Instead, it merely bars the addition of new impervious surface in the utility line corridor: "no built upon area is added within the riparian buffer where it did not exist prior to July 22, 1997." At 2B .0610(5), "built upon area" is defined to by the statute at N.C. Gen. Stat.§143-214.7(b2). The term built upon area is restricted to new impervious surface of certain specific qualities. A replacement or rehabilitation sewer line does not include any new impervious surface, so accordingly it is exempted by (6)(e) of the rule, and then added to the rule by (10) Table of Uses, New Sewer Line Construction Activities. These two provisions in the same rule are at best ambiguous and unclear, if not directly in conflict. This conflict in the rule provisions should be removed by deleting the phrase "(including replacement/rehabilitation that does not meet the criteria of existing use in Item (6) of this Rule)". Nowhere in Item (6) is replacement/rehabilitation of a sewer line recognized as an exemption.

Moreover, the effect of this significant change in the rule is to subject the ongoing and existing use of sewer lines which require rehabilitation or replacement in the riparian buffer to the mitigation requirements of the riparian buffer rule. Raleigh's sewer system is constantly undergoing rehabilitation and replacement lines to accommodate growth and redevelopment of areas previously provided sewer service. It is physically impossible to move these lines outside of Zone 1 of the riparian buffer and thus mitigation will likely be required. This is an important new fiscal impact that will first appear in the rules by this proposed change. Accordingly, the RIA wrongly asserts no economic impact from this rule change.

The NRCA also objects to provisions in (10) Table of Uses for Utility -sewer lines which will frustrate or give rise to mitigation for addressing sewer overflows that are caused by roots. Raleigh had 20 overflows caused by root intrusion in the past 7 years. Two provisions create problems; the requirement for a disturbed area to be "replanted with comparable vegetation" and the requirement to "leave vegetative root systems and stumps are left intact to maintain the soil integrity except in the trench when trees are cut." "Comparable vegetation" is not a defined term in 2B .0610.

The removed vegetation may be inappropriate to restore in particular if it caused or contributed to a sewer line rupture or it is simply too burdensome. For example, bamboo and willow both infiltrate the sewer lines with roots. A repeated line break from roots is subject to civil penalty or other enforcement action under the Sewer Collection System permit. It would be inconsistent with that DEQ program to replant with a plant which is known to contribute to spills. A preferable term would be "appropriate vegetation for control of stormwater runoff." That term will achieve the underlying purpose of the rule while avoiding mitigation demands for actions necessary to comply with the Collection System permit.

Likewise, the requirement to leave in place root systems and stumps for species which will regenerate and again penetrate and open the sewer lines to spills is inconsistent with the preventive measures required by the Collection System permit. Those provisions should be removed.

The Table of Uses in the present rule for sewer lines, and other non-electric utility lines, is one line long: "Non-electric utility lines." In the proposed rule, the text is one page long and makes numerous additions to the rule. It requires mitigation if the Zone 1 impact are 2,500 square feet or greater and any grubbing or grading to replace an existing and ongoing use utility line comes within 10

feet of the adjacent surface water. While these provisions may result for the codification of existing policies, the provisions are new to the rules and thus constitute a significant change within the meaning of N.C. Gen. Stat.§150B-21.3A.

Clearly, these are significant changes and thus the proposed rule was wrongly sent to notice in the Register. The agency has failed to comply with the procedures set forth in the Administrative Procedure Act. The attempt to add the exception to the Exemption in the body of the Table of Uses must be removed if this rule is to move forward in compliance with the Administrative Procedure Act.

GREENSBORO
NORTH CAROLINA

July 2, 2018

Ms. Julie Ventaloro
NCDEQ-DEMLR-Stormwater Permitting Program
1612 Mail Service Center
Raleigh, NC 27699-1612

Re: Proposed Actions to the Watershed Protection Rules and Water Quality Permitting Rules

Dear Ms. Ventaloro:

In response to the proposed actions to the Watershed Protection Rules and Water Quality Permitting Rules the City of Greensboro is submitting this letter to provide comments as requested.

The City of Greensboro stream buffer ordinance was written so that the regulations for both the Jordan and Randleman for consistency. So therefore, knowing the timeline for revisions to the Jordan Lake Stream Buffer Rules is critical as well as the timeline for implementation of these proposed actions. Below you will find our comments for the proposed actions.

- 15A NCAC 02B .0724 Randleman Lake Water Supply Watershed: Protection and Maintenance of Existing Riparian Buffers. (6) Exemptions When Existing Uses are Present and Ongoing (b). Including a timeline (10 years) for existing uses may restrict the ability to maintain utilities and may create financial hardships for sewer system maintenance.
- 15A NCAC 02B .0724 Randleman Lake Water Supply Watershed: Protection and Maintenance of Existing Riparian Buffers. (6) Exemptions When Existing Uses are Present and Ongoing (c). Allowing a reduction in stream buffer impacts (in exchange for existing impacts) at a new location provides flexibility for development and when designed and implemented correctly would ensure better water quality results compared to the existing impact.
- 15A NCAC 02B .0724 Randleman Lake Water Supply Watershed: Protection and Maintenance of Existing Riparian Buffers. (12) Rule Implementation (a). Requiring the municipality to appoint a single Program Administrator adds additional responsibilities to a single position and increases costs for the municipality. Larger municipalities may have multiple staff members that are certified to perform on-site determinations. In those cases, the intent of the rule is being meet, however the proposed rule requires a single person to be completely responsible for the implementation of the program. We propose that the municipality should be able to submit a program plan to handle the implementation of the program to NCDEQ.

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GREENSBORO
NORTH CAROLINA

- 15A NCAC 02B .0724 Randleman Lake Water Supply Watershed: Protection and Maintenance of Existing Riparian Buffers, (12) Rule Implementation (c). Please provide additional information on the requirements of the Audit.

The City of Greensboro recognizes and appreciates the hard work NCDEQ staff has done to stream line the stream buffer rules.

Please feel free to contact me at (336) 373-2527 if you have any questions.

Sincerely,

Mr. Jeremy L. McCall, PE, CFM
Stormwater Engineering Supervisor
Department of Water Resources
City of Greensboro

JM

cc: Mrs. Virginia Spillman, Engineering Manager of Water Resources
Mr. Kristine Williams, Deputy Director of Water Resources
Mr. David Phelgar, Stormwater Dept. Manager

TO: publiccomments@ncdenr.gov

FROM: Robert Massengill, Director of Raleigh Public Utilities Department
Daniel F. McLawhorn, Associate City Attorney, Raleigh City Attorney's Office

CC: Karen Higgins, DEMLR karen.higgins@ncdenr.gov
Julie Ventaloro, DEMLR julie.ventaloro@ncdenr.gov
Jucilene Hoffman, DWR jucilene.hoffman@ncdenr.gov

DATE: June 25, 2018

RE: Comment on proposed rule 15A NCAC 2H .0127

The Raleigh Public Utilities Department objects to the proposed readoption of 15A NACA 2H .0127, General Permits. The rule fails to conform to the requirements of the U.S. Environmental Protection Agency that are mandatory for State approved NPDES permit programs. The rule has been applied by DEQ to exempt discharging sand filters from the nutrient reduction requirements applicable to point source discharges into Nutrient Sensitive Waters, in particular the Falls Lake Basin.

The Raleigh Public Utilities Department services the City of Raleigh and the Towns of Garner, Knightdale, Rolesville, Wake Forest, Wendell and Zebulon and is the sole consumer of the potable water from Falls Lake. Its treatment cost due to the nutrient impaired status of Falls Lake is increased and the restoration of Falls Lake to an attainment status for chlorophyll-a is critically important to the delivery of high quality drinking waters to the more than 570,000 customers who consume water from Falls Lake. The City funds approximately 30% of about $1,000,000 expended annually by the Upper Neuse River Basin Association on activities to study water quality in Falls Lake, expends approximately $195,000 per year in monitoring activities with the Center for Applied Aquatic Ecology and has expended over $5,600,000 to leverage land conservation activities worth over $70,000,000 in the Falls Lake watershed.

In 2013, the City of Raleigh challenged the issuance of NCG550000 for its failure to require discharging single family septic tanks to meet the water quality standard for nutrient loading into the 303(d) impaired waters of Falls Lake. That challenge was resolved when DWR issued NCG570000. Under that general permit, new development is required to meet the water quality standards by the installation of nutrient reducing treatment systems. In the meantime, DWR has continued to issue Certificates of Coverage to more than 100 additional failed septic tank owners for the installation of discharging sand filters. The owners are not required to install nutrient removing systems and no compliance schedule has been established for addressing the nutrient loading from these, or other previously permitted NPDES discharging systems. By its general permits, DWR has demonstrated an interpretation of 15A NCAC 2H .0127 which is in violation of the controlling federal regulations for general NPDES permits.

The Federal Regulations for the NPDES program include numerous provisions which are mandatory for state programs. Those provisions include important requirements as set out in 40 CFR §122.4 and §122.28 that apply to General Permits. In its current rule, the EMC has made no provision for discharges into 303(d) non-attainment designated water, in particular for those which are so designated because of nutrient loading with resulting violations of the chlorophyll-a water quality standard.

§ 122.4 Prohibitions (applicable to State NPDES programs, see § 123.25).
No permit may be issued:
(a) When the conditions of the permit do not provide for compliance with the applicable requirements of CWA, or regulations promulgated under CWA;
(b) . .
(c) . .
(d) When the imposition of conditions cannot ensure compliance with the applicable water quality requirements of all affected States;
(e) . .
(f) . .
(g) . .
(h) . .
(i) To a new source or a new discharger, if the discharge from its construction or operation will cause or contribute to the violation of water quality standards. The owner or operator of a new source or new discharger proposing to discharge into a water segment which does not meet applicable water quality standards or is not expected to meet those standards even after the application of the effluent limitations required by sections 301(b)(1)(A) and 301(b)(1)(B) of CWA, and for which the State or interstate agency has performed a pollutants load allocation for the pollutant to be discharged, must demonstrate, before the close of the public comment period, that:

(1) There are sufficient remaining pollutant load allocations to allow for the discharge; and
(2) The existing dischargers into that segment are subject to compliance schedules designed to bring the segment into compliance with applicable water quality standards. The Director may waive the submission of information by the new source or new discharger required by paragraph (i) of this section if the Director determines that the Director already has adequate information to evaluate the request. An explanation of the development of limitations to meet the criteria of this paragraph (i)(2) is to be included in the fact sheet to the permit under § 124.56(b)(1) of this chapter.

§ 122.28 General permits (applicable to State NPDES programs, see § 123.25).

(a) Coverage. The Director may issue a general permit in accordance with the following:

(1) . .
(2) Sources. The general permit may be written to regulate one or more categories or subcategories of discharges or sludge use or disposal practices or facilities,

within the area described in paragraph (a)(1) of this section, where the sources within a covered subcategory of discharges are either:

(i) Storm water point sources; or

(ii) One or more categories or subcategories of point sources other than storm water point sources, or one or more categories or subcategories of "treatment works treating domestic sewage", if the sources or "treatment works treating domestic sewage" within each category or subcategory all:

(A) Involve the same or substantially similar types of operations;

(B) Discharge the same types of wastes or engage in the same types of sludge use or disposal practices;

(C) Require the same effluent limitations, operating conditions, or standards for sewage sludge use or disposal;

(D) Require the same or similar monitoring; and

(E) In the opinion of the Director, are more appropriately controlled under a general permit than under individual permits.

(3) Water quality-based limits. Where sources within a specific category or subcategory of dischargers are subject to water quality-based limits imposed pursuant to § 122.44, the sources in that specific category or subcategory shall be subject to the same water quality-based effluent limitations.

(4) Other requirements.

(i) The general permit must clearly identify the applicable conditions for each category or subcategory of dischargers or treatment works treating domestic sewage covered by the permit.

(ii) The general permit may exclude specified sources or areas from coverage.

The following modification to the General Permit rule will bring it into compliance with the applicable CFRs and should be adopted by the EMC.

15A NCAC 02H .0127 GENERAL PERMITS

(a) In accordance with the provisions of G.S. 143.215.1 (b)(3) and (4), general permits may be developed by the Division and issued by the Director for categories of activities shown in this Rule. All those dischargers in the State that received a "Certificate of Coverage" for that category from the Division will be deemed covered under that general permit. Each of the general permits will be issued individually under G.S. 143-215.1, using all procedural requirements specified for individual NPDES or state permits including application and public notice. Each general permit must be approved by the U.S. EPA, before it becomes effective. Dischargers covered under general permits, developed in accordance with this Rule, will be subject to the same effluent standards and limits, management practices, enforcement authorities, and rights and privileges as specified in the general permit. Procedural requirements for application and permit approval, unless specifically designated as applicable to individuals proposed to be covered under the general permits, apply only to the issuance of the general permits. After issuance of the general permit by the Director and approval by EPA, dischargers in the applicable categories may request coverage under the general permit, and the Director or his designee shall grant appropriate certification. General permits may be written to regulate

categories of other discharges that all: Involve the same or substantially similar operations; Have similar discharge characteristics; Require the same effluent limitations or operating conditions; Require the same or similar monitoring; and ~~in~~ In the opinion of the Director are more appropriately controlled by a general permit such as:

(1) once-through non-contact cooling waters with no biocidal additives;
(2) mine dewatering facilities;
(3) water filtration facilities;
(4) swimming pool filter backwash facilities;
(5) seafood packing facilities;
(6) oil terminal storage facilities;
(7) tourist gem mines;
(8) sand dredges;
(9) trout farms;
(10) aquifer restoration;
(11) stormwater discharges;
(12) other discharges that meet the Criteria in Paragraph (a) of this Rule.

(b) General permits will only be granted for discharge into waters classified either WS or SA following review and approval by the Division of Public Health Section of the Department of ~~Environment, Health, and Natural Resources~~ Health and Human Services.

(c) No provision in any general permit issues under this Rule shall be interpreted as allowing the permittee to violate state water quality standards or other applicable environmental standards and the permittee shall show that a nutrient allocation or nutrient offset credit has been assigned for the discharge if it will be made to surface waters classified as impaired for nutrients and that no service is available from a sewer system with nutrient allocation capacity to receive the discharge. Pursuant to 40 CFR §122.4(i), any general permit applicable to previously installed and permitted discharges to surface waters classified as impaired for nutrient shall include a schedule for the discharges to meet the water quality standards for nutrients within the next full permit cycle.

(d) For one of these general permits to apply to a facility, a Notice of Intent to be covered by the general permit must be given using forms described in Rule .0105(a) of this Section and, as appropriate, following the application procedures specified in Rules .0105 and .0106 of this Section. If all requirements are met, coverage under the general permit may be granted. If all requirements are not met, a long form application and full application review procedure will be required.

(e) General permits will be effective for a term not to exceed five years at the end of which the Division may renew them. All public notice requirements shall be satisfied prior to renewal of general permits. Dischargers covered by general permits need not submit new Notices of Intent or renewal requests unless so directed by the Division. If the Division chooses not to renew a general permit, all facilities covered under that general permit shall be notified to submit applications for individual permits. An application for renewal of a permitted facility discharging to surface waters classified as impaired for nutrients shall show that a nutrient allocation or nutrient offset credit has been assigned for the discharge if it is being made to surface waters classified as impaired for nutrients and that no service is available from a sewer system with nutrient allocation capacity to receive the discharge.

(f) All previous state water quality permits issued to a facility which can be covered by a general permit, whether for construction or operation, are revoked upon request of

the permittee, termination of the individual permit and issuance of the Certification of Coverage.

(g) Anyone engaged in activities covered by the general permit rules but not permitted in accordance with this Section will be considered in violation in G.S. 143-215.1.

(h) Any individual covered or considering coverage under a general permit may choose to pursue an individual permit for any facility covered by this Rule.

(i) The Director may require any person, otherwise eligible for coverage under a general permit, to apply for an individual NPDES permit by notifying that person that an application is required. Notification shall consist of a written description of the reason(s) for the decision, appropriate permit application forms and application instructions, a statement establishing the required date for submission of the application, and a statement informing the person that coverage by the general permit shall automatically terminate upon issuance of the individual permit. Reasons for requiring application for an individual permit may be:

(1) the discharge is a significant contributor of pollutants;
(2) conditions at the permitted site change, altering the constituents or characteristics of the discharge such that the discharge no longer qualifies for coverage under a general permit;
(3) noncompliance with the general permit;
(4) noncompliance with Division Rules; or
(5) a change has occurred in the availability of demonstrated technology or practices for the control or abatement of pollutants applicable to the point source;
(6) effluent limitations are promulgated for the point sources covered by the general permit;
(7) a water quality management plan containing the requirements applicable to such point sources is approved after the issuance of the general permit;
(8) a determination that the water of the stream receiving the discharge is not meeting applicable water quality standards.

(j) Any interested person may petition the Director to take an action under Paragraph (i) of this Rule to require an individual NPDES permit.

(k) General permits may be modified, terminated, or revoked and reissued in accordance with the authority and requirements and .0114 of this Section.

The federal CWA requires the identification of waters that are not meeting the assigned water quality standards and the development for a TMDL, or equivalent strategy, to bring those waters into attainment. *See, e.g. Friends of Pinto Creek v. U.S. E.P.A.*, 504 F.3d 1007, 1011 (C.A.9,2007). When a septic tank fails and begins to discharge into the surface waters, it is a new discharger as that term is used in 40 CFR §122.4(i). Accordingly, such dischargers must also conform to the requirements imposed on new discharges into impaired waters. Citing to that CFR, the Ninth Circuit Court of Appeals held:

> "The plain language of the first sentence of the regulation is very clear that no permit may be issued to a new discharger if the discharge will contribute to the violation of water quality standards. This corresponds to the stated objectives of the Clean Water

> Act "to restore and maintain the chemical, physical, and biological integrity of the nation's waters." 33 U.S.C. § 1251(a) (1987). And that "it is the national policy that the discharge of toxic pollutants in toxic amounts be prohibited." 33 U.S.C. § 1251(a)(3) (1987)."
>
> *Friends of Pinto Creek v. U.S. E.P.A.,* 504 F.3d 1007, 1011–12 (C.A.9,2007)

The Court's holding is consistent with EPA's own explanation of its regulation. The explanation was provided in the Notice of Proposed Rulemaking in 1996 when EAP amended the regulation.

> **"3. New Sources/New Dischargers (40 CFR 122.4, 124.56)**
> Section 122.4(i) prohibits the issuance of a permit to a new source or new discharger if the discharge would cause or contribute to a violation of water quality standards. A new source or new discharger may, however, obtain a permit for discharge into a water segment which does not meet applicable water quality standards by submitting information demonstrating that there is sufficient loading capacity remaining in waste load allocations (WLAs) for the stream segment to accommodate the new discharge and that existing dischargers to that segment are subject to compliance schedules designed to bring the segment into compliance with the applicable water quality standards."
>
> Amendments to Streamline the National Pollutant Discharge Elimination System Program Regulations: Round Two, 61 FR 65268-01, December 11, 1996.

Absent appropriate technology or the purchase of nutrient offset credits, the sand filter systems installed to replace the failed and discharging septic systems will contribute to the violation of water quality standards. Accordingly, the proposed language is consistent with the plain language of 40 CFR §122.4(i), a provision that applies to state issued NPDES permits.

The Ninth Circuit also examined the situation of existing discharges. Its opinion sets forth basis for making the other change in the rule requested in this comment.

> "We examine that language utilizing the definitions provided in the regulation. The term "discharge" is defined to mean "the discharge of a pollutant." 40 C.F.R. § 122.2 (2000). The term "discharge of a pollutant," is defined as any addition of any "pollutant" or combination of pollutants to "waters of the United States" from "*any point source*." *Id.* at § 122.2(a) (emphasis added). Thus, under the plain language of the regulation, compliance schedules are not confined only to "permitted" point source discharges, but are applicable to "any" point source.
>
> "The EPA contends that this would amount to a complete ban of the discharge of pollution to impaired waters. This is based on its misreading of the plain language of the regulation to state that the remediation has to be *completed* before Carlota's discharge. The plain language of clause (2) of the regulation, instead, provides that existing discharges into that segment (of the waters) are "subject to *compliance schedules*

> designed to bring the segment into compliance with applicable water quality standards." 40 C.F.R. § 122.4(i)(2) (2000) (emphasis added). This is not a complete ban but a requirement of schedules to meet the objective of the Clean Water Act."
>
> *Friends of Pinto Creek v. U.S. E.P.A.,* 504 F.3d 1007, 1012–13 (C.A.9,2007*)*

The use of general permits by EPA was confirmed as being within its authority in 1977. See *Natural Resources Defense Council, Inc. v. Costle,* 568 F.2d 1369, 1381–82, 186 U.S. App. D.C. 147, 159–60 (C.A.D.C.,1977). In its opinion, the D.C. Circuit Court of Appeals held that like any NPDES permit, a general permit must be in compliance with the limitations as set out in the Clean Water Act, an in particular in §402 of the Act. The Court also examined the difference between a NPDES permit and an exemption. It expressly held that sources of pollutants required to be regulated under the Act cannot be exempted from coverage in NPDES permits.

> "We insist, as the Act insists, that a permit is necessary; the Administrator has no authority to exempt point sources from the NPDES program. But we concede necessary flexibility in the shaping of the permits that is not inconsistent with the clear terms of the Act.
>
> "There is also a very practical difference between a general permit and an exemption. An exemption tends to become indefinite: the problem drops out of sight, into a pool of inertia, unlikely to be recalled in the absence of crisis or a strong political protagonist. In contrast, the general or area permit approach forces the Agency to focus on the problems of specific regions and requires that the problems of the region be reconsidered at least every five years, the maximum duration of a permit."
>
> *Natural Resources Defense Council, Inc. v. Costle,* 568 F.2d 1369, 1381–82, 186 U.S. App. D.C. 147, 159–60 (C.A.D.C.,1977).

In the 1996 proposed rules, EPA also examined the purpose and appropriate use of general permits. Consistent with the Court's opinion, EPA expressly states that general permits are not a means to provide exemptions from compliance with water quality standards.

> "General permits are still subject to the same reporting and monitoring requirements, limitations, enforcement provisions, penalties, and other substantive requirements as individual permits."
>
> Amendments to Streamline the National Pollutant Discharge Elimination System Program Regulations: Round Two, 61 FR 65268-01; Dec 11, 1996 Notice of Proposed Rule.

For the reasons set forth above, the comment proposes the rule be revised to avoid the repeat of prior use of this authority to exempt certain wastewater discharges of nutrient from having to comply with the water quality standards applied to nutrient sensitive waters. In addition, the rule should be amended to expressly require the inclusion in the general permits

of an appropriate compliance schedule for existing discharges of nutrients into nutrient impaired surface waters.

CC: Forrest Westall, Executive Director UNRBA
Haywood Phthisic, Executive Director LNBA/NRCA

PUBLIC WORKS
CITY OF DURHAM

July 2, 2018

Attn: Julie Ventaloro
NCDEQ-DEMLR-Stormwater Permitting Program
1612 Mail Service Center
Raleigh, NC 27699-1612
publiccomments@ncdenr.gov

RE: Comments on Draft Changes to 15A NCAC 02B .0714, Neuse River Basin Nutrient Sensitive Waters Management Strategy: Protection and Maintenance of Existing Riparian Buffers

Dear Ms. Ventaloro:

The City of Durham Department of Public Works ("the Department") reviews residential, commercial, industrial, and institutional development plans for compliance with stormwater and riparian buffer protection requirements. As such, the Department has a strong interest in the regulatory review of the Water Supply Watershed Protection Program pursuant to Title 15A of the North Carolina Administrative Code (NCAC) Section 02B .0700 et al.

The Department wishes to offer the following comments on several of the proposed changes to 15A NCAC 02B .0714:

- 15A NCAC 02B .0714(9)(b)(i) STORMWATER RUNOFF THROUGH THE RIPARIAN BUFFER
  This paragraph allows in the buffer "New drainage conveyances from a Primary SCM as defined in 15A NCAC 02H .1002 when the Primary SCM is provided to treat the drainage area to the conveyance but are not approved under a state stormwater program or a state-approved local government stormwater program."
  - Comment: The Department assumes that this is to allow drainage conveyances from voluntary SCMs to be allowed through the buffer. We suggest changing the wording "but are not approved" to "but are not required to be approved". This would eliminate the possibility that a developer might skirt the review process for an SCM that is required by a local or state stormwater program.
- 15A NCAC 02B .0714(9)(b)(ii) STORMWATER RUNOFF THROUGH THE RIPARIAN BUFFER
  This paragraph allows in the buffer "New drainage conveyances when the drainage area to the conveyance is demonstrated via approved nutrient calculation methodologies to meet the nutrient loading goal of 3.6 pounds per acre per year of Nitrogen (N) outside of the Falls of the Neuse Reservoir Watershed. Within the Falls of the Neuse Reservoir Watershed, new drainage conveyances when the drainage area to the conveyance is demonstrated via approved nutrient calculation methodologies to meet the nutrient loading goal of 2.2 pounds per acre per year of Nitrogen (N) and 0.33 pounds per acre per year of Phosphorus (P)".
  - Question: Does this rule allow for the purchase of offsite nutrient credits to achieve the target loading rates? In other words: If the new drainage conveyance does not achieve the

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target loading goal with its design, can the owner purchase offsite nutrient credits in order to achieve compliance with the rule?

- 15A NCAC 02B .0714(9)(b)(iii) STORMWATER RUNOFF THROUGH THE RIPARIAN BUFFER
  This paragraph allows in the buffer "New drainage conveyances when the flow rate of the conveyance is less than 0.5 cubic feet per second during the peak flow from the 0.75 inch per hour storm".
  - Comment: Per "Options for Meeting Diffuse Flow Provisions of the Stormwater and Riparian Buffer Protection Programs" Letter from NC DEQ dated March 7, 2014: Diffuse flow to the buffer is designed using the 1 inch per hour storm or the water quality event when a stormwater control measure is installed upstream. Flow from larger events should be discharged through the buffer so long as they are non-erosive. This guidance seem to be in conflict with the proposed provisions of 15A NCAC 02B .0714(10)(b)(iii).
  - Comment: In order to more broadly enforce a peak flow of 0.5 cubic feet per second, an *equivalent rainfall event* is needed to use in the NRCS Curve Number Method. The rainfall event of 0.75 in/hr is used in the Rational Method to calculate a flow rate (cubic feet per second). However, when a stormwater control measure is constructed upstream of a proposed new conveyance, the Rational Method is not an adequate method for calculating the flow rate as there is not a "free outfall." The industry standard is to use the NRCS Curve Number Method for calculating peak flows when a stormwater control measure is used. The NRCS Curve Number Method needs an annual reoccurrence interval and storm duration (or precipitation depth in inches) to determine a peak flow (cubic feet per second). Based on current National Oceanic and Atmospheric Administration (NOAA) precipitation data, there is no widely-used equivalent to a 0.75 inch per hour storm.
  - Question: How was the 0.75 inch per hour storm event chosen for this requirement? We were unable to locate a precedent for this storm event and how it will impact development.
- 15A NCAC 02B .0714(10)(b) TABLE OF USES
  The new "Allowable with Exception" category is curious. Is it meant to replace a variance procedure?
- 15A NCAC 02B .0714(10)(b) TABLE OF USES
  The following new use has been added to this table: "Public Safety - publicly owned spaces where it has been determined by the head of the local law enforcement agency with jurisdiction over that area that the buffers pose a risk to public safety. The head of the local law enforcement agency shall notify the local government with land use jurisdiction over the publicly owned space and the Division of Water Resources of any such determination in writing."
  - Comment: What exactly is the "use" that is being allowed in the buffer? Policemen stationed in the buffer 24/7? Cutting of vegetation in the buffer to increase visibility? The wording of this entry into the Table of Uses doesn't really define an activity or structure that is being allowed in the buffer.
  - Comment: We suggest the following language (underline indicates added language): "Public Safety - publicly owned spaces where it has been determined by the head of the local law enforcement agency with jurisdiction over that area that the buffers pose a risk to public safety. The determination must be based on one or more documented cases of crime that were enabled by the buffer. The head of the local law enforcement agency shall notify the local government with land use jurisdiction over the publicly owned space and the Division of Water Resources of any such determination in writing."

There needs to be some threshold or criteria for determining whether or not a buffer is impeding public safety. Citizens' first reaction to vegetated stream buffers is to complain about the vegetated buffers being hiding places for criminals. However, crime maps for Durham reveal that there is no clustering of crime occurring in public places like parks with maintained stream buffers. If law enforcement wants to address citizen complaints about buffers with minimal effort and declares them "unsafe", buffers could be cleared without any real reason.

Thank you for the opportunity to comment on these proposed changes. If you have any questions, please contact Jennifer Buzun at (919) 560-4326, ext. 30292, jennifer.buzun@durhamnc.gov .

Respectfully,

Marvin G. Williams

Marvin G. Williams
Director of Public Works

From: Wendi Hartup
To: SVC_DENR.publiccomments
Subject: [External] regarding riparian buffer rules
Date: Friday, June 8, 2018 2:01:08 PM
Attachments: image001.jpg

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I am in support of many of the changes in the rules; particularly the clarifying statements within both the Water Supply Watershed rules and the Riparian Buffer rules.

I would like to state that I am not in favor of utilities being so close to streams; particularly when they are in a watershed with buffer rules. I would be in more support of utilities being close to streams if they were more proactive with the management of their sewer systems. In Forsyth County the Utilities Commission are reactive only when a pipe has burst and sewage is going into the stream. I would prefer if these Utility groups cannot maintain their systems properly for the benefit of the environment, then the actual pipes should be located farther from the creek itself. Thirty feet away would be great since that is what we typically impose on developers.

As you know creeks move over time and putting utilities within 10-15' of the creek allows for quite a bit of erosion potential. Often these pipes are hanging out of the water or are just below the water surface just waiting for an object or gravity to destroy the pipe. Mowers mow not just the easement super close to the ground but also just a bit beyond, encouraging turf grass to creep into these riparian areas. I understand why the Utilities and design engineers want to situate these pipes so close to the water but as a Town when we're trying to enforce Riparian Buffer Rules where deep-rooted vegetation must be established along the creek banks, they are **ruining** the example we need to show citizens of how to maintain their own buffers. We need some sort of happy medium in the way of plant choice as well that will hold the soil but could be mowed periodically and still grow back. Turf grass is not the solution as it is very shallow-rooted. I find it very frustrating that we are to tell citizens one thing as well as enforce rules and then government, particularly when it comes to NCDOT and Utility Commissions, does whatever without regard for the impression and example we are providing to the public.

Thank you for your consideration,
Wendi

Wendi Hartup
Stormwater Manager
Town of Kernersville, NC
336-564-1613

Tar-Pamlico Basin Association
Preserving the Tar-Pamlico River as a major source of clean water.

City of Rocky Mount
P.O. Box 1180
Rocky Mount, NC 27802

Greenville Utility Commission
P. O. Box 1847
Greenville, N.C. 27835

June 29, 2018

Mrs. Julie Ventaloro
N.C. DEQ – DEMLR - Stormwater Permitting Program
1612 Mail Service Center
Raleigh, N. C. 27699-1612

RE: Comments on Proposed Buffer Rules, 15A NCAC 02B .0734

Dear Mrs. Ventaloro:

On behalf of the Tar Pamlico Basin Association I am submitting the following comments on the proposed buffer rules (listed above) that are currently noticed for comments.

Thank you for the opportunity to comment

Sincerely,

David W. Springer, P.E.
TPBA Chairman

Comments by the Tar Pamlico Basin Association

For Proposed Revisions to the Tar Pamlico Buffer Rules

June 29, 2018

Buffer Rule Comments

15A NCAC 02B.0734 Tar-Pamlico River Basin: Nutrient Sensitive Waters Management Strategy: Protection and Maintenance of Existing Riparian Buffers.

Utility Sewer Lines. The proposed rules require mitigation payments for any disturbance in a riparian buffer where a utility (sewer) line may exist that has not been maintained in the last 10 years and it is noted the part labeled "Impacts other than perpendicular crossings" forbid the disturbance of the area within 10 feet of the adjacent water. The utility installed many of these lines before any buffer requirement existed. In addition, it is impossible to know where the stream will meander in the long time between installation and the need to replace or upgrade a sewer line. These same lines are subject to needs for emergency repairs, yet any disturbance in the 20 foot zone (10 feet per side) of the stream and the stream bed results in the application of "Allowable with Mitigation upon Authorization." It is mandatory that such lines be both immediately repaired when they fail and that they be kept in good repair under the NPDES permit for the treatment facility and under the collection system permit issued by the State. Complying with those legal requirements for pre-existing sewer lines in the riparian buffer should not include a requirement for mitigation, in particular as an obstacle to emergency repair needs. This is covered by the catch all "Impacts to Zone 1 other than noted above." Per the comment, mitigation will be required if the impact in Zone 1 is above 2500 sq. ft. Since the easement for the utility line is 20 feet wide at minimum, during construction a temporary easement of 10 additional feet is generally acquired (for line construction), this results in a requirement for mitigation to repair or replace a pre-existing line that is longer than 125 feet. That is an unreasonable burden when the utility is confronted with the high cost of replacement and repair of such lines. The damage can be restored and restoration should be the only requirement, not mitigation. Why are sewer lines limited to a vegetation maintenance area 20 feet wide when other non-sewer utility lines can maintain a vegetation maintenance area of 30 feet? Sewer lines should also be allowed up to 30 feet.

The requirement to provide mitigation will create a financial burden for public utility owners and do not understand why a fiscal note was not required by the Division and request that one be completed prior to rule adoption.

Tar-Pamlico Basin Membership

Town of Belhaven
Town of Bunn
Town of Enfield
Franklin County
Greenville Utility Commission
Town of Louisburg
City of Oxford
Town of Pinetops
Town of Robersonville
City of Rocky Mount
Town of Scotland Neck
Town of Spring Hope
Town of Tarboro
Town of Warrenton
City of Washington

North Carolina
Geographic Information Coordinating Council

Fostering cooperation among government agencies, universities and the private sector, creating policy and resolving technical issues related to North Carolina's geographic information and GIS technology.

NCGICC

June 29, 2018

Ms. Julie Ventaloro
NCDEQ-DEMLR-Stormwater Permitting Program
1612 Mail Service Center
Raleigh, NC 27699-1612

Dear Ms. Ventaloro:

Thank you for the opportunity to comment on the proposed language for Rule 15A NCAC 02B .0607. The following comments and suggested rule language are intended to clarify the roles and responsibilities of the North Carolina Geographic Information Coordinating Council (GICC) and the Environmental Management Commission (EMC) related to approving "maps" as noted in current rule language. Comments apply to the GICC role for this specific part of Rule 15 NCAC 02B .0607 (c), (1, A-C) and do not consider any other aspect of any other rules being reviewed during this comment period.

Background

The GICC was established by the NC General Assembly to develop policies regarding the use of geographic information, geographic information systems (GIS), and related technologies. The Council is an organization of volunteers whose goals are to:

- Collaborate in geographic information and systems, involving state, federal, and local government agencies, academic institutions, private organizations and individuals across the state.
- Improve the quality, access, cost-effectiveness and utility of North Carolina's geographic information and resources, and promote geographic information as a strategic resource.
- Efficiently collect, develop and use geographic information through voluntary exchange and sharing of data and technical know-how.
- Explore, guide and provide a framework for coordination including:
    - Developing standards
    - Planning strategically
    - Resolving policy and technical issues
    - Providing central direction and oversight
    - Advising the Governor and the Legislature as to needed directions, responsibilities and funding regarding geographic information.

The Council achieves its goals through collaborative leadership, communication, and assistance. Leadership includes promoting GIS technology for the state and demonstrating the value of reliable geographic information for effective decision making. The Council supports

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20322 Mail Service Center, Raleigh, NC 27699-0322
919.754.6580 – http://it.nc.gov/gicc

communication by providing opportunities to hear and examine issues, share ideas, and build consensus through collaborative activities and subcommittees. Assistance consists of standards and recommended practices, guidelines and policies, learning opportunities, and projects and initiatives that expand and improve public access to authoritative, complete, consistent, current, statewide geographic information. https://it.nc.gov/about-gicc

The Council has recognized the value of geographic information relating to hydrography in North Carolina since the coordinating body formed in 1991. Digital geographic representations of surface waters have been and will continue to be vitally important to environmental quality and water resources and to land development and related business interests. Hydrography, the science that measures and describes the physical features of bodies of water, has been one of the priority data themes for the Council and its Statewide Mapping Advisory Committee. The Council also recognizes that improvements in technology support more complete, consistent, current geographic information representing streams and water bodies and enable more accurate, detailed data collection on site.

Rule Comments

The GICC's comments are written below each portion of the rule language specific to the GICC.

15 NCAC 02B .0607 (c) BUFFERS PROTECTED. The following minimum criteria shall be used for identifying regulated buffers:

(1) A surface water shall be subject to this Rule if the feature is approximately shown on any of the following references:

Part (1)(A) Proposed Rule Language

(A) The most recent version of the published manuscript of the soil survey map that shows stream layers prepared by the Natural Resources Conservation Service of the United States Department of Agriculture;

> **GICC Comment:** The GICC encourages application of the best available geospatial technology and data. While the soil survey may have helped identify streams to be evaluated for buffers years ago, it is not available for practical application to riparian buffers using current technology (online mapping applications or data download). Better quality sources are now available in digital format at scales comparable to hard copy soil survey maps. Therefore, the GICC recommends removing this source as a reference for identifying streams to be evaluated for buffers.
>
> **GICC Recommendation:** Omit (A) as a reference.

NCGICC

North Carolina Geographic Information Coordinating Council

Part (1)(B) Proposed Rule Language

(B) The most recent version of the 1:24,000 scale (7.5 minute) quadrangle topographic maps prepared by the United States Geological Survey (USGS); or

> **GICC Comment:** This reference to 1:24,000-scale maps is dated and should refer to the current digital version of the National Hydrography Dataset (NHD High Resolution). While the geometry of the data has changed little since the publication of the quadrangle topographic maps cited above, it is widely available as a download and on many online map viewers. This reference is also not the best available for depicting potential streams in all parts of North Carolina. The GICC is working with a wide range of stakeholders to improve and update this geospatial dataset or supersede these data with a better hydrography dataset that can work for all local, state, federal and private stakeholders.
>
> **GICC Language Recommendation:**
> (B) The National Hydrography Dataset (NHD High Resolution) maintained by the United States Geological Survey (USGS) (website); or

Part (1)(C) Proposed Rule Language

(C) Other maps approved by the Geographic Information Coordinating Council and by the Environmental Management Commission as more accurate than those identified in Sub-Item (c)(4)(A) and (c)(4)(B) of this Rule. Other maps may be submitted to the Division for review and recommendation to the Environmental Management Commission. Prior to recommendation to the Environmental Management Commission, the Division shall issue a 30-calendar day public notice through the Division's Mailing List in accordance with 15A NCAC 02H .0503. Division staff shall present recommendations including comments received during the public notice period to the Environmental Management Commission for a final decision. Maps approved under this Sub-Item shall not apply to projects that are existing and ongoing within the meaning of this Rule as set out in Item (6) of this Rule;

> **GICC Comment**: The language above should reference Sub-Item (c)(1)(A) and (c)(1)(B) and not Sub-Item (c)(4)(A) and (c)(4)(B). This part of the rule mentions a GICC approval process but unlike the EMC role there are no specifics on what the approval process would look like. There is no current GICC approval process for this data. The GICC, through the Center for Geographic Information and Analysis (CGIA), has had one inquiry from a local government in the past year to approve a stream map for its jurisdiction. The GICC did not take part in writing the rule language and has not been asked to approve any maps other than the one instance noted for purposes of implementing this part of the rule. It should also be made clear that the role of the EMC is to approve if a mapped stream should be used for

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NCGICC

North Carolina Geographic Information Coordinating Council

implementation of the rule, and that the EMC's role is not to determine whether or not a stream should be mapped.

Well-developed and documented hydrography data have many valuable uses in North Carolina outside the scope of this rule. This rule should not discourage or influence good stream mapping processes in North Carolina. GICC workgroups are working to improve the hydrography data in the state. The GICC approval process would involve a governing body responsible for assuring proper documentation and maintenance of the hydrography.

GICC Language Recommendation:
(C) A hydrography dataset developed using hydrography specifications and standard metadata approved by the Geographic Information Coordinating Council (GICC) and maintained on a GICC list of the best available hydrography. Prior to approving a dataset under this sub-division, the GICC shall assure that edits, deletions and additions to the hydrography dataset follow approved standards and specifications (per stewardship governance). The EMC will make a determination as to whether riparian buffer rules shall apply to edits and additions to this hydrography dataset after a 30-day public notice and opportunity for comment. Hydrography developed by the approved standards and specifications under this sub-item shall not apply to projects that are existing and ongoing within the meaning of this Rule as set out in Item (6).

Thank you for your consideration of these comments. For more information, please contact me or Tim Johnson, CGIA Director and staff to the GICC (tim.johnson@nc.gov, 919-754-6588).

Respectfully submitted,

Frank A. Rankin III
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North Carolina Wildlife Resources Commission

Gordon Myers, Executive Director

MEMORANDUM

TO: Julie Ventaloro
NCDEQ-DEMLR-Stormwater Permitting Program

FROM: David Cox, Supervisor
Habitat Conservation Division

DATE: 2 July 2018

SUBJECT: Comments on proposed DEQ rules published in Public Notice 2018-05-01.
15A NCAC 02B .0164, .0233, .0243, .0250, .0259, .0605, .0607, & .0620-.0624
15A NCAC 02H .1300.

Biologists with the North Carolina Wildlife Resources Commission (Commission) have reviewed the subject public notice. Our comments are provided in accordance with provisions of the North Carolina General Statutes (G.S. 113-131 et seq.).

As published in the North Carolina Register on May 1, 2018, the Department of Environmental Quality (DEQ) is requesting comments on changes to rules contained in 15A NCAC 02B and 15A NCAC 02H. The Environmental Management Commission (EMC) intends to adopt new rules and readopt other rules within 15A NCAC 02B and 02H with substantive changes. The following changes have the potential to impact aquatic and terrestrial wildlife resources:

1. (15A NCAC 02B .0233, .0243, .0250, .0259, .0607; (SL 2013-413, 2011-394, 2017-209) A new exemption for agricultural ponds is allowed in the riparian buffer rules of the Neuse River basin, Tar-Pamlico River basin, Catawba River basin, Randleman Lake, and Goose Creek watersheds: EXEMPTION FOR PONDS CONSTRUCTED AND USED FOR AGRICULTURAL PURPOSES. We understand that a Session Law is requiring changes to these statutes but wanted to ensure that you are aware that constructing and maintaining agricultural ponds within riparian zones can impact wildlife resources that need forested riparian corridors. Agricultural ponds do not have the same ecological value as a forested riparian buffer for nutrient, sediment, and other pollutant treatment, as well as other buffer benefits such as streambank stabilization and habitat for terrestrial wildlife species. In addition, a pond can impact downstream waters by increasing water temperature in the warm months; temperature increases can negatively impact native aquatic wildlife. We recommend that ponds not be constructed within riparian buffers. If pond construction is necessary, they should be located outside of riparian buffers to the extent practicable.

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2. (15A NCAC 02B.0164 (7)) For the Catawba River basin buffer rules on page 1976, there was a change in wording from "Zone 1 shall consist of a forested area that is undisturbed" to "Zone 1 shall consist of a vegetated area that is undisturbed". With this language change Zone 1 and Zone 2 do not have any functional difference. Zone 2 is noted as consisting of a "stable, vegetated area that is undisturbed". The distinction of a forested buffer for Zone 1 offers additional benefits to surface waters when compared to a vegetated buffer, such as increased streambank stability, stream temperature moderation, and improved wildlife habitat. Changing the term from forested to vegetative will reduce the overall benefit, especially for wildlife, of the riparian buffer. We recommend maintaining the wildlife benefit in Zone 1 by keeping the "forested" distinction between Zone 1 and Zone 2.

3. (15A NCAC 02B .0605) The language for riparian buffer widths for the Goose Creek watershed on page 2082 of the public notice, deletes "undisturbed" from the description of riparian buffers and later defines it as "a vegetated area that is undisturbed…" A forested buffer provides additional benefits to a stream compared to a vegetated buffer, such as increased streambank stability, stream temperature moderation, and improved wildlife habitat. Including the term "forested" increases the overall benefit of the riparian buffer. We recommend keeping the word "undisturbed in the description for riparian buffer for more clarity.

4. (15A NCAC 02B .0607; SL 2017-209) The table on page 2092 of the public notice, indicates that for the Goose Creek watershed, impacts to greater than 1/3 of an acre of riparian buffer are allowable upon authorization. This language appears to be an error because impacts to 1/10 to 1/3 of an acre of riparian buffer are also allowable upon authorization. We assume this impact instead should be categorized as allowable with mitigation upon authorization; this change would make it consistent with the rules for other basins.

5. (15A NCAC 02B .0621) In WATER SUPPLY WATERSHED PROTECTION PROGRAM: DEFINITIONS on page 2111, planned unit developments and mixed use developments are included in the definition of cluster developments. Cluster developments can benefit wildlife by concentrating development on a portion of a development tract while conserving wildlife habitat on other portions of the tract. Many wildlife species depend on large forested blocks of connected habitat. Planned unit developments and mixed use developments do not necessarily provide the same benefits to wildlife that are achieved by concentrating development and conserving habitat within a tract. We recommend that planned unit developments and mixed use developments be defined separately and recommend requirements for the percent of land resources that are conserved. …

6. (15A NCAC 02B .0620-.0624) The public notice specifically asks for comments regarding the efficacy of a 10-foot vegetated setback requirement for agricultural activities in water supply watersheds. The NCWRC recommends 50-foot forested buffers on intermittent streams and 100-foot forested buffers on perennial streams for wildlife benefits. If federal listed aquatic species are found nearby, we recommend extending those riparian buffer widths on intermittent and perennial streams to 100 and 200 feet, respectively. Ten-foot vegetated setbacks are not sufficient to filter sediment and other pollutants, stabilize streambanks, and provide other important services to protect streams and water supplies. Wide, forested buffers protect streambanks from excessive erosion, filter pollutants, moderate stream temperatures and algal growth via shading, and provide large woody debris that contributes to habitat complexity and functional stream ecosystems. To adequately protect water quality in water supply watersheds, vegetated setbacks in agricultural areas would need to be

considerably wider than 10 feet. Furthermore, forested riparian setbacks provide benefits beyond those provided by buffers only comprised of herbaceous vegetation.

7. (15A NCAC 02H .1300; SL 2015-286, 2014-120) Beginning on page 2160, DISCHARGES TO ISOLATED WETLANDS AND ISOLATED WATERS addresses recent changes in protection of isolated waters. Permit and mitigation thresholds for isolated wetlands in North Carolina were increased to 1 acre in the coastal plain, 1/2 acres in the piedmont and 1/3 acres in the mountains with passage of the Regulatory Reform Act of 2015. The Regulatory Reform Act also removed the mitigation requirement for impacts to isolated streams of 150 or more linear feet. We understand that changes to this NCAC text are required by a recent Session Law. However, our agency wants to ensure you consider the reduction in aquatic and terrestrial wildlife resource conservation due to these changes.

    a. With the increased acreage trigger, isolated wetlands are now more vulnerable to development since thresholds for protection have been increased without requiring mitigation or avoidance. Isolated wetlands provide important wildlife habitat, perform important groundwater recharge functions and represent some of the most unique and rare ecosystem types in North Carolina. Isolated wetlands are important breeding habitats for several rare and sensitive amphibian species since fish species that typically prey on amphibian eggs and juveniles generally do not survive in these isolated wetland areas. In addition to amphibians, wildlife species such as birds and reptiles use isolated wetland habitats during various life history stages.
    b. Impacts to isolated wetlands are no longer combined with impacts to 404 jurisdictional wetlands for determining impact thresholds that trigger mitigation requirements. Changing the threshold for compensatory mitigation for wetlands and not allowing impacts to isolated wetlands to be combined with impacts to 404 jurisdictional wetlands likely will result in a net loss of important wetland habitats. This change may result in a significant cumulative impact to rare and sensitive species that are found in these wetland habitats.
    c. Isolated streams help maintain base flow in larger streams during drought, provide food for downstream aquatic species (e.g., insects or decaying organic matter), and serve as wildlife corridors. Removing mitigation requirements for impacts to isolated streams equal to or greater than 150 linear feet may result in a significant cumulative loss of these important habitats.

Thank you for the opportunity to comment on these proposed rules. We would be happy to discuss any of these comments with you. If we can be of further assistance, please contact David Cox at 919-707-0366 or david.cox@ncwildlife.org.

Appendix E:
Text of Proposed Rules for Adoption, Readoption and Repeal

As published, with changes identified by yellow highlighting

15A NCAC 02B ~~.0233~~ .0714 NEUSE RIVER BASIN: NUTRIENT SENSITIVE WATERS MANAGEMENT STRATEGY: PROTECTION AND MAINTENANCE OF EXISTING RIPARIAN BUFFERS

The following is the management strategy for maintaining and protecting existing riparian buffers in the Neuse River Basin.

(1) PURPOSE. The purpose of this Rule shall be to maintain and protect ~~and preserve~~ existing riparian buffers in the Neuse River ~~Basin~~ Basin, including the Falls of the Neuse Reservoir watershed, to maintain their nutrient removal functions. Terms used in this Rule shall be as defined in Rule .0610 of this Subchapter.

~~(2) DEFINITIONS. For the purpose of this Rule, these terms shall be defined as follows~~

~~(a) 'Channel' means a natural water carrying trough cut vertically into low areas of the land surface by erosive action of concentrated flowing water or a ditch or canal excavated for the flow of water. (current definition in Forest Practice Guidelines Related to Water Quality, 15A NCAC 01I .0102)~~

~~(b) 'DBH' means Diameter at Breast Height of a tree, which is measured at 4.5 feet above ground surface level.~~

~~(c) 'Ditch or canal' means a man-made channel other than a modified natural stream constructed for drainage purposes that is typically dug through inter-stream divide areas. A ditch or canal may have flows that are perennial, intermittent, or ephemeral and may exhibit hydrological and biological characteristics similar to perennial or intermittent streams.~~

~~(d) 'Ephemeral (stormwater) stream' means a feature that carries only stormwater in direct response to precipitation with water flowing only during and shortly after large precipitation events. An ephemeral stream may or may not have a well-defined channel, the aquatic bed is always above the water table, and stormwater runoff is the primary source of water. An ephemeral stream typically lacks the biological, hydrological, and physical characteristics commonly associated with the continuous or intermittent conveyance of water.~~

~~(e) 'Forest plantation' means an area of planted trees that may be conifers (pines) or hardwoods. On a plantation, the intended crop trees are planted rather than naturally regenerated from seed on the site, coppice (sprouting), or seed that is blown or carried into the site.~~

~~(f) 'High Value Tree' means a tree that meets or exceeds the following standards: for pine species, 14 inch DBH or greater or 18 inch or greater stump diameter; and, for hardwoods and wetland species, 16 inch DBH or greater or 24 inch or greater stump diameter.~~

~~(g) 'Intermittent stream' means a well-defined channel that contains water for only part of the year, typically during winter and spring when the aquatic bed is below the water table. The flow may be heavily supplemented by stormwater runoff. An intermittent stream often~~

~~lacks the biological and hydrological characteristics commonly associated with the conveyance of water.~~

~~(h) 'Modified natural stream' means an on-site channelization or relocation of a stream channel and subsequent relocation of the intermittent or perennial flow as evidenced by topographic alterations in the immediate watershed. A modified natural stream must have the typical biological, hydrological, and physical characteristics commonly associated with the continuous conveyance of water.~~

~~(i) 'Perennial stream' means a well-defined channel that contains water year-round during a year of normal rainfall with the aquatic bed located below the water table for most of the year. Groundwater is the primary source of water for a perennial stream, but it also carries stormwater runoff. A perennial stream exhibits the typical biological, hydrological, and physical characteristics commonly associated with the continuous conveyance of water.~~

~~(j) 'Perennial waterbody' means a natural or man-made basin that stores surface water permanently at depths sufficient to preclude growth of rooted plants, including lakes, ponds, sounds, non-stream estuaries and ocean. For the purpose of the State=s riparian buffer protection program, the waterbody must be part of a natural drainageway (i.e., connected by surface flow to a stream).~~

~~(k) 'Stream' means a body of concentrated flowing water in a natural low area or natural channel on the land surface.~~

~~(l) 'Surface water' means all waters of the state as defined in G.S. 143-212 except underground waters.~~

~~(m) 'Tree' means a woody plant with a DBH equal to or exceeding five inches.~~

~~(3)~~(2) APPLICABILITY. This Rule applies to all landowners and other persons including local governments, state and federal entities conducting activities within the riparian buffers as described in Item (3) of this Rule in the Neuse River Basin, including the Falls of the Neuse Reservoir watershed.

(3) BUFFERS PROTECTED. The following minimum criteria shall be used for identifying regulated riparian buffers:

(a) A surface water shall be subject to this Rule if the feature is approximately shown on any of the following references:

(i) The most recent version of the published manuscript of the soil survey map that shows stream layers prepared by the Natural Resources Conservation Service of the United States Department of Agriculture;

(ii) The ~~most recent version of the 1:24,000 scale (7.5 minute) quadrangle topographic maps prepared by the~~ United States Geologic Survey's (USGS) National Map, available online at: https://www.usgs.gov/core-science-systems/national-geospatial-program/national-map; or

(iii) Other maps approved ~~by the Geographic Information Coordinating Council and~~ by the Environmental Management Commission as more accurate than those identified in Sub-Item (3)(a)(i) and (3)(a)(ii) of this Rule. Other maps must use a hydrography dataset developed using hydrography specifications and standard metadata approved by the Geographic Information Coordinating Council (GICC) and maintained on a GICC list of the best available hydrography. Edits, deletions and additions to the hydrography dataset must follow GICC approved standards and specifications, per stewardship governance. Other maps must have their hydrography dataset and procedures for edits, deletions and additions reviewed and approved by the GICC. Other maps ~~may~~ shall be submitted to the Division for review and recommendation to the Environmental Management Commission. Prior to recommendation to the Environmental Management Commission, the Division shall issue a 30-calendar day public notice through the Division's Mailing List in accordance with 15A NCAC 02H .0503. Division staff shall present recommendations including comments received during the public notice period to the Environmental Management Commission for a final decision. Maps approved under this Sub-Item shall not apply to projects that are existing and ongoing within the meaning of this Rule as set out in Item (6) of this Rule;

(b) This Rule shall apply to activities conducted within 50-foot wide riparian buffers directly adjacent to surface waters in the Neuse River Basin (intermittent streams, perennial streams, lakes, ponds, reservoirs and estuaries), excluding wetlands; ~~wetlands. Except as described in Sub-Item (4)(a)(iii) of this Rule, wetlands~~

(c) Wetlands adjacent to surface waters or within 50 feet of surface waters shall be considered as part of the riparian buffer but are regulated pursuant to 15A NCAC 02H ~~.0506.~~ .0506;

(d) Stormwater runoff from activities conducted outside the riparian buffer shall comply with Item (9) of this Rule;

~~The riparian buffers protected by this Rule shall be measured pursuant to Item (4) of this Rule. For the purpose of this Rule, a surface water shall be present if the feature is approximately shown on either the most recent version of the soil survey map prepared by the Natural Resources Conservation Service of the United States Department of Agriculture or the most recent version of the 1:24,000 scale (7.5 minute) quadrangle topographic maps prepared by the United States Geologic Survey (USGS). Riparian buffers adjacent to surface waters that do not appear on either of the maps shall not be subject to this Rule. Riparian buffers adjacent to surface waters that appear on the maps shall be subject to this Rule unless one of the following applies.~~

(e) Riparian buffers protected by this Rule shall be measured pursuant to Item (8) of this Rule;

(f) A riparian buffer may be exempt from this Rule as described in Items (5), (6) and (7) of this Rule; and

(g) No new clearing, grading or development shall take place nor shall any new building permits be issued in violation of this Rule.

~~(a)~~(4) ~~EXEMPTION WHEN AN~~ ON-SITE ~~DETERMINATION SHOWS THAT SURFACE WATERS ARE NOT PRESENT.~~ DETERMINATION. When a landowner or other affected party believes that the maps listed in Sub-Item (3)(a) of this Rule have inaccurately depicted surface ~~waters,~~ waters or the specific origination point of a stream, or the specific origination point of a stream is in question or unclear, he or she shall ~~consult~~ request the ~~Division or the appropriate delegated local authority. Upon request, the Division or delegated local authority shall~~ Authority to make an on-site ~~determinations.~~ determination. On-site determinations shall be made by Authority staff that are certified pursuant to G.S. 143-214.25A. Registered Foresters under Chapter 89B of the General Statutes who are employees of the North Carolina Forest Service of the Department of Agriculture and Consumer Services can make on-site determinations for forest harvesting operations and practices. On-site determinations shall expire five years from the date of the determination. Any disputes over on-site determinations shall be referred to the Director in ~~writing.~~ writing within 60 calendar days of written notification from the Authority. ~~A determination of the Director as to the accuracy or application of the maps~~ The Director's determination is subject to review as provided in ~~Articles 3 and 4 of~~ G.S. 150B.

(5) EXEMPTION BASED ON ON-SITE DETERMINATION. Surface waters that appear on the maps listed in Sub-Item (3)(a) of this Rule shall not be subject to this Rule if an on-site determination shows that they fall into one of the following ~~categories.~~ categories:

~~(i)~~(a) Ditches and manmade conveyances other than modified natural streams unless constructed for navigation or boat access.

~~(ii)~~(b) Manmade ponds and lakes that are ~~located outside natural drainage ways.~~ not fed by an intermittent or perennial stream or do not have a direct discharge point to an intermittent or perennial stream.

~~(iii)~~(c) Ephemeral ~~(stormwater)~~ streams.

(d) The absence on the ground of a corresponding perennial waterbody, intermittent waterbody, lake, pond or estuary.

~~(b)~~(6) EXEMPTION WHEN EXISTING USES ARE PRESENT AND ONGOING. This Rule shall not apply to portions of the riparian buffer where a use is existing and ~~ongoing according to the following:~~ ongoing.

~~(i)~~(a) A use shall be considered existing ~~if~~ if:

(i) ~~it~~ It was present within the riparian buffer as of July 22, ~~1997.~~ 1997 and has continued to exist since that time; or

(ii) It was a deemed allowable activity as listed in Item ~~(10)~~(11) of this Rule; or

(iii) It was conducted and maintained pursuant to an Authorization Certificate or Variance issued by the Authority.

(b) Existing and ongoing uses shall include, but not be limited to, agriculture, buildings, industrial facilities, commercial areas, transportation facilities, maintained ~~lawns,~~ lawns (i.e. can be mowed without a chainsaw or bush-hog), ~~maintained (i.e. vegetation management has occurred within the last ten years)~~ existing utility ~~lines~~ line maintenance corridors and on-site sanitary sewage ~~systems.~~ systems, any of which involve either specific periodic management of vegetation or displacement of vegetation by structures or regular activity.

(c) Only the portion of the riparian buffer that contains the footprint of the existing and ongoing use is exempt from this Rule.

(d) Change of ownership through purchase or inheritance is not a change of use.

(e) Activities necessary to maintain existing and ongoing uses are allowed provided that ~~no additional vegetation is removed from Zone 1 except that grazed or trampled by livestock~~ the site remains similarly vegetated, no built upon area is added within the riparian buffer where it did not exist prior to July 22, 1997, and the site is in compliance with Item (9) of this Rule. ~~existing diffuse flow is maintained. Grading and revegetating Zone 2 is allowed provided that the health of the vegetation in Zone 1 is not compromised, the ground is stabilized and existing diffuse flow is maintained.~~

(f) This Rule shall apply at the time an existing and ongoing use is changed to another use. Change of use shall involve the initiation of any activity not defined as existing and ongoing in Sub-Items (6)(a) through (6)(e) of this Rule.

~~(ii) At the time an existing use is proposed to be converted to another use, this Rule shall apply. An existing use shall be considered to be converted to another use if any of the following applies:~~

~~(A) Impervious surface is added to the riparian buffer in locations where it did not exist previously.~~

~~(B) An agricultural operation within the riparian buffer is converted to a non-agricultural use.~~

~~(C) A lawn within the riparian buffer ceases to be maintained.~~

(7) EXEMPTION FOR PONDS CONSTRUCTED AND USED FOR AGRICULTURAL PURPOSES. This Rule shall not apply to a freshwater pond if all of the following conditions are met:

(a) The property on which the pond is located is used for agriculture as that term is defined in G.S. 106-581.1.

(b) Except for this Rule, the use of the property is in compliance with all other water quality and water quantity statutes and rules applicable to the property before July 22, 1997.

(c) The pond is not a component of an animal waste management system as defined in G.S. 143-215.10B (3).

~~(4)~~(8) ZONES OF THE RIPARIAN BUFFER. The protected riparian buffer shall have two zones as follows:

(a) Zone 1 shall consist of a vegetated area that is undisturbed except for uses provided for in Items (9) and ~~(6)~~~~(10)~~(11) of this Rule. The location of Zone 1 shall be as follows:

(i) For intermittent and perennial streams, Zone 1 shall begin at the most landward limit of the top of bank or the rooted herbaceous vegetation and extend landward a distance of 30 feet on all sides of the ~~surface water,~~ stream, measured horizontally on a line perpendicular to the ~~surface water.~~ stream (where an intermittent or perennial stream begins or ends, including when it goes underground, enters or exits a culvert, or enters or exits a wetland, the required distance shall be measured as a radius around the beginning or the end).

(ii) For ponds, lakes and reservoirs ~~located within a natural drainage way~~subject to this Rule, Zone 1 shall begin at the ~~most landward limit of the~~ normal water level ~~or the rooted herbaceous vegetation~~ and extend landward a distance of 30 feet, measured horizontally on a line perpendicular to the surface water.

(iii) For surface waters within the 20 Coastal Counties (defined in ~~15A NCAC 02B .0202)~~ Rule .0202 of this Subchapter) and within the jurisdiction of the Division of Coastal Management, Zone 1 shall begin at the most landward limit ~~of:~~

~~(A) the normal high water level;~~

~~(B) the normal water level; or~~

~~(C) the landward limit of coastal wetlands as defined by the Division of Coastal Management;~~ of the normal high water level or the normal water level and extend landward a distance of 30 feet, measured horizontally on a line perpendicular to the surface water, whichever is more restrictive.

(b) Zone 2 shall consist of a stable, vegetated area that is undisturbed except for activities and uses provided for in Items (9) and ~~(6)~~~~(10)~~(11) of this Rule. Grading and revegetating Zone 2 is allowed provided that the health of the vegetation in Zone 1 is not compromised. Zone 2 shall begin at the outer edge of Zone 1 and extend landward 20 feet as measured horizontally on a line perpendicular to the surface water. The combined width of Zones 1 and 2 shall be 50 feet on all sides of the surface water.

~~(5) DIFFUSE FLOW REQUIREMENT. Diffuse flow of runoff shall be maintained in the riparian buffer by dispersing concentrated flow and reestablishing vegetation.~~

~~(a) Concentrated runoff from new ditches or manmade conveyances shall be converted to diffuse flow before the runoff enters the Zone 2 of the riparian buffer.~~

~~(b) Periodic corrective action to restore diffuse flow shall be taken if necessary to impede the formation of erosion gullies.~~

(9) STORMWATER RUNOFF THROUGH THE RIPARIAN BUFFER. Stormwater runoff into the riparian buffer shall meet dispersed flow as defined in 15A NCAC 02H .1002 except as otherwise described in this Item. Drainage conveyances include drainage ditches, roadside ditches, and stormwater conveyances. The following stormwater conveyances through the riparian buffer are either deemed allowable or allowable upon authorization, as defined in Sub-Item (10)(a) of this Rule, provided that they do not erode through the riparian buffer and do not cause erosion to the receiving waterbody. Stormwater conveyances through the riparian buffer that are not listed below shall be allowable with exception as defined in Sub-Item (10)(a)(v) of this Rule.

(a) The following are deemed allowable as defined in Sub-Item (10)(a)(i) of this rule:

(i) New drainage conveyances from a Primary SCM, as defined in 15A NCAC 02H .1002, when the Primary SCM is designed to treat the drainage area to the conveyance and that comply with a stormwater management plan reviewed and approved under a state stormwater program or a state-approved local government stormwater program; and

(ii) New stormwater flow to existing drainage conveyances provided that the addition of new flow does not result in the need to alter the conveyance.

(b) The following are allowable upon authorization as defined in Sub-Item (10)(a)(ii) of this Rule:

(i) New drainage conveyances from a Primary SCM as defined in 15A NCAC 02H .1002 when the Primary SCM is provided to treat the drainage area to the conveyance but are not required to be approved under a state stormwater program or a state-approved local government stormwater program;

(ii) New drainage conveyances when the drainage area to the conveyance is demonstrated via approved nutrient calculation methodologies to meet the nutrient loading goal of 3.6 pounds per acre per year of Nitrogen (N) outside of the Falls of the Neuse Reservoir Watershed. Within the Falls of the Neuse Reservoir Watershed, new drainage conveyances when the drainage area to the conveyance is demonstrated via approved nutrient calculation methodologies to meet the nutrient loading goal of 2.2 pounds per acre per year of Nitrogen (N) and 0.33 pounds per acre per year of Phosphorus (P);

(iii) New drainage conveyances when the flow rate of the conveyance is less than 0.5 cubic feet per second during the peak flow from the 0.75 inch per hour storm;

(iv) New stormwater runoff that has been treated through a level spreader-filter strip that complies with 15A NCAC 02H .1059;

(v) Realignment of existing drainage conveyances applicable to publicly funded and maintained linear transportation facilities when retaining or improving the design dimensions provided that no additional travel lanes are added and the minimum required roadway typical section is used based on traffic and safety considerations;

(vi) Realignment of existing drainage conveyances retaining or improving the design dimensions provided that the size of the drainage area and the percent built-upon area within the drainage area remain the same;

(vii) New or altered drainage conveyances applicable to publicly funded and maintained linear transportation facilities provided that SCMs, or BMPs from the NCDOT Stormwater Best Management Practices Toolbox, are employed;

(viii) New drainage conveyances applicable to publicly funded and maintained linear transportation facilities that do not provide a stormwater management facility due to topography constraints provided other measures are employed to protect downstream water quality to the maximum extent practical; and

(ix) New drainage conveyances where the drainage area to the conveyance has no new built-upon area as defined in 15A NCAC 02H .1002 and the conveyance is necessary for bypass of existing drainage only.

~~(6)~~(10) ~~TABLE OF~~ USES. Uses within the riparian buffer, or outside the riparian buffer with hydrological impacts on the riparian buffer, shall be designated as deemed allowable, allowable upon authorization, allowable with mitigation upon authorization, allowable with exception or prohibited.

(a) Potential new uses shall have the following requirements:

(i) DEEMED ALLOWABLE. Uses designated as deemed allowable in Sub-~~Items~~ Item (9)(a) and Item ~~(10)(b)~~(11) of this Rule may occur within the riparian buffer. Deemed allowable uses shall be designed, constructed and maintained to minimize vegetation and soil disturbance and to provide the maximum water quality protection practicable, including construction, monitoring, and maintenance activities. In addition, deemed allowable uses shall meet the requirements listed in ~~Sub~~ Item ~~(10)(b)~~ (11) of this Rule for the specific use.

(ii) ALLOWABLE UPON AUTHORIZATION. Uses designated as allowable upon authorization in Sub-~~Items~~ Item (9)(b) and Item ~~(10)(b)~~ (11) of this Rule require a written Authorization Certificate from the Authority for impacts within the riparian buffer pursuant to Rule .0611 of this Subchapter.

(iii) ALLOWABLE WITH MITIGATION UPON AUTHORIZATION. Uses designated as allowable with mitigation upon authorization in ~~Sub~~ Item ~~(10)(b)~~(11) of this Rule require a written Authorization Certificate from the Authority for impacts within the riparian buffer pursuant to Rule .0611 of this

Subchapter and an appropriate mitigation strategy that has received written approval pursuant to Item ~~(11)~~(12) of this Rule.

(iv) PROHIBITED. Uses designated as prohibited in ~~Sub~~ Item ~~(10)(b)~~(11) of this Rule may not proceed within the riparian buffer unless a Variance is granted pursuant to Rule .0226 of this Subchapter. Mitigation may be required as a condition of variance approval.

(v) ALLOWABLE WITH EXCEPTION. Uses not designated as deemed allowable, allowable upon authorization, allowable with mitigation upon authorization or prohibited in ~~Sub~~ Item ~~(10)(b)~~(11) of this Rule require a written Authorization Certificate with Exception from the Authority for impacts within the riparian buffer pursuant to Rule .0611 of this Subchapter and an appropriate mitigation strategy that has received written approval pursuant to Item ~~(11)~~(12) of this Rule.

~~(b)~~(11) TABLE OF USES. The following ~~chart~~ table sets out ~~the~~ potential new uses within the riparian buffer, or outside the riparian buffer with hydrological impacts on the riparian buffer, and ~~their designation under this Rule~~ designates them as ~~exempt,~~ deemed allowable, ~~allowable,~~ allowable upon authorization, allowable with ~~mitigation, or prohibited.~~ mitigation upon authorization, or prohibited: ~~The requirements for each category are given in Item (7) of this Rule.~~

	~~Exempt~~ Deemed Allowable	Allowable Upon Authorization	Allowable with Mitigation Upon Authorization	Prohibited
(a) Airport facilities:				
(i) Vegetation removal activities necessary to comply with Federal Aviation Administration requirements (e.g. line of sight requirements) provided the disturbed areas are stabilized and revegetated	X			
(ii) Airport facilities that impact equal to or less than ~~150 linear feet or~~ one-third of an acre of riparian buffer		X		
(iii) Airport facilities that impact greater than ~~150 linear feet or~~ one-third of an acre of riparian buffer			X	
(b) Archaeological activities	X			
(c) Bridges:				
(i) Impact equal to or less than one-tenth of an acre of riparian buffer	X			
(ii) Impact greater than one-tenth of an acre of riparian buffer		X		

	~~Exempt~~ Deemed Allowable	Allowable Upon Authorization	Allowable with Mitigation Upon Authorization	Prohibited
(d) Dam maintenance activities: (i) Dam maintenance activities that do not cause additional riparian buffer disturbance beyond the footprint of the existing dam (ii) Dam maintenance activities that do cause additional riparian buffer disturbance beyond the footprint of the existing dam	X	X		
~~Drainage ditches, roadside ditches and stormwater outfalls through riparian buffers:~~ • ~~Existing drainage ditches, roadside ditches, and stormwater outfalls provided that they are managed to minimize the sediment, nutrients and other pollution that convey to waterbodies~~ • ~~New drainage ditches, roadside ditches and stormwater outfalls provided that a stormwater management facility is installed to control nitrogen and attenuate flow before the conveyance discharges through the riparian buffer~~ • ~~New drainage ditches, roadside ditches and stormwater outfalls that do not provide control for nitrogen before discharging through the riparian buffer~~ • ~~Excavation of the streambed in order to bring it to the same elevation as the invert of a ditch~~	~~X~~	~~X~~		~~X~~ ~~X~~
(e) Drainage of a pond ~~in a natural drainage way~~ subject to Item (3) of this Rule provided that a new riparian buffer ~~that meets the requirements of Items (4) and (5) of this Rule~~ is established ~~adjacent to the new channel~~ by natural regeneration or planting, within 50 feet of any stream which naturally forms or is constructed within the drained pond area. Drained ponds shall be allowed to naturalize for a minimum of six months from completion of the draining activity before a stream determination is conducted pursuant to Item (4) of this Rule	X			

	~~Exempt~~ Deemed Allowable	Allowable Upon Authorization	Allowable with Mitigation Upon Authorization	Prohibited
~~Driveway crossings of streams and other surface waters subject to this Rule:~~	~~X~~			
• ~~Driveway crossings on single family residential lots that disturb equal to or less than 25 linear feet or 2, 500 square feet of riparian buffer~~		~~X~~		
• ~~Driveway crossings on single family residential lots that disturb greater than 25 linear feet or 2,500 square feet of riparian buffer~~		~~X~~		
• ~~In a subdivision that cumulatively disturb equal to or less than 150 linear feet or one third of an acre of riparian buffer~~			~~X~~	
• ~~In a subdivision that cumulatively disturb greater than 150 linear feet or one third of an acre of riparian buffer~~				
(f) Fences:				
(i) Fencing livestock out of surface waters	X			
(ii) ~~Fences provided that disturbance is minimized and installation~~ Installation does not result in removal of ~~forest vegetation~~ trees from Zone 1	X			
(iii) Installation results in removal of trees from Zone 1		X		
(g) Fertilizer application:				
(i) One-time fertilizer application at agronomic rates in the riparian buffer to establish replanted ~~vegetation~~ vegetation. ~~This only applies to the one-time application of fertilizer in the riparian buffer.~~ No runoff from this one-time application in the riparian buffer is allowed in the applicable surface water	X			
(ii) Ongoing fertilizer application				X
(h) Forest harvesting - see ~~Item (11) of this~~ Rule .0612 of this Subchapter				
(i) Grading ~~and revegetation~~ only in Zone 2 ~~only~~ provided that ~~diffuse flow and~~ the health of existing vegetation in Zone 1 is not ~~compromised~~ compromised, Item (9) of this Rule is complied with, and disturbed areas are stabilized and revegetated	X			
(j) ~~Greenway/hiking trails~~ Greenways, trails, sidewalks or linear pedestrian/bicycle transportation ~~system~~systems:				

	~~Exempt~~ Deemed Allowable	Allowable Upon Authorization	Allowable with Mitigation Upon Authorization	Prohibited
(i) In Zone 2 provided that no built upon area is added within the riparian buffer	X			
(ii) In Zone 1 provided that no built upon area is added within the riparian buffer and the installation does not result in the removal of tree(s)	X			
(iii) When built upon area is added to the riparian buffer, equal to or less than 10 feet wide with 2 foot wide shoulders. ~~Must~~ ~~S~~shall be located outside Zone 1 unless there is no practical alternative		X		
(iv) When built upon area is added to the riparian buffer, greater than 10 feet wide with 2 foot wide shoulders. ~~Must~~ Shall be located outside Zone 1 unless there is no practical alternative			X	
(k) Historic preservation	X			
(l) New Landfills as defined by G.S. 130A-290				X
(m) ~~Periodic maintenance of~~ Maintenance access on modified natural streams ~~such as canals~~ or canals: ~~and~~ a grassed travelway on one side of the ~~surface~~ ~~water body~~waterbody when less impacting ~~alternative forms~~ alternatives ~~of maintenance access~~ are not practical. The width and specifications of the travel way shall be only that needed for equipment access and operation. The travel way shall be located to maximize stream shading		X		
(n) Mining activities:				
(i) Mining activities that are covered by the Mining Act provided that new riparian buffers that meet the requirements of Items ~~(4)~~(8) and ~~(5)~~(9) of this Rule are established adjacent to ~~the~~ any relocated channels		X		
(ii) Mining activities that are not covered by the Mining Act OR where new riparian buffers that meet the requirements or Items ~~(4)~~(8) and ~~(5)~~(9) of this Rule are not established ~~adjacent to the relocated channels~~			X	

	~~Exempt~~ Deemed Allowable	Allowable Upon Authorization	Allowable with Mitigation Upon Authorization	Prohibited
(iii) Wastewater or mining dewatering wells with approved NPDES permit	X			
~~Non-electric utility lines:~~ • ~~Impacts other than perpendicular crossings in Zone 2 only[3]~~ • ~~Impacts other than perpendicular crossings in Zone 1[3]~~ ~~Non-electric utility line perpendicular crossing of streams and other surface waters subject to this Rule[3]:~~ • ~~Perpendicular crossings that disturb equal to or less than 40 linear feet of riparian buffer with a maintenance corridor equal to or less than 10 feet in width~~ • ~~Perpendicular crossings that disturb greater than 40 linear feet of riparian buffer with a maintenance corridor greater than 10 feet in width~~ • ~~Perpendicular crossings that disturb greater than 40 linear feet but equal to or less than 150 linear feet of riparian buffer with a maintenance corridor equal to or less than 10 feet in width~~ • ~~Perpendicular crossings that disturb greater than 40 linear feet but equal to or less than 150 linear feet of riparian buffer with a maintenance corridor greater than 10 feet in width~~ • ~~Perpendicular crossings that disturb greater than 150 linear feet of riparian buffer~~	~~X~~	~~X~~ ~~X~~ ~~X~~	~~X~~ ~~X~~ ~~X~~	
(o) On-site sanitary sewage systems - new ones that use ground absorption				X
~~Overhead electric utility lines:~~ • ~~Impacts other than perpendicular crossings in Zone 2 only[3]~~ ~~Overhead electric utility line perpendicular crossings of streams and other surface waters subject to this Rule[3]~~ • ~~Perpendicular crossings that disturb equal to or less than 150 linear feet of riparian buffer[1]~~ • ~~Perpendicular crossings that disturb greater than 150 linear feet of riparian buffer[1, 2]~~	~~X~~ ~~X~~ ~~X~~	~~X~~		
(p) Pedestrian access trail and associated steps leading to a surface water, dock, canoe or kayak access, fishing pier, boat ramp or other water dependent structure:				

	~~Exempt~~ Deemed Allowable	Allowable Upon Authorization	Allowable with Mitigation Upon Authorization	Prohibited
(i) ~~Pedestrian access trail equal~~Equal to or less than six feet wide that does not result in the removal of ~~any~~ tree(s) within the riparian buffer and does not result in ~~any built upon area being added~~the addition of built upon area to the riparian buffer	X			
(ii) ~~Pedestrian access trail equal~~Equal to or less than six feet wide ~~where the installation or use~~that results in the removal of tree(s) or the addition of built upon area to the riparian buffer		X		
(iii) ~~Pedestrian access trail greater~~Greater than six feet wide			X	
(q) Playground equipment:				
(i) Playground equipment on ~~single family~~single-family lots provided that installation and use does not result in removal of vegetation	X			
(ii) Playground equipment on ~~single family~~single-family lots where installation or use results in the removal of vegetation		X		
(iii) Playground equipment installed on lands other than single-family lots ~~or that requires removal of vegetation~~		X		
(r) ~~Ponds in natural drainage ways, excluding dry ponds:~~ Ponds created or modified by impounding streams subject to riparian buffers pursuant to Item (3) of this Rule and not used as stormwater control measures (SCMs):				
(i) New ponds provided that a riparian buffer that meets the requirements of Items ~~(4)~~(8) and ~~(5)~~(9) of this Rule is established adjacent to the pond		X		
(ii) New ponds where a riparian buffer that meets the requirements of Items ~~(4)~~(8) and ~~(5)~~(9) of this Rule is NOT established adjacent to the pond			X	

	~~Exempt~~ Deemed Allowable	Allowable Upon Authorization	Allowable with Mitigation Upon Authorization	Prohibited
(s) Protection of existing ~~structures, facilities and streambanks~~ structures and facilities~~,~~ when this requires additional disturbance ~~of~~ to the riparian buffer ~~or the stream channel~~		X		
(t) Public Safety - publicly owned spaces where it has been determined by the head of the local law enforcement agency with jurisdiction over that area that the riparian buffers pose a risk to public safety. The head of the local law enforcement agency shall notify the local government with land use jurisdiction over the publicly owned space and the Division of Water Resources of any such determination in writing	X			
~~Railroad impacts other than crossings of streams and other surface waters subject to this Rule~~ ~~Railroad crossings of streams and other surface waters subject to this Rule:~~ • ~~Railroad crossings that impact equal to or less than 40 linear feet of riparian buffer~~ • ~~Railroad crossings that impact greater than 40 linear feet but equal to or less than 150 linear feet or one-third of an acre of riparian buffer~~ • ~~Railroad crossings that impact greater than 150 linear feet or one-third of an acre of riparian buffer~~	~~X~~	~~X~~	~~X~~ ~~X~~	
(u) Removal of previous fill or debris provided that ~~diffuse flow is maintained~~ Item (9) of this Rule is complied with and any vegetation removed is restored	X			

	~~Exempt~~ Deemed Allowable	Allowable Upon Authorization	Allowable with Mitigation Upon Authorization	Prohibited
(v) Residential Properties: Where application of this Rule would preclude construction or expansion of a single-family residence and necessary infrastructure, the single-family residence may encroach in the riparian buffer if all of the following conditions are met: (1) the residence is set back the maximum feasible distance from the top of the bank, rooted herbaceous vegetation, normal high-water level, or normal water level, whichever is applicable, on the existing lot; (2) the residence is designed to minimize encroachment into the riparian buffer; (3) the residence complies with Item (9) of this Rule; and (4) if the residence will be served by an on-site wastewater system, no part of the septic tank or drainfield may encroach into the riparian buffer:				
(i) The residence or necessary infrastructure only impact Zone 2 ~~only~~		X		
(ii) The residence or necessary infrastructure impact Zone 1			X	
(iii) Impacts other than the residence or necessary infrastructure			X	
(w) Restoration or enhancement (wetland, stream) as defined in 33 CFR Part 332 available free of charge on the internet at: http://water.epa.gov/lawsregs/guidance/wetlands/wetlandsmitigation_index.cfm:				
(i) Wetland or stream restoration that ~~does not require written Division approval that results in impacts to the riparian buffer~~ is part of a compensatory mitigation bank, nutrient offset bank or the In Lieu Fee program	X			
(ii) Wetland or stream restoration ~~that requires written Division approval that results in impacts to the riparian buffer~~ other than those listed above		X		

	~~Exempt~~ Deemed Allowable	Allowable Upon Authorization	Allowable with Mitigation Upon Authorization	Prohibited
(x) ~~Road~~ Road, driveway or railroad - impacts other than perpendicular crossings of streams and other surface waters subject to this Rule			X	
(y) ~~Road~~ Road, driveway or ~~railroads~~ railroad - ~~railroads:~~ perpendicular crossings of streams and other surface waters subject to this ~~Rule:~~ Rule ~~or perpendicular entry into the riparian buffer that does not cross a stream or other surface water subject to this Rule~~:				
(i) ~~Road crossings that impact~~ Impact equal to or less than ~~40 linear feet~~ one-tenth of an acre of riparian buffer	X			
(ii) ~~Road crossings that impact~~ Impact greater than ~~40 linear feet~~ one-tenth of an acre but equal to or less than ~~150 linear feet or~~ one-third of an acre of riparian buffer		X		
(iii) ~~Road crossings that impact~~ Impact greater than ~~150 linear feet or~~ one-third of an acre of riparian buffer			X	
(iv) Driveway crossings in a residential subdivision that cumulatively ~~disturb~~ impact equal to or less than one-third of an acre of riparian buffer		X		
(v) Driveway crossings in a residential subdivision that cumulatively ~~disturb~~ impact greater than one-third of an acre of riparian buffer			X	
(vi) ~~Agriculture~~ Farm roads and forest roads that are exempt from permitting from the U.S. Army Corps of Engineers per Section 404(f) of the F~~f~~ederal Clean Water Act	X			
(z) Road relocation of existing private access roads associated with public road projects where necessary for public safety:				
(i) Less than or equal to 2,500 square feet of riparian buffer impact		X		

	~~Exempt~~ Deemed Allowable	Allowable Upon Authorization	Allowable with Mitigation Upon Authorization	Prohibited
(ii) Greater than 2,500 square feet of riparian buffer impact			X	
(aa) Scientific studies and stream gauging	X			
(bb) Slatted uncovered decks, including steps and support posts, which are associated with a dwelling, provided that it meets the requirements of Items (8) and (9) of this Rule and:				
(i) Installation does not result in removal of vegetation in Zone 1		X		
(ii) Installation results in removal of vegetation in Zone 1			X	
(cc) Stormwater Control Measure (SCM) as defined in 15A NCAC 02H .1002: ~~management ponds excluding dry ponds:~~				
(i) ~~New stormwater management ponds provided that a riparian buffer that meets the requirements of Items (4) and (5) of this Rule is established adjacent to the pond~~ In Zone 2 if Item (9) of this Rule is complied with		X		
(ii) ~~New stormwater management ponds where a riparian buffer that meets the requirements of Items (4) and (5) of this Rule is NOT established adjacent to the pond~~ In Zone 1			X	
~~Stream restoration~~	~~X~~			
(dd) Streambank or shoreline stabilization		X		
(ee) Temporary ~~roads:~~ roads, provided that the disturbed area is restored to pre-construction topographic and hydrologic conditions and replanted with comparable vegetation within two months of when construction is complete. Tree planting may occur during the dormant season. At the end of five years, ~~the~~ any restored wooded riparian buffer shall comply with the restoration criteria in Rule .0295(i) of this Subchapter:				

	~~Exempt~~ Deemed Allowable	Allowable Upon Authorization	Allowable with Mitigation Upon Authorization	Prohibited
(i) ~~Temporary roads that disturb less~~ Less than or equal to 2,500 square feet ~~provided that vegetation is restored within six months of initial disturbance~~ of riparian buffer disturbance	X			
(ii) ~~Temporary roads that disturb greater~~ Greater than 2,500 square feet ~~provided that vegetation is restored within six months of initial disturbance~~ of riparian buffer disturbance		X		
(iii) ~~Temporary roads used for~~ Associated with culvert installation or bridge construction or replacement ~~provided that restoration activities, such as soil stabilization and revegetation, are conducted immediately after construction~~		X		
(ff) Temporary sediment and erosion control ~~devices:~~ devices provided that the disturbed area is restored to preconstruction topographic and hydrologic conditions and replanted with comparable vegetation within two months of when construction is complete. Tree planting may occur during the dormant season. At the end of five years, ~~the~~ any restored wooded riparian buffer shall comply with the restoration criteria in Rule .0295(i) of this Subchapter:				
(i) In Zone 2 ~~only~~ provided ~~that the vegetation in Zone 1 is not compromised~~ that ground cover is established within the timeframes required by the Sedimentation and Erosion Control Act, vegetation in Zone 1 is not compromised, and that discharge is released ~~as diffuse flow~~ in accordance with Item ~~(5)~~(9) of this Rule	X			

	~~Exempt~~ Deemed Allowable	Allowable Upon Authorization	Allowable with Mitigation Upon Authorization	Prohibited
(ii) In Zones 1 and 2 to control impacts associated with uses identified in this Table or ~~approved by the Division Authority or~~uses that have received ~~a variance~~ an ~~authorization certificate~~Authorization Certificate with ~~exception~~ Exception provided that sediment and erosion control for upland areas is addressed ~~to the maximum extent practical~~ outside the riparian buffer		X		
(iii) In-stream temporary erosion and sediment control measures for work within a stream channel that is authorized under Sections 401 and 404 of the Federal ~~Water Pollution Control Act~~Clean Water Act	X			
~~(iv) In-stream temporary erosion and sediment control measures for work within a stream channel that has written approval from the Division and the U.S. Army Corps of Engineers under Sections 401 & 404 of the Federal Water Pollution Control Act~~		~~X~~		
~~Underground electric utility lines:~~				
• ~~Impacts other than perpendicular crossings in Zone 2 only~~[3]	~~X~~			
• ~~Impacts other than perpendicular crossings in Zone 1~~[3,4]	~~X~~			
~~Underground electric utility line perpendicular crossings of streams and other surface waters subject to this Rule:~~[3]				
• ~~Perpendicular crossings that disturb less than or equal to 40 linear feet of riparian buffer~~[3,4]	~~X~~			
• ~~Perpendicular crossings that disturb greater than 40 linear feet of riparian buffer~~[3,4]		~~X~~		
(gg) Utility Lines - Streambank stabilization for the protection of publicly owned utility lines (not including new line installation):				
(i) Less than 150 feet of streambank disturbance	X			
(ii) Greater than 150 feet of streambank disturbance		X		
(hh) Utility - Sewer Lines – Sanitary Sewer Overflows:				

	~~Exempt~~ Deemed Allowable	Allowable Upon Authorization	Allowable with Mitigation Upon Authorization	Prohibited
(i) Emergency sanitary sewer overflow response activities, provided that the disturbed area within the riparian buffer outside of the existing utility line maintenance corridor~~:~~ is the minimum necessary to respond to the emergency overflow, is restored to pre-construction topographic and hydrologic conditions, and is replanted with comparable vegetation (e.g. grass with grass, hardwoods with hardwoods) within two months of when disturbance is complete	X			
(ii) Emergency sanitary sewer overflow response activities that do not meet the listing above. ~~activities, provided the disturbed area within the buffer: is the minimum necessary to respond to the emergency overflow and is not fully restored to pre-construction topographic and hydrologic conditions~~. For any new proposed permanent impacts ~~proposed to remain permanently~~ that are not a "Deemed Allowable Activity", an application for an Authorization Certificate must be submitted to the ~~authority~~ Authority ~~within~~ no later than 30 calendar days of conclusion of the emergency response activities		X		
(ii) Utility - Sewer Lines – Vegetation ~~M~~maintenance ~~A~~activities that remove forest vegetation ~~for~~ from existing sewer utility right of ways (not including new line installation) ~~ways/corridors~~ outside of the existing utility line maintenance corridor: ~~that do not meet the criteria of existing use in Item (6) of this Rule~~:				
(i) Zone 2 impacts	X			

	~~Exempt~~ Deemed Allowable	Allowable Upon Authorization	Allowable with Mitigation Upon Authorization	Prohibited
(ii) Zone 1 impacts: For lines that have not been maintained, the vegetation can be mowed, cut or otherwise maintained without disturbance to the soil structure for a maintenance corridor that is equal to or less than 30 feet wide ~~impacts provided no clearing within 10 feet of the stream~~	X			
~~Zone 1 impacts, provided the permanent maintenance corridor is kept to 10 feet on either side of the existing sewer line. Clearing within 10 feet of the stream may occur provided no grading or grubbing occurs within this area~~	~~X~~			
~~Zone 1 impacts, provided the permanent maintenance corridor is kept to 10 feet on either side of the existing sewer line. Clearing, grading and grubbing can occur within 10 feet of the stream provided the grading and grubbing within 10 feet is less than 2,500 square feet~~		~~X~~		
(iii) Zone 1 impacts other than those listed above		X	~~X~~	
(jj) Utility - Sewer Lines –Replacement/Rehabilitation of existing sewer lines within, or adjacent to, an existing right of way but outside of an existing utility line maintenance corridor provided ~~the~~ –that comparable vegetation (e.g. grass with grass, hardwoods with hardwoods) is allowed to regenerate in disturbed ~~areas~~ riparian buffers outside of the permanent maintenance corridor and riparian buffers outside of the permanent maintenance corridor are not maintained:				
(i) Permanent maintenance corridor equal to or less than 30 feet wide provided there is no grading and/or grubbing within 10 feet of the top of bank when the sewer line is parallel to the stream	X			

	~~Exempt~~ Deemed Allowable	Allowable Upon Authorization	Allowable with Mitigation Upon Authorization	Prohibited
(ii) Grading and/or grubbing within 10 feet of the top of bank when the sewer line is parallel to the stream and permanent maintenance corridor equal to or less than 30 feet wide		X		
(iii) Permanent maintenance corridor greater than 30 feet wide. For impacts other than perpendicular crossings, mitigation is only required for Zone 1 impacts. For perpendicular crossings that disturb equal to or less than 40 linear feet, no mitigation is required. For perpendicular crossings that disturb greater than 40 linear feet, mitigation is only required for Zone 1 impacts			X	
(kk) Utility - Sewer Lines – New Line Construction/Installation Activities – Perpendicular crossings of streams and other surface waters subject to this Rule or perpendicular entry into the riparian buffer that does not cross a stream or other surface water subject to this Rule provided that vegetation is allowed to regenerate in disturbed areas outside of the permanent maintenance corridor: ~~New Sewer Line Construction Activities (including replacement/rehabilitation that does not meet the criteria of existing use in Item (6) of this Rule) provided that (1) vegetative root systems and stumps are left intact to maintain the integrity of the soil except in the trench where trees are cut, and (2) vegetation is allowed to regenerate in disturbed areas, except within the permanent maintenance corridor:~~				
(i) Construction corridor of less ~~Less~~ than or equal to 40 linear feet wide ~~with~~ and a permanent maintenance corridor that is equal to or less than ~~20~~ 30 feet ~~in width~~wide	X			

	~~Exempt~~ Deemed Allowable	Allowable Upon Authorization	Allowable with Mitigation Upon Authorization	Prohibited
(ii) Construction corridor of greater ~~Greater~~ than 40 linear feet wide and less than or equal to 150 linear feet wide ~~with~~ and a permanent maintenance corridor that is equal to or less than ~~20~~ 30 feet wide~~in width~~		X		
(iii) Construction corridor of greater ~~Greater~~ than 150 linear feet wide ~~with~~ and a permanent maintenance corridor that is equal to or less than ~~20~~ 30 feet ~~in width~~wide			X	
(iv) Permanent maintenance corridor greater than ~~20~~ 30 linear feet ~~(mitigation is required only for impacts beyond the 20 linear feet corridor width)~~wide. For impacts other than perpendicular crossings, mitigation is only required for Zone 1 impacts. For perpendicular crossings that disturb equal to or less than 40 linear feet, no mitigation is required. For perpendicular crossings that disturb greater than 40 linear feet, mitigation is only required for Zone 1 impacts			X	
(ll) Utility - Sewer Lines – New Line Construction/Installation Activities – Impacts other than perpendicular crossings provided that vegetation is allowed to regenerate in disturbed areas outside of the permanent maintenance corridor:				
(i) Zone 2 ~~only~~impacts	X			
(ii) Zone 1 impacts to less than 2,500 square feet when impacts are solely the result of tying into an existing utility line and when grubbing or grading within 10 feet immediately adjacent to the surface water is avoided		X		
~~Zone 1 impacts for replacement/rehabilitation within an existing Right of Way when land grubbing or grading within 10 feet immediately adjacent to the surface water is avoided~~		~~X~~		

	~~Exempt~~ Deemed Allowable	Allowable Upon Authorization	Allowable with Mitigation Upon Authorization	Prohibited
(iii) Zone 1 impacts other than those listed above			X	
(mm) Utility – Non-Sewer Underground Lines – Vegetation ~~M~~maintenance ~~A~~activities that remove forest vegetation from existing utility right of ways (not including new line installation) outside of the existing utility line maintenance corridor:				
(i) Zone 2 impacts ~~Vegetation maintenance activities along an existing utility line beyond the footprint of an existing utility line maintenance corridor where the total maintenance corridor is equal to or less than 30 linear feet in width~~	X	~~X~~		
(ii) Zone 1 impacts: For lines that have not been maintained, the vegetation can be mowed, cut or otherwise maintained without disturbance to the soil structure for a maintenance corridor that is equal to or less than 30 feet wide	X			
(iii) Zone 1 impacts other than those listed above ~~Vegetation maintenance activities along an existing utility line beyond the footprint of an existing utility line maintenance corridor where the total maintenance corridor is greater than 30 linear feet in width~~		X	~~X~~	
(nn) Utility – Non-Sewer Underground Lines – Perpendicular crossings of streams and other surface waters subject to this Rule or perpendicular entry into the riparian buffer that does not cross a stream or other surface water subject to this Rule provided that vegetation is allowed to regenerate in disturbed areas outside of the permanent maintenance corridor:				

	~~Exempt~~ Deemed Allowable	Allowable Upon Authorization	Allowable with Mitigation Upon Authorization	Prohibited
(i) Construction ~~activities~~ corridor ~~that disturb~~of less than or equal to 50 linear feet wide ~~of riparian buffer provided that vegetative root systems and stumps shall be left intact to maintain the integrity of the soil except in the trench where trees are cut and that vegetation is allowed to regenerate in disturbed areas with the exception of~~ and a permanent maintenance corridor that is equal to or less than 30 feet ~~in width~~wide	X			
(ii) Construction ~~activities that disturb~~corridor of greater than 50 linear feet wide and less than or equal to 150 linear feet wide ~~of riparian buffer provided that vegetative root systems and stumps shall be left intact to maintain the integrity of the soil except in the trench where trees are cut and that vegetation is allowed to regenerate in disturbed areas with the exception of~~ and a permanent maintenance corridor that is equal to or less than 30 feet ~~in width~~ wide		X		
(iii) Construction ~~activities that disturb~~corridor of greater than 150 linear feet wide ~~of riparian buffer~~ and a permanent maintenance corridor that is equal to or less than 30 feet ~~in width~~wide			X	
(iv) Permanent maintenance corridor that is greater than 30 linear feet wide (mitigation is required only for Zone 1 impacts) ~~Any activities with a permanent maintenance corridor greater than 30 feet in width~~			X	
(oo) Utility – Non-Sewer Underground Lines – Impacts other than perpendicular crossings provided that vegetation is allowed to regenerate in disturbed areas outside of the permanent maintenance corridor:				
(i) Zone 2 ~~only~~ impacts ~~Impacts in Zone Two provided vegetation is re-established after disturbance and the function of Zone 1 is not compromised~~	X			

	~~Exempt~~ Deemed Allowable	Allowable Upon Authorization	Allowable with Mitigation Upon Authorization	Prohibited
(ii) ~~Impacts in Zone One~~ Zone 1 impacts to less than 2,500 square feet when impacts are solely the result of tying into an existing utility line and when grubbing or grading ~~provided that land grubbing or grading is not conducted~~ within 10 feet immediately adjacent to the surface water is avoided		X		
(iii) Zone 1 impacts other than those listed above			X	
(pp) Utility – Non-Sewer Aerial Lines – Perpendicular crossings of streams and other surface waters subject to this Rule or perpendicular entry into the riparian buffer that does not cross a stream or other surface water subject to this Rule:				
(i) Disturb equal to or less than 150 linear feet wide of riparian buffer provided that a minimum zone of 10 feet wide immediately adjacent to the ~~water body~~waterbody is managed such that only vegetation that poses a hazard or has the potential to grow tall enough to interfere with the line is removed, that no land grubbing or grading is conducted in Zone 1, and that that poles or aerial infrastructure are not installed within 10 feet of a ~~water body~~waterbody	X			
(ii) Disturb greater than 150 linear feet wide of riparian buffer		X		
(qq) Utility – Non-Sewer Aerial Lines – Impacts other than perpendicular crossings of streams and other surface waters subject to this Rule or perpendicular entry into the riparian buffer that does not cross a stream or other surface water subject to this Rule:				
(i) Impacts in Zone ~~Two~~ 2 only	X			

	~~Exempt~~ Deemed Allowable	Allowable Upon Authorization	Allowable with Mitigation Upon Authorization	Prohibited
(ii) Impacts in Zone ~~One~~ 1 provided that a minimum zone of 10 feet wide immediately adjacent to the ~~water body~~waterbody is managed such that only vegetation that poses a hazard or has the potential to grow tall enough to interfere with the line is removed, that no land grubbing or grading is conducted in Zone 1, and that that poles or aerial infrastructure are not installed within 10 feet of a ~~water body~~waterbody		X		
(rr) Vegetation management:				
(i) Emergency fire control measures provided that topography is restored	X			
(ii) Periodic mowing and harvesting of plant products only in Zone 2 ~~only~~	X			
(iii) Placement of mulch ring around restoration plantings for a period of five years from the date of planting	X			
(iv) Planting non-invasive vegetation to enhance the riparian buffer	X			
(v) Pruning forest vegetation provided that the health and function of the forest vegetation is not compromised	X			
(vi) Removal of individual ~~trees~~ trees, branches or limbs which are in danger of causing damage to dwellings, existing utility lines, other structures or human ~~life~~ life, or are imminently endangering stability of the streambank provided that the stumps are left or ground in place without causing additional land disturbance	X			
(vii) Removal of individual trees that are dead, diseased or damaged	X			

	~~Exempt~~ Deemed Allowable	Allowable Upon Authorization	Allowable with Mitigation Upon Authorization	Prohibited
(viii) Removal of poison ~~ivy~~ ivy, oak or sumac. Removal can include application of pesticides within the riparian buffer if the pesticides are certified by EPA for use in or near aquatic sites and are applied in accordance with the manufacturer's instructions. If removal is significant, then the riparian buffer shall be replanted with non-invasive species	X			
(ix) Removal of understory nuisance vegetation as defined in: Smith, Cherri L. ~~1998. Exotic Plant Guidelines. Department of Environment and Natural Resources. Division of Parks and Recreation. Raleigh, NC. Guideline #30~~ 2008. Invasive Plants of North Carolina. Dept. of Transportation. Raleigh, NC (available at http://portal.ncdenr.org/c/document_library/get_file?uuid=0acc6377-ea07-42dc-bb27-45a78d1c7ebe&groupId=38364). Removal can include application of pesticides within the riparian buffer is the pesticides are certified by EPA for use in or near aquatic sites and are applied in accordance with the manufacturer's instructions. If removal is significant then the riparian buffer shall be replanted with non-invasive species	X			
(x) Removal of woody vegetation in Zone 1 provided that Item (9) of this Rule is complied with			X	
(ss) Vehicle access roads and boat ramps (excluding parking areas) leading to surface water, docks, fishing piers, and other water dependent activities:				
(i) Single vehicular access road and boat ramp to the surface water but not crossing the surface water that are restricted to the minimum width practicable not to exceed 15 feet ~~in width~~wide		X		

	~~Exempt~~ Deemed Allowable	Allowable Upon Authorization	Allowable with Mitigation Upon Authorization	Prohibited
(ii) Vehicular access roads and boat ramps to the surface water but not crossing the surface water that are restricted to the minimum width practicable and exceed 15 feet ~~in width~~wide			X	
(tt) Water dependent structures (except for boat ramps) as defined in Rule .0202 of this Subchapter		X		
(uu) Water supply reservoirs:				
(i) New reservoirs provided that a riparian buffer that meets the requirements of Items ~~(4)~~(8) and ~~(5)~~(9) of this Rule is established adjacent to the reservoir		X		
(ii) New reservoirs where a riparian buffer that meets the requirements of Items ~~(4)~~(8) and ~~(5)~~(9) of this Rule is NOT established adjacent to the reservoir			X	
(vv) Water wells	X			
(ww) Wildlife passage structures		X		
~~Wetland restoration~~	~~X~~			

~~[1] Provided that, in Zone 1, all of the following BMPs for overhead utility lines are used. If all of these BMPs are not used, then the overhead utility lines shall require a no practical alternative evaluation by the Division.~~

- ~~A minimum zone of 10 feet wide immediately adjacent to the water body shall be managed such that only vegetation that poses a hazard or has the potential to grow tall enough to interfere with the line is removed.~~
- ~~Woody vegetation shall be cleared by hand. No land grubbing or grading is allowed.~~
- ~~Vegetative root systems shall be left intact to maintain the integrity of the soil. Stumps shall remain where trees are cut.~~
- ~~Rip rap shall not be used unless it is necessary to stabilize a tower.~~
- ~~No fertilizer shall be used other than a one-time application to re-establish vegetation.~~
- ~~Construction activities shall minimize the removal of woody vegetation, the extent of the disturbed area, and the time in which areas remain in a disturbed state.~~
- ~~Active measures shall be taken after construction and during routine maintenance to ensure diffuse flow of stormwater through the buffer.~~
- ~~In wetlands, mats shall be utilized to minimize soil disturbance.~~
- ~~[2] Provided that poles or towers shall not be installed within 10 feet of a water body unless the Division completes a no practical alternative evaluation.~~

~~[3] Perpendicular crossings are those that intersect the surface water at an angle between 75° and 105°.~~

~~[4] Provided that, in Zone 1, all of the following BMPs for underground utility lines are used. If all of these BMPs are not used, then the underground utility line shall require a no practical alternatives evaluation by the Division.~~

- ~~Woody vegetation shall be cleared by hand. No land grubbing or grading is allowed.~~
- ~~Vegetative root systems shall be left intact to maintain the integrity of the soil. Stumps shall remain, except in the trench, where trees are cut.~~

- ~~Underground cables shall be installed by vibratory plow or trenching.~~
- ~~The trench shall be backfilled with the excavated soil material immediately following cable installation.~~
- ~~No fertilizer shall be used other than a one-time application to re-establish vegetation.~~
- ~~Construction activities shall minimize the removal of woody vegetation, the extent of the disturbed area, and the time in which areas remain in a disturbed state.~~
- ~~Active measures shall be taken after construction and during routine maintenance to ensure diffuse flow of stormwater through the buffer.~~
- ~~In wetlands, mats shall be utilized to minimize soil disturbance.~~

~~(7) REQUIREMENTS FOR CATEGORIES OF USES. Uses designated as exempt, allowable, allowable with mitigation and prohibited in Item (6) of this Rule shall have the following requirements:~~

~~(a) EXEMPT. Uses designated as exempt are allowed within the riparian buffer. Exempt uses shall be designed, constructed and maintained to minimize soil disturbance and to provide the maximum water quality protection practicable. In addition, exempt uses shall meet requirements listed in Item (6) of this Rule for the specific use.~~

~~(b) ALLOWABLE. Uses designated as allowable may proceed within the riparian buffer provided that there are no practical alternatives to the requested use pursuant to Item (8) of this Rule. These uses require written authorization from the Division or the delegated local authority.~~

~~(c) ALLOWABLE WITH MITIGATION. Uses designated as allowable with mitigation may proceed within the riparian buffer provided that there are no practical alternatives to the requested use pursuant to Item (8) of this Rule and an appropriate mitigation strategy has been approved pursuant to Item (10) of this Rule. These uses require written authorization from the Division or the delegated local authority.~~

~~(d) PROHIBITED. Uses designated as prohibited may not proceed within the riparian buffer unless a variance is granted pursuant to Item (9) of this Rule. Mitigation may be required as one condition of a variance approval.~~

~~(8) DETERMINATION OF "NO PRACTICAL ALTERNATIVES." Persons who wish to undertake uses designated as allowable or allowable with mitigation shall submit a request for a "no practical alternatives" determination to the Division or to the delegated local authority. The applicant shall certify that the criteria identified in Sub-Item (8)(a) of this Rule are met. The Division or the delegated local authority shall grant an Authorization Certificate upon a "no practical alternatives" determination. The procedure for making an Authorization Certificate shall be as follows:~~

~~(a) For any request for an Authorization Certificate, the Division or the delegated local authority shall review the entire project and make a finding of fact as to whether the~~

~~following requirements have been met in support of a "no practical alternatives" determination:~~

~~(i) The basic project purpose cannot be practically accomplished in a manner that would better minimize disturbance, preserve aquatic life and habitat, and protect water quality.~~

~~(ii) The use cannot practically be reduced in size or density, reconfigured or redesigned to better minimize disturbance, preserve aquatic life and habitat, and protect water quality.~~

~~(iii) Best management practices shall be used if necessary to minimize disturbance, preserve aquatic life and habitat, and protect water quality.~~

~~(b) Requests for an Authorization Certificate shall be reviewed and either approved or denied within 60 days of receipt of a complete submission based on the criteria in Sub-Item (8)(a) of this Rule by either the Division or the delegated local authority. Failure to issue an approval or denial within 60 days shall constitute that the applicant has demonstrated "no practical alternatives." The Division or the delegated local authority may attach conditions to the Authorization Certificate that support the purpose, spirit and intent of the riparian buffer protection program. Complete submissions shall include the following:~~

~~(i) The name, address and phone number of the applicant;~~

~~(ii) The nature of the activity to be conducted by the applicant;~~

~~(iii) The location of the activity, including the jurisdiction;~~

~~(iv) A map of sufficient detail to accurately delineate the boundaries of the land to be utilized in carrying out the activity, the location and dimensions of any disturbance in riparian buffers associated with the activity, and the extent of riparian buffers on the land;~~

~~(v) An explanation of why this plan for the activity cannot be practically accomplished, reduced or reconfigured to better minimize disturbance to the riparian buffer, preserve aquatic life and habitat and protect water quality; and~~

~~(vi) Plans for any best management practices proposed to be used to control the impacts associated with the activity.~~

~~(c) Any disputes over determinations regarding Authorization Certificates shall be referred to the Director for a decision. The Director's decision is subject to review as provided in Articles 3 and 4 of G.S. 150B.~~

~~(9) VARIANCES. Persons who wish to undertake uses designated as prohibited may pursue a variance. The Division or the appropriate delegated local authority may grant minor variances. The variance request procedure shall be as follows:~~

~~(a) For any variance request, the Division or the delegated local authority shall make a finding of fact as to whether the following requirements have been met:~~

~~(i) There are practical difficulties or unnecessary hardships that prevent compliance with the strict letter of the riparian buffer protection requirements. Practical difficulties or unnecessary hardships shall be evaluated in accordance with the following:~~

~~(A) If the applicant complies with the provisions of this Rule, he/she can secure no reasonable return from, nor make reasonable use of, his/her property. Merely proving that the variance would permit a greater profit from the property shall not be considered adequate justification for a variance. Moreover, the Division or delegated local authority shall consider whether the variance is the minimum possible deviation from the terms of this Rule that shall make reasonable use of the property possible.~~

~~(B) The hardship results from application of this Rule to the property rather than from other factors such as deed restrictions or other hardship.~~

~~(C) The hardship is due to the physical nature of the applicant's property, such as its size, shape, or topography, which is different from that of neighboring property.~~

~~(D) The applicant did not cause the hardship by knowingly or unknowingly violating this Rule.~~

~~(E) The applicant did not purchase the property after the effective date of this Rule, and then requesting an appeal.~~

~~(F) The hardship is unique to the applicant's property, rather than the result of conditions that are widespread. If other properties are equally subject to the hardship created in the restriction, then granting a variance would be a special privilege denied to others, and would not promote equal justice;~~

~~(ii) The variance is in harmony with the general purpose and intent of the State's riparian buffer protection requirements and preserves its spirit; and~~

~~(iii) In granting the variance, the public safety and welfare have been assured, water quality has been protected, and substantial justice has been done.~~

~~(b) MINOR VARIANCES. A minor variance request pertains to activities that are proposed only to impact any portion of Zone 2 of the riparian buffer. Minor variance requests shall be reviewed and approved based on the criteria in Sub-Item (9)(a) of this Rule by the either the Division or the delegated local authority pursuant to G.S. 153A-Article 18, or G.S. 160A-Article 19. The Division or the delegated local authority may attach conditions to the variance approval that support the purpose, spirit and intent of the riparian buffer protection program. Requests for appeals of decisions made by the Division shall be made~~

~~to the Office of Administrative Hearings. Request for appeals made by the delegated local authority shall be made to the appropriate Board of Adjustment under G.S. 160A-388 or G.S. 153A-345.~~

~~(c) MAJOR VARIANCES. A major variance request pertains to activities that are proposed to impact any portion of Zone 1 or any portion of both Zones 1 and 2 of the riparian buffer. If the Division or the delegated local authority has determined that a major variance request meets the requirements in Sub-Item (9)(a) of this Rule, then it shall prepare a preliminary finding and submit it to the Commission. Preliminary findings on major variance requests shall be reviewed by the Commission within 90 days after receipt by the Director. Requests for appeals of determinations that the requirements of Sub-Item (9)(a) of this Rule have not been met shall be made to the Office of Administrative Hearings for determinations made by the Division or the appropriate Board of Adjustments under G.S. 160A-388 or G.S. 153A-345 for determinations made by the delegated local authority. The purpose of the Commission's review is to determine if it agrees that the requirements in Sub-Item (9)(a) of this Rule have been met. Requests for appeals of decisions made by the Commission shall be made to the Office of Administrative Hearings. The following actions shall be taken depending on the Commission's decision on the major variance request:~~

~~(i) Upon the Commission's approval, the Division or the delegated local authority shall issue a final decision granting the major variance.~~

~~(ii) Upon the Commission's approval with conditions or stipulations, the Division or the delegated local authority shall issue a final decision, which includes these conditions or stipulations.~~

~~(iii) Upon the Commission's denial, the Division or the delegated local authority shall issue a final decision denying the major variance.~~

~~(10)~~(12) MITIGATION. Persons who wish to undertake uses designated as allowable with mitigation upon authorization as defined in Sub-Item (10)(a)(iii) of this Rule or allowable with exception as defined in Sub-Item (10)(a)(v) of this Rule shall meet the following requirements in order to proceed with their proposed use.

(a) Obtain ~~a determination of "no practical alternatives" to the proposed use~~ an Authorization Certificate pursuant to ~~Item (8) of this Rule.~~ Rule .0611 of this Subchapter; and

(b) Obtain written approval for a mitigation proposal pursuant to ~~15A NCAC 02B .0242.~~ Rule .0295 of this Subchapter.

~~(11) REQUIREMENTS SPECIFIC TO FOREST HARVESTING. The following requirements shall apply for forest harvesting operations and practices.~~

~~(a) The following measures shall apply in the entire riparian buffer:~~

~~(i) Logging decks and sawmill sites shall not be placed in the riparian buffer.~~

~~(ii) Access roads and skid trails shall be prohibited except for temporary and permanent stream crossings established in accordance with 15A NCAC 01I .0203. Temporary stream crossings shall be permanently stabilized after any site disturbing activity is completed.~~

~~(iii) Timber felling shall be directed away from the stream or water body.~~

~~(iv) Skidding shall be directed away from the stream or water body and shall be done in a manner that minimizes soil disturbance and prevents the creation of channels or ruts.~~

~~(v) Individual trees may be treated to maintain or improve their health, form or vigor.~~

~~(vi) Harvesting of dead or infected trees or application of pesticides necessary to prevent or control extensive tree pest and disease infestation shall be allowed. These practices must be approved by the Division of Forest Resources for a specific site. The Division of Forest Resources must notify the Division of all approvals.~~

~~(vii) Removal of individual trees that are in danger of causing damage to structures or human life shall be allowed.~~

~~(viii) Natural regeneration of forest vegetation and planting of trees, shrubs, or ground cover plants to enhance the riparian buffer shall be allowed provided that soil disturbance is minimized. Plantings shall consist primarily of native species.~~

~~(ix) High intensity prescribed burns shall not be allowed.~~

~~(x) Application of fertilizer shall not be allowed except as necessary for permanent stabilization. Broadcast application of fertilizer or herbicides to the adjacent forest stand shall be conducted so that the chemicals are not applied directly to or allowed to drift into the riparian buffer.~~

~~(b) In Zone 1, forest vegetation shall be protected and maintained. Selective harvest as provided for below is allowed on forest lands that have a deferment for use value under forestry in accordance with G.S. 105-277.2 through G.S. 277.6 or on forest lands that have a forest management plan prepared or approved by a registered professional forester. Copies of either the approval of the deferment for use value under forestry or the forest management plan shall be produced upon request. For such forest lands, selective harvest is allowed in accordance with the following:~~

~~(i) Tracked or wheeled vehicles are not permitted except at stream crossings designed, constructed and maintained in accordance with 15A NCAC 01I .0203.~~

~~(ii) Soil disturbing site preparation activities are not allowed.~~

~~(iii) Trees shall be removed with the minimum disturbance to the soil and residual vegetation.~~

~~(iv) The following provisions for selective harvesting shall be met:~~

~~(A) The first 10 feet of Zone 1 directly adjacent to the stream or waterbody shall be undisturbed except for the removal of individual high value trees as defined provided that no trees with exposed primary roots visible in the streambank be cut.~~

~~(B) In the outer 20 feet of Zone 1, a maximum of 50 percent of the trees greater than five inches dbh may be cut and removed. The reentry time for harvest shall be no more frequent than every 15 years, except on forest plantations where the reentry time shall be no more frequent than every five years. In either case, the trees remaining after harvest shall be as evenly spaced as possible.~~

~~(C) In Zone 2, harvesting and regeneration of the forest stand shall be allowed provided that sufficient ground cover is maintained to provide for diffusion and infiltration of surface runoff.~~

~~(11)~~(13) REQUIREMENTS SPECIFIC TO LOCAL GOVERNMENTS WITH STORMWATER PROGRAMS FOR NITROGEN CONTROL. Local governments that are required to have local stormwater programs pursuant to ~~15A NCAC 02B~~ Rule .0235 of this Subchapter shall have two options for ensuring protection of riparian buffers on new developments within their jurisdictions as follows.

(a) Obtain authority to implement a local riparian buffer protection program pursuant to ~~15A NCAC 02B .0241.~~ Rule .0715 of this Section; or~~.~~

(b) Refrain from issuing local approvals for new development projects unless either:

(i) The person requesting the approval does not propose to impact the riparian buffer ~~of a surface water that appears on either the most recent versions of the soil survey maps prepared by the Natural Resources Conservation Service of the United States Department of Agriculture or the most recent versions of the 1:24,000 scale (7.5 minute quadrangle) topographic maps prepared by the United States Geologic Survey (USGS).~~ as described in Item (3) of this Rule; or~~.~~

(ii) The person requesting the approval proposes to impact the riparian buffer ~~of a surface water that appears on the maps~~ as described in ~~Sub-Item (12)(b)(i)~~ Item (3) of this Rule and either:

(A) Has received an on-site determination from the ~~Division~~ Authority pursuant to ~~Sub-Item (3)(a)~~ Item (4) of this Rule that surface waters are not present in the location of the proposed impact;

(B) The activity is designated as exempt under this Rule;

(C~~B~~) Has received an Authorization Certificate from the ~~Division~~ Authority pursuant to ~~Item (8) of this~~ Rule .0611 of this Subchapter for uses designated as ~~Allowable~~ allowable upon authorization under this Rule;

(D~~C~~) Has received an Authorization Certificate from the ~~Division~~ Authority pursuant to ~~Item (8) of this~~ Rule .0611 of this Subchapter and obtained the ~~Division's~~ Authority's approval on a mitigation plan pursuant to Item ~~(10)~~(11) of this Rule for uses designated as ~~Allowable with Mitigation~~ allowable with mitigation upon authorization under this Rule; ~~or~~

(E~~D~~) Has received ~~a variance from the Commission~~ an Authorization Certificate with Exception from the Authority pursuant to ~~Item (9) of this Rule.~~ Rule .0611 of this Subchapter~~.~~; or

(F) Has received a Variance pursuant to Rule .0611 of this Subchapter.

~~(12)~~(14) OTHER LAWS, REGULATIONS AND PERMITS. In all cases, compliance with this Rule does not preclude the requirement to comply with all federal, state and local regulations and laws.

History Note: *Authority G.S. 143-214.1; 143-214.7; 143-215.3(a)(1); S.L. 1995, c. 572; S.L. 2011, c. 394; S.L. 2012, c. 200; S.L. 2013, c. 413; S.L. 2015 c. 246; S.L. 2017, c. 209*
Temporary Adoption Eff. July 22, 1997;
Temporary Adoption Eff. June 22, 1999; April 22, 1998; January 22, 1998;
Eff. August 1, 2000.
Readopted Eff. [New Date].
The provisions of this Rule were transferred from 15A NCAC 02B .0233. The provisions of item (2) of 15A NCAC 02B .0233 were transferred to 15A NCAC 02B .0610. The provisions of item (8) & (9) of 15A NCAC 02B .0233 were transferred to 15A NCAC 02B .0611. The provisions of item (11) of 15A NCAC 02B .0233 were transferred to 15A NCAC 02B .0612.

15A NCAC 02B ~~.0241~~ .0715 NEUSE RIVER BASIN: NUTRIENT SENSITIVE WATERS MANAGEMENT STRATEGY: DELEGATION OF AUTHORITY FOR THE PROTECTION AND MAINTENANCE OF EXISTING RIPARIAN BUFFERS

(a) PURPOSE. This Rule sets out the requirements for delegation of the responsibility for implementing and enforcing the Neuse Basin ~~existing~~ riparian buffer protection program, as described in Rule ~~15A NCAC 2B .0233,~~ .0714 of this Section, to local governments.

(b) PROCEDURES FOR GRANTING ~~AND RESCINDING~~ DELEGATION. The Commission shall grant ~~and rescind~~ local government delegation of the Neuse River Basin Riparian Buffer Protection ~~requirements~~ requirements, as described in Rule .0714 of this Section, according to the following ~~procedures.~~ procedures:

(1) Local governments within the Neuse River Basin may submit a written request to the Commission for authority to implement and enforce the ~~State's~~ Neuse River Basin riparian buffer protection requirements within their ~~jurisdiction.~~ jurisdiction by establishing a riparian buffer program to meet the requirements of Rule .0714 of this Section. The written request to establish a riparian buffer program shall ~~be accompanied by information that shows:~~ include the following:

(A) ~~The~~ Documentation that the local government has land use jurisdiction for the riparian ~~buffer~~ buffer. This can be demonstrated by delineating the local land use jurisdictional boundary on the USGS 1:24,000 topographical map(s) or other finer scale map(s);

(B) ~~The~~ Documentation that the local government has the administrative organization, staff, legal authority, financial resources and other resources necessary to implement and enforce the ~~State's~~ Neuse River Basin riparian buffer protection requirements based on its size and projected amount of development;

(C) The local government ~~has adopted~~ ordinances, resolutions, or regulations necessary to establish ~~and maintain the State's riparian buffer protection requirements; and~~ a riparian buffer program to meet the requirements of Rule .0714 of this Section and G.S. 143-214.23A;

(D) Documentation that the local government's riparian buffer program ~~complies~~ will comply with all requirements set forth in G.S. 143-214.23A; and

~~(D)~~(E) ~~The local government has provided a~~ A plan to address violations with appropriate remedies and actions including, but not limited to, civil or criminal remedies that shall restore riparian buffer nutrient removal functions on violation sites and provide a deterrent against the occurrence of future violations.

(2) Within 90 days after the Commission has received the request for delegation, the Commission shall notify the local government whether it has been approved, approved with modifications, or denied.

~~(3) The Commission, upon determination that a delegated local authority is failing to implement or enforce the Neuse Basin riparian buffer protection requirements in keeping with a request approved under Sub-item (b)(2) of this Rule, shall notify the delegated local authority in writing of the local~~

~~program's inadequacies. If the delegated local authority has not corrected the deficiencies within 90 days of receipt of the written notification, then the Commission shall rescind the delegation of authority to the local government and shall implement and enforce the State's riparian buffer protection requirements.~~

~~(4) The Commission may delegate its duties and powers for granting and rescinding local government delegation of the State's riparian buffer protection requirements, in whole or in part, to the Director.~~

(c) APPOINTMENT OF A RIPARIAN BUFFER PROTECTION ADMINISTRATOR. Upon receiving delegation, local governments shall appoint a Riparian Buffer Protection Administrator(s) who shall coordinate the implementation and enforcement of the program. The Administrator(s) shall attend an initial training session by the Division and ~~subsequent annual training sessions.~~ be certified to make on-site determinations pursuant to G.S. 143-214.25A. The Administrator(s) shall ensure that local government ~~staffs~~ staff working directly with the program receive training to understand, implement and enforce the ~~program.~~ program and are certified to make on-site determinations pursuant to G.S. 143-214.25A. At any time that a local government does not have a certified individual retained on staff to make on-site determinations pursuant to G.S. 143-214.25A, they shall immediately notify the Division and indicate a proposed schedule to secure a certified staff member. The local government shall coordinate with the Division to provide on-site determinations until a new certified staff member is secured by the local government.

(d) PROCEDURES FOR USES WITHIN RIPARIAN BUFFERS THAT ARE ALLOWABLE UPON AUTHORIZATION AND ALLOWABLE WITH ~~MITIGATION.~~ MITIGATION UPON AUTHORIZATION. Upon receiving delegation, local ~~authorities~~ governments shall review ~~proposed uses within the riparian buffer and issue approvals if the uses meet the State's riparian buffer protection requirements. Delegated local authorities shall issue an Authorization Certificate for uses if the proposed use meets the State's riparian buffer protection requirements, or provides for appropriate mitigated provisions to the State's riparian buffer protection requirements. The Division may challenge a decision made by a delegated local authority for a period of 30 days after the Authorization Certificate is issued. If the Division does not challenge an Authorization Certificate within 30 days of issuance, then the delegated local authority's decision shall stand.~~ applications requesting an Authorization Certificate pursuant to the requirements set forth in Rule .0705 of this Section.

(e) ~~VARIANCES.~~ EXCEPTIONS. ~~After~~ Upon receiving delegation, local governments shall review ~~variance requests, provide approvals for minor variance requests and make recommendations to the Commission for major variance requests pursuant to the State's riparian buffer protection program.~~ applications requesting an Authorization Certificate with Exception pursuant to the requirements set forth in Rule .0705 of this Section.

(f) LIMITS OF DELEGATED LOCAL AUTHORITY. The ~~Commission~~ Division shall have jurisdiction to the exclusion of local governments to implement the State's riparian buffer protection requirements for the following types of activities:

(1) Activities conducted under the authority of the State;

(2) Activities conducted under the authority of the United States;

(3) Activities conducted under the authority of multiple jurisdictions; ~~and~~

(4) Activities conducted under the authority of local units of ~~government.~~ government;

(5) Forest harvesting activities described in Rule .0706 of this Section; and

(6) Agricultural activities.

(g) RECORD-KEEPING REQUIREMENTS. Delegated local ~~authorities~~ governments shall maintain on-site records for a minimum of five years~~. Delegated local authorities governments must~~and shall furnish a copy of these records to the ~~Director~~ Division within 30 calendar days of receipt of a written request for ~~the records~~them. ~~The Division shall inspect local riparian buffer protection programs to ensure that the programs are being implemented and enforced in keeping with a request approved under Sub-item (b)(2) of this Rule.~~ Each delegated local ~~authority's~~ governments records shall include the following:

(1) A copy of ~~variance~~ all Authorization Certificates with E~~e~~xception requests;

(2) ~~The~~ Findings on all ~~variance~~ Authorization Certificates with E~~e~~xception ~~request's finding of fact~~requests;

(3) The results of ~~the~~ all ~~variance~~ Authorization Certificates with E~~e~~xception proceedings;

(4) A record of complaints and action taken as a result of the complaints;

(5) Records for on-site determinations as described in Item (4) of this Rule~~stream origin calls and stream ratings~~; and

(6) Copies of all requests for authorization, records approving authorization and Authorization Certificates.

(h) AUDITS OF LOCAL AUTHORITIES. The Division shall regularly audit delegated local governments to ensure the local programs are being implemented and enforced in keeping with the requirements of this Rule and Rule .0714 of this Section. The audit shall consist of a review of all local government activities with regards to implementation of the Rules.

(i) PROCEDURES FOR RESCINDING DELEGATION. Upon determination by the Division that a delegated local government is failing to implement or enforce the Neuse Basin riparian buffer protection requirements in keeping with the request approved under Subparagraph (b)(4) of this Rule, the Commission shall notify the delegated local government in writing of the local program's inadequacies. If the delegated local government has not corrected the deficiencies within 90 calendar days of receipt of the written notification, then the Commission shall rescind the delegation of authority to the local government and the Division shall implement and enforce the Neuse River Basin riparian buffer protection requirements within their jurisdiction.

(j) DELEGATION. The Commission may delegate its duties and powers for granting and rescinding local government delegation of the Neuse River Basin riparian buffer protection requirements, in whole or in part, to the Director.

History Note: *Authority 143-214.1; 143-214.7; 143-214.23, 143-214.23A, 143-215.3(a)(1); S.L. 1998 c. 221; S.L. 2015 c. 246*
Eff. August 1, 2000.
Readoption Eff. [New Date].
The provisions of this Rule were transferred from 15A NCAC 02B .0241.

15A NCAC 02B ~~.0243~~ .0614 CATAWBA RIVER BASIN: PROTECTION AND MAINTENANCE OF EXISTING RIPARIAN BUFFERS

The following is the management strategy for maintaining and protecting existing riparian buffers along the Catawba River mainstem below Lake James and along mainstem lakes from and including Lake James to the North Carolina and South Carolina border in the Catawba River Basin.

(1) PURPOSE. The purpose of this Rule shall be to maintain and protect ~~and preserve~~ existing riparian buffers along the Catawba River mainstem below Lake James and along mainstem lakes from and including Lake James to the North Carolina and South Carolina border in the Catawba River Basin in order to maintain their pollutant removal functions as an aid in protecting the water quality of the lakes and connecting river segments.

(2) DEFINITIONS. For the purpose of ~~Rules 15A NCAC 02B .0243 and 15A NCAC 02B .0244,~~ this Rule, these terms shall be defined as found in Rule .0610 of this Section and as follows:

(a) "Authority" means either the Division or a local government that has been delegated pursuant this Rule to implement the riparian buffer program.

(b) "Riparian buffer" means the area as defined in Item (4) of this Rule.

~~(a) "Access Trails" means pedestrian trails constructed of pervious or impervious surfaces, and related structures to access a surface water including boardwalks, steps, rails, signage, etc.~~

~~(b) "Archaeological Activities" means activities conducted by a Registered Professional Archaeologist (RPA).~~

~~(c) "Airport Facilities" means all properties, facilities, buildings, structures, and activities that satisfy or otherwise fall within the scope of one or more of the definitions or uses of the words or phrases "air navigation facility," "airport," or "airport protection privileges" under G.S. 63-1; the definition of "aeronautical facilities" in G.S. 63-79(1); the phrase "airport facilities" as used in G.S. 159-48(b)(1); the phrase "aeronautical facilities" as defined in G.S. 159-81 and G.S. 159-97; and the phrase "airport facilities and improvements" as used in Article V, Section 13, of the North Carolina Constitution, which shall include, without limitation, any and all of the following: airports, airport maintenance facilities, clear zones, drainage ditches, fields, hangars, landing lighting, airport and airport-related offices, parking facilities, related navigational and signal systems, runways, stormwater outfalls, terminals, terminal shops, and all appurtenant areas used or suitable for airport buildings or other airport facilities, and all appurtenant rights-of-way; restricted landing areas; any structures, mechanisms, lights, beacons, marks, communicating systems, or other instrumentalities or devices used or useful as an aid, or constituting an advantage or convenience to the safe taking off, navigation, and landing of aircraft, or the safe and efficient operation or maintenance of an airport or restricted landing area; easements through, or other interests in, air space over land or water, interests in airport hazards outside the boundaries of airports or restricted landing areas, and other protection~~

~~privileges, the acquisition or control of which is necessary to ensure safe approaches to the landing areas of airports and restricted landing areas, and the safe and efficient operation thereof; and any combination of any or all of such facilities. Notwithstanding the foregoing, the following shall not be included in the definition of "Airport Facilities":~~

~~(i) satellite parking facilities;~~

~~(ii) retail and commercial development outside of the terminal area, such as rental car facilities; and~~

~~(iii) other secondary development, such as hotels, industrial facilities, free standing offices and other similar buildings, so long as these facilities are not directly associated with the operation of the airport, and are not operated by a unit of government or special governmental entity such as an airport authority.~~

~~(d) "Approved local government" means any government with a riparian buffer ordinance approved by the Division pursuant to Subparagraph (3)(b) of this Rule.~~

~~(e) "Channel" means a natural water carrying trough cut vertically into low areas of the land surface by erosive action of concentrated flowing water or a ditch or canal excavated for the flow of water.~~

~~(f) "DBH" means diameter at breast height of a tree measured at 4.5 feet above ground surface level.~~

~~(g) "Forest plantation" means an area of planted trees that may be conifers (pines) or hardwoods. On a plantation, the intended crop trees are planted rather than naturally regenerated from seed on the site, coppice (sprouting), or seed that is blown or carried into the site.~~

~~(h)~~(c) "Full Pond Level" is a term used by Duke Energy Inc. that refers to the project water level, referenced to mean sea level, for each of the seven mainstem lakes along the Catawba River. The landward edge of the lakes at full pond level represents the project boundary for each lake.

~~(i) "Greenway / Hiking Trails" means pedestrian trails constructed of pervious and impervious surfaces and related structures including but not limited to boardwalks, steps, rails, signage, etc.~~

~~(j) "High Value Tree" means a tree whose stump diameter is equal to or exceeding 18 inches.~~

~~(k)~~(d) "Mainstem lakes" means the following impoundments created along the mainstem of the Catawba River: Lake James, Lake Rhodhiss, Lake Hickory, Lookout Shoals Lake, Lake Norman, Mountain Island Lake and Lake Wylie (North Carolina portion).

~~(l) "Riparian buffer enhancement" is defined as the process of converting a non forested riparian area, where woody vegetation is sparse (greater than or equal to 100 trees per acre but less than 200 trees per acre) to a forested riparian buffer area. The enhanced, forested riparian buffer area shall include a minimum of at least two native hardwood tree species~~

~~planted at a density sufficient to provide 320 trees per acres at maturity, and diffuse flow through the riparian buffer shall be maintained.~~

~~(m) "Riparian buffer restoration" is defined as the process of converting a non-forested riparian area, where woody vegetation is absent (less than 100 trees per acre) to a forested riparian buffer area. The restored, forested riparian buffer area shall include a minimum of at least two native hardwood tree species planted at a density sufficient to provide 320 trees per acres at maturity, and diffuse flow through the riparian buffer shall be maintained.~~

~~(n) "Shoreline stabilization" is the in-place stabilization of an eroding shoreline. Stabilization techniques which include "soft" methods or natural materials (such as root wads, or rock vanes) may be considered as part of a restoration design. However, stabilization techniques that consist primarily of "hard" engineering, such as concrete-lined channels, rip-rap, or gabions, while providing bank stabilization, shall not be considered stream restoration.~~

~~(o) "Stream restoration" is defined as the process of converting an unstable, altered or degraded stream corridor, including adjacent riparian zone and flood prone areas to its natural or referenced, stable conditions considering recent and future watershed conditions. This process also includes restoring the geomorphic dimension, pattern, and profile as well as biological and chemical integrity, including transport of water and sediment produced by the stream's watershed in order to achieve dynamic equilibrium. "Referenced" or "referenced reach" means a stable stream that is in dynamic equilibrium with its valley and contributing watershed. A reference reach can be used to develop natural channel design criteria for stream restoration projects.~~

~~(p) "Stump diameter" means diameter of a tree measured at six inches above ground surface level.~~

~~(q) "Surface water" means all waters of the state as defined in G.S. 143-212 except underground waters.~~

~~(r) "Temporary road" means a road constructed temporarily for equipment access to build or replace hydraulic conveyance structures or water dependent structures, or to maintain public traffic during construction.~~

~~(s) "Tree" means a woody plant with a DBH equal to or exceeding five inches or a stump diameter equal to or exceeding six inches.~~

(3) APPLICABILITY. This Rule applies to all landowners and other persons including local governments, state and federal entities conducting activities within the riparian buffers as described in Item (4) of this Rule in the Catawba River Basin.

(4) BUFFERS PROTECTED. The following minimum criteria shall be used for identifying regulated riparian buffers:

(a) This Rule shall apply to activities conducted within ~~a~~ 50-foot wide riparian ~~buffer~~ buffers along the Catawba River mainstem below Lake James and along the mainstem lakes in the Catawba River Basin, excluding wetlands;~~.~~

(b) Wetlands adjacent to surface waters or within 50 feet of surface waters shall be considered as part of the riparian buffer but are regulated pursuant to 15A NCAC 02H .0506;~~.~~

(c) Stormwater runoff from activities conducted outside the riparian buffer shall comply with Item (8) of this Rule;~~.~~

(d) Riparian ~~The riparian~~ buffers protected by this Rule shall be measured pursuant to Item ~~(4)~~(7) of this Rule;~~.~~

(e) A riparian buffer may be exempt from this Rule as described in Items (5) and (6) of this Rule;~~.~~ ~~Riparian buffers along the Catawba River mainstem below Lake James and along mainstem lakes shall be subject to this Rule unless one of the following applies.~~

(f) No new clearing, grading or development shall take place nor shall any new building permits be issued in violation of this Rule.

~~(a)~~(5) EXEMPTION WHEN EXISTING USES ARE PRESENT AND ONGOING. This Rule shall not apply to portions of the riparian buffer where a use is existing and ongoing. ~~Only the portion of the riparian buffer that contains the footprint of the existing and ongoing use is exempt from this Rule. The determination of whether a use is existing and ongoing will be made either by the Division or approved local government; whichever is appropriate according to the administration of the buffer program. A use is existing and ongoing when it is a completed and maintained activity, an activity with appropriate valid permits, or an activity with documentation for unexpired vested rights, as described below:~~

~~(i)~~(a) A use ~~that~~ shall be considered existing if:

(i) It was present within the riparian buffer as of June 30, 2001 and has continued to exist since that ~~time.~~ time;

(ii) It was a deemed allowable activity as listed in Item ~~(9)~~(10) of this Rule; or

(iii) It was conducted and maintained pursuant to an Authorization Certificate or Variance issued by the Authority; or

(iv) The project or proposed development are determined by the Authority to meet at least one of the following criteria:

(A) Project requires a 401 Certification/404 permit and these were issued prior to June 30, 2001 and are still valid; or

(B) Projects that require a state permit, such as landfills, NPDES wastewater discharges, land application of residuals and road construction activities, have begun construction or are under contract to begin construction and had received all required state permits prior to June 30, 2001; or

(C) Projects that are being reviewed through the Clean Water Act Section 404/National Environmental Policy Act Merger 01 Process (published by the US Army Corps of Engineers and Federal Highway Administration, 2003) or its immediate successor and that have reached agreement with the Department on avoidance and minimization by June 30, 2003; or

(D) Projects that are not required to be reviewed by the Clean Water Act Section 404/National Environmental Policy Act Merger 01 Process (published by the US Army Corps of Engineers and Federal Highway Administration, 2003) or its immediate successor if a Finding of No Significant Impact has been issued for the project and the project has the written approval of the Division prior to June 30, 2001.

(b) Existing and ongoing uses shall ~~include~~ include, but not be limited to, agriculture, buildings, industrial facilities, commercial areas, transportation facilities, maintained ~~lawns,~~ lawns (i.e. can be mowed without a chainsaw or bush-hog), ~~maintained (i.e vegetation management has occurred within the last ten years)~~ existing utility ~~lines~~ line maintenance corridors and on-site sanitary sewage ~~systems.~~ systems, any of which involve either specific periodic management of vegetation or displacement of vegetation by structures or regular activity.

(c) Only the portion of the riparian buffer that contains the footprint of the existing and ongoing use is exempt from this Rule.

(d) Change of ownership through purchase or inheritance is not a change of use.

(e) Activities necessary to maintain existing and ongoing uses are allowed provided that the site remains similarly vegetated, no ~~impervious surface~~ built upon area is added within ~~50 feet of the surface water~~ the riparian buffer where it did not ~~previously~~ exist ~~as of the effective date of the Rule,~~ prior to June 30, 2001, and ~~existing diffuse flow is maintained.~~ the site is in compliance with Item (8) of this Rule. ~~Grading and revegetating Zone 2 is allowed provided that the health of the vegetation in Zone 1 is not compromised, the ground is stabilized and existing diffuse flow is maintained.~~

~~(ii) A use that can be documented to the Division or the appropriate approved local government that meets at least one of the following criteria:~~

~~(A) Project requires a 401 Certification/404 Permit, these were issued prior to June 30, 2001 and are still valid;~~

~~(B) Projects that require a state permit, such as landfills, NPDES wastewater discharges, land application of residuals and road construction activities, have begun construction or are under contract to begin construction and had received all required state permits prior to June 30, 2001;~~

~~(C) Projects that are being reviewed through the Clean Water Act Section 404/National Environmental Policy Act Merger 01 Process (published by the US Army Corps of Engineers and Federal Highway Administration, 2003) or its immediate successor and that have reached agreement with DENR on avoidance and minimization by June 30, 2003; and~~

~~(D) Projects that are not required to be reviewed by the Clean Water Act Section 404/National Environmental Policy Act Merger 01 Process (published by the US Army Corps of Engineers and Federal Highway Administration, 2003) or its immediate successor if a Finding of No Significant Impact has been issued for the project and the project has the written approval of the DWQ prior to June 30, 2001.~~

~~(iii)~~(f) A project that can be documented to the ~~Division or the appropriate approved local government~~ Authority that has vested rights that were established or recognized for that project under the common law or by G.S. 153A-344(b), 153A-344.1, 160A-385(b), or 160A-385.1 prior to July 1, 2001. This Rule does not confer or restrict a vested right established or recognized under common law or G.S. 153A-344(b), 153A-344.1, 160A-385(b), or 160A-385.1.

~~(iv)~~(g) This Rule shall apply at the time an existing and ongoing use is changed to another use. Change of use ~~shall include the following:~~ shall involve the initiation of any activity not defined as existing and ongoing in Sub-Items (5)(a) through (5)(f) of this Rule.

~~(A) Impervious surface is added to the riparian buffer in locations where it did not exist previously either on the ground or in proposed site plans showing the locations of proposed impervious surfaces for uses defined as existing and ongoing in Subitem (3)(a)(ii) or Subitem (3)(a)(iii) of this Rule; or~~

~~(B) An agricultural operation within the riparian buffer is converted to a non-agricultural use.~~

(6) EXEMPTION FOR PONDS CONSTRUCTED AND USED FOR AGRICULTURAL PURPOSES. This Rule shall not apply to a freshwater pond if all of the following conditions are met:

(a) The property on which the pond is located is used for agriculture as that term is defined in G.S. 106-581.1.

(b) Except for this Rule, the use of the property is in compliance with all other water quality and water quantity statutes and rules applicable to the property before July 22, 1997.

(c) The pond is not a component of an animal waste management system as defined in G.S. 143-215.10B (3).

~~(b) LOCAL GOVERNMENTS THAT HAVE APPROVED RIPARIAN BUFFER ORDINANCES. All local governments that have land use authority along the Catawba River mainstem below Lake James and along mainstem lakes in the Catawba River Basin may adopt local riparian buffer ordinances to protect water quality. The Division shall approve the local riparian buffer ordinance within 30 days after receiving the request from local governments, if the Division determines that the local riparian buffer ordinance provides equal to or greater water quality protection than this Rule. This Rule shall not apply in any area where a local government has obtained the Division's approval of the local riparian buffer ordinance, provided that the local government is implementing and enforcing the approved local riparian buffer ordinance. The Division, upon determination that the local government is failing to implement or enforce the approved local buffer ordinance, shall notify the local government in writing of the local program inadequacies. If the local government has not corrected the deficiencies within 90 days of receipt of written notification, then the Division shall implement and enforce the provisions of this Rule.~~

~~(c) RIPARIAN AREAS AND ACTIVITIES NOT REGULATED UNDER AN APPROVED LOCAL GOVERNMENT ORDINANCE. The Division shall be responsible for the implementation of this rule for all riparian areas and activities not regulated under a Division approved local government ordinance.~~

~~(4)~~(7) ZONES OF THE RIPARIAN BUFFER. The protected riparian buffer shall have two zones as follows:

(a) Zone 1 shall consist of a ~~forested~~ vegetated area that is undisturbed except for uses provided for in Items (8) and ~~(6)~~(9) of this Rule. The location of Zone 1 shall be as follows:

(i) For the Catawba River mainstem below Lake James, Zone 1 shall begin at the most landward limit of the top of the bank and extend landward a distance of 30 feet on all sides of the ~~surface water,~~ river, measured horizontally on a line perpendicular to ~~a vertical line marking the edge of the top of the bank.~~ the river.

(ii) For the mainstem lakes located on the Catawba River mainstem, Zone 1 shall begin at the ~~most landward limit of the~~ full pond level and extend landward a distance of 30 feet, measured horizontally on a line perpendicular to ~~a vertical line marking the edge of the full pond level.~~ the lake.

(b) Zone 2 shall consist of a stable, vegetated area that is undisturbed except for uses provided for in Items (8) and ~~(6)~~(9) of this Rule. Grading and revegetating Zone 2 is allowed provided that the health of the vegetation in Zone 1 is not compromised. Zone 2 shall begin at the outer edge of Zone 1 and extend landward 20 feet as measured horizontally on a line perpendicular to ~~a vertical line marking the outer edge of Zone 1.~~ the surface water. The combined width of Zones 1 and 2 shall be 50 feet on all sides of the surface water along

the Catawba River mainstem below Lake James and along mainstem lakes in the Catawba River Basin.

~~(5) DIFFUSE FLOW REQUIREMENT. Diffuse flow of runoff shall be maintained in the riparian buffer by dispersing concentrated flow and reestablishing vegetation.~~

~~(a) Concentrated runoff from new ditches or manmade conveyances shall be converted to diffuse flow at non-erosive velocities before the runoff enters Zone 2 of the riparian buffer.~~

~~(b) Periodic corrective action to restore diffuse flow shall be taken if necessary to impede the formation of erosion gullies.~~

~~(c) No new stormwater conveyances are allowed through the buffers except for stormwater management ponds provided for in Item (6) of this Rule.~~

(8) STORMWATER RUNOFF THROUGH THE RIPARIAN BUFFER. Stormwater runoff into the riparian buffer shall meet dispersed flow as defined in 15A NCAC 02H .1002 except as otherwise described in this Item. Drainage conveyances include drainage ditches, roadside ditches, and stormwater conveyances. The following stormwater conveyances through the riparian buffer are either deemed allowable or allowable upon authorization, as defined in Sub-Item (9)(a) of this Rule, provided that they do not erode through the riparian buffer and do not cause erosion to the receiving waterbody. Stormwater conveyances through the riparian buffer that are not listed below shall be allowable with exception as defined in Sub-Item (9)(a)(v) of this Rule.~~:~~

(a) The following are deemed allowable as defined in Sub-Item (9)(a)(i) of this Rule:

(i) New drainage conveyances from a Primary SCM, as defined in 15A NCAC 02H .1002, when the Primary SCM is designed to treat the drainage area to the conveyance and that comply with a stormwater management plan reviewed and approved under a state stormwater program or a state-approved local government stormwater program; and

(ii) New stormwater flow to existing drainage conveyances provided that the addition of new flow does not result in the need to alter the conveyance.

(b) The following are allowable upon authorization as defined in Sub-Item (9)(a)(ii) of this Rule:

(i) New drainage conveyances from a Primary SCM as defined in 15A NCAC 02H .1002 when the Primary SCM is provided to treat the drainage area to the conveyance but are not required to be approved under a state stormwater program or a state-approved local government stormwater program;

(ii) New drainage conveyances when the flow rate of the conveyance is less than 0.5 cubic feet per second during the peak flow from the 0.75 inch per hour storm;

(iii) New stormwater runoff that has been treated through a level spreader-filter strip that complies with 15A NCAC 02H .1059;

(iv) Realignment of existing roadside drainage conveyances applicable to publicly funded and maintained linear transportation facilities when retaining or improving the design dimensions provided that no additional travel lanes are added and the minimum required roadway typical section is used based on traffic and safety considerations;

(v) Realignment of existing drainage conveyances retaining or improving the design dimensions provided that the size of the drainage area and the percent built-upon area within the drainage area remain the same;

(vi) New or altered drainage conveyances applicable to publicly funded and maintained linear transportation facilities provided that SCMs, or BMPs from the NCDOT Stormwater Best Management Practices Toolbox, are employed;

(vii) New drainage conveyances applicable to publicly funded and maintained linear transportation facilities that do not provide a stormwater management facility due to topography constraints provided other measures are employed to protect downstream water quality to the maximum extent practical; and

(viii) New drainage conveyances where the drainage area to the conveyance has no new built-upon area as defined in 15A NCAC 02H .1002 and the conveyance is necessary for bypass of existing drainage only.

~~(6)~~(9) ~~TABLE OF~~ USES. Uses within the riparian buffer, or outside the riparian buffer with hydrological impacts on the riparian buffer, shall be designated as deemed allowable, allowable upon authorization, allowable with mitigation upon authorization, or prohibited.

(a) Potential new uses shall have the following requirements:

(i) DEEMED ALLOWABLE. Uses designated as deemed allowable in Sub-~~Items~~ Item (8)(a) and ~~(9)(b)~~Item(10) of this Rule may occur within the riparian buffer. Deemed allowable uses shall be designed, constructed and maintained to minimize vegetation and soil disturbance and to provide the maximum water quality protection practicable, including construction, monitoring, and maintenance activities. In addition, deemed allowable uses shall meet requirements listed in ~~Sub-~~Item ~~(9)(b)~~(10) of this Rule for the specific use.

(ii) ALLOWABLE UPON AUTHORIZATION. Uses designated as allowable upon authorization in Sub-Item~~Items~~ (8)(b) and Item ~~(9)(b)~~(10) of this Rule require a written Authorization Certificate from the Authority for impacts within the riparian buffer pursuant to Rule .0611 of this Section.

(iii) ALLOWABLE WITH MITIGATION UPON AUTHORIZATION. Uses designated as allowable with mitigation upon authorization in ~~Sub-~~Item ~~(9)(b)~~(10) of this Rule require a written Authorization Certificate from the Authority for impacts within the riparian buffer pursuant to Rule .0611 of this Section and an

appropriate mitigation strategy has received written approval pursuant to Item ~~(10)~~(11) of this Rule.

(iv) PROHIBITED. Uses designated as Prohibited in ~~Sub-~~Item ~~(9)(b)~~(10) of this Rule may not proceed within the riparian buffer unless a Variance is granted pursuant to Rule .0226 of this Subchapter. Mitigation may be required as a condition of variance approval.

(v) ALLOWABLE WITH EXCEPTION. Uses not designated as deemed allowable, allowable upon authorization, allowable with mitigation upon authorization or prohibited in ~~Sub-~~Item ~~(9)(b)~~(10) of this Rule require a written Authorization Certificate with Exception from the Authority for impacts within the riparian buffer pursuant to Rule .0611 of this Section and an appropriate mitigation strategy that has received written approval pursuant to Item ~~(10)~~(11) of this Rule.

~~(b)~~(10) TABLE OF USES: The following ~~chart~~ table sets out ~~the~~ potential new uses within the riparian buffer, or outside the riparian buffer with hydrological impacts on the riparian buffer, and ~~their category designation under this Rule~~ designates them as ~~exempt, allowable, or allowable with mitigation. Any uses, which are not listed in the table, are prohibited. The requirements for each category listed in the table as well as prohibited uses not set out in the table are given in Item (7) of this Rule.~~ deemed allowable, allowable upon authorization, allowable with mitigation upon authorization, or prohibited:

Use	~~Exempt~~ Deemed Allowable	Allowable Upon Authorization	Allowable with Mitigation Upon Authorization	Prohibited
~~Access trails: Pedestrian access trails leading to the surface water, docks, fishing piers, boat ramps and other water dependent activities:~~				
• ~~Pedestrian access trails that are restricted to the minimum width practicable and do not exceed4 feet in width of buffer disturbance, and provided that installation and use does not result in removal of trees as defined in this Rule and no impervious surface is added to the riparian buffer~~	~~X~~			
• ~~Pedestrian access trails that exceed 4 feet in width of buffer disturbance, the installation or use results in~~		~~X~~		

Use	~~Exempt~~ Deemed Allowable	Allowable Upon Authorization	Allowable with Mitigation Upon Authorization	Prohibited
~~removal of trees as defined in this Rule or impervious surface is added to the riparian buffer~~				
(a) Airport facilities:				
(i) Vegetation removal activities necessary to comply with Federal Aviation Administration requirements (e.g. line of sight requirements) provided the disturbed areas are stabilized and revegetated	X			
(ii) Airport ~~Airport or airstrip~~ facilities that impact equal to or less than ~~150 linear feet or~~ one-third of an acre of riparian buffer		X		
(iii) Airport ~~or airstrip~~ facilities that impact greater than ~~150 linear feet or~~ one-third of an acre of riparian buffer			X	
(b) Archaeological activities	X			
(c) Bridges:				
(i) Impact equal to or less than one-tenth of an acre of riparian buffer	X			
(ii) Impact greater than one-tenth of an acre of riparian buffer		X		
~~Canoe Access provided that installation and use does not result in removal of trees as defined in this Rule and no impervious surface is added to the buffer~~	~~X~~			
(d) Dam maintenance activities:				
(i) Dam maintenance activities that do not cause additional riparian buffer disturbance beyond the footprint of the existing dam ~~or those covered under the U.S. Army Corps of Engineers Nationwide Permit No. 3~~	X			
(ii) Dam maintenance activities that do cause additional riparian buffer disturbance beyond the footprint of the existing dam ~~or those not covered~~		X		

Use	~~Exempt~~ Deemed Allowable	Allowable Upon Authorization	Allowable with Mitigation Upon Authorization	Prohibited
~~under the U.S. Army Corps of Engineers Nationwide Permit No. 3~~				
~~Drainage ditches, roadside ditches and stormwater outfalls through riparian buffers:~~ • ~~Existing drainage ditches, roadside ditches, and stormwater outfalls provided that they are managed to~~ minimize ~~the sediment, nutrients and other pollution that convey to waterbodies~~ • ~~New drainage ditches, roadside ditches and stormwater outfalls provided that a stormwater management facility is installed to control pollutants and attenuate flow before the conveyance discharges through the riparian buffer~~ • ~~New stormwater discharges to existing man-~~made ~~conveyances (including, but not limited to, drainage ditches, roadside ditches, and stormwater outfalls) provided that the new stormwater discharge does not result in the need to alter the existing man-made conveyances~~	~~X~~	~~X~~ ~~X~~		
~~Driveway crossings of surface waters subject to this Rule:~~ • ~~Driveway crossings on single family residential lots subdivided or recorded prior to the effective date of~~ this ~~Rule that disturb equal to or less than 25 linear feet or 2,500 square feet of riparian buffer~~ • ~~Driveway crossings on single family residential lots subdivided or recorded prior to the effective date of~~ this ~~Rule that disturb greater than 25 linear feet or 2,500 square feet of riparian buffer~~ • ~~In a subdivision that cumulatively disturbs equal to or less than 150~~ linear ~~feet or one third of an acre of riparian buffer~~ • ~~In a subdivision that cumulatively~~ disturbs ~~greater than 150 linear feet or one third of an acre of riparian buffer~~	~~X~~	~~X~~ ~~X~~	~~X~~	
(e) Fences: (i) Fencing livestock out of surface waters	X			

Use	~~Exempt~~ Deemed Allowable	Allowable Upon Authorization	Allowable with Mitigation Upon Authorization	Prohibited
(ii) ~~Fences provided that disturbance is minimized and installation~~ Installation does not result in removal of trees ~~as defined in this Rule~~ from Zone 1	X			
(iii) ~~Fences provided that disturbance is minimized and installation~~ Installation results in removal of trees ~~as defined in this Rule~~ from Zone 1		X		
(f) Fertilizer application:				
(i) One-time fertilizer application at agronomic rates in the riparian buffer to establish replanted vegetation. ~~This only applies to the one-time application of fertilizer in the riparian buffer.~~ No runoff from this one-time application in the riparian buffer is allowed in the applicable surface water	X			
(ii) Ongoing fertilizer application				X
(g) Forest harvesting - see ~~Item (11) of this~~ Rule .0612 of this Section				
(h) Grading ~~and revegetation~~ only in Zone 2 ~~only~~ provided that ~~diffuse flow and~~ the health of existing vegetation in Zone 1 is not ~~compromised~~ compromised, Item (8) of this Rule is complied with, and disturbed areas are stabilized and revegetated	X			
(i) ~~Greenway / hiking trails~~ Greenways, trails, sidewalks or linear pedestrian/bicycle transportation ~~system~~systems:				
(i) On publicly owned property	X			
(ii) In Zone 2 provided that no built upon area is added within the riparian buffer	X			
(iii) In Zone 1 provided that no built upon area is added within the riparian buffer and the installation does not result in the removal of tree(s)	X			
(iv) When built upon area is added to the riparian buffer, equal to or less than 10 feet wide with 2 foot wide shoulders. ~~Must~~ Shall be located outside Zone 1 unless there is no practical alternative		X		

Use	~~Exempt~~ Deemed Allowable	Allowable Upon Authorization	Allowable with Mitigation Upon Authorization	Prohibited
(v) When built upon area is added to the riparian buffer, greater than 10 feet wide with 2 foot wide shoulders. ~~Must~~ Shall be located outside Zone 1 unless there is no practical alternative			X	
(j) Historic preservation	X			
(k) New Landfills as defined by G.S. 130A-290				X
(l) Mining activities:				
(i) Mining activities that are covered by the Mining Act provided that new riparian buffers that meet the requirements of Items ~~(4) and (5)~~(7) and (8) of this Rule are established adjacent to ~~the~~ any relocated channels		X		
(ii) Mining activities that are not covered by the Mining Act OR where new riparian buffers that meet the requirements of Items (7) and (8)~~(4) and (5)~~ of this Rule are not established ~~adjacent to the relocated channels~~			X	
(iii) Wastewater or mining dewatering wells with approved NPDES permit	X			
~~Non-electric utility lines:~~ • ~~Impacts other than perpendicular crossings in Zone 2 only~~ [1] • ~~Impacts other than perpendicular crossings in Zone 1~~ [1]		~~X~~ ~~X~~		
~~Non-electric utility line perpendicular crossings of surface waters subject to this Rule 1:~~ • ~~Perpendicular crossings that disturb equal to or less than 40 linear feet of riparian buffer with a maintenance corridor equal to or less than 10 feet in width~~ • ~~Perpendicular crossings that disturb equal~~ to ~~or less than 40 linear feet of riparian buffer with a maintenance corridor greater than 10 feet in width~~ • ~~Perpendicular crossings that disturb greater than 40 linear feet but equal to or~~ less ~~than 150 linear feet of riparian~~	~~X~~	~~X~~ ~~X~~		

Use	~~Exempt~~ Deemed Allowable	Allowable Upon Authorization	Allowable with Mitigation Upon Authorization	Prohibited
~~buffer with a maintenance corridor equal to or less than 10 feet in width~~ • ~~Perpendicular crossings that disturb greater than 40 linear feet but equal to or less than 150 linear feet of riparian buffer with a maintenance corridor greater than 10 feet in width~~ • ~~Perpendicular crossings that disturb~~ greater ~~than 150 linear feet of riparian buffer regardless of the width of the maintenance corridor~~			~~X~~ ~~X~~	
~~Overhead electric utility lines:~~ • ~~Impacts other than perpendicular crossings in Zone 2 only [1]~~ • ~~Impacts other than perpendicular crossings in Zone 1 [1,2, 3]~~	~~X~~ ~~X~~			
~~Overhead electric utility line perpendicular crossings of surface waters subject to this Rule [1]:~~ • ~~Perpendicular crossings that disturb equal to or less than 150 linear feet of riparian buffer [2]~~ • ~~Perpendicular crossings that disturb greater than 150 linear feet of riparian buffer [2, 3]~~	~~X~~	~~X~~		
(m) On-site sanitary sewage systems – new ones that use ground absorption				X
(n) Pedestrian access trail and associated steps leading to a surface water, dock, canoe or kayak access, fishing pier, boat ramp or other water dependent structure: (i) ~~Pedestrian access trail equal~~Equal to or less than six feet wide that does not result in the removal of ~~any~~ tree(s) within the riparian buffer and does not result in ~~any built upon area being added~~the addition of built upon area to the riparian buffer (ii) ~~Pedestrian access trail equal~~Equal to or less than six feet wide ~~where the installation or use~~that results in the removal of tree(s) or the addition of built upon area to the riparian buffer	X	X		

Use	~~Exempt~~ Deemed Allowable	Allowable Upon Authorization	Allowable with Mitigation Upon Authorization	Prohibited
(iii) ~~Pedestrian access trail greater~~Greater than six feet wide			X	
(o) Playground equipment:				
(i) Playground equipment on ~~single-family~~single-family lots provided that installation and use does not result in removal of ~~trees as defined in this Rule~~ vegetation	X			
(ii) Playground equipment on ~~single-family~~single-family lots where installation ~~and~~ or use ~~requires~~ results in the removal of ~~trees as defined in this Rule~~ vegetation		X		
(iii) Playground equipment installed on lands other than ~~single-family~~single-family lots		X		
(p) Properties that have been subdivided by a preliminary subdivision ~~plat~~ [4] plat approved by local governments within the Catawba River Basin within 2 years prior to June 30, 2001 for conventional subdivisions and within 5 years prior to June 30, 2001 for phased ~~subdivisions:~~ subdivisions. The submitted preliminary subdivision plan stall include all of the following: total acreage of land proposed for platting, boundaries of the tract or portion thereof to be subdivided, with all bearings and distances accurately shown, including dimensions of all lot lines; location and use of all existing and proposed easements, including easements for drainage and utilities, location, width of rights-of-way and all proposed streets, location of all utilities installations, distance to nearest public water supply and sanitary sewerage systems, significant natural features including existing riparian buffer areas, existing wetlands, lakes or rivers, or other natural features affecting the site, and existing physical features including buildings, streets, railroads, power lines, drainage ways, sewer and water				

Use	~~Exempt~~ Deemed Allowable	Allowable Upon Authorization	Allowable with Mitigation Upon Authorization	Prohibited
or spring heads, and town limit lines both to or adjacent to the land to be subdivided:				
(i) Uses in Zone 2 provided that the ground is stabilized and Item (8) of this Rule is complied with ~~diffuse flow is maintained~~	X			
(ii) Uses in Zone 1 provided that the ground is stabilized and Item (8) of this Rule is complied with ~~diffuse flow is maintained~~. On-site waste systems, septic tanks and drainfields are not allowed in Zone 1		X		
(q) Properties that are included on a recorded subdivision plan prior to June 30, 2001:				
(i) Uses in Zone 2 provided that the ground is stabilized and Item (8) of this Rule is complied with ~~diffuse flow is maintained~~	X			
(ii) Uses in Zone 1 provided that the ground is stabilized and Item (8) of this Rule is complied with ~~diffuse flow is maintained~~. On-site waste systems, septic tanks and drainfields are not allowed in Zone 1		X		
(r) Protection of existing ~~structures,~~ structures and facilities ~~and shoreline~~ when this requires additional disturbance ~~of~~ to the riparian buffer ~~or the channel~~		X		
(s) Public Safety - publicly owned spaces where it has been determined by the head of the local law enforcement agency with jurisdiction over that area that the riparian buffers pose a risk to public safety. The head of the local law enforcement agency shall notify the local government with land use jurisdiction over the publicly owned space and the Division of Water Resources of any such determination in writing	X			
(t) Pumps for agricultural irrigation in Zone 1 provided that installation and use does not result in removal of trees as defined in this Rule	X			

Use	~~Exempt~~ Deemed Allowable	Allowable Upon Authorization	Allowable with Mitigation Upon Authorization	Prohibited
~~Railroad impacts other than crossings of surface waters subject to this Rule~~			~~X~~	
~~Recreational and accessory structures:~~ • ~~Recreational and accessory structures such as decks, gazebos and sheds provided the total cumulative footprint of all structures within the buffer does not exceed 150 square feet, that the structures are elevated above pervious ground, that installation does not result in removal of trees as defined in this Rule, and that they are not otherwise prohibited under the local water supply watershed ordinance~~ • ~~Recreational and accessory structures such as decks, gazebos, and sheds with a cumulative footprint of more than 150 square feet provided that the structures are elevated above pervious ground, that installation does not result in removal of trees as defined in this Rule, and that they are not otherwise prohibited under the local water supply watershed ordinance~~	~~X~~	~~X~~		
(u) Removal of previous fill or debris provided that Item (8) of this Rule is complied with ~~diffuse flow is maintained~~ and any vegetation removed is restored	X			
(v) Restoration or enhancement (wetland, stream) as defined in 33 CFR Part 332 available free of charge on the internet at: http://water.epa.gov/lawsregs/guidance/wetlands/wetlandsmitigation_index.cfm: (i) Wetland or stream restoration that is part of a compensatory mitigation bank, nutrient offset bank or the In Lieu Fee program~~does not require written Division approval that results in impacts to the riparian buffer~~ (ii) Wetland or stream restoration other than those listed above~~that requires written Division approval that results in impacts to the riparian buffer~~	X	X		
(w) ~~Road~~ Road, driveway or ~~railroad~~ railroad - impacts other than perpendicular crossings of surface waters subject to this Rule			X	
(x) ~~Road~~ Road, driveway or ~~railroads:~~ railroad~~s~~ - perpendicular crossings of surface waters subject to this				

Use	~~Exempt~~ Deemed Allowable	Allowable Upon Authorization	Allowable with Mitigation Upon Authorization	Prohibited
Rule ~~or perpendicular entry into the riparian buffer that does not cross a stream or other surface water subject to this Rule~~:				
(i) ~~Road crossings that impact~~ Impact equal to or less than ~~40 linear feet~~ one-tenth of an acre of riparian buffer	X			
(ii) ~~Road crossings that impact~~ Impact greater than ~~40 linear feet~~ one-tenth of an acre but equal to or less than ~~150 linear feet or~~ one-third of an acre of riparian buffer		X		
(iii) ~~Road crossings that impact~~ Impact greater than ~~150 linear feet or~~ one-third of an acre of riparian buffer			X	
(iv) Driveway crossings in a residential subdivision that cumulatively ~~disturb~~ impact equal to or less than one-third of an acre of riparian buffer		X		
(v) Driveway crossings in a residential subdivision that cumulatively ~~disturb~~ impact greater than one-third of an acre of riparian buffer			X	
(vi) ~~Agriculture~~ Farm roads and forest roads that are exempt from permitting from the U.S. Army Corps of Engineers per Section 404(f) of the ~~federal~~ Federal Clean Water Act	X			
(y) Road relocation of existing private access roads associated with public road projects where necessary for public safety:				
(i) Less than or equal to 2,500 square feet of riparian buffer impact		X		
(ii) Greater than 2,500 square feet of riparian buffer impact			X	
(z) Scientific studies and gauging station	X			
(aa) Shoreline stabilization		X		
(bb) Slatted uncovered decks ~~(and associated~~ including steps and support posts,~~)~~ which are associated with a dwelling, ~~that are in Zone 1 or 2 and are at least eight~~				

Use	~~Exempt~~ Deemed Allowable	Allowable Upon Authorization	Allowable with Mitigation Upon Authorization	Prohibited
~~feet in height and vegetation is not removed from Zone 1 for the installation and~~provided that it meets the requirements of Items (7) and (8) of this Rule and:				
(i) Installation does not result in removal of vegetation in Zone 1		X		
(ii) Installation results in removal of vegetation in Zone 1			X	
(cc) Stormwater ~~management ponds excluding dry ponds:~~ Control Measure (SCM) as defined in 15A NCAC 02H .1002:				
(i) In Zone 2 if Item (8) of this Rule is complied with ~~New stormwater management ponds provided that a riparian buffer that meets the requirements of Items (4) and (5) of this Rule is established adjacent to the pond~~		X		
(ii) In Zone 1 ~~New stormwater management ponds where a riparian buffer that meets the requirements of Items (4) and (5) of this Rule is NOT established adjacent to the pond~~			X	
~~Stormwater constructed wetland and bio retention area~~		~~X~~		
(dd) Temporary ~~roads:~~ roads, provided that the disturbed area is restored to pre-construction topographic and hydrologic conditions and replanted with comparable vegetation within two months of when construction is complete. Tree planting may occur during the dormant season. At the end of five years, ~~the~~ any restored wooded riparian buffer shall comply with the restoration criteria in Rule .0295(i) of this Subchapter:				
(i) ~~Temporary roads that disturb less~~ Less than or equal to 2,500 square feet ~~provided that vegetation is restored within six months of initial disturbance~~ of riparian buffer disturbance	X			
(ii) ~~Temporary roads that disturb greater~~ Greater than 2,500 square feet ~~provided that vegetation is~~		X		

Use	~~Exempt~~ Deemed Allowable	Allowable Upon Authorization	Allowable with Mitigation Upon Authorization	Prohibited
~~restored within six months of initial disturbance~~ of riparian buffer disturbance				
(iii) ~~Temporary roads used for~~ Associated with culvert installation, bridge construction or replacement ~~provided that restoration activities, such as soil stabilization and revegetation, are conducted immediately after construction~~		X		
(ee) Temporary sediment and erosion control ~~devices:~~ devices provided that the disturbed area is restored to preconstruction topographic and hydrologic conditions and replanted with comparable vegetation within two months of when construction is complete. Tree planting may occur during the dormant season. At the end of five years, ~~the~~ any restored wooded riparian buffer shall comply with the restoration criteria in Rule .0295(i) of this Subchapter:				
(i) In Zone 2 ~~only~~ provided that ground cover is established within the timeframes required by the Sedimentation and Erosion Control Act, ~~that the~~ vegetation in Zone 1 is not compromised and that discharge is released ~~as diffuse flow~~ in accordance with Item ~~(5)~~(8) of this Rule	X			
(ii) In Zones 1 and 2 to control impacts associated with uses identified in this Table or ~~approved by the Division Authority or~~uses that have received ~~a variance~~ an ~~a~~Authorization Certificate with Eexception provided that sediment and erosion control for upland areas is addressed ~~to the maximum extent practical~~ outside the riparian buffer		X		
(iii) In-stream temporary erosion and sediment control measures for work within a stream channel that is authorized under Sections 401 and 404 of the	X			

Use	~~Exempt~~ Deemed Allowable	Allowable Upon Authorization	Allowable with Mitigation Upon Authorization	Prohibited
Federal ~~Water Pollution Control Act~~Clean Water Act				
~~Underground electric utility lines:~~ • ~~Impacts other than perpendicular crossings in Zone 2 only~~ [1] ~~Impacts other than perpendicular crossings in Zone 1~~[1,5]	~~X~~ ~~X~~			
~~Underground electric utility line perpendicular crossings of surface waters subject to this Rule:~~ [1] • ~~Perpendicular crossings that disturb less than or equal to 40 linear feet of riparian buffer~~ [5] ~~Perpendicular crossings that disturb greater than 40 linear feet of riparian buffer~~ [5]	~~X~~	~~X~~		
(ff) Utility – Streambank stabilization for the protection of publicly owned utility lines (not including new line installation): (i) Less than 150 feet of streambank disturbance (ii) Greater than 150 feet of streambank disturbance	X	X		
(gg) Utility – Sewer lines - Sanitary Sewer Overflows: (i) Emergency sanitary sewer overflow response activities, provided that the disturbed area within the ~~buffer:~~ riparian buffer outside of the existing utility line maintenance corridor~~:~~ is the minimum necessary to respond to the emergency overflow, is restored to pre-construction topographic and hydrologic conditions, and is replanted with comparable vegetation (e.g. grass with grass, hardwoods with hardwoods) within two months of when disturbance is complete (ii) Emergency sanitary sewer overflow response activities that do not meet the listing above. ~~activities, provided the disturbed area within the buffer: is the minimum necessary to respond to the emergency overflow and is not fully restored to pre-construction topographic and hydrologic conditions~~. For any new proposed permanent	X	X		

Use	~~Exempt~~ Deemed Allowable	Allowable Upon Authorization	Allowable with Mitigation Upon Authorization	Prohibited
impacts ~~proposed to remain permanently~~ that are not a "Deemed Allowable Activity", an application for an Authorization Certificate must be submitted to the ~~authority~~ Authority ~~within~~ no later than 30 calendar days of conclusion of the emergency response activities				
(hh) Utility – Sewer Lines – Vegetation maintenance activities that remove forest vegetation ~~for~~ from existing sewer utility right of ways (not including new line installation) ~~ways/corridors~~ outside of the existing utility line maintenance corridor: ~~that do not meet the criteria of existing use in Item (6) of this Rule~~:				
(i) Zone 2 impacts	X			
(ii) Zone 1 impacts: For lines that have not been maintained, the vegetation can be mowed, cut or otherwise maintained without disturbance to the soil structure for a maintenance corridor that is equal to or less than 30 feet wide ~~impacts provided no clearing within 10 feet of the stream~~	X			
~~Zone 1 impacts, provided the permanent maintenance corridor is kept to 10 feet on either side of the existing sewer line. Clearing within 10 feet of the stream may occur provided no grading or grubbing occurs within this area~~	~~X~~			
~~Zone 1 impacts, provided the permanent maintenance corridor is kept to 10 feet on either side of the existing sewer line. Clearing, grading and grubbing can occur within 10 feet of the stream provided the grading and grubbing within 10 feet is less than 2,500 square feet~~		~~X~~		
(iii) Zone 1 impacts other than those listed above		X	~~X~~	
(ii) Utility - Sewer Lines –Replacement/Rehabilitation of existing sewer lines within, or adjacent to, an existing right of way but outside of an existing utility line				

Use	~~Exempt~~ Deemed Allowable	Allowable Upon Authorization	Allowable with Mitigation Upon Authorization	Prohibited
maintenance corridor provided ~~the~~ that comparable vegetation (e.g. grass with grass, hardwoods with hardwoods) is allowed to regenerate in disturbed ~~areas~~ riparian buffers outside of the permanent maintenance corridor and riparian buffers outside of the permanent maintenance corridor are not maintained:				
(i) Permanent maintenance corridor equal to or less than 30 feet wide provided there is no grading and/or grubbing within 10 feet of the top of bank when the sewer line is parallel to the stream	X			
(ii) Grading and/or grubbing within 10 feet of the top of bank when the sewer line is parallel to the stream and permanent maintenance corridor equal to or less than 30 feet wide		X		
(iii) Permanent maintenance corridor greater than 30 feet wide. For impacts other than perpendicular crossings, mitigation is only required for Zone 1 impacts. For perpendicular crossings that disturb equal to or less than 40 linear feet, no mitigation is required. For perpendicular crossings that disturb greater than 40 linear feet, mitigation is only required for Zone 1 impacts			X	
(jj) Utility – Sewer L~~l~~ines - New ~~Sewer~~ Line Construction Activities - Perpendicular crossings of streams and other surface waters subject to this Rule or perpendicular entry into the riparian buffer that does not cross a stream or other surface water subject to this Rule provided that vegetation is allowed to regenerate in disturbed areas outside of the permanent maintenance corridor: ~~(including replacement/rehabilitation that does not meet the criteria of existing use in Item (5) of this Rule) provided that (1) vegetative root systems and stumps are left intact to maintain the integrity of the soil except in the trench where trees are cut, and (2)~~				

Use	~~Exempt~~ Deemed Allowable	Allowable Upon Authorization	Allowable with Mitigation Upon Authorization	Prohibited
(i) Construction corridor of less ~~Less~~ than or equal to 40 linear feet wide ~~with~~ and a permanent maintenance corridor that is equal to or less than ~~20~~ 30 feet ~~in width~~wide	X			
(ii) Construction corridor of greater ~~Greater~~ than 40 linear feet wide and less than or equal to 150 linear feet ~~with~~ and a permanent maintenance corridor that is equal to or less than ~~20~~ 30 feet ~~in width~~wide		X		
(iii) Construction corridor of greater ~~Greater~~ than 150 linear feet wide ~~with~~ and a permanent maintenance corridor that is equal to or less than ~~20~~ 30 feet ~~in width~~wide			X	
(iv) Permanent maintenance corridor that is greater than ~~20~~ 30 linear feet wide. For impacts other than perpendicular crossings, mitigation is only required for Zone 1 impacts. For perpendicular crossings that disturb equal to or less than 40 linear feet, no mitigation is required. For perpendicular crossings that disturb greater than 40 linear feet, mitigation is only required for Zone 1 impacts~~(mitigation is required only for Zone 1 impacts beyond the 20 linear feet corridor width)~~			X	
(kk) Utility – Sewer L~~l~~ines - New ~~Sewer~~ Line Construction/Installation Activities - Impacts other than perpendicular crossings provided that ~~(including replacement/rehabilitation that does not meet the criteria of existing use in Item (5) of this Rule) provided that (1) vegetative root systems and stumps are left intact to maintain the integrity of the soil except in the trench where trees are cut, and (2)~~ vegetation is allowed to regenerate in disturbed areas, except within the permanent maintenance corridor:				
(i) Zone 2 ~~only~~impacts	X			

Use	~~Exempt~~ Deemed Allowable	Allowable Upon Authorization	Allowable with Mitigation Upon Authorization	Prohibited
(ii) Zone 1 impacts to less than 2,500 square feet when impacts are solely the result of tying into an existing utility line and when grubbing or grading within10 feet immediately adjacent to the surface water is avoided		X		
~~Zone 1 impacts for replacement/rehabilitation within an existing Right of Way when land grubbing or grading within 10 feet immediately adjacent to the surface water is avoided~~		~~X~~		
(iii) Zone 1 impacts other than those listed above			X	
(ll) Utility – Non-Sewer Underground Lines – Vegetation m~~M~~aintenance a~~A~~ctivities that remove forest vegetation from existing utility right of ways (not including new line installation) outside of the existing utility line maintenance corridor:				
(i) Zone 2 impacts ~~Vegetation maintenance activities along an existing utility line beyond the footprint of an existing utility line maintenance corridor where the total maintenance corridor is equal to or less than 30 linear feet in width~~	X	~~X~~		
(ii) Zone 1 impacts: For lines that have not been maintained, the vegetation can be mowed, cut or otherwise maintained without disturbance to the soil structure for a maintenance corridor that is equal to or less than 30 feet wide	X			
(iii) Zone 1 impacts other than those listed above ~~Vegetation maintenance activities along an existing utility line beyond the footprint of an existing utility line maintenance corridor where the total maintenance corridor is greater than 30 linear feet in width~~			X	
(mm) Utility –Non-sewer underground lines - Perpendicular crossings of streams and other surface waters subject to this Rule or perpendicular entry into the riparian buffer				

Use	~~Exempt~~ Deemed Allowable	Allowable Upon Authorization	Allowable with Mitigation Upon Authorization	Prohibited
that does not cross a stream or other surface water subject to this Rule provided that vegetation is allowed to regenerate in disturbed areas outside of the permanent maintenance corridor:				
(i) Construction ~~activities that disturb~~corridor of less than or equal to 50 linear feet wide ~~of riparian buffer provided that vegetative root systems and stumps shall be left intact to maintain the integrity of the soil except in the trench where trees are cut and that vegetation is allowed to regenerate in disturbed areas with the exception of~~ and a permanent maintenance corridor that is equal to or less than 30 feet ~~in width~~wide	X			
(ii) Construction ~~activities that disturb~~corridor of greater than 50 linear feet wide and less than or equal to 150 linear feet wide ~~of riparian buffer provided that vegetative root systems and stumps shall be left intact to maintain the integrity of the soil except in the trench where trees are cut and that vegetation is allowed to regenerate in disturbed areas with the exception of~~ and a permanent maintenance corridor that is equal to or less than 30 feet ~~in width~~wide		X		
(iii) Construction ~~activities that disturb~~corridor of greater than 150 linear feet wide ~~of riparian buffer~~ and a permanent maintenance corridor that is equal to or less than 30 feet ~~in width~~wide			X	
(iv) Permanent maintenance corridor that is greater than 30 linear feet wide (mitigation is required only for Zone 1 impacts) ~~Any activities with a permanent maintenance corridor greater than 30 feet in width~~			X	
(nn) Utility –Non-~~S~~sewer ~~U~~underground ~~L~~lines. Impacts other than perpendicular crossings provided that				

Use	~~Exempt~~ Deemed Allowable	Allowable Upon Authorization	Allowable with Mitigation Upon Authorization	Prohibited
vegetation is allowed to regenerate in disturbed areas outside of the permanent maintenance corridor:				
(i) Zone 2 ~~only~~ impacts ~~Impacts in Zone Two provided vegetation is re-established after disturbance and the function of Zone 1 is not compromised~~	X			
(ii) ~~Impacts in Zone One~~ Zone 1 impacts to less than 2,500 square feet when impacts are solely the result of tying into an existing utility line and when grubbing or grading ~~provided that land grubbing or grading is not conducted~~ within 10 feet immediately adjacent to the surface water is avoided		X		
(iii) Impacts in Zone ~~One~~ 1 other than listed above		X		
(oo) Utilities – Non-~~S~~sewer ~~A~~aerial ~~L~~lines - Perpendicular crossings of streams and other surface waters subject to this Rule or perpendicular entry into the riparian buffer that does not cross a stream or other surface water subject to this Rule:				
(i) Disturb equal to or less than 150 linear feet wide of riparian buffer provided that a minimum zone of 10 feet wide immediately adjacent to the ~~water body~~waterbody is managed such that only vegetation that poses a hazard or has the potential to grow tall enough to interfere with the line is removed, that no land grubbing or grading is conducted in Zone 1, and that that poles or aerial infrastructure are not installed within 10 feet of a ~~water body~~waterbody	X			
(ii) Disturb greater than 150 linear feet wide of riparian buffer		X		
(pp) Utilities – Non-~~S~~sewer ~~A~~aerial ~~L~~lines - Impacts other than perpendicular crossings of streams and other surface waters subject to this Rule or perpendicular				

Use	~~Exempt~~ Deemed Allowable	Allowable Upon Authorization	Allowable with Mitigation Upon Authorization	Prohibited
entry into the riparian buffer that does not cross a stream or other surface water subject to this Rule:				
(i) Impacts in Zone ~~Two~~ 2 only	X	~~X~~		
(ii) Impacts in Zone ~~One~~ 1 provided that a minimum zone of 10 feet wide immediately adjacent to the ~~water body~~waterbody is managed such that only vegetation that poses a hazard or has the potential to grow tall enough to interfere with the line is removed, that no land grubbing or grading is conducted in Zone 1, and that that poles or aerial infrastructure are not installed within 10 feet of a ~~water body~~waterbody		X	~~X~~	
(qq) Vegetation management:				
(i) Emergency fire control measures provided that topography is restored	X			
(ii) Periodic mowing and harvesting of plant products only in Zone 2 ~~only~~	X			
(iii) Placement of mulch ring around restoration plantings for a period of five years from the date of planting	X			
(iv) Planting non-invasive vegetation to ~~improve water quality protection function of~~ enhance the riparian buffer	X			
(v) Pruning forest vegetation provided that the health and function of the forest vegetation is not compromised	X			
(vi) Removal of individual ~~trees~~ trees, branches or limbs which are in danger of causing damage to dwellings, existing utility lines, other structures or human life, or are imminently endangering stability of the streambank provided that the stumps are left or ground in place without causing additional land disturbance. ~~life~~	X			

Use	~~Exempt~~ Deemed Allowable	Allowable Upon Authorization	Allowable with Mitigation Upon Authorization	Prohibited
(vii) Removal of individual trees which are dead, diseased or damaged	X			
(viii) Removal of poison ~~ivy~~ ivy, oak or sumac. Removal can include application of pesticides within the riparian buffer if the pesticides are certified by EPA for use in or near aquatic sites and are applied in accordance with the manufacturer's instructions. If removal is significant, then the riparian buffer shall be replanted with non-invasive species	X			
(ix) Removal of understory nuisance vegetation listed in Appendix III of: Smith, Cherri L. 2008. Invasive Plants of North Carolina. Dept. of Transportation. Raleigh, NC (available at http://portal.ncdenr.org/c/document_library/get_file?uuid=0acc6377-ea07-42dc-bb27-45a78d1c7ebe&groupId=38364). Removal can include application of pesticides within the riparian buffer is the pesticides are certified by EPA for use in or near aquatic sites and are applied in accordance with the manufacturer's instructions. If removal is significant, then the riparian buffer shall be replanted with non-invasive species. ~~998. Exotic Plant Guidelines. Department of Environment and Natural Resources. Division of Parks and Recreation. Raleigh, NC. Guideline #30~~	X			
(rr) Vehicle access roads and boat ramps (excluding parking areas) leading to the surface water, docks, fishing piers, and other water dependent activities:				
(i) ~~Vehicular~~ Single vehicular access ~~roads~~ road and boat ~~ramps~~ ramp to the surface water but not crossing the surface water that are restricted to the minimum width practicable not to exceed ~~10~~ 15 feet ~~in width~~wide		X		

Use	~~Exempt~~ Deemed Allowable	Allowable Upon Authorization	Allowable with Mitigation Upon Authorization	Prohibited
(ii) Vehicular access roads and boat ramps to the surface water but not crossing the surface water that are restricted to the minimum width practicable and exceed ~~10~~ 15 feet ~~in width~~wide			X	
(ss) View corridors:				
(i) Thinning of underbrush, shrubs, and limbs up to 50% of individual tree height to enhance a lake view provided soils are undisturbed, Item (8) of this Rule is complied with ~~diffuse flow is maintained~~ and no stems of woody vegetation larger than 3" DBH are removed	X			
(ii) Thinning of underbrush, shrubs, and limbs above 50% of individual tree height to enhance a lake view provided soils are undisturbed, Item (8) of this Rule is complied with ~~diffuse flow is maintained~~ and no stems of woody vegetation larger than 3" DBH are removed		X		
(tt) Water dependent ~~structures:~~				
~~Water dependent structures as defined in 15A NCAC 02B .0202 where installation and use do not result in disturbance to riparian buffers~~	~~X~~			
~~Water dependent structures as defined in 15A NCAC 02B .0202 where installation and use result in disturbance to riparian buffers~~ structures (except for boat ramps) as defined in Rule .0202 of this Subchapter		X		
(uu) Water ~~wells:~~				
~~Single family residential water wells~~	X			
~~All other water wells~~ wells		~~X~~		
~~Wetland, stream and buffer restoration that results in impacts to the riparian buffers:~~				
~~Wetland, stream and buffer restoration that requires DWQ approval for the use of a 401 Water Quality Certification~~	~~X~~			
		X		

Use	~~Exempt~~ Deemed Allowable	Allowable Upon Authorization	Allowable with Mitigation Upon Authorization	Prohibited
~~Wetland, stream and buffer restoration that does not require DWQ approval for the use of a 401 Water Quality Certification~~				
(vv) Wildlife passage structures		X		

~~[1] Perpendicular crossings are those that intersect the surface water at an angle between 75° and 105°. New water intakes and new outfall lines which may be required to extend to or cross part of waterbodies will be implemented and enforced under this category.~~

~~[2] Provided that, in Zone 1, all of the following BMPs for overhead utility lines are used. If all of these BMPs are not used, then the overhead utility lines shall require a no practical alternative evaluation by the Division.~~

- ~~A minimum zone of 10 feet wide immediately adjacent to the water body shall be managed such that only vegetation that poses a hazard or has the potential to grow tall enough to interfere with the line is removed.~~
- ~~Woody vegetation shall be cleared by hand. No land grubbing or grading is allowed.~~
- ~~Vegetative root systems shall be left intact to maintain the integrity of the soil. Stumps shall remain where trees are cut.~~
- ~~Rip rap shall not be used unless it is necessary to stabilize a tower.~~
- ~~No fertilizer shall be used other than a one-time application to re-establish vegetation.~~
- ~~Construction activities shall minimize the removal of woody vegetation, the extent of the disturbed area, and the time in which areas remain in a disturbed state.~~
- ~~Measures shall be taken after construction and during routine maintenance to ensure diffuse flow of stormwater through the buffer.~~
- ~~In wetlands, mats shall be utilized to minimize soil disturbance.~~
- ~~[3] Provided that poles or towers shall not be installed within 10 feet of a water body unless the Division completes a no practical alternative evaluation.~~

~~[4] The submitted preliminary subdivision plat shall include all the following information:~~

- ~~Total acreage of land proposed for platting.~~
- ~~The boundaries of the tract or portion thereof to be subdivided, with all bearings and distances accurately shown, including dimensions of all lot lines.~~
- ~~Location and use of all existing and proposed easements. This includes easements for drainage and utilities.~~
- ~~Location, width of rights-of-way and all proposed streets.~~
- ~~Location of all utilities installations.~~
- ~~Distance to nearest public water supply and sanitary sewerage systems.~~
- ~~Significant natural features including existing riparian buffer areas, existing wetlands, lakes or rivers, or other natural features affecting the site.~~
- ~~Existing physical features including buildings, streets, railroads, power lines, drainage ways, sewer and water or spring heads, and town limit lines both to or adjacent to the land to be subdivided~~.

~~[5] Provided that, in Zone 1, all of the following BMPs for underground utility lines are used. If all of these BMPs are not used, then the underground utility line shall require a no practical alternative evaluation by the Division.~~

- ~~Woody vegetation shall be cleared by hand. No land grubbing or grading is allowed.~~
- ~~Except as specified within this footnote, vegetative root systems shall be left intact to maintain the integrity of the soil. Stumps shall remain, except in the trench, where trees are cut.~~
- ~~Underground cables shall be installed by vibratory plow or trenching.~~
- ~~The trench shall be backfilled with the excavated soil material immediately following cable installation.~~

- ~~No fertilizer shall be used other than a one-time application to re-establish vegetation.~~
- ~~Construction activities shall minimize the removal of woody vegetation, the extent of the disturbed area, and the time in which areas remain in a disturbed state.~~
- ~~Active measures shall be taken after construction and during routine maintenance to ensure diffuse flow of stormwater through the buffer.~~
- ~~In wetlands, mats shall be utilized to minimize soil disturbance.~~

~~(7) REQUIREMENTS FOR CATEGORIES OF USES. Uses designated as exempt, allowable, and allowable with mitigation in Item (6) of this Rule and prohibited in this Rule shall have the following requirements:~~

~~(a) EXEMPT. Uses designated as exempt are allowed within the riparian buffer. Exempt uses shall be designed, constructed and maintained to minimize soil disturbance and to provide the maximum water quality protection practicable. In addition, exempt uses shall meet requirements listed in Item (6) of this Rule for the specific use.~~

~~(b) ALLOWABLE. Uses designated as allowable may proceed within the riparian buffer provided that there are no practical alternatives to the requested use pursuant to Item (8) of this Rule and that disturbance to the buffer is minimized. These uses require prior written authorization from the Division or from a local government with an approved riparian buffer ordinance pursuant to Sub-Item (3)(b) of this Rule.~~

~~(c) ALLOWABLE WITH MITIGATION. Uses designated as allowable with mitigation may proceed within the riparian buffer provided that there are no practical alternatives to the requested use pursuant to Item (8) of this Rule and an appropriate mitigation strategy has been approved pursuant to Item (10) of this Rule. These uses require written authorization from the Division or the approved local government.~~

~~(d) PROHIBITED. All uses not designated as exempt, allowable or allowable with mitigation are considered prohibited and may not proceed within the riparian buffer unless a variance is granted pursuant to Item (9) of this Rule. Mitigation may be required as one condition of a variance approval.~~

~~(8) DETERMINATION OF "NO PRACTICAL ALTERNATIVES." Persons who wish to undertake uses designated as allowable or allowable with mitigation shall submit a request for a "no practical alternatives" determination to the Division or to the approved local government. The applicant shall certify that the criteria identified in Sub-Item (8)(a) of this Rule are met. The Division or the approved local government shall grant an Authorization Certificate upon a "no practical alternatives" determination. The procedure for making an Authorization Certificate shall be as follows:~~

~~(a) For any request for an Authorization Certificate, the Division or the approved local government shall review the entire project and make a finding of fact as to whether the following requirements have been met in support of a "no practical alternatives" determination:~~

~~(i) The basic project purpose cannot be practically accomplished in a manner that would better minimize disturbance, preserve aquatic life and habitat, and protect water quality.~~

~~(ii) The use cannot practically be reduced in size or density, reconfigured or redesigned to better minimize disturbance, preserve aquatic life and habitat, and protect water quality.~~

~~(iii) Best management practices shall be used if necessary to minimize disturbance, preserve aquatic life and habitat, and protect water quality.~~

~~(b) Requests for an Authorization Certificate shall be reviewed and either approved or denied within 60 days of receipt of a complete submission based on the criteria in Sub-Item (8)(a) of this Rule by either the Division or the approved local government. Failure to issue an approval or denial within 60 days shall constitute that the applicant has demonstrated "no practical alternatives." An Authorization Certificate shall be issued to the applicant, unless:~~

~~(i) The applicant agrees, in writing, to a longer period;~~

~~(ii) Applicant fails to furnish requested information necessary to the Division's or approved local government's decision; or~~

~~(iii) Information necessary to the Division's or approved local government's decision.~~

~~The Division or the approved local government may attach conditions to the Authorization Certificate that support the purpose, spirit and intent of the riparian buffer protection program. Complete submissions to the Division shall use the appropriate Pre-Construction Notification (PCN) Application Form and shall submit the completed form to the Division. Complete submissions to the delegated local government shall include the following unless otherwise identified within an approved local government ordinance:~~

~~(i) The name, address and phone number of the applicant;~~

~~(ii) The nature of the activity to be conducted by the applicant;~~

~~(iii) The location of the activity, including the jurisdiction;~~

~~(iv) A map of sufficient detail to accurately delineate the boundaries of the land to be utilized in carrying out the activity, the location and dimensions of any disturbance in riparian buffers associated with the activity, and the extent of riparian buffers on the land;~~

~~(v) An explanation of why this plan for the activity cannot be practically accomplished, reduced or reconfigured to better minimize disturbance to the riparian buffer, preserve aquatic life and habitat and protect water quality; and~~

~~(vi) Plans for any best management practices proposed to be used to control the impacts associated with the activity.~~

~~(c) Any disputes over determinations regarding Authorization Certificates shall be referred to the Director for a decision. The Director's decision is subject to review as provided in G.S. 150B Articles 3 and 4.~~

~~(9) VARIANCES. Persons who wish to undertake uses designated as prohibited may pursue a variance. The Division or the appropriate approved local government shall make all of the following findings of fact and may grant variances. The variance request procedure shall be as follows:~~

~~(a) For any variance request, the Division or the approved local government shall make a finding of fact to insure that the following requirements have been met:~~

~~(i) There are practical difficulties or hardships that prevent compliance with the riparian buffer protection requirements. Practical difficulties or unnecessary hardships shall be evaluated in accordance with the following:~~

~~(A) If the applicant complies with the provisions of this Rule, he or she can secure no reasonable return from, nor make reasonable use of, his or her property. Merely proving that the variance would permit a greater profit from the property shall not be considered adequate justification for a variance. Moreover, the Division or the approved local government shall consider whether the variance is the minimum possible deviation from the terms of this Rule that shall make reasonable use of the property possible.~~

~~(B) The hardship results from application of this Rule to the property rather than from other factors such as deed restrictions or other hardship.~~

~~(C) The hardship is due to the physical nature of the applicant's property, such as its size, shape, or topography, which is different from that of neighboring property.~~

~~(D) The applicant did not cause the hardship by knowingly or unknowingly violating this Rule.~~

~~(E) The hardship is unique to the applicant's property, rather than the result of conditions that are widespread. If other properties are equally subject to the hardship created in the restriction, then granting a variance would be a special privilege denied to others, and would not promote equal justice.~~

~~(ii) The variance is in harmony with the general purpose and intent of the Catawba River Basin's riparian buffer protection requirements and preserves its spirit; and~~

~~(iii) In granting the variance, the public safety and welfare have been assured, water quality has been protected, and justice has been done.~~

~~(b) Variance requests shall be reviewed and approved based on the criteria in Sub-Item (9)(a) of this Rule by either the Division or the approved local government pursuant to G.S. 153A,~~

~~Article 18, or G.S. 160A, Article 19. The Division or the approved local government may attach conditions to the variance approval that support the purpose, spirit and intent of the riparian buffer protection program. Requests for appeals of decisions made by the Division shall be made to the Office of Administrative Hearings. Request for appeals of decisions made by the approved local government shall be made to the appropriate Board of Adjustment under G.S. 160A-388 or G.S. 153A-345 for determinations made by the approved local government.~~

~~(10)~~(11) MITIGATION. Persons who wish to undertake uses designated as allowable with mitigation upon authorization as defined in Sub-Item (9)(a)(iii) of this Rule or allowable with exception as defined in Sub-Item (9)(a)(v) of this Rule shall meet the following requirements in order to proceed with their proposed ~~use.~~ use:

(a) Obtain ~~a determination of "no practical alternatives" to the proposed use~~ an Authorization Certificate pursuant to ~~Item (8) of this Rule.~~ Rule .0611 of this Section; and

(b) Obtain written approval for a mitigation proposal pursuant to ~~15A NCAC 02B .0244.~~ Rule .0295 of this Subchapter.

~~(11) REQUIREMENTS SPECIFIC TO FOREST HARVESTING. The following requirements shall apply for forest harvesting operations and practices.~~

~~(a) The following measures shall apply in Zone 1 of the riparian buffer:~~

~~(i) Logging decks and sawmill sites shall not be placed in the riparian buffer.~~

~~(ii) Timber felling shall be directed away from the water body.~~

~~(iii) Skidding shall be directed away from the water body and shall be done in a manner that minimizes soil disturbance and prevents the creation of channels or ruts in accordance with 15A NCAC 01I .0203 as enforced by the Division of Forest Resources.~~

~~(iv) Individual trees may be treated to maintain or improve their health, form or vigor.~~

~~(v) Harvesting of dead or infected trees or application of pesticides necessary to prevent or control tree pest and disease infestation shall be allowed. These practices must be approved by the Division of Forest Resources for a specific site pursuant to this Rule. The Division of Forest Resources must notify the Division of all approvals.~~

~~(vi) Removal of individual trees that are in danger of causing damage to structures or human life shall be allowed.~~

~~(vii) Natural regeneration of forest vegetation and planting of trees, shrubs, or ground cover plants to enhance the riparian buffer shall be allowed provided that soil disturbance is minimized. Plantings shall consist primarily of native species.~~

~~(viii) Prescribed burns shall not be allowed.~~

~~(ix) Application of fertilizer shall not be allowed except as necessary for permanent stabilization. Broadcast application of fertilizer or herbicides to the adjacent forest stand shall be conducted so that the chemicals are not applied directly to or allowed to drift into the riparian buffer.~~

~~(b) In Zone 1, forest vegetation shall be protected and maintained. Selective harvest as provided for below is allowed on forest lands that have a deferment for use value under forestry in accordance with G.S. 105-277.2 through G.S. 277.6 or on forest lands that have a forest management plan prepared or approved by a registered professional forester. Copies of either the approval of the deferment for use value under forestry or the forest management plan shall be produced upon request. For such forest lands, selective harvest is allowed in accordance with the following:~~

~~(i) Tracked or wheeled vehicles are not permitted except at stream crossings designed, constructed and maintained in accordance with 15A NCAC 01I .0203 as enforced by the Division of Forest Resources.~~

~~(ii) Soil disturbing site preparation activities are not allowed.~~

~~(iii) Trees shall be removed with the minimum disturbance to the soil and residual vegetation.~~

~~(iv) The following provisions for selective harvesting shall be met:~~

~~(A) The first 10 feet of Zone 1 directly adjacent to the stream or waterbody shall be undisturbed except for the removal of individual high value trees as defined.~~

~~(B) In the outer 20 feet of Zone 1, trees greater than 12-inch diameter stump may be cut and removed. The reentry time for harvest shall be no more frequent than every 15 years, except on forest plantations where the reentry time shall be no more frequent than every five years. In either case, the trees remaining after harvest shall be as evenly spaced as possible.~~

~~(c) In Zone 2, harvesting and regeneration of the forest stand shall be allowed in accordance with 15A NCAC 01I .0100 – .0200 as enforced by the Division of Forest Resources.~~

~~(11)~~(12) PREVIOUSLY APPROVED DELEGATION OF AUTHORITY FOR THE PROTECTION AND MAINTENANCE OF EXISTING RIPARIAN BUFFER. The following set out the requirements for delegation of the responsibility for implementing and enforcing the Catawba River riparian buffer protection program, as described in this Rule, to local governments previously approved by the Division:

(a) All local governments that have land use authority along the Catawba River mainstem below Lake James and along mainstem lakes in the Catawba River Basin may adopt local riparian buffer ordinances to protect water quality. The Division shall approve the local

riparian buffer ordinance within 30 days after receiving the request from local governments, if the Division determines that the local riparian buffer ordinance provides equal to or greater water quality protection than this Rule. This Rule shall not apply in any area where a local government has obtained the Division's approval of the local riparian buffer ordinance, provided that the local government is implementing and enforcing the approved local riparian buffer ordinance. The Division, upon determination that the local government is failing to implement or enforce the approved local riparian buffer ordinance, shall notify the local government in writing of the local program inadequacies. If the local government has not corrected the deficiencies within 90 days of receipt of written notification, then the Division shall implement and enforce the provisions of this Rule.

(b) The Division shall be responsible for the implementation of this rule for all riparian areas and activities not regulated under a Division-approved local government ordinance.

~~(12)~~(13) DELEGATION OF AUTHORITY FOR THE PROTECTION AND MAINTENANCE OF EXISTING RIPARIAN BUFFER. The following set out the requirements for delegation of the responsibility for implementing and enforcing the Catawba River riparian buffer protection program, as described in this Rule, to local governments not previously approved by the Division:

(a) The Commission shall grant local government delegation of the Catawba River Riparian Buffer Protection requirements as described in this Rule according to the following procedures:

(i) Local governments within the Catawba River may submit a written request to the Commission for authority to implement and enforce the Catawba River riparian buffer protection requirements within their jurisdiction by establishing a riparian buffer program to meet the requirements of this Rule. The written request to establish a riparian buffer program shall include the following:

(A) Documentation that the local government has land use jurisdiction along the Catawba River mainstem below Lake James and along mainstem lakes in the Catawba River Basin. This can be demonstrated by delineating the local land use jurisdictional boundary on the USGS 1:24,000 topographical map(s) or other finer scale map(s);

(B) Documentation that the local government has the administrative organization, staff, legal authority, financial resources and other resources necessary to implement and enforce the State's riparian buffer protection requirements based on its size and projected amount of development;

(C) The local government ordinances, resolutions, or regulations necessary to establish a riparian buffer program to meet the requirements of this Rule and G.S. 143-214.23A.

(D) Documentation that the local government's riparian buffer program ~~complies~~ will comply with all requirements set forth in G.S. 143-214.23A

(E) A plan to address violations with civil or criminal remedies and actions as well as remedies that shall restore riparian buffer functions on violation sites and provide a deterrent against the occurrence of future violations.

(ii) Within 90 days after the Commission has received the request for delegation, the Commission shall notify the local government whether it has been approved, approved with modifications, or denied.

(b) The Division has jurisdiction to the exclusion of local governments to implement the requirements of this Rule for the following types of activities:

(i) Activities undertaken by the State;

(ii) Activities undertaken by the United States;

(iii) Activities undertaken by multiple jurisdictions;

(iv) Activities undertaken by local units of government;

(v) Forest harvest activities described in Rule .0612 of this Section; and

(vi) Agricultural activities.

(c) Delegated local governments shall maintain on-site records for a minimum of five years~~.~~ ~~Delegated local governments must~~and shall furnish a copy of these records to the Division within 30 calendar days of receipt of a written request for ~~the records~~them. Each delegated local government's records shall include the following:

(i) A copy of all Authorization Certificates with Exception requests;

(ii) Findings on all ~~The~~ Authorization Certificates with Exception requests~~'s~~ ~~finding of fact~~;

(iii) The results of ~~the~~ all Authorization Certificates with Exception proceedings;

(iv) A record of complaints and action taken as a result of the complaints;

~~(v) Records for stream origin calls and stream ratings; and~~

(v~~i~~) Copies of all requests for authorization, records approving authorization and Authorization Certificates.

(d) The Division shall regularly audit delegated local governments to ensure the local programs are being implemented and enforced in keeping with the requirements of this Rule. The audit shall consist of a review of all local government activities with regards to implementation of the Rules.

(e) Upon determination by the Division that a delegated local government is failing to implement or enforce the Catawba River riparian buffer protection requirements in keeping with the request approved under Sub-Item (14)(a)(iv) of this Rule, the Commission shall

notify the delegated local government in writing of the local program's inadequacies. If the delegated local government has not corrected the deficiencies within 90 calendar days of receipt of the written notification, then the Commission shall rescind the delegation of authority to the local government and the Division shall implement and enforce the Catawba River riparian buffer protection requirements within their jurisdiction.

(f) The Commission may delegate its duties and powers for granting and rescinding local government delegation of the Catawba River riparian buffer protection requirements, in whole or in part, to the Director.

~~(13)~~(14) OTHER LAWS, REGULATIONS AND PERMITS. In all cases, compliance with this Rule does not preclude the requirement to comply with all federal, state and local regulations and laws. ~~Whichever regulation is more restrictive shall apply.~~

History Note: *Authority G.S. 143-214.1; 143-214.7; 143-215.3(a)(1); S.L. 1999, c. 329; ~~329, s. 7.1; S.B 824 2003;~~ S.L. 2013, c. 413; S.L. 2017, c. 209*
Temporary Adoption Eff. June 30, 2001; (exempt from 270 day requirement - S.L. 2001-418 & S.L. 2003-340).
Eff. August 1, 2004.
Readopted Eff. [New Date].
The provisions of this Rule were transferred from 15A NCAC 02B .0243. The provisions of item (2) of 15A NCAC 02B .0243 were transferred to 15A NCAC 02B .0610. The provisions of item (8) & (9) of 15A NCAC 02B .0243 were transferred to 15A NCAC 02B .0611. The provisions of item (11) of 15A NCAC 02B .0243 were transferred to 15A NCAC 02B .0612.

15A NCAC 02B ~~.0248~~ .0720 RANDLEMAN ~~LAKE WATER SUPPLY WATERSHED:~~ NUTRIENT ~~MANAGEMENT STRATEGY~~ STRATEGY: PURPOSE AND SCOPE

(a) PURPOSE. The purpose of the Randleman nutrient strategy is to attain the designated uses of Randleman Lake. All waters of the Randleman Lake (Deep River) water supply watershed are classified for water supply uses and designated by the Environmental Management Commission as a Critical Water Supply Watershed pursuant to G.S. 143-214.5(b).

(b) SCOPE AND LIMITATION. The Randleman nutrient strategy rules require controls to reduce significant nutrient sources throughout the Randleman Lake watershed. These Rules do not address sources for which there is insufficient scientific knowledge to base regulation. The Commission may undertake additional rulemaking in the future or make recommendations to other rulemaking bodies as deemed appropriate to more fully address nutrient sources to Randleman Lake.

(c) RULES ENUMERATED. The following ~~rules~~ rules, which together shall constitute the Randleman nutrient strategy, shall be implemented for the entire drainage area upstream of the Randleman Lake Dam:

~~(1) Rule .0249 of this Section for Wastewater Discharges,~~

~~(2) Rule .0250 of this Section for Protection and Maintenance of Riparian Areas, and~~

~~(3) Rule .0251 of this Section for Urban Stormwater Management.~~

(1) Rule .0721 of this Section for Urban Stormwater Management.

(2) Rule .0722 of this Section for Wastewater Discharges; and

(3) Rule .0723 of this Section for Protection and Maintenance of Riparian Areas.

~~(b)~~(d) PENALTIES. Failure to meet the requirements of the Rules in this Section may result in the imposition of enforcement measures as authorized by G.S. 143-215.6A (civil penalties), G.S. 143-215.6B (criminal penalties), and G.S. 143-215.6C (injunctive relief).

History Note: Authority G.S. 143-214.1; 143-214.5; 143-215.3(a)(1); 143-215.6A; 143-215.6B; 143-215.6C;
Eff. April 1, 1999;
Amended Eff. May 1, 2010;
Readopted Eff. [New Date].
The provisions of this Rule were transferred from 15A NCAC 02B .0248.

15A NCAC 02B ~~.0249~~ .0722 RANDLEMAN LAKE WATER SUPPLY WATERSHED: WASTEWATER DISCHARGE REQUIREMENTS

The following is the National Pollutant Discharge Elimination System (NPDES) wastewater discharge management strategy for the Randleman Lake watershed. For purposes of this Rule, permitted wastewater discharges means those facilities permitted to discharge domestic wastewater or wastewaters containing phosphorus:

(1) The City of High ~~Point's Eastside facility~~ Point ~~East Side~~ Eastside Wastewater Treatment Plant (WWTP) shall meet a total phosphorus concentration predicted to provide a level of water quality in the Randleman Lake which meets all designated uses of those waters.

(2) There shall be no new or expanding permitted wastewater discharges in the watershed with the exception that the City of High Point Eastside ~~wastewater treatment plant~~ WWTP may be allowed to expand provided that any new permit contains concentration and mass limits predicted to provide a level of water quality in the Randleman Lake which meets all designated uses of those waters.

History Note: *Authority G. S. 143-214.1; 143-214.5; 143-215.3(a)(1);*
Eff. April 1, ~~1999.~~ 1999;
Readopted Eff. [New Date].
The provisions of this Rule were transferred from 15A NCAC 02B .0249.

15A NCAC 02B ~~.0250~~ .0724 RANDLEMAN LAKE WATER SUPPLY WATERSHED: PROTECTION AND MAINTENANCE OF EXISTING RIPARIAN BUFFERS

Protection of the pollutant removal and other water quality services provided by riparian buffers throughout the watershed is an important element of the overall Randleman Lake water supply pollutant strategy. The following is the management strategy for maintaining and protecting riparian areas in the Randleman Lake watershed:

(1) PURPOSE. The purposes of this Rule shall be for the local governments listed in this Rule, and in certain cases stated in this Rule the Division, to maintain and protect ~~and preserve~~ existing riparian buffers throughout the Randleman Lake watershed as generally described in this Rule, in order to maintain their nutrient removal and stream protection functions. Additionally this Rule will help protect the water supply uses of Randleman Lake and of designated water supplies throughout the Randleman Lake water supply watershed. Terms used in this Rule shall be as defined in Rule .0610 of this Subchapter. ~~Local governments with jurisdictions in Randleman Lake watershed shall establish programs to meet or exceed the minimum requirements of this Rule. However, the Division shall assume responsibility for applying the requirements of this Rule to activities listed in Item (3) of this Rule. The requirements of this Rule shall supersede all buffer requirements stated in Rules 15A NCAC 02B .0214 through .0216 as applied to WS-II, WS-III, and WS-IV waters in the Randleman Lake watershed. Parties subject to this Rule may choose to implement more stringent rules, including the one-hundred foot buffer requirement set out in Sub-item (3)(b)(i) of Rules 15A NCAC 02B .0214 through .0216 for high-density developments.~~

~~(2) DEFINITIONS. For the purpose of this Rule, these terms shall be defined as follows:~~

~~(a) 'Access Trails' means pedestrian trails constructed of pervious or impervious surfaces, and related structures to access a surface water including (but not limited to) boardwalks, steps, rails, signage;~~

~~(b) 'Archaeological Activities' means activities conducted by a Registered Professional Archaeologist (RPA);~~

~~(c) 'Airport Facilities' means all properties, facilities, buildings, structures, and activities that satisfy or otherwise fall within the scope of one or more of the definition or uses of the words or phrases 'air navigation facility', 'airport', or 'airport protection privileges' under G.S. 63-1; the definition of 'aeronautical facilities' in G.S. 63-79(1); the phrase 'airport facilities' as used in G.S. 159-48(b)(1); the phrase 'aeronautical facilities' as defined in G.S. 159-81 and G.S. 159-97; and the phrase 'airport facilities and improvements' as used in Article V, Section 13, of the North Carolina Constitution. Airport facilities shall include without limitation, any and all of the following: airports, airport maintenance facilities, clear zones, drainage ditches, fields, hangars, landing lighting, airport and airport related offices, parking facilities, related navigational and signal systems, runways, stormwater outfalls, terminals, terminal shops, and all appurtenant areas used or suitable for airport buildings or other airport facilities, and all appurtenant rights-of-way; restricted landing~~

~~areas; any structures, mechanisms, lights, beacons, marks, communicating systems, or other instrumentalities or devices used or useful as an aid, or constituting an advantage or convenience to the safe taking off, navigation, and landing of aircraft, or the safe and efficient operation or maintenance of an airport or restricted landing area; easements through, or interests in, air space over land or water, interests in airport hazards outside the boundaries of airports or restricted landing areas, and other protection privileges, the acquisition or control of which is necessary to ensure safe approaches to the landing areas of airports and restricted landing areas, and the safe and efficient operation thereof and any combination of any or all of such facilities. Notwithstanding the foregoing, the following shall not be included in the definition of 'airport facilities':~~

~~(i) Satellite parking facilities;~~

~~(ii) Retail and commercial development outside of the terminal area, such as rental car facilities; and~~

~~(iii) Other secondary development, such as hotels, industrial facilities, free standing offices and other similar buildings, so long as these facilities are not directly associated with the operation of the airport, and are not operated by a unit of government or special governmental entity such as an airport authority;~~

~~(d) 'Channel' means a natural water carrying trough cut vertically into low areas of the land surface by erosive action of concentrated flowing water or a ditch or canal excavated for the flow of water;~~

~~(e) 'DBH' means diameter at breast height of a tree measured at 4.5 feet above ground surface level;~~

~~(f) Ditch means a man made, open drainage way in or into which excess surface water or groundwater from land, stormwater runoff, or floodwaters flow either continuously or intermittently;~~

~~(g) 'Ephemeral stream' means a feature that carries stormwater in direct response to precipitation with water flowing only during and shortly after large precipitation events. An ephemeral stream may or may not have a well defined channel, the aquatic bed is always above the water table, and stormwater runoff is the primary source of water. An ephemeral stream typically lacks the biological, hydrological, and physical characteristics commonly associated with the continuous or intermittent conveyance of water;~~

~~(h) 'Forest plantation' means an area of planted trees that may be conifers (pines) or hardwoods. On a plantation, the intended crop trees are planted rather than naturally regenerated from seed on the site, coppice (sprouting), or seed that is blown or carried into the site;~~

~~(i) 'Greenway / Hiking Trails' means pedestrian trails constructed of pervious and impervious surfaces and related structures including but not limited to boardwalks, steps, rails, and signage, and that generally run parallel to the surface water;~~

~~(j) 'High Value Tree' means a tree that meets or exceeds the following standards: for pine species, 14 inch DBH or greater or 18 inch or greater stump diameter; and, for hardwoods and wetland species, 16 inch DBH or greater or 24 inch or greater stump diameter;~~

~~(k) 'Intermittent stream' means a well-defined channel that contains a continuous flow of water for only part of the year, typically during winter and spring when the aquatic bed is below the water table. The flow may be heavily supplemented by stormwater runoff. An intermittent stream often lacks the biological and hydrological characteristics commonly associated with the continuous conveyance of water;~~

~~(l) 'Modified natural stream' means an on-site channelization or relocation of a stream channel and subsequent relocation of the intermittent or perennial flow as evidenced by topographic alterations in the immediate watershed. A modified natural stream must have the typical biological, hydrological, and physical characteristics commonly associated with the continuous conveyance of water;~~

~~(m) 'Perennial stream' means a well-defined channel that contains water year-round during a year of normal rainfall with the aquatic bed located below the water table for most of the year. Groundwater is the primary source of water for a perennial stream, but it also carries stormwater runoff. A perennial stream exhibits the typical biological, hydrological, and physical characteristics commonly associated with the continuous conveyance of water;~~

~~(n) 'Perennial waterbody' means a natural or man-made watershed that stores surface water permanently at depths sufficient to preclude growth of rooted plants, including lakes, ponds, sounds, non-stream estuaries and ocean. For the purpose of the State's riparian buffer protection program, the waterbody must be part of a natural drainage way (i.e., connected by surface flow to a stream);~~

~~(o) 'Shoreline stabilization' is the in-place stabilization of an eroding shoreline. Stabilization techniques which include "soft" methods or natural materials (such as root wads, or rock vanes) may be considered as part of a restoration design. However, stabilization techniques that consist primarily of "hard" engineering, such as concrete lined channels, rip-rap, or gabions, while providing bank stabilization, shall not be considered stream restoration;~~

~~(p) 'Stream restoration' is defined as the process of converting an unstable, altered or degraded stream corridor, including adjacent riparian zone and flood-prone areas to its natural or referenced, stable conditions considering recent and future watershed conditions. This process also includes restoring the geomorphic dimension, pattern, and profile as well as biological and chemical integrity, including transport of water and sediment produced by the stream's watershed in order to achieve dynamic equilibrium. 'Referenced' or 'referenced reach' means a stable stream that is in dynamic equilibrium with its valley and contributing watershed. A reference reach can be used to develop natural channel design criteria for~~

~~stream restoration projects. 'Stream' means a body of concentrated flowing water in a natural low area or natural channel on the land surface;~~

~~(q) 'Stump diameter' means the diameter of a tree measured at six inches above the ground surface level;~~

~~(r) 'Surface waters' means all waters of the state as defined in G.S. 143-212 except underground waters and wetlands;~~

~~(s) 'Temporary road' means a road constructed temporarily for equipment access to build or replace hydraulic conveyance structures such as bridges, culverts or pipes or water dependent structures, or to maintain public traffic during construction; and~~

~~(t) 'Tree' means a woody plant with a DBH equal to or exceeding five inches or a stump diameter exceeding six inches.~~

~~(3)~~(2) APPLICABILITY. This Rule shall apply to all ~~local governments with jurisdictions~~ landowners and other persons including local governments, state and federal entities conducting activities within the riparian buffers as described in Item (3) of this Rule in the Randleman Lake watershed. ~~Local governments shall develop riparian buffer protection programs for approval by the Division incorporating the minimum standards set out throughout this Rule and shall apply the requirements of this Rule throughout their jurisdictions within the Randleman watershed except where the Division shall exercise jurisdiction. For the following types of buffer activities in the Randleman watershed, wherever local governments are referenced in this Rule, the Division shall implement applicable requirements to the exclusion of local governments:~~

~~(a) Activities conducted under authority of the State;~~

~~(b) Activities conducted under the authority of the United States;~~

~~(c) Activities conducted under the authority of multiple jurisdictions;~~

~~(d) Activities conducted under the authority of local units of government;~~

~~(e) Forest harvesting activities described in Item 16 of this Rule; and~~

~~(f) Agricultural activities.~~

~~(4)~~(3) ~~REQUIREMENTS.~~ BUFFERS PROTECTED. The following minimum criteria shall be used for identifying regulated riparian buffers: ~~buffers. All local governments subject to this Rule shall develop riparian buffer protection programs and ordinances for approval by the Commission, incorporating the minimum standards contained in Rule.~~

(a) A surface water shall be subject to this Rule if the feature is approximately shown on any of the following references, or if there is other site specific evidence that indicates to the Authority the presence of waters not shown on any of these references:

(i) The ~~most recent version of the~~ United States Geological ~~Survey~~ Survey's (USGS) National Map, available online at: https://www.usgs.gov/core-science-systems/national-geospatial-program/national-map; ~~1:24,000 scale (7.5 minute quadrangle) topographic maps;~~

(ii) The most recent version of the published manuscript of the soil survey map that shows stream layers prepared by the Natural Resource Conservation Service of the United States Department of Agriculture; or

(iii) Other maps approved ~~by the Geographic Information Coordinating Council and~~ by the Environmental Management Commission as more accurate than those identified in Sub-Item (3)(a)(i) and (3)(a)(ii) of this Rule. Other maps must use a hydrography dataset developed using hydrography specifications and standard metadata approved by the Geographic Information Coordinating Council (GICC) and maintained on a GICC list of the best available hydrography. Edits, deletions and additions to the hydrography dataset must follow GICC approved standards and specifications, per stewardship governance. Other maps must have their hydrography dataset and procedures for edits, deletions and additions reviewed and approved by the GICC. Other maps ~~may~~ shall be submitted to the Division for review and recommendation to the Environmental Management Commission. Prior to recommendation to the Environmental Management Commission, the Division shall issue a 30-day public notice through the Division's Mailing List in accordance with 15A NCAC 02H .0503. Division staff shall present recommendations including comments received during the public notice period to the Environmental Management Commission for a final decision. Maps approved under this Sub-Item shall not apply to projects that are existing and ongoing within the meaning of this Rule as set out in Item (6) of this Rule;

(b) This Rule shall apply to activities conducted within 50 foot wide riparian buffers directly adjacent to surface waters in the Randleman Lake watershed (intermittent and perennial streams, lakes, reservoirs, and ponds) excluding ~~wetlands.~~ wetlands;

(c) Wetlands adjacent to surface waters or within 50 feet of surface ~~waters,~~ waters shall be considered as part of the riparian buffer but are regulated pursuant to 15A NCAC ~~02H. 0506.~~ 02H .0506;

(d) Stormwater runoff from activities conducted outside the riparian buffer shall comply with Item (9) of this Rule;

~~(a) Surface waters shall be subject to this Rule if the feature is approximately shown on any of the following references, or if there is other site-specific evidence that indicates to the Division or local government the presence of waters not shown on any of these maps:~~

~~(i) The most recent version of the United States Geological Survey 1:24,000 scale (7.5 minute quadrangle) topographic maps;~~

~~(ii) The most recent version of the hardcopy soil survey maps developed by USDA-Natural Resource Conservation Service; or~~

~~(iii) A map approved by the Geographic Information Coordinating Council and by the Commission. Prior to approving a map under this sub-division the Commission shall provide a 30-day public notice and opportunity for comment;~~

(e) Riparian buffers protected by this Rule shall be measured pursuant to Item (8) of this Rule;

(f) A riparian buffer may be exempt from this Rule as described in Items (5), (6) and (7) of this Rule; and

(g) No new clearing, grading, or development shall take place nor shall any new building permits be issued in violation of this Rule.

~~(b) Where the specific origination point of an intermittent or perennial stream is in question, parties subject to this Rule shall use the Division publication, Identification Methods for the Origins of Intermittent and Perennial Streams, v 3.1 February 28, 2005 available at: http://portal.ncdenr.org/web/wq/swp/ws/401/waterresources/streamdeterminations to establish that point;~~

~~(c) Local governments may develop stream network maps for the watershed based on maps referenced in Sub-Item (4)(a) of this Rule or criteria identified in Sub-Item (4)(b) and of this Rule. These maps shall be submitted to the Director for review to establish that proper methods were used by any local government wishing to use such maps for implementation of riparian area protection. The local map must be at least as accurate as the map identified in Sub-Items (4)(a)(i) and (4)(a)(ii) and must use the stream identification manual as referenced in Item (4)(b) of this Rule. Riparian areas shall be protected and maintained in accordance with this Rule on all sides of surface waters in the Randleman Lake watershed as delineated on these approved stream network maps;~~

~~(d) Personnel from delegated local governments that are assigned to perform stream determinations, shall successfully complete the Division's Surface Water Identification Training and Certification Class within three years of the effective revision date of this Rule. A delegated local government shall retain personnel on staff who have successfully completed the Division's class at all times with the exception of staff vacancies and class scheduling problems. At any time that a local government does not have a certified individual retained on staff they shall notify the Division and indicate a proposed schedule to secure a certified staff member;~~

~~(e) All local governments that have land use authority within the Randleman Lake water supply watershed shall adopt and enforce this Rule through local water supply and other local ordinances. Ordinances shall require that all riparian protection areas are recorded on new or modified plats. No new clearing, grading, or development shall take place and no new building permits shall be issued in violation of this Rule; and~~

~~(f) Parties subject to this Rule shall abide by all State rules and laws regarding waters of the state including Rules 15A NCAC 02H .0500, 15A NCAC 02H .1300, and Sections 401 and 404 of the Federal Clean Water Act.~~

~~(5)~~(4) ~~EXEMPTION REQUIREMENTS TO WHEN AN~~ ON-SITE ~~DETERMINATION SHOWS THAT SURFACE WATERS ARE NOT PRESENT.~~ DETERMINATION. When a landowner or other affected party believes that the maps listed in Sub-Item (3)(a) of this Rule have inaccurately depicted surface ~~waters,~~ waters or the specific origination point of a stream, or the specific origination point of a stream is in question or unclear, he or she shall ~~consult~~ request the ~~delegated local authority. Upon request, the delegated local authority shall~~ Authority to make an ~~onsite~~ on-site ~~determinations.~~ determination. On-site determinations shall be made by Authority staff that are certified pursuant to G.S. 143-214.25A. Registered Foresters under Chapter 89B of the General Statutes who are employees of the North Carolina Forest Service of the Department of Agriculture and Consumer Services can make on-site determinations for forest harvesting operations and practices. Local governments may ~~also~~ accept the results of ~~site assessments~~ an on-site determination made by other parties who have successfully completed the Division's Surface Water Identification Training Certification course, its successor, or other equivalent training curriculum approved by the Division. ~~course and are sanctioned by the Division to make such determinations.~~ On-site determinations shall expire five years from the date of the determination. Any disputes over on-site determinations shall be referred to the ~~local Board of Adjustment or other local appeals process in writing. For projects proposed for state and federal lands, any disputes shall be referred to the~~ Director in ~~writing.~~ writing within 60 calendar days of written notification from the Authority. ~~A determination of the Director as to the accuracy or application of the maps~~ The Director's determination is subject to review as provided in Articles 3 and 4 of G.S. 150B.

(5) EXEMPTION BASED ON ON-SITE DETERMINATION. Surface waters that appear on the maps listed in Sub-Item (3)(a) of this Rule shall not be subject to this Rule if an on-site determination shows that they fall into one of the following categories:

(a) Ditches and manmade conveyances, to include manmade stormwater conveyances, other than modified natural streams, unless the ditch or manmade conveyance delivers untreated stormwater runoff from an adjacent source directly to an intermittent or perennial stream;

(b) ~~Areas mapped as intermittent streams, perennial streams, lakes, ponds, or estuaries on the most recent versions of United States Geological Survey 1:24,000 scale (7.5 minute quadrangle) topographic maps, hard-copy soil survey maps or other EMC approved stream maps where no~~ The absence on the ground of a corresponding perennial waterbody, intermittent waterbody, lake, reservoir or pond; ~~pond or estuary actually exists on the ground;~~

(c) Ephemeral streams; and

(d) ~~Ponds~~ Manmade ponds and lakes ~~created for animal watering, irrigation, or other agricultural uses~~ that are not ~~part of a natural drainage way that is classified in accordance with 15A NCAC 02B .0100. Ponds are part of a natural drainage way when they are hydrologically connected (i.e. the pond is~~ fed by an intermittent or perennial ~~stream)~~ stream ~~nor~~ or do not ~~or when they~~ have a direct discharge point to an intermittent or perennial stream.

(6) EXEMPTION ~~TO REQUIREMENTS~~ WHEN EXISTING USES ARE PRESENT AND ONGOING. This Rule shall not apply to portions of the riparian buffer where a use is existing ~~and ongoing according to the following:~~ ongoing.

(a) A use shall be considered existing and ongoing ~~if~~ if:

(i) ~~it~~ It was present within the riparian buffer as of the effective date of the local ordinance or ~~local~~ ordinances enforcing this Rule and has continued to exist since that time. For ~~state and federal entities,~~ activities listed in Sub-Item (12)(b), a use shall be considered existing and ongoing if it was present within the riparian buffer as of ~~the effective date of this Rule~~ April 1, 1999 and has continued to exist since that ~~time.~~ time;

(ii) It was a deemed allowable activity as listed in Item ~~(10)~~(11) of this Rule; or

(iii) It was conducted and maintained pursuant to an Authorization Certificate or Variance issued by the Authority; or

(iv) The project or proposed development are determined by the Authority to meet at least one of the following criteria:

(A) Project requires a 401 Certification/404 permit and these were issued prior to the effective date of the local ordinance or ordinances enforcing this Rule, or for activities listed in Sub-Item (12)(b), prior to April 1, 1999, and are still valid; or

(B) Projects that require a state permit, such as landfills, NPDES wastewater discharges, land application of residuals and road construction activities, and have begun construction or are under contract to begin construction, and have received all required state permits and certifications prior to the effective date of the local ordinance or ordinances implementing this Rule, or for activities listed in Sub-Item (12)(b), prior to April 1, 1999; or

(C) Projects that are being reviewed through the Clean Water Act Section 404/National Environmental Policy Act Merger 01 Process (published by the US Army Corps of Engineers and Federal Highway Administration, 2003) or its immediate successor and that have reached

agreement with the Department on avoidance and minimization prior to April 1, 1999; or

(D) Projects that are not required to be reviewed by the Clean Water Act Section 404/National Environmental Policy Act Merger 01 Process (published by the US Army Corps of Engineers and Federal Highway Administration, 2003) or its immediate successor if a Finding of No Significant Impact has been issued for the project and the project has the written approval of the Division prior to April 1, 1999.

(b) Existing and ongoing uses shall include, but not be limited to, agriculture, buildings, industrial facilities, commercial areas, transportation facilities, maintained ~~lawns,~~ lawns (i.e. can be mowed without a chainsaw or bush-hog), ~~maintained (i.e. vegetation management has occurred within the last 10 years)~~ existing utility ~~lines~~ line maintenance corridors and on-site sanitary sewage ~~systems~~ systems, any of which involve either specific, periodic management of vegetation or displacement of vegetation by structures or regular activity.

(c) Only the portion of the riparian buffer that contains the footprint of the existing and ongoing use is exempt from this Rule.

(d) Change of ownership through purchase or inheritance is not a change of use.

(e) Activities necessary to maintain existing and ongoing uses are allowed provided that the site remains similarly vegetated, no ~~impervious surface~~ built upon area is added within ~~50 feet of the surface water~~ the riparian buffer where it did not previously exist ~~as of~~ prior to the effective date of the local ordinance or ~~local~~ ordinances enforcing this Rule, or for activities listed in Sub-Item (12)(b) prior to April 1, 1999, and the site is in compliance with Item (9) of this Rule. ~~existing diffuse flow is maintained. Grading and revegetating Zone 2 is allowed provided that the health of the vegetation in Zone 1 is not compromised, the ground is stabilized and existing diffuse flow is maintained;~~

~~(b) A use shall be considered existing if projects or proposed development are determined by the local government, or the Director for the cases involving state or federal entities, to meet at least one of the following criteria:~~

~~(i) Project requires a 401 Certification/404 permit and these were issued prior to the effective date of the local program enforcing this Rule, and prior to the effective date of this Rule for Division-administered activities listed in Item (3) of this Rule;~~

~~(ii) Projects that require a state permit, such as landfills, NPDES wastewater discharges, land application of residuals and road construction activities, have begun construction or are under contract to begin construction and had received all required state permits and certifications prior to the effective date of the local~~

~~program implementing this Rule, and prior to the effective date of this Rule for Division-administered activities listed in Item (3) of this Rule;~~

~~(iii) Projects that are being reviewed through the Clean Water Act Section 404/National Environmental Policy Act Merger 01 Process (published by the US Army Corps of Engineers and Federal Highway Administration, 2003) or its immediate successor and that have reached agreement with DENR on avoidance and minimization by the effective date of the local program enforcing this Rule, and prior to the effective date of this Rule for state and federal entities; or~~

~~(iv) Projects that are not required to be reviewed by the Clean Water Act Section 404/National Environmental Policy Act Merger 01 Process (published by the US Army Corps of Engineers and Federal Highway Administration, 2003) or its immediate successor if a Finding of No Significant Impact has been issued for the project and the project has the written approval of the local government prior to the effective date of the local program enforcing this Rule, or the written approval of the Division prior to the effective date of this Rule for state and federal entities: and~~

~~(e)~~(f) This Rule shall apply at the time an existing and ongoing use is changed to another use. Change of use shall ~~include, but not limited to~~ involve the initiation of any activity not defined as existing and ongoing in ~~either Sub-Item (6)(a) or (6)(b)~~ Sub-Items (6)(a) through (6)(e) of this Rule.

(7) EXEMPTION FOR PONDS CONSTRUCTED AND USED FOR AGRICULTURAL PURPOSES. This Rule shall not apply to a freshwater pond if all of the following conditions are met:

(a) The property on which the pond is located is used for agriculture as that term is defined in G.S. 106-581.1.

(b) Except for this Rule, the use of the property is in compliance with all other water quality and water quantity statutes and rules applicable to the property before April 1, 1999.

(c) The pond is not a component of an animal waste management system as defined in G.S. 143-215.10B (3).

~~(7)~~(8) ZONES OF THE RIPARIAN BUFFER. The protected riparian buffer shall have two zones as follows:

(a) Zone 1 shall consist of a vegetated area that is undisturbed except for uses provided for in Items (9) and ~~(9)(10)~~(11) of this Rule. The location of Zone 1 shall be as follows:

(i) For intermittent and perennial streams, Zone 1 shall begin at the most landward limit of the top of the bank or the rooted herbaceous vegetation and extend landward a distance of 30 feet on all sides of the ~~surface water,~~ stream, measured horizontally on a line perpendicular to ~~a vertical line marking the edge of the top of the bank;~~ the stream (where an intermittent or perennial stream begins or ends,

including when it goes underground, enters or exits a culvert, or enters or exits a wetland, the required distance shall be measured as a radius around the beginning or the end); and

(ii) For ponds, lakes and reservoirs ~~located within a natural drainage way~~subject to this Rule, Zone 1 shall begin at the ~~most landward limit of the~~ normal water level ~~or the rooted herbaceous vegetation~~ and extend landward a distance of 30 feet, measured horizontally on a line perpendicular to ~~a vertical line marking the edge of the surface water or rooted herbaceous vegetation: and~~ the surface water.

(b) Zone 2 shall consist of a stable, vegetated area that is undisturbed except for uses provided for in Items (9) and ~~(9)(10)~~(11) of this Rule. Grading and revegetating Zone 2 is allowed provided that the health of the vegetation in Zone 1 is not compromised. Zone 2 shall begin at the outer edge of Zone 1 and extend landward 20 feet as measured horizontally on a line perpendicular to the surface water. The combined width of Zones 1 and 2 shall be 50 feet on all sides of the surface water.

~~(8) DIFFUSE FLOW REQUIREMENT. Diffuse flow of runoff shall be maintained in the riparian buffer by dispersing concentrated flow and reestablishing vegetation.~~

~~(a) Concentrated runoff from new ditches or manmade conveyances shall be converted to diffuse flow at non-erosive velocities before the runoff enters Zone 2 of the riparian buffer;~~

~~(b) Periodic corrective action to restore diffuse flow shall be taken if necessary to impede the formation of erosion gullies; and~~

~~(c) No new stormwater conveyances are allowed through the buffers except for those specified in Item (9) of this Rule addressing stormwater management ponds drainage ditches, roadside ditches, and stormwater conveyances.~~

(9) STORMWATER RUNOFF THROUGH THE RIPARIAN BUFFER. Stormwater runoff into the riparian buffer shall meet dispersed flow as defined in 15A NCAC 02H .1002 except as otherwise described in this Item. Drainage conveyances include drainage ditches, roadside ditches, and stormwater conveyances. The following stormwater conveyances through the riparian buffer are either deemed allowable or allowable upon authorization, as defined in Sub-Item (10)(a) of this Rule, provided that they do not erode through the riparian buffer and do not cause erosion to the receiving waterbody. Stormwater conveyances through the riparian buffer that are not listed below shall be allowable with exception as defined in Sub-Item (10)(a)(v) of this Rule.

(a) The following are deemed allowable as defined in Sub-Item (10)(a)(i) of this Rule:

(i) New drainage conveyances from a Primary SCM, as defined in 15A NCAC 02H .1002, when the Primary SCM is designed to treat the drainage area to the conveyance and that comply with a stormwater management plan reviewed and approved under a state stormwater program or a state-approved local government stormwater program; and

(ii) New stormwater flow to existing drainage conveyances provided that the addition of new flow does not result in the need to alter the conveyance.

(b) The following are allowable upon authorization as defined in Sub-Item (10)(a)(ii) of this Rule:

(i) New drainage conveyances from a Primary SCM as defined in 15A NCAC 02H .1002 when the Primary SCM is provided to treat the drainage area to the conveyance but are not required to be approved under a state stormwater program or a state-approved local government stormwater program;

(ii) New drainage conveyances when the flow rate of the conveyance is less than 0.5 cubic feet per second during the peak flow from the 0.75 inch per hour storm;

(iii) New stormwater runoff that has been treated through a level spreader-filter strip that complies with 15A NCAC 02H .1059;

(iv) Realignment of existing roadside drainage conveyances applicable to publicly funded and maintained linear transportation facilities when retaining or improving the design dimensions provided that no additional travel lanes are added and the minimum required roadway typical section is used based on traffic and safety considerations;

(v) Realignment of existing drainage conveyances retaining or improving the design dimensions provided that the size of the drainage area and the percent built-upon area within the drainage area remain the same;

(vi) New or altered drainage conveyances applicable to publicly funded and maintained linear transportation facilities provided that SCMs, or BMPs from the NCDOT Stormwater Best Management Practices Toolbox, are employed;

(vii) New drainage conveyances applicable to publicly funded and maintained linear transportation facilities that do not provide a stormwater management facility due to topography constraints provided other measures are employed to protect downstream water quality to the maximum extent practical; and

(viii) New drainage conveyances where the drainage area to the conveyance has no new built-upon area as defined in 15A NCAC 02H .1002 and the conveyance is necessary for bypass of existing drainage only.

~~(9)~~(10) ~~TABLE OF~~ USES. Uses within the riparian buffer, or outside the riparian buffer with hydrological impacts on the riparian buffer, shall be designated as deemed allowable, allowable upon authorization, allowable with mitigation upon authorization, or prohibited.

(a) Potential new uses shall have the following requirements:

(i) DEEMED ALLOWABLE. Uses designated as deemed allowable in Sub-~~Items~~ Item (9)(a) and Item ~~(10)(b)~~(11) of this Rule may occur within the riparian buffer. Deemed allowable uses shall be designed, constructed and maintained to

minimize vegetation and soil disturbance and to provide the maximum water quality protection practicable, including construction, monitoring, and maintenance activities. In addition, deemed allowable uses shall meet requirements listed in ~~Sub-~~Item ~~(10)(b)~~(11) of this Rule for the specific use.

(ii) ALLOWABLE UPON AUTHORIZATION. Uses designated as allowable upon authorization in Sub-~~Items~~ Item (9)(b) and Item ~~(10)(b)~~ (11) of this Rule require a written Authorization Certificate from the Authority for impacts within the riparian buffer ~~provided that there are no practical alternatives to the requested use~~ pursuant to Rule .0611 of this Subchapter.

(iii) ALLOWABLE WITH MITIGATION UPON AUTHORIZATION. Uses designated as allowable with mitigation upon authorization in ~~Sub-~~Item ~~(10)(b)~~(11) of this Rule require a written Authorization Certificate from the Authority for impacts within the riparian buffer ~~provided that there are no practical alternatives to the requested use~~ pursuant to Rule.0611 of this Subchapter. and an appropriate mitigation strategy has received written approval pursuant to Item ~~(11)~~(12) of this Rule.

(iv) PROHIBITED. Uses designated as prohibited in ~~Sub-~~Item ~~(10)(b)~~(11) of this Rule may not proceed within the riparian buffer unless a Variance is granted pursuant to Rule .0226 of this Subchapter. Mitigation may be required as a condition of variance approval.

(v) ALLOWABLE WITH EXCEPTION. Uses not designated as deemed allowable, allowable upon authorization, allowable with mitigation upon authorization or prohibited in ~~Sub-~~Item ~~(10)(b)~~(11) of this Rule require a written Authorization Certificate with Exception from the Authority for impacts within the riparian buffer pursuant to Rule .0611 of this Subchapter and an appropriate mitigation strategy that has received written approval pursuant to Item ~~(11)~~(12) of this Rule.

~~(b)~~(11) TABLE OF USES: The following ~~chart~~ table sets out ~~the~~ potential new uses within the riparian buffer, or outside the riparian buffer with hydrological impacts on the riparian buffer, and ~~their designation under this Rule~~ designates them as ~~exempt,~~ deemed allowable, ~~potentially allowable,~~ allowable upon authorization ~~or potentially~~ allowable with mitigation upon authorization or prohibited: ~~mitigation. All uses not designated as exempt, potentially allowable, or potentially allowable with mitigation are considered prohibited and may not proceed within the riparian buffer unless a variance is granted pursuant to Item (12) of this Rule. The requirements for each category are given in Item (10) of this Rule.~~

Use	~~Exempt~~ Deemed Allowable	~~Potentially~~ Allowable Upon Authorization	~~Potentially~~ Allowable with Mitigation Upon Authorization	Prohibited
~~Access trails: Pedestrian access trails leading to the surface water, docks, fishing piers, boat ramps and other water dependent activities:~~	~~X~~			
• ~~Pedestrian access trails that are restricted to the minimum width practicable and do not exceed 4 feet in width of buffer disturbance, and provided that installation and use does not result in removal of trees as defined in this Rule and no impervious surface is added to the riparian buffer~~		~~X~~		
• ~~Pedestrian access trails that exceed 4 feet in width of buffer disturbance, the installation or use results in removal of trees as defined in this Rule or impervious surface is added to the riparian buffer~~				
(a) Airport facilities:				
(i) Airport facilities that impact equal to or less than ~~150 linear feet or~~ one-third of an acre of riparian buffer		X		
(ii) Airport facilities that impact greater than ~~150 linear feet or~~ one-third of an acre of riparian buffer			X	
(iii) Vegetation removal activities necessary to comply with ~~FAA~~ Federal Aviation Administration requirements (e.g. ~~radar uses or landing strips)~~[1] line of sight requirements) provided the disturbed areas are stabilized and revegetated	X	~~X~~		
(b) Archaeological activities ~~activities:~~	X			
~~In Zones 1 and 2 and are designed, constructed and maintained to provide the maximum sediment removal and erosion protection, to have the least adverse effects on aquatic life and habitat, and to protect water quality to the maximum extent practical.~~				
(c) Bridges:				
(i) Impact equal to or less than one-tenth of an acre of riparian buffer	X			

Use	~~Exempt~~ Deemed Allowable	~~Potentially~~ Allowable Upon Authorization	~~Potentially~~ Allowable with Mitigation Upon Authorization	Prohibited
(ii) Impact greater than one-tenth of an acre of riparian buffer		X		
~~Canoe access provided that installation and use does not result in removal of trees as defined in the Rule and no impervious surface is added to the buffer.~~	~~X~~			
(d) Dam maintenance activities:				
(i) Dam maintenance activities that do not cause additional riparian buffer disturbance beyond the footprint of the existing dam ~~or those covered under a U.S. Army Corps of Engineers Nationwide Permit~~	X			
(ii) Dam maintenance activities that do cause additional riparian buffer disturbance beyond the footprint of the existing dam ~~or those not covered under a U.S. Army Corps of Engineers Nationwide Permit~~		X		

Use	~~Exempt~~ Deemed Allowable	~~Potentially~~ Allowable Upon Authorization	~~Potentially~~ Allowable with Mitigation Upon Authorization	Prohibited
~~Drainage ditches, roadside ditches and stormwater conveyances through riparian buffers:~~				
• ~~New stormwater flows to existing drainage ditches, roadside ditches, and stormwater conveyances provided flows do not alter or result in the need to alter the conveyance and are managed to minimize the sediment, nutrients and other pollution that convey to waterbodies~~	~~X~~			
• ~~Realignment of existing roadside drainage ditches retaining the design dimensions, provided that no additional travel lanes are added and the minimum required roadway typical section is used based on traffic and safety considerations~~		~~X~~		
• ~~New or altered drainage ditches, roadside ditches and stormwater outfalls provided that a stormwater management facility is installed to control nitrogen and attenuate flow before the conveyance discharges through the riparian buffer~~		~~X~~		
• ~~New drainage ditches, roadside ditches and stormwater conveyances applicable to linear projects that do not provide a stormwater management facility due to topography constraints provided that other practicable BMPs are employed~~			~~X~~	
(e) Drainage of a pond subject to Item (4) of this Rule ~~in a natural drainage way~~ provided that a new riparian buffer ~~that meets the requirements of Items (7) and (8) of this Rule~~ is established ~~adjacent to the new channel~~. by natural regeneration or planting, within 50 feet of any stream which naturally forms or is constructed within the drained pond area. Drained ponds shall be allowed to naturalize for a minimum of six months from completion of the draining activity before a stream determination is conducted pursuant to Item (4) of this Rule	X			

Use	~~Exempt~~ Deemed Allowable	~~Potentially~~ Allowable Upon Authorization	~~Potentially~~ Allowable with Mitigation Upon Authorization	Prohibited
~~Driveway crossings of streams and other surface waters subject to this Rule:~~ • ~~Driveway crossings on single family residential lots that disturb equal to or less than 25 linear feet or 2,500 square feet of riparian buffer~~ • ~~Driveway crossings on single family residential lots that disturb greater than 25linear feet or 2,500 square feet of riparian buffer~~ • ~~In a subdivision that cumulatively disturb equal to or less than 150 linear feet or one third of an acre of riparian buffer~~ • ~~In a subdivision that cumulatively disturb greater than 150 linear feet or one third of an acre of riparian buffer~~	~~X~~	~~X~~ ~~X~~	~~X~~	
~~Driveway impacts other than crossing of a stream or other surface waters subject to this Rule~~			~~X~~	
(f) Fences: (i) Fencing livestock out of surface waters (ii) ~~Fences provided that disturbance is minimized and installation~~ Installation does not result in removal of trees ~~as defined in this Rule~~ from Zone 1 (iii) ~~Fences provided that disturbance is minimized and installation~~ Installation results in removal of trees ~~as defined in this Rule~~ from Zone 1	 X X	 X		
(g) Fertilizer a~~A~~pplication: (i) One-time fertilizer application at agronomic rates in the riparian buffer to establish ~~vegetation~~ replanted vegetation. ~~This only applies to the one-time application of fertilizer in the riparian buffer.~~ No runoff from this one-time application in the riparian buffer is allowed in the applicable surface water (ii) Ongoing fertilizer application	X			 X

Use	~~Exempt~~ Deemed Allowable	~~Potentially~~ Allowable Upon Authorization	~~Potentially~~ Allowable with Mitigation Upon Authorization	Prohibited
(h) Forest harvesting - see ~~Item (16) of this~~ Rule .0612 of this Subchapter				
(i) Grading ~~and revegetation~~ in only Zone 2 provided that ~~diffuse flow and~~ the health of existing vegetation in Zone 1 is not ~~compromised~~ compromised, Item (9) of this Rule is complied with, and disturbed areas are ~~revegetated with native vegetation~~ stabilized and revegetated	X			
(j) ~~Greenway / hiking trails: Designed, constructed and maintained to provide the maximum nutrient removal and erosion protection, to have the least adverse effects on aquatic life and habitat, and to protect water quality to the maximum extent practical.~~ Greenways, trails, sidewalks or linear pedestrian/bicycle transportation ~~systems~~systems:				
(i) In Zone 2 provided that no built upon area is added within the riparian buffer	X			
(ii) In Zone 1 provided that no built upon area is added within the riparian buffer and the installation does not result in the removal of tree(s)	X			
(iii) When built upon area is added to the riparian buffer, equal to or less than 10 feet wide with 2 foot wide shoulders. ~~Must~~ Shall be located outside Zone 1 unless there is no practical alternative		X		
(iv) When built upon area is added to the riparian buffer, greater than 10 feet wide with 2 foot wide shoulders. ~~Must~~ Shall be located outside Zone 1 unless there is no practical alternative			X	

Use	~~Exempt~~ Deemed Allowable	~~Potentially~~ Allowable Upon Authorization	~~Potentially~~ Allowable with Mitigation Upon Authorization	Prohibited
(k) Historic ~~preservation: Designed, constructed and maintained to provide the maximum nutrient removal and erosion protection, to have the least adverse effects on aquatic life and habitat, and to protect water quality to the maximum extent practical~~ preservation	X			
(l) New Landfills as defined by G.S. 130A-290	X			X
(m) Maintenance access of modified natural streams: a grassed travel way on one side of the ~~water body~~waterbody when less impacting alternatives are not practical. The width and specifications of the travel way shall be only that needed for equipment access and operation. The travel way shall be located to maximize stream shading		X		
(n) Mining activities:				
(i) Mining activities that are covered by the Mining Act provided that new riparian buffers that meet the requirements of Items ~~(7)~~(8) and ~~(8)~~(9) of this Rule are established adjacent to ~~the~~ any relocated channels		X		
(ii) Mining activities that are not covered by the Mining Act ~~or~~ OR where new riparian buffers that meet the requirements or Items ~~(7)~~(8) and ~~(8)~~(9) of this Rule are not established ~~adjacent to the relocated channels~~			X	
(iii) Wastewater or mining dewatering wells with approved NPDES permit	X			
(o) Pedestrian access trail and associated steps leading to a surface water, dock, canoe or kayak access, fishing pier, boat ramp or other water dependent structure:				

Use	~~Exempt~~ Deemed Allowable	~~Potentially~~ Allowable Upon Authorization	~~Potentially~~ Allowable with Mitigation Upon Authorization	Prohibited
(i) ~~Pedestrian access trail equal~~Equal to or less than six feet wide that does not result in the removal of ~~any~~ tree(s) within the riparian buffer and does not result in ~~any built upon area being added~~the addition of built upon area to the riparian buffer	X			
(ii) ~~Pedestrian access trail equal~~Equal to or less than six feet wide ~~where the installation or use~~that results in the removal of tree(s) or the addition of built upon area to the riparian buffer		X		
(iii) ~~Pedestrian access trail greater~~Greater than six feet wide			X	
(p) Playground equipment:				
(i) Playground equipment on ~~single family~~single-family lots provided that installation and use does not result in removal of vegetation	X			
(ii) Playground equipment on ~~single family~~single-family lots where installation or use results in the removal of vegetation		X		
(iii) Playground equipment installed on lands other than single-family lots ~~or that requires removal of vegetation~~		X		
(q) Ponds ~~in natural drainage ways, excluding dry ponds:~~ created or modified by impounding streams subject to riparian buffers pursuant to Item (3) of this Rule and not used ~~at~~ as stormwater control measures (SCMs):				
(i) New ponds provided that a riparian buffer that meets the requirements of Items ~~(7)~~(8) & ~~(8)~~(9) of this Rule is established adjacent to the pond		X		
(ii) New ponds where a riparian buffer that meets the requirements of Items ~~(7)~~(8) & ~~(8)~~(9) of this Rule is NOT established adjacent to the pond			X	

Use	~~Exempt~~ Deemed Allowable	~~Potentially~~ Allowable Upon Authorization	~~Potentially~~ Allowable with Mitigation Upon Authorization	Prohibited
(r) Protection of existing ~~structures, facilities and stream banks~~ structures and facilities~~,~~ when this requires additional disturbance ~~of~~ to the riparian buffer ~~or the stream channel~~		X		
(s) Public Safety - publicly owned spaces where it has been determined by the head of the local law enforcement agency with jurisdiction over that area that the riparian buffers pose a risk to public safety. The head of the local law enforcement agency shall notify the local government with land use jurisdiction over the publicly owned space and the Division of Water Resources of any such determination in writing	X			
~~Railroad impacts other than crossings of streams and other surface waters subject to this Rule.~~			~~X~~	
~~Railroad crossings of streams and other surface waters subject to this Rule:~~ • ~~Railroad crossings that impact equal to or less than 40 linear feet of riparian buffer~~ • ~~Railroad crossings that impact greater than 40 linear feet but equal to or less than 150 linear feet or one third of an acre of riparian buffer~~ • ~~Railroad crossings that impact greater than 150 linear feet or one third of an acre of riparian buffer~~	~~X~~	~~X~~	~~X~~	

Use	~~Exempt~~ Deemed Allowable	~~Potentially~~ Allowable Upon Authorization	~~Potentially~~ Allowable with Mitigation Upon Authorization	Prohibited
~~Recreational and accessory structures:~~ • ~~Total footprint of gazebos and sheds in Zone 2, provided they are not prohibited under local water supply ordinance less than or equal to 150 square feet per lot~~ • ~~Total footprint gazebos and sheds in Zone 2, provided they are not prohibited under local water supply ordinance of more than 150 square feet per lot~~ • ~~Wooden slatted decks (and associated steps) that are at least 8 feet in height and vegetation is not removed from Zone 1 for the installation and that it meets the requirements of Items (7) and (8) of this Rule~~ • ~~Wooden slatted decks (and associated steps) that are not at least 8 feet in height or vegetation is removed from Zone 1 for the installation and that it meets the requirements of Items (7) and (8) of this Rule~~		~~X~~ ~~X~~	~~X~~ ~~X~~	
(t) Removal of previous fill or debris provided that Item (9) of this Rule is complied with ~~diffuse flow is maintained~~ and any vegetation removed is restored	X			
(u) Residential Properties: Where application of this Rule would preclude construction of a single-family residence and necessary infrastructure, the single-family residence may encroach in the riparian buffer if all of the following conditions are met: (1) the residence is set back the maximum feasible distance from the top of the bank, rooted herbaceous vegetation, normal high-water level, or normal water level, whichever is applicable, on the existing lot; (2) the residence is designed to minimize encroachment into the riparian buffer; (3) the residence complies with Item (9) of this Rule; and if the residence will be served by an on-site wastewater system, no part of the septic tank or drainfield may encroach into the riparian buffer:				

Use	~~Exempt~~ Deemed Allowable	~~Potentially~~ Allowable Upon Authorization	~~Potentially~~ Allowable with Mitigation Upon Authorization	Prohibited
(i) The residence ~~and~~ or necessary infrastructure only impact Zone 2 ~~only~~		X		
(ii) The residence or necessary infrastructure impact Zone 1			X	
(iii) Impacts other than the residence or necessary infrastructure			X	
(v) Restoration or enhancement (wetland, stream) as defined in 33 CFR Part 332 available free of charge on the internet at: http://water.epa.gov/lawsregs/guidance/wetlands/wetlandsmitigation_index.cfm:				
(i) Wetland or stream restoration is part of a compensatory mitigation bank, nutrient offset bank or the In Lieu Fee program~~that does not require written Division approval results in impacts to the riparian buffer~~	X			
(ii) Wetland or stream restoration other than those listed above~~that does require written Division approval that results in impacts to the riparian buffer~~		X		
(w) ~~Road~~ Road, driveway or ~~railroad:~~ railroad - perpendicular crossings of streams and other surface waters subject to this Rule ~~or perpendicular entry into the buffer that does not cross a stream or other surface water riparian subject to this Rule~~:				
(i) ~~Road crossings that impact~~ Impact equal to or less than ~~40 linear feet~~ one-tenth of an acre of riparian buffer	X			
(ii) ~~Road crossings that impact~~ Impact greater than one-tenth of an acre ~~40 linear feet~~ but equal to or less than ~~150 linear feet or~~ one-third of an acre of riparian buffer		X		

Use	~~Exempt~~ Deemed Allowable	~~Potentially~~ Allowable Upon Authorization	~~Potentially~~ Allowable with Mitigation Upon Authorization	Prohibited
(iii) ~~Road crossings that impact~~ Impact greater than ~~150 linear feet or~~ one-third of an acre of riparian buffer			X	
(iv) Driveway crossings in a residential subdivision that cumulatively ~~disturb~~ impact equal to or less than one-third of an acre of riparian buffer		X		
(v) Driveway crossings in a residential subdivision that cumulatively ~~disturb~~ impact greater than one-third of an acre of riparian buffer			X	
(vi) ~~Agriculture~~ Farm roads and forest roads that are exempt from permitting from the U.S. Army Corps of Engineers per Section 404(f) of the ~~federal~~ Federal Clean Water Act	X			
(x) ~~Road~~ Road, driveway or ~~railroad~~ railroad - impacts other than perpendicular crossings of streams and other surface waters subject to this Rule			X	
(y) Road relocation of existing private access roads associated with public road projects where necessary for public safety:				
(i) Less than or equal to 2,500 square feet of riparian buffer impact		X		
(ii) Greater than 2,500 square feet of riparian buffer impact			X	
(z) Scientific studies and stream ~~gauging:~~ ~~In Zones 1 and 2 if they are designed, constructed and maintained to protect water quality to the maximum extent practical.~~ gauging	X			
(aa) Slatted uncovered decks, including steps and support posts, which are associated with a dwelling, provided that it meets the requirements of Items (8) and (9) of this Rule and:				
(i) Installation does not result in removal of vegetation in Zone 1		X		

Use	~~Exempt~~ Deemed Allowable	~~Potentially~~ Allowable Upon Authorization	~~Potentially~~ Allowable with Mitigation Upon Authorization	Prohibited
(ii) Installation results in removal of vegetation in Zone 1			X	
(bb) Stormwater ~~BMPs:~~ Control Measure (SCM) as defined in 15A NCAC 02H .1002:				
(i) In Zone 2 if Item (9) of this Rule is complied with ~~wet detention, bioretention, and constructed wetlands in Zone 2 if diffuse flow of discharge is provided into Zone 1~~		X		
(ii) ~~Wet detention, bioretention, and constructed wetlands in~~ In Zone 1			X	
(cc) Streambank or shoreline stabilization		X		
(dd) Temporary roads provided that the disturbed area is restored to pre-construction topographic and hydrologic conditions ~~immediately after construction is complete~~ and replanted ~~immediately~~ with comparable vegetation within two months of when construction is complete. ~~vegetation, except that the tree~~ Tree planting may occur during the dormant season. ~~A one-time application of fertilizer may be utilized to establish vegetation.~~ At the end of five ~~years~~ years, ~~the~~ any restored wooded riparian buffer shall comply with the restoration criteria ~~Item (9) of Rule 15A NCAC 02B .0252:~~ Rule .0295(i) of this Subchapter:				
(i) Less than or equal to 2,500 square feet of riparian buffer disturbance	X			
(ii) Greater than 2,500 square feet of riparian buffer disturbance		X		
(iii) Associated with culvert installation~~,~~ or bridge construction or replacement		X		

Use	~~Exempt~~ Deemed Allowable	~~Potentially~~ Allowable Upon Authorization	~~Potentially~~ Allowable with Mitigation Upon Authorization	Prohibited
(ee) Temporary sediment and erosion control devices provided that the disturbed area is restored to pre-construction topographic and hydrologic conditions ~~immediately after construction is complete~~ and replanted ~~immediately~~ with comparable ~~vegetation, except that tree~~ vegetation within two months of when construction is complete. Tree planting may occur during the dormant season. ~~A one-time application of fertilizer may be used to establish vegetation.~~ At the end of five ~~years~~ years, ~~the~~ any restored wooded riparian buffer shall comply with the restoration criteria in ~~Item (9) of Rule 15A NCAC 02B .0252:~~ Rule .0295(i) of this Subchapter:				
(i) In Zone 2 only provided that ground cover is established within the timeframes required by the Sedimentation and Erosion Control ~~Act and that~~ Act, the vegetation in Zone 1 is not compromised and that discharge is ~~released as diffuse flow~~ in accordance with Item ~~(8)~~(9) of this Rule	X			
(ii) In Zones 1 and 2 to control impacts associated with uses identified in this Table or ~~approved by the local government Authority or~~uses that have received ~~a variance~~ an Authorization Certificate with eException provided that sediment and erosion control for upland areas is addressed ~~to the maximum extent practical~~ outside the riparian buffer		X		
(iii) In-stream temporary erosion and sediment control measures for work within a stream channel that is authorized under Section 401 and 404 of the Federal ~~Water Pollution Control~~Clean Water Act	X			

Use	~~Exempt~~ Deemed Allowable	~~Potentially~~ Allowable Upon Authorization	~~Potentially~~ Allowable with Mitigation Upon Authorization	Prohibited
~~(iv) In-stream temporary erosion and sediment control measures for authorized work within a stream channel – In-stream temporary erosion and sediment control measures for work within a stream that has written approval from the Division and the U.S. Army Corps of Engineers under Sections 401 & 404 of the Federal Water Pollution Control Act~~		~~X~~		
~~Utility- Non-electric utility lines:~~ • ~~Impacts other than perpendicular crossings in Zone 2 only[4, 5]~~ • ~~Impacts other than perpendicular crossings in Zone 1 only[4, 5]~~ ~~Utility Non-electric utility line perpendicular crossings of streams and other surface waters subject to this Rule[4, 5]:~~ • ~~Perpendicular crossings that disturb equal to or less than 40 linear feet of riparian buffer with a maintenance corridor equal to or less than 10 feet in width~~ • ~~Perpendicular crossings that disturb equal to or less than 40 linear feet of riparian buffer with a maintenance corridor greater than 10 feet in width~~ • ~~Perpendicular crossings that disturb greater than 40 linear feet but equal to or less than 150 linear feet of riparian buffer with a maintenance corridor equal to or less than 10 feet in width~~ • ~~Perpendicular crossings that disturb greater than 40 linear feet but equal to or less than 150 linear feet of riparian buffer with a maintenance corridor greater than 10 feet in width~~ • ~~Perpendicular crossings that disturb greater than 150 linear feet of riparian buffer~~	~~X~~	~~X~~ ~~X~~ ~~X~~	X ~~X~~ ~~X~~	

Use	~~Exempt~~ Deemed Allowable	~~Potentially~~ Allowable Upon Authorization	~~Potentially~~ Allowable with Mitigation Upon Authorization	Prohibited
~~Utility-Overhead electric utility lines:~~				
• ~~Impacts other than perpendicular crossings in Zone 2 only[4, 5]~~		~~X~~		
• ~~Impacts other than perpendicular crossings in Zone 1[2,3,4, 5]~~			~~X~~	
~~Utility-Overhead electric utility line perpendicular crossings of streams and other surface waters subject to this Rule[2, 3,4, 5]:~~	~~X~~			
• ~~Perpendicular crossings that disturb equal to or less than 150 linear feet of riparian buffer~~		~~X~~		
• ~~Perpendicular crossings that disturb greater than 150 linear feet of riparian buffer~~				
~~Utility-Underground electric utility lines:~~				
• ~~Impacts other than perpendicular crossings in Zone 2 only[2]~~	~~X~~			
• ~~Impacts other than perpendicular crossings in Zone 1[1,4]~~	~~X~~			
~~Utility-Underground electric utility line perpendicular crossings of streams and other surface waters subject to this Rule:~~	~~X~~			
• ~~Perpendicular crossings that disturb less than or equal to 40 linear feet of riparian buffer[3, 4, 5]~~		~~X~~		
• ~~Perpendicular crossings that disturb greater than 40 linear feet of riparian buffer[3, 4, 5]~~				
(ff) Utility Lines - Streambank stabilization for the protection of publicly owned utility lines (not including new line installation):				
(i) Less than 150 feet of streambank disturbance	X			
(ii) Greater than 150 feet of streambank disturbance		X		
(gg) Utility – Sewer lines - Sanitary Sewer Overflows:				

Use	~~Exempt~~ Deemed Allowable	~~Potentially~~ Allowable Upon Authorization	~~Potentially~~ Allowable with Mitigation Upon Authorization	Prohibited
(i) Emergency sanitary sewer overflow response activities, provided that the disturbed area within the riparian buffer outside of the existing utility line maintenance corridor~~:~~ is the minimum necessary to respond to the emergency overflow, is restored to pre-construction topographic and hydrologic conditions, and is replanted with comparable vegetation (e.g. grass with grass, hardwoods with hardwoods) within two months of when disturbance is complete	X			
(ii) Emergency sanitary sewer overflow response activities that do not meet the listing above. ~~activities, provided the disturbed area within the buffer: is the minimum necessary to respond to the emergency overflow and is not fully restored to pre-construction topographic and hydrologic conditions~~. For any new proposed permanent impacts ~~proposed to remain permanently~~ that ~~-~~are not a "Deemed Allowable Activity", an application for an Authorization Certificate must be submitted to the ~~authority~~ Authority ~~within~~ no later than 30 calendar days of conclusion of the emergency response activities		X		
(hh) Utility - Sewer Lines – Vegetation m~~M~~aintenance a~~A~~ctivities that remove forest vegetation ~~for~~ from existing sewer utility right of ways (not including new line installation) ~~ways/corridors~~ outside of the existing utility line maintenance corridor: ~~that do not meet the criteria of existing use in Item (6) of this Rule~~:				
(i) Zone 2 impacts	X			

Use	~~Exempt~~ Deemed Allowable	~~Potentially~~ Allowable Upon Authorization	~~Potentially~~ Allowable with Mitigation Upon Authorization	Prohibited
(ii) Zone 1 impacts: For lines that have not been maintained, the vegetation can be mowed, cut or otherwise maintained without disturbance to the soil structure for a maintenance corridor that is equal to or less than 30 feet wide ~~impacts provided no clearing within 10 feet of the stream~~	X			
~~Zone 1 impacts, provided the permanent maintenance corridor is kept to 10 feet on either side of the existing sewer line. Clearing within 10 feet of the stream may occur provided no grading or grubbing occurs within this area~~	~~X~~			
~~Zone 1 impacts, provided the permanent maintenance corridor is kept to 10 feet on either side of the existing sewer line. Clearing, grading and grubbing can occur within 10 feet of the stream provided the grading and grubbing within 10 feet is less than 2,500 square feet~~		~~X~~		
(iii) Zone 1 impacts other than those listed above		X	~~X~~	
(ii) Utility - Sewer Lines –Replacement/Rehabilitation of existing sewer lines within, or adjacent to, an existing right of way but outside of an existing utility line maintenance corridor provided that comparable ~~the~~ vegetation (e.g. grass with grass, hardwoods with hardwoods) is allowed to regenerate in disturbed ~~areas~~ riparian buffers outside of the permanent maintenance corridor and riparian buffers outside of the permanent maintenance corridor are not maintained:				
(i) Permanent maintenance corridor equal to or less than 30 feet wide provided there is no grading and/or grubbing within 10 feet of the top of bank when the sewer line is parallel to the stream	X			

Use	~~Exempt~~ Deemed Allowable	~~Potentially~~ Allowable Upon Authorization	~~Potentially~~ Allowable with Mitigation Upon Authorization	Prohibited
(ii) Grading and/or grubbing within 10 feet of the top of bank when the sewer line is parallel to the stream and permanent maintenance corridor equal to or less than 30 feet wide		X		
(iii) Permanent maintenance corridor greater than 30 feet wide. For impacts other than perpendicular crossings, mitigation is only required for Zone 1 impacts. For perpendicular crossings that disturb equal to or less than 40 linear feet, no mitigation is required. For perpendicular crossings that disturb greater than 40 linear feet, mitigation is only required for Zone 1 impacts			X	
(jj) Utility - Sewer Lines – New Line Construction/Installation Activities – Perpendicular crossings of streams and other surface waters subject to this Rule or perpendicular entry into the riparian buffer that does not cross a stream or other surface water subject to this Rule provided that vegetation is allowed to regenerate in disturbed areas outside of the permanent maintenance corridor: ~~New Sewer Line Construction Activities (including replacement/rehabilitation that does not meet the criteria of existing use in Item (6) of this Rule) provided that (1) vegetative root systems and stumps are left intact to maintain the integrity of the soil except in the trench where trees are cut, and (2) vegetation is allowed to regenerate in disturbed areas, except within the permanent maintenance corridor:~~				
(i) Construction corridor of less ~~Less~~ than or equal to 40 linear feet wide ~~with~~ and a permanent maintenance corridor that is equal to or less than ~~20~~ 30 feet wide~~in width~~	X			

Use	~~Exempt~~ Deemed Allowable	~~Potentially~~ Allowable Upon Authorization	~~Potentially~~ Allowable with Mitigation Upon Authorization	Prohibited
(ii) Construction corridor of greater ~~Greater~~ than 40 linear feet wide and less than or equal to 150 linear feet wide ~~with~~ and a permanent maintenance corridor that is equal to or less than ~~20~~ 30 feet wide~~in width~~		X		
(iii) Construction corridor of greater ~~Greater~~ than 150 linear feet wide ~~with~~ and a permanent maintenance corridor that is equal to or less than ~~20~~ 30 feet wide~~in width~~			X	
(iv) Permanent maintenance corridor that is greater than ~~20~~ 30 linear feet wide. For impacts other than perpendicular crossings, mitigation is only required for Zone 1 impacts. For perpendicular crossings that disturb equal to or less than 40 linear feet, no mitigation is required. For perpendicular crossings that disturb greater than 40 linear feet, mitigation is only required for Zone 1 impacts~~(mitigation is required only for Zone 1 impacts beyond the 20 linear feet corridor width)~~			X	
(kk) Utility - Sewer Lines – New Line Construction/Installation Activities – Impacts other than perpendicular crossings provided that vegetation is allowed to regenerate in disturbed areas outside of the permanent maintenance corridor:				
(i) Zone 2 ~~only~~impacts	X			
(ii) Zone 1 impacts to less than 2,500 square feet when impacts are solely the result of tying into an existing utility line and when grubbing or grading within10 feet immediately adjacent to the surface water is avoided		X		

Use	~~Exempt~~ Deemed Allowable	~~Potentially~~ Allowable Upon Authorization	~~Potentially~~ Allowable with Mitigation Upon Authorization	Prohibited
~~Zone 1 impacts for replacement/rehabilitation within an existing Right of Way when land grubbing or grading within 10 feet immediately adjacent to the surface water is avoided~~		~~X~~		
(iii) Zone 1 impacts other than those listed above			X	
(ll) Utility – Non-Sewer Underground Lines – Vegetation m~~M~~aintenance a~~A~~ctivities that remove forest vegetation from existing utility right of ways (not including new line installation) outside of the existing utility line maintenance corridor:				
(i) Zone 2 impacts ~~Vegetation maintenance activities along an existing utility line beyond the footprint of an existing utility line maintenance corridor where the total maintenance corridor is equal to or less than 30 linear feet in width~~	X	~~X~~		
(ii) Zone 1 impacts: For lines that have not been maintained, the vegetation can be mowed, cut or otherwise maintained without disturbance to the soil structure for a maintenance corridor that is equal to or less than 30 feet wide	X			
(iii) Zone 1 impacts other than those listed above ~~Vegetation maintenance activities along an existing utility line beyond the footprint of an existing utility line maintenance corridor where the total maintenance corridor is greater than 30 linear feet in width~~		X	~~X~~	
(mm) Utilities – Non-S~~s~~ewer U~~u~~nderground L~~l~~ines. Perpendicular crossings of streams and other surface waters subject to this Rule or perpendicular entry into the riparian buffer that does not cross a stream or other surface water subject to this Rule provided that vegetation is allowed to regenerate in disturbed areas outside of the permanent maintenance corridor:				

Use	~~Exempt~~ Deemed Allowable	~~Potentially~~ Allowable Upon Authorization	~~Potentially~~ Allowable with Mitigation Upon Authorization	Prohibited
(i) Construction ~~activities that disturb~~corridor of less than or equal to 50 linear feet wide ~~of riparian buffer provided that vegetative root systems and stumps shall be left intact to maintain the integrity of the soil except in the trench where trees are cut and that vegetation is allowed to regenerate in disturbed areas with the exception of~~ and a permanent maintenance corridor that is equal to or less than 30 feet wide~~in width~~	X			
(ii) Construction ~~activities that disturb~~corridor of greater than 50 linear feet wide and less than or equal to 150 linear feet wide ~~of riparian buffer provided that vegetative root systems and stumps shall be left intact to maintain the integrity of the soil except in the trench where trees are cut and that vegetation is allowed to regenerate in disturbed areas with the exception of~~ and a permanent maintenance corridor that is equal to or less than 30 feet wide~~in width~~		X		
(iii) Construction ~~activities that disturb~~corridor of greater than 150 linear feet wide ~~of riparian buffer~~ and a permanent maintenance corridor that is equal to or less than 30 feet wide~~in width~~			X	
(iv) Permanent maintenance corridor that is greater than 30 linear feet wide (mitigation is required only for Zone 1 impacts) ~~Any activities with a permanent maintenance corridor greater than 30 feet in width~~			X	
(nn) Utilities – Non-~~S~~sewer U~~u~~nderground L~~l~~ines. Impacts other than perpendicular crossings provided that vegetation is allowed to regenerate in disturbed areas outside of the permanent maintenance corridor::				

Use	~~Exempt~~ Deemed Allowable	~~Potentially~~ Allowable Upon Authorization	~~Potentially~~ Allowable with Mitigation Upon Authorization	Prohibited
(i) Zone 2 ~~only~~ impacts ~~Impacts in Zone Two provided vegetation is re-established after disturbance and the function of Zone 1 is not compromised~~	X			
(ii) ~~Impacts in Zone One~~ Zone 1 impacts to less than 2,500 square feet when impacts are solely the result of tying into an existing utility line and when grubbing or grading ~~provided that land grubbing or grading is not conducted~~ within 10 feet immediately adjacent to the surface water is avoided		X		
(iii) Impacts in Zone One other than listed above			X	
(oo) Utilities – Non-~~S~~sewer ~~A~~aerial ~~L~~lines. Perpendicular crossings of streams and other surface waters subject to this Rule or perpendicular entry into the riparian buffer that does not cross a stream or other surface water subject to this Rule:				
(i) Disturb equal to or less than 150 linear feet wide of riparian buffer provided that a minimum zone of 10 feet wide immediately adjacent to the ~~water body~~waterbody is managed such that only vegetation that poses a hazard or has the potential to grow tall enough to interfere with the line is removed, that no land grubbing or grading is conducted in Zone 1, and that that poles or aerial infrastructure are not installed within 10 feet of a ~~water body~~waterbody	X			
(ii) Disturb greater than 150 linear feet wide of riparian buffer		X		

Use	~~Exempt~~ Deemed Allowable	~~Potentially~~ Allowable Upon Authorization	~~Potentially~~ Allowable with Mitigation Upon Authorization	Prohibited
(pp) Utilities – Non-~~S~~sewer ~~A~~aerial ~~L~~lines. Impacts other than perpendicular crossings of streams and other surface waters subject to this Rule or perpendicular entry into the riparian buffer that does not cross a stream or other surface water subject to this Rule:				
(i) Impacts in Zone ~~Two~~ 2 only		X		
(ii) Impacts in Zone ~~One~~ 1 provided that a minimum zone of 10 feet wide immediately adjacent to the ~~water body~~waterbody is managed such that only vegetation that poses a hazard or has the potential to grow tall enough to interfere with the line is removed, that no land grubbing or grading is conducted in Zone 1, and that that poles or aerial infrastructure are not installed within 10 feet of a ~~water body~~waterbody			X	
(qq) Vegetation management:				
(i) Emergency fire control measures provided that topography is restored	X			
(ii) Periodic mowing and harvesting of plant products only in Zone 2 ~~only~~	X			
(iii) Placement of mulch ring around restoration plantings for a period of five years from the date of planting	X			
(iv) Planting non-invasive vegetation to enhance the riparian buffer	X			
(v) Pruning forest vegetation provided that the health and function of the forest vegetation is not compromised	X			

Use	~~Exempt~~ Deemed Allowable	~~Potentially~~ Allowable Upon Authorization	~~Potentially~~ Allowable with Mitigation Upon Authorization	Prohibited
(vi) Removal of individual ~~trees~~ trees, branches or limbs which are in danger of causing damage to dwellings, existing utility lines, other structures or human ~~life~~ life, or are imminently endangering stability of the streambank provided that the stumps are left or ground in place without causing additional land disturbance	X			
(vii) Removal of individual trees that are dead, diseased or damaged	X			
(viii) Removal of poison ~~ivy~~ ivy, oak or sumac. Removal can include application of pesticides within the riparian buffer if the pesticides are certified by EPA for use in or near aquatic sites and are applied in accordance with the manufacturer's instructions. If removal is significant, then the riparian buffer shall be replanted with non-invasive species	X			

Use	~~Exempt~~ Deemed Allowable	~~Potentially~~ Allowable Upon Authorization	~~Potentially~~ Allowable with Mitigation Upon Authorization	Prohibited
(ix) Removal of understory nuisance vegetation as defined in:Smith, Cherri L. ~~1998. Exotic Plant Guidelines. Dept. of Environment and Natural Resources. Division of Parks and Recreation. Raleigh, NC. Guideline #30~~ 2008. Invasive Plants of North Carolina. Dept. of Transportation. Raleigh, NC (available at http://portal.ncdenr.org/c/document_library/get_file?uuid=0acc6377-ea07-42dc-bb27-45a78d1c7ebe&groupId=38364). Removal can include application of pesticides within the riparian buffer is the pesticides are certified by EPA for use in or near aquatic sites and are applied in accordance with the manufacturer's instructions. If removal is significant, then the riparian buffer shall be replanted with non-invasive species	X			
(x) Removal of woody vegetation in Zone 1 provided that Item (9) of this Rule is complied with			X	
(rr) Vehicle access roads and boat ramps (excluding parking areas) leading to surface water, docks, fishing piers, and other water dependent activities: ~~o water dependent structures~~				
(i) ~~Vehicular~~ Single vehicular access ~~roads~~ road and boat ramp ~~leading~~ to ~~water dependent structures as defined in 15A NCAC 02B .0202, provided they do not cross~~ the surface water but not crossing the surface water that are restricted to the ~~and have a~~ minimum ~~practicable~~ width practicable not ~~exceeding~~ to exceed ~~ten~~ 15 feet ~~in width~~wide		X		

Use	~~Exempt~~ Deemed Allowable	~~Potentially~~ Allowable Upon Authorization	~~Potentially~~ Allowable with Mitigation Upon Authorization	Prohibited
(ii) Vehicular access roads and boat ramps to the surface water but not crossing the surface water that are restricted to the minimum width practicable and exceed 15 feet ~~in width~~wide			X	
(ss) Water dependent structures (except for boat ramps) as defined in ~~15A NCAC 02B~~ Rule .0202 of this Subchapter		X		
(tt) Water supply reservoirs: (i) New reservoirs provided that a riparian buffer that meets the requirements of Items ~~(7)~~(8) and ~~(8)~~(9) of this Rule is established adjacent to the reservoir (ii) New reservoirs where a riparian buffer that meets the requirements of Items ~~(7)~~(8) and ~~(8)~~(9) of this Rule is not established adjacent to the reservoir		X	X	
(uu) Water wells ~~Single family water wells~~ ~~All water wells other than single family water wells~~	X	~~X~~		
~~Wetland stream and buffer restoration~~ • ~~Wetland, stream and buffer restoration that requires DWQ approval for the use of a 401 Water Quality Certification~~ • ~~Wetland, stream and buffer restoration that does NOT require DWQ approval for the use of a 401 Water Quality Certification~~	~~X~~	~~X~~		
(vv) Wildlife passage structures		X		

~~[1] Provided that:~~

- ~~Heavy equipment is not used in Zone 1~~
- ~~Vegetation is not compromised in the portions of Zone 1 and Zone 2 that are not impacted~~
- ~~Trees that are cut down are removed by chain~~
- ~~No permanent felling of trees occurs in the protected buffers or in the streams~~
- ~~Stump removal is performed only by grinding~~
- ~~At the completion of the project the disturbed area is stabilized with native vegetation~~

- ~~Zones 1 & 2 meet the requirements of (7) and (8) of this Rule.~~

~~[2] Provided that, in Zone 1, all of the following BMPs for overhead utility lines are used. If all of these BMPs are not used, then the overhead utility lines shall require a no practical alternative evaluation by the local government, or the Director for the cases involving activities listed in Item (3)of this Rule.~~

- ~~A minimum zone of 10 feet wide immediately adjacent to the water body shall be managed such that only vegetation that poses a hazard or has the potential to grow tall enough to interfere with the line is removed.~~
- ~~Woody vegetation shall be cleared by hand. No land grubbing or grading is allowed.~~
- ~~Vegetative root systems shall be left intact to maintain the integrity of the soil. Stumps shall remain where trees are cut.~~
- ~~Riprap shall not be used unless it is necessary to stabilize a tower.~~
- ~~No fertilizer shall be used other than a one-time application to re-establish vegetation.~~
- ~~Construction activities shall minimize the removal of woody vegetation, the extent of the disturbed area, and the time in which areas remain in a disturbed state.~~
- ~~Active measures shall be taken after construction and during routine maintenance to ensure diffuse flow of stormwater through the buffer.~~
- ~~In wetlands, mats shall be utilized to minimize soil disturbance.~~

~~[3] Provided that poles or towers shall not be installed within 10 feet of a water body unless the local government or the Director for the cases involving activities listed in Item (3) of this Rule completes a no practical alternative evaluation as defined in Item (11) of this Rule.~~

~~[4] Provided that, in Zone 1, all of the following BMPs for underground utility lines are used. If all of these BMPs are not used, then the underground utility line shall require a no practical alternative evaluation by the local government or the Director for the cases involving activities listed in Item (3) of this Rule, as defined in Item (11) of this Rule.~~

- ~~Woody vegetation shall be cleared by hand. No land grubbing or grading is allowed.~~
- ~~Vegetative root systems shall be left intact to maintain the integrity of the soil. Stumps shall remain, except in the trench, where trees are cut.~~
- ~~Underground cables shall be installed by vibratory plow or trenching.~~
- ~~The trench shall be backfilled with the excavated soil material immediately following cable installation.~~
- ~~No fertilizer shall be used other than a one-time application to re-establish vegetation.~~
- ~~Construction activities shall minimize the removal of woody vegetation, the extent of the disturbed area, and the time in which areas remain in a disturbed state.~~
- ~~Active measures shall be taken after construction and during routine maintenance to ensure diffuse flow of stormwater through the buffer.~~
- ~~In wetlands, mats shall be utilized to minimize soil disturbance.~~

~~[5] Perpendicular crossings are those that intersect the surface water at an angle between 75 degrees and 105 degrees.~~

~~(10) REQUIREMENTS FOR CATEGORIES OF USES. Uses designated as exempt, potentially allowable, and potentially allowable with mitigation in Item (9) of this Rule shall have the following requirements:~~

~~(a) EXEMPT. Uses designated as exempt are allowed within the riparian buffer. Exempt uses shall be designed, constructed and maintained to minimize soil disturbance and to provide the maximum water quality protection practicable, including construction, monitoring, and maintenance activities. In addition, exempt uses shall meet requirements listed in Item (9) of this Rule for the specific use;~~

~~(b) POTENTIALLY ALLOWABLE. Uses designated as potentially allowable require a written buffer authorization from the local government, or the Director for the cases involving activities listed in Item (3) of this Rule for impacts within the riparian buffer provided that there are no practical alternatives to the requested use pursuant to Item (11) of this Rule;~~

~~(c) POTENTIALLY ALLOWABLE WITH MITIGATION. Uses designated as potentially allowable with mitigation require written authorization from the local government, or the Director for the cases involving activities listed in Item (3) of this Rule for impacts within the riparian buffer provided that there are no practical alternatives to the requested use pursuant to Item (11) of this Rule and an appropriate mitigation strategy has been approved pursuant to Item (15) of this Rule; and~~

~~(d) PROHIBITED. Uses that are not designated in Item (9) of this Rule are considered prohibited in the riparian buffers.~~

~~(11) DETERMINATION OF "NO PRACTICAL ALTERNATIVES." Persons who wish to undertake uses designated as allowable or allowable with mitigation shall submit a request for a "no practical alternatives" determination to the local government or the Director for the cases involving activities listed in Item (3) of this Rule. The applicant shall certify that the criteria identified in Sub-Item (a) of this Item are met. The local government, or the Director for the cases involving activities listed in Item (3) of this Rule, shall grant an Authorization Certificate upon a "no practical alternatives" determination. The procedure for making an Authorization Certificate shall be as follows:~~

~~(a) For any request for an Authorization Certificate, the local government, or the Director for the cases involving activities listed in Item (3) of this Rule, shall review the entire project and make a finding of fact as to whether the following requirements have been met in support of a "no practical alternatives" determination:~~

~~(i) The basic project purpose cannot be practically accomplished in a manner that would better minimize disturbance, preserve aquatic life and habitat, and protect water quality;~~

~~(ii) The use cannot practically be reduced in size or density, reconfigured or redesigned to better minimize disturbance, preserve aquatic life and habitat, and protect water quality; and~~

~~(iii) Best management practices shall be used if required to minimize disturbance, preserve aquatic life and habitat, and protect water quality;~~

~~(b) Requests for an Authorization Certificate shall be reviewed and either approved or denied within 60 days of receipt of a complete submission based on the criteria in Sub-Item (a) of this Item and the local ordinance or ordinances enforcing this Rule by the local government, or the Director for the cases involving activities listed in Item (3) of this Rule. Failure to issue an approval or denial within 60 days shall constitute that the applicant has demonstrated "no practical alternatives." An Authorization Certificate shall be issued to the applicant, unless:~~

~~(i) The applicant agrees, in writing, to a longer period; and~~

~~(ii) Applicant fails to furnish requested information necessary to the local government's decision or the Director's decision for the cases involving activities listed in Item (3) of this Rule;~~

~~(c) The local government, or the Director for the cases involving activities listed in Item (3) of this Rule, may attach conditions to the Authorization Certificate that support the purpose, spirit and intent of the riparian buffer protection program. Complete submissions shall include the following:~~

~~(i) The name, address and phone number of the applicant;~~

~~(ii) The nature of the activity to be conducted by the applicant;~~

~~(iii) The location of the activity, including the jurisdiction;~~

~~(iv) A map of sufficient detail to accurately delineate the boundaries of the land to be utilized in carrying out the activity, the location and dimensions of any disturbance in riparian buffers associated with the activity, and the extent of riparian buffers on the land;~~

~~(v) An explanation of why this plan for the activity cannot be practically accomplished, reduced or reconfigured to better minimize disturbance to the riparian buffer, preserve aquatic life and habitat and protect water quality; and~~

~~(vi) Plans for any best management practices proposed to be used to control the impacts associated with the activity: and~~

~~(d) Any disputes over determinations regarding Authorization Certificates shall be referred to the local government's appeals process for a decision, or to the Director for determinations involving lands of activities listed in Item (3) of this Rule. The Director's decision is subject to review as provided in G.S. 150B Articles 3 and 4.~~

~~(12) VARIANCES. Persons who wish to undertake prohibited uses may pursue a variance. The local government may grant only minor variances. For major variances, local governments shall prepare preliminary findings and submit them to the Commission for approval. The variance request procedure shall be as follows:~~

~~(a) There are practical difficulties or unnecessary hardships that prevent compliance with the riparian buffer protection requirements. Practical difficulties or unnecessary hardships shall be evaluated in accordance with all of the following:~~

~~(i) If the applicant complies with the provisions of this Rule, he or she can secure no reasonable return from, nor make reasonable use of, his or her property. Merely proving that the variance would permit a greater profit from the property shall not be considered adequate justification for a variance. Moreover, the local government, or the Director for the cases involving activities listed in Item (3) of this Rule, shall consider whether the variance is the minimum possible deviation from the terms of this Rule that shall make reasonable use of the property possible;~~

~~(ii) The hardship results from application of this Rule to the property rather than from other factors such as deed restrictions or other hardship;~~

~~(iii) The hardship is due to the physical nature of the applicant's property, such as its size, shape, or topography, and is unique to the applicant's property rather than the result of conditions that are widespread. If other properties are equally subject to the hardship created in the restriction, then granting a variance would be a special privilege denied to others, and would not promote equal justice; and~~

~~(iv) The applicant did not cause the hardship by knowingly or unknowingly violating this Rule.~~

~~(b) The variance is in harmony with the general purpose and intent of the State's riparian buffer protection requirements and preserves its spirit; and~~

~~(c) In granting the variance, the public safety and welfare have been assured, water quality has been protected, and substantial justice has been done.~~

~~(13) MINOR VARIANCES. A minor variance request pertains to activities that are proposed to impact only Zone 2 or any portion of Zone 2 of the riparian buffer. Minor variance requests shall be reviewed and approved based on the criteria in Sub-Item (12)(a) of this Rule by the local government pursuant to G.S. 153A Article 18, or G.S. 160A Article 19. The local government may attach conditions to the variance approval that support the purpose, spirit and intent of the riparian buffer protection program. Request for appeals to decisions made by the local government shall be made through the local government's appeals process, or to the Director for determinations involving activities listed in Item (3) of this Rule. The Director's decision is subject to review as provided in G.S. 150B Articles 3 and 4.~~

~~(14) MAJOR VARIANCES. A major variance request pertains to activities that are proposed to impact any portion of Zone 1 of the riparian buffer. If the local government, or the Director for the cases involving activities listed in Item (3) of this Rule, has determined that a major variance request meets the requirements in Sub-Item (12)(a) of this Rule, then itshall prepare a preliminary finding and submit it to the Commission for approval. Within 90 days after receipt by the local government, or the Director for the cases involving activities listed in Item (3) of this Rule, the Commission shall review preliminary findings on major variance requests. The Commission may choose to approve, approve with conditions, or deny the major variance.~~

~~(15)~~~~(11)~~(12) MITIGATION. Persons who wish to undertake uses designated as allowable upon authorization with mitigation as defined in Sub-Item (10)(a)(iii) of this Rule or allowable with exception as defined in Sub-Item (10)(a)(v) of this Rule shall meet the following requirements in order to proceed with their proposed use.

(a) Obtain ~~a determination of "no practical alternatives" to the proposed use~~ an Authorization Certificate pursuant to ~~Item (11) of this~~ Rule .0611 of this Subchapter; and

(b) Obtain written approval for a mitigation proposal pursuant to ~~15A NCAC 02B .0252.~~ Rule .0295 of this Subchapter.

~~(16) REQUIREMENTS SPECIFIC TO FOREST HARVESTING. The following requirements shall apply for forest harvesting operations and practices:~~

~~(a) The following measures shall apply in the entire riparian buffer:~~

~~(i) Logging decks and sawmill sites shall not be placed in the riparian buffer;~~

~~(ii) Access roads and skid trails shall be prohibited except for temporary and permanent stream crossings established in accordance with 15A NCAC 01I .0203. Temporary stream crossings shall be permanently stabilized after any site disturbing activity is completed;~~

~~(iii) Timber felling shall be directed away from the stream or water body;~~

~~(iv) Skidding shall be directed away from the stream or water body and shall be done in a manner that minimizes soil disturbance and prevents the creation of channels or ruts;~~

~~(v) Individual trees may be treated to maintain or improve their health, form or vigor;~~

~~(vi) Harvesting of dead or infected trees or other timber cutting techniques necessary to prevent or control extensive tree pest and disease infestation shall be allowed. These practices must be approved by the Division of Forest Resources for a specific site pursuant to 15A NCAC 01I .0100-.0209. The Division of Forest Resources must notify the local government of all approvals;~~

~~(vii) Removal of individual trees that are in danger of causing damage to structures or human life shall be allowed;~~

~~(viii) Natural regeneration of forest vegetation and planting of trees, shrubs, or ground cover plants to enhance the riparian buffer shall be allowed provided that soil disturbance is minimized. Plantings shall consist primarily of native species;~~

~~(ix) High-intensity prescribed burns shall not be allowed;~~

~~(x) Application of fertilizer shall not be allowed except as a one-time use that is necessary for permanent stabilization; and~~

~~(xi) Broadcast application of fertilizer or herbicides to the adjacent forest stand shall be conducted so that the chemicals are not applied directly to or allowed to drift into the riparian buffer;~~

~~(b) In Zone 1, forest vegetation shall be protected and maintained. Selective harvest as provided for below is allowed on forest lands that have a deferment for use value under forestry in accordance with G.S. 105-277.2 through 277.6 or on forest lands that have a forest management plan prepared or approved by a registered professional forester. Copies of either the approval of the deferment for use value under forestry or the forest management plan shall be produced upon request. For such forest lands, selective harvest is allowed in accordance with the following:~~

~~(i) Tracked or wheeled vehicles are permitted for the purpose of selective timber harvesting where there is no other practical alternative for removal of individual trees provided activities comply with forest practices guidelines for water quality as defined in Rule 15A NCAC 01I .0101 through .0209, and provided no equipment shall operate within the first 10 feet immediately adjacent to the stream except at stream crossings designed, constructed and maintained in accordance with Rule 15A NCAC 01I .0203;~~

~~(ii) Soil disturbing site preparation activities are not allowed; and~~

~~(iii) Trees shall be removed with the minimum disturbance to the soil and residual vegetation: and~~

~~(c) In addition to the requirements of (b) in this Item, the following provisions for selective harvesting shall be met:~~

~~(i) The first 10 feet of Zone 1 directly adjacent to the stream or waterbody shall be undisturbed except for the removal of individual high value trees as defined provided that no trees with exposed primary roots visible in the streambank be cut unless listed as an exempt activity under Vegetation Management in the Table of Uses (9) of this Rule.~~

~~(ii) In the outer 20 feet of Zone 1, a maximum of 50 percent of the trees greater than five inches DBH may be cut and removed. The reentry time for harvest shall be no more frequent than every 15 years, except on forest plantations where the~~

~~reentry time shall be no more frequent than every five years. In either case, the trees remaining after harvest shall be as evenly spaced as possible; and~~

~~(iii) In Zone 2, harvesting and regeneration of the forest stand shall be allowed in accordance with 15A NCAC 01I .0100 through .0209 as enforced by the Division of Forest Resources.~~

~~(17)~~~~(12)~~(13) RULE IMPLEMENTATION. This Rule shall be implemented as follows:

(a) Local governments with land use authority within the Randleman Lake water supply watershed shall establish and maintain riparian buffer protection programs to meet or exceed the minimum requirements of this Rule and shall comply with all requirements set forth in G.S. 143-214.23A.

(i) Local governments shall adopt and enforce this Rule through local ordinances.

(ii) Local governments shall appoint a Riparian Buffer Protection ~~Administrator~~ Administrator(s) who shall coordinate the implementation and enforcement of the program. The ~~Administrator~~ Administrator(s) shall attend an initial training session by the Division and be certified to make on-site determinations pursuant to G.S. 143-214.25A. The Administrator(s) shall ensure that local government staff working directly with the program receive training to understand, implement and enforce the program and are certified to make on-site determinations pursuant to G.S. 143-214.25A. At any time that a local government does not have a certified individual retained on staff to make on-site determinations pursuant to G.S. 143-214.25A, they shall immediately notify the Division and indicate a proposed schedule to secure a certified staff member. The local government shall coordinate with the Division to provide on-site determinations until a new certified staff member is secured by the local government.

(b) Local governments shall apply the requirements of this Rule throughout their jurisdictions within the Randleman Lake watershed except where the Division shall exercise jurisdiction. The Division shall ~~implement applicable requirements in lieu~~ have jurisdiction to the exclusion of local governments to administer the requirements of this Rule ~~for:~~ for the following types of activities:

(i) Activities conducted under authority of the State;

(ii) Activities conducted under the authority of the United States;

(iii) Activities conducted under the authority of multiple jurisdictions;

(iv) Activities conducted under the authority of local units of government;

(v) Forest harvesting activities described in Rule .0612 of this Subchapter; and

(vi) Agricultural activities.

(c) The Division shall regularly audit local programs to ensure that local programs are being implemented and enforced in keeping with the requirements of this Rule and Rule .0611

of this Subchapter. The audit shall consist of a review of all local government activities with regards to implementation of the Rules.

(d) Local governments shall maintain on-site records for a minimum of five years, and shall furnish a copy of these records to the Division within 30 calendar days of receipt of a written request for them. Local programs' records shall include the following:

(i) A copy of all Authorization Certificates with ~~e~~Exception requests;

(ii) Findings ~~of fact~~ on all Authorization Certificates with Eexception requests;

(iii) The ~~R~~results of all Authorization Certificates with ~~e~~Exception proceedings;

(iv) A record of complaints and action taken as a result of complaints;

(v) Records for on-site determinations as described in Item (4) of this Rule; and

(vi) Copies of all requests for authorization, records approving authorization and Authorization Certificates.

(e) If a local government fails to adopt or adequately implement its program as specified in this Rule, the Division may take appropriate enforcement action as authorized by statute and may choose to assume responsibility for implementing that program until such time as it determines that the local government is prepared to comply with its responsibilities.

(f) The Commission may delegate its duties and powers for granting and rescinding local government delegation of the ~~Neuse River Basin~~ Randleman Lake riparian buffer protection requirements, in whole or in part, to the Director.

~~(a) For activities listed in Item (3) of this Rule, the Division shall implement the requirements of this Rule as of its effective date;~~

~~(b) Within six months of the effective revision date of this Rule, local governments shall review, revise as necessary, and submit a local program including all necessary ordinances to the Division for review. The local program shall detail local government buffer program implementation including but not limited to such factors as a method for resolution of disputes involving Authorization Certificate or variance determinations, a plan for record keeping, and a plan for enforcement. Local governments shall use the Division's publication, Identification Methods for the Origins of Intermittent and Perennial Streams, v 3.1 February 28, 2005 available at http://portal.ncdenr.org/web/wq/swp/ws/401/waterresources/streamdeterminations to establish the existence of streams;~~

~~(c) Within six months of the Division approval of the revised local ordinance, the local government shall implement their revised buffer program;~~

~~(d) Upon implementation, subject local governments shall submit annual reports to the Division summarizing their activities in implementing each of the requirements in Item (4) of this Rule;~~

~~(e) The Division shall regularly audit local programs to ensure rule implementation; and~~

~~(f) If a local government fails to adopt or adequately implement its program as called for in this Rule, the Division may take appropriate enforcement action as authorized by statute, and may choose to assume responsibility for implementing that program until such time as it determines that the local government is prepared to comply with its responsibilities.~~

~~(18) Where the standards and management requirements for riparian areas are in conflict with other laws, regulations, and permits regarding streams, steep slopes, erodible soils, wetlands, floodplains, forest harvesting, surface mining, land disturbance activities, or other environmental protection areas, the more restrictive shall apply.~~

~~(19)~~~~(13)~~(14) WATER SUPPLY REQUIREMENTS. The existing water supply requirement in Rule ~~.0216(3)(b)~~ .0624(12) of this ~~Section~~ Subchapter that stipulates a 100 foot vegetated buffer, adjacent to perennial streams, for all new development activities which utilize the high density option, applies to the entire Randleman Lake watershed. The first 50 feet of these riparian areas on either side of these waters must also be protected in accordance with all the requirements of this Rule. Local governments subject to this Rule may choose to implement more stringent requirements, including requiring additional buffer width.

~~(20)~~~~(14)~~(15) OTHER LAWS, REGULATIONS AND PERMITS. In all cases, compliance with this Rule does not preclude the requirement to comply with all other federal, state and local regulations and laws.

History Note: *Authority G.S. 143-214.1; 143-214.5; 143-215.3(a)(1);*
Eff. April 1, 1999;
Amended Eff. June 1, 2010.
Readopted Eff. [New Date].
The provisions of this Rule were transferred from 15A NCAC 02B .0250. The provisions of item (2) of 15A NCAC 02B .0250 were transferred to 15A NCAC 02B .0610. The provisions of item (11) & (12) of 15A NCAC 02B .0250 were transferred to 15A NCAC 02B .0611. The provisions of item (16) of 15A NCAC 02B .0250 were transferred to 15A NCAC 02B .0612.

15A NCAC 02B ~~.0251~~ .0721 RANDLEMAN LAKE WATER SUPPLY WATERSHED: STORMWATER REQUIREMENTS

The following is the ~~urban~~ stormwater management strategy for the Randleman Lake watershed:

(1) IMPLEMENTING AUTHORITY. The requirements of this Rule shall be implemented by ~~All~~ local governments that have land use authority within the Randleman Lake ~~watershed~~ watershed. ~~shall comply with stormwater management requirements as outlined in this Rule. Although the management requirements for the upper and the lower portions of the watershed are similar, additional density-related stormwater requirements apply to the lower portion of this watershed that do not apply to the upper portion of the watershed. The upper portion of the watershed is defined as those waters and lands of the Deep River watershed which drain to the Oakdale Cotton Mill Dam. The lower portion of the watershed are those waters and lands of the Deep River upstream and draining to the Randleman Lake Dam, from the Oakdale Cotton Mill Dam to the Randleman Dam.~~ State agencies shall also comply with this Rule insofar as required by G.S. 143-214.5 and in accordance with Rule .0622 of this Subchapter.

~~(2) To meet the requirements of this Rule, the local governments with jurisdictions in the upper portion of the Randleman Reservoir watershed shall meet the state's rules for a WS-IV classification as specified in 15A NCAC 2B .0104, .0202 and .0216, the conditions specified in their existing ordinances, the riparian area protection requirements of Rule .0250 of this Section, along with the stormwater planning requirements set forth in Sub-Items (4), (5), and (6) of this Rule.~~

~~(3) To meet the requirements of this Rule, local governments with jurisdictions in the lower portion of the Randleman Lake watershed shall meet the provisions of Sub-Items (4), (5) and (6) of this Rule along with the following:~~

~~(a) Within 270 days of the effective date of this Rule, the affected jurisdictions, in coordination with the Piedmont Triad Regional Water Authority, shall submit local water supply ordinances to the Environmental Management Commission for approval. The ordinances shall at least meet the state's minimum rules for a WS-IV classification as specified in 15A NCAC 2B .0104, .0202 and .0216, except that the requirements of this Sub-Item shall replace the nonpoint source requirements in 15A NCAC 2B .0216(3)(b) for the lower portion of the Randleman Lake watershed.~~

~~(b) The local ordinances shall provide for review and approval of stormwater management plans for new developments to ensure that the following conditions can be met:~~

~~(i) Stormwater pollution control criteria for the Randleman Lake watershed outside of critical area:~~

~~(A) Low Density Option: For each development project, development density must be limited to either no more than one dwelling unit per acre of single family detached residential development (or 40,000 square foot lot excluding roadway right-of-way) or 12 percent built-upon area for all~~

~~other residential and non-residential development. Stormwater runoff shall be transported primarily by vegetated conveyances. Conveyance system shall not include a discrete stormwater collection system as defined in 15A NCAC 2B .0202;~~

~~(B) High Density Option: If new development exceeds the low density option requirements as stated in Sub Item (2)(b)(i) of this Rule, then engineered stormwater controls must be used to control runoff from the first inch of rainfall. Engineering controls may consist of wet detention ponds designed in accordance with 15A NCAC 2H .1000 or alternative stormwater management systems consisting of other treatment options, or a combination of options, that are approved by the Director of the Division of Water Quality in accordance with 15A NCAC 2B .0104(g). New residential and non-residential development shall not exceed 50 percent built-upon area, unless an alternative high density option is submitted to the Commission as part of the submittal of the local water supply watershed protection ordinance and determined by the Commission to provide equal or greater water quality protection in Randleman Reservoir and its tributaries;~~

~~(C) Cluster development shall be allowed on a project by project basis as follows:~~

~~(I) overall density of the project meets associated density or stormwater control requirements of this Section;~~

~~(II) buffers meet the minimum statewide water supply watershed protection requirements and those specified for the Randleman Lake watershed riparian areas in Rule .0250 of this Section;~~

~~(III) built-upon areas are designed and located to minimize stormwater runoff impact to the receiving waters, minimize concentrated stormwater flow, maximize the use of sheet flow through vegetated areas, and maximize the flow length through vegetated areas;~~

~~(IV) areas of concentrated development are located in upland areas and away, to the maximum extent practicable, from surface waters and drainageways;~~

~~(V) remainder of tract to remain in vegetated or natural state by utilization of one of the methods provided in Sub Item 3(b)(i)(C)(VI) of this Rule;~~

~~(VI) area in the vegetated or natural state may be conveyed to a property owners association; a local government for preservation as a park or greenway; a conservation organization; or placed in a permanent conservation or farmland preservation easement;~~

~~(VII) a maintenance agreement for the vegetated or natural area shall be filed with the Register of Deeds; and~~

~~(VIII) cluster development that meets the applicable low density option requirements shall transport stormwater runoff from the development by vegetated conveyances to the maximum extent practicable;~~

~~(D) If local governments choose the high density development option which requires engineered stormwater controls, then they shall assume ultimate responsibility for operation and maintenance of the required controls as outlined in Rule .0104 of this Subchapter;~~

~~(E) Impervious cover shall be minimized to the maximum extent practical through clustering, narrower and shorter paved areas (streets, driveways, sidewalks, cul-de-sacs, and parking lots), and spreading rooftop and other impervious area runoff over pervious areas. Land clearing during the construction process shall be limited to the maximum extent practical. The local government permit shall require recorded deed restrictions and protective covenants to ensure that development activities maintain the development consistent with the plans and specifications approved by the local governments;~~

~~(F) The project is in compliance with the riparian area protection requirements as specified in 15A NCAC 2B .0250 (Randleman Lake riparian area rule);~~

~~(G) No new development shall be allowed within 50 feet of waters affected by the Randleman riparian area rule 15A NCAC 2B .0250;~~

~~(H) New development meeting the high density option shall be located at least 100 feet from perennial waters as identified on topo or soil survey maps; however, within the area between 50 and 100 feet adjacent to the perennial water body, water dependent structures, or other structures, such as flag poles, signs and security lights, which result in only diminimus increases in impervious area and public projects such as road crossings and greenways may be allowed where no practicable alternative exists; these activities shall minimize built-upon surface area,~~

~~divert runoff away from surface waters and maximize the utilization of BMPs;~~

~~(I) For local governments that do not use the high density option, a maximum of 10 percent of each jurisdiction's portion of the watershed outside of the critical area as delineated on April 1, 1999 may be developed with new development projects and expansions to existing development of up to 70 percent built upon surface area in addition to the new development approved in compliance with the appropriate requirements of Sub-Item (3)(b)(ii)(A) of this Rule. For expansions to existing development, the existing built upon surface area shall not be counted toward the allowed 70 percent built upon surface area. A local government having jurisdiction within the watershed may transfer, in whole or in part, its right to the 10 percent/70 percent land area to local government within the watershed upon submittal of a joint resolution for review by the Commission. When the designated water supply watershed area is composed of public land, such as National Forest land, local governments may count the public land acreage within the designated watershed area outside of the critical area in figuring the acreage allowed under this provision. Each project shall, to the maximum extent practicable, minimize built upon surface area, direct stormwater runoff away from surface waters and incorporate best management practices to minimize water quality impacts;~~

~~(ii) Stormwater pollution control criteria for critical areas of the watershed:~~

~~(A) Low Density Option: Development density must be limited to either no more than one dwelling unit per two acres of single family detached residential development (or 80,000 square foot lot excluding roadway right-of-way) or six percent built upon area for all other residential and non-residential development. Stormwater runoff shall be transported primarily by vegetated conveyances to the maximum extent practicable;~~

~~(B) High Density Option: If new development exceeds the low density option requirements as stated in Sub-Item (3)(b)(ii) of this Rule, then engineered stormwater controls must be used to control runoff from the first inch of rainfall. New residential and non-residential development shall not exceed 30 percent built upon area;~~

~~(C) No new permitted sites for land application of residuals or petroleum contaminated soils shall be allowed;~~

~~(D) No new landfills shall be allowed; and~~

~~(E) Sub-Items (3)(b)(i)(C)-(H) of this Rule also apply to the critical area.~~

(2) SUBWATERSHEDS. For the purpose of this Rule, the Randleman Lake Watershed is divided into subwatersheds as follows:

(a) the upper portion of the watershed is defined as those waters and lands of the Deep River watershed which drain to the Oakdale-Cotton Mill Dam;

(b) the lower portion of the watershed are those waters and lands of the Deep River upstream and draining to the Randleman Lake Dam, from the Oakdale-Cotton Mill Dam to the Randleman Dam;

(c) Oak Hollow Lake subwatershed is defined as all land areas draining to Oak Hollow Lake;

(d) High Point Lake subwatershed is defined as all land areas draining to High Point Lake, East Fork Deep River and West Fork Deep River from Oak Hollow Lake Dam; and

(e) Deep River 1 subwatershed is defined as all land areas draining to the Deep River from High Point Lake Dam to Freeman Mill Dam.

~~(4)~~(3) COMPREHENSIVE STORMWATER MANAGEMENT PLANS. ~~Within 12 months of the effective date of adoption of this Rule, all~~ All local governments with ~~jurisdictions~~ jurisdiction in the Randleman Lake watershed shall ~~develop~~ implement and maintain comprehensive stormwater management plans ~~and submit those plans to the Commission for review and approval. Comprehensive stormwater management plans meeting~~ that meet or exceed the criteria set forth in ~~Subparts (4)(a) through (4)(f)~~ Sub-Items (3)(a) through (3)(f) of this ~~Rule shall be approved.~~ Rule. ~~Within six months of the Commission's approval of the local plan, subject local governments shall adopt and implement their approved plan. Those~~ Stormwater management plans shall include, but not be limited to, the following:

(a) ~~Evaluation~~ evaluation of existing land use within Oak Hollow Lake subwatershed, High Point Lake subwatershed and Deep River 1 subwatershed in the Randleman Lake watershed with recommendations that show how overall built-upon area (for existing and future development) for each subwatershed can be minimized and high intensity land uses can be targeted away from surface waters and sensitive areas. ~~Oak Hollow Lake subwatershed is defined as all land areas draining to Oak Hollow Lake. High Point Lake subwatershed is defined as all land areas draining to High Point Lake, East Fork Deep River and West Fork Deep River from Oak Hollow Lake Dam. Deep River 1 subwatershed is defined as all land areas draining to the Deep River from High Point Lake Dam to Freeman Mill Dam.~~ This evaluation shall be done by the local governments having jurisdiction in those watersheds, working in cooperation with the ~~PTRWA;~~ Piedmont Triad Regional Water Authority;

(b) ~~Coordination~~ coordination between all affected jurisdictions to encourage their development in the existing urban areas. The planning effort shall include provisions for areas of contiguous open space to be protected through conservation easements or other

long-term protection measures and provisions to direct infrastructure growth towards existing urban development corridors rather than to rural lands;

(c) ~~Evaluation~~ evaluation of existing ordinances, municipal programs (maintenance, street cleaning, etc.) and other local policies to identify opportunities for stormwater quality improvements including reducing the amount of built-upon area that is required for uses such as parking, building setbacks, road widths and cul-de-sacs. The evaluations shall consider development options such as multiple story buildings, mixed use to encourage pedestrian travel and mass transit and an identification of municipal activities and procedures that may be modified to allow for stormwater pollution prevention opportunities;

(d) ~~Implementation~~ implementation of watershed protection public education programs;

(e) ~~Identification~~ identification and removal of illegal discharges; and

(f) ~~Identification~~ identification of suitable locations for potential stormwater retrofits (such as riparian areas) that could be funded by various sources.

~~(5) Local governments may submit a more stringent local stormwater management program plan. Local stormwater management programs and modifications to these programs shall be kept on file by the Division of Water Quality.~~

~~(6) If a local government fails to submit an acceptable local stormwater management program plan within the time frames established in this Rule or fails to properly implement an approved plan, then stormwater management requirements for existing and new urban areas within its jurisdiction shall be administered through the NPDES municipal stormwater permitting program per 15A NCAC 2H .0126 which shall include at a minimum:~~

~~(a) Subject local governments shall be required to develop and implement comprehensive stormwater management programs for both existing and new development.~~

~~(b) These stormwater management programs shall provide all components that are required of local government stormwater programs in this Rule.~~

~~(c) Local governments that are subject to an NPDES permit shall be covered by the permit for at least one permitting cycle (five years) before they are eligible to submit a revised local stormwater management component of their water supply watershed protection program for consideration and approval by the EMC.~~

(4) RANDLEMAN LAKE WATERSHED ORDINANCES. Local governments with jurisdiction in the Randleman Lake watershed shall implement local ordinances that meet or exceed the provisions of Items (5) and (6) of this Rule in accordance with their location in the Randleman Lake watershed and in coordination with the Piedmont Triad Regional Water Authority. All revisions to these local ordinances shall be submitted to the Commission for review and approval. Ordinances that meet or exceed the provisions of Items (5) and (6) of this Rule shall be approved by the Commission.

(5) REQUIREMENTS FOR THE UPPER PORTION OF THE WATERSHED. Local governments with jurisdiction in the upper portion of the Randleman Lake watershed shall adopt ordinances that meet or exceed the state's minimum rules for a Class WS-IV watershed as specified in 15A NCAC 02B .0216 (Fresh Surface Water Quality Standards for WS-IV Waters) and 15A NCAC 02B .0620 through .0624 (Water Supply Watershed Protection Program) in addition to meeting the riparian area protection requirements of 15A NCAC 02B .0723.

(6) REQUIREMENTS FOR THE LOWER PORTION OF THE WATERSHED. Local governments with jurisdiction in the lower portion of the Randleman Lake watershed shall adopt ordinances that meet the riparian area protection requirements set forth in 15A NCAC 02B .0723. Local ordinances shall also meet or exceed the state's minimum requirements for a Class WS-IV watershed set forth in 15A NCAC 02B .0620 through .0624 except that the following requirements shall supersede the equivalent provisions of 15A NCAC 02B .0624 as specified:

(a) the following maximum allowable project densities and minimum lot sizes shall supersede the requirements of 15A NCAC 02B .0624(4) and shall apply to a project according to its relative location in the watershed (Critical Area versus Protected Area), its project density (low density versus high density), and the type of development (single-family detached residential versus all other types):

Location in the Watershed	Maximum Allowable Project Density or Minimum Lot Size		
	Low Density Development		High Density Development
	Single-family detached residential	Non-residential and all other residential	All types
Critical Area	1 dwelling unit per 2 acres or 80,000 square foot lot or 6% built-upon area	6% built-upon area	6 to 30% built-upon area
Protected Area	1 dwelling unit per acre or 40,000 square foot lot or 12% built-upon area	12% built-upon area	12 to 50% built-upon area;

(b) for high density development, the following vegetated setback requirements shall be in addition to the riparian area protection requirements set forth in 15A NCAC 02B .0723 and shall supersede the requirements of 15A NCAC 02B .0624(12):

(i) vegetated setbacks for high density development shall be located at least 100 feet from perennial waterbodies and perennial streams indicated on the most recent versions of the United States Geological Survey (USGS) 1:24,000 scale (7.5

minute) quadrangle topographic maps, which are herein incorporated by reference and are available at no cost at http://www.usgs.gov/pubprod/, or the most recent version of the published manuscript of the soil survey map that shows stream layers prepared by the Natural Resources Conservation Service of the United States Department of Agriculture, which are herein incorporated by reference and are available at no cost at http://www.nrcs.usda.gov/wps/portal/nrcs/main/soils/survey/;

(ii) the width of a vegetated setback shall be measured horizontally from the normal pool elevation of impounded structures, from the top of bank of each side of streams or rivers, and from the mean high waterline of tidal waters, perpendicular to the shoreline;

(iii) vegetated setbacks may be cleared or graded, but shall be replanted and maintained in grass or other vegetation; and

(iv) no new built-upon area shall be allowed in the vegetated setback except for publicly-funded linear projects such as roads, greenways, and sidewalks, water dependent structures such as docks, and minimal footprint uses such as poles, signs, utility appurtenances, and security lights where it is not practical to locate the built-upon area elsewhere. Built-upon area associated with these uses shall be minimized and the channelization of stormwater runoff shall be avoided.

(c) outside of the critical areas, a local government may submit an alternative high density option to the Commission as part of the submittal of the local water supply watershed protection ordinance in order to allow development to exceed 50 percent built-upon area. The alternative ordinance shall be approved by the Commission if the Commission determines that it provides equal or greater water quality protection to the Randleman Lake reservoir and its tributaries;

(d) no new permitted sites for land application of residuals or petroleum contaminated soils shall be allowed in the critical areas; and

(e) no new landfills shall be allowed in the critical areas.

(7) Local governments shall have the option to develop more stringent local stormwater management plans and watershed ordinances. Local stormwater management programs and ordinances, and modifications to these programs and ordinances, shall be submitted to the Commission for review and approval and kept on file by the Division.

(8) If a local government fails to properly implement an approved plan, then stormwater management requirements for existing and new urban areas within its jurisdiction shall be administered through the NPDES municipal stormwater permitting program per 15A NCAC 02H .0126 which shall include at a minimum:

(a) subject local governments shall be required to develop and implement comprehensive stormwater management programs for both existing and new development;

(b) these stormwater management programs shall provide all components that are required of local government stormwater programs in this Rule; and

(c) local governments that are subject to an NPDES permit shall be covered by the permit for at least one permitting cycle (five years) before they are eligible to submit a revised local stormwater management component of their water supply watershed protection program for consideration and approval by the Commission.

History Note: *Authority G.S. 143-214.1; 143-214.5; 143-214.7; 143-215.1; 143-215.3(a)(1);*
Eff. April 1, 1999.
Readopted Eff. [New Date].
The provisions of this Rule were transferred from 15A NCAC 02B .0251.

15A NCAC 02B ~~.0259~~ .0734 TAR-PAMLICO RIVER BASIN: NUTRIENT SENSITIVE WATERS MANAGEMENT STRATEGY: PROTECTION AND MAINTENANCE OF EXISTING RIPARIAN BUFFERS

The following is the management strategy for maintaining and protecting existing riparian buffers in the Tar-Pamlico River Basin.

(1) PURPOSE. The purpose of this Rule shall be to maintain and protect ~~and preserve~~ existing riparian ~~buffers, to maintain their nutrient removal functions,~~ buffers in the ~~entire~~ Tar-Pamlico River ~~Basin, whose surface waters are described in the Schedule of Classifications, 15A NCAC 02B .0316.~~ Basin to maintain their nutrient removal functions. Terms used in this Rule shall be as defined in Rule .0610 of this Subchapter.

~~(2) DEFINITIONS. For the purpose of this Rule, these terms shall be defined as follows:~~

~~(a) "Channel" means a natural water carrying trough cut vertically into low areas of the land surface by erosive action of concentrated flowing water or a ditch or canal excavated for the flow of water. (current definition in Forest Practice Guidelines Related to Water Quality, 15A NCAC 01I .0102)~~

~~(b) "DBH" means Diameter at Breast Height of a tree, which is measured at 4.5 feet above ground surface level.~~

~~(c) "Ditch or canal" means a man-made channel other than a modified natural stream constructed for drainage purposes that is typically dug through inter-stream divide areas. A ditch or canal may have flows that are perennial, intermittent, or ephemeral and may exhibit hydrological and biological characteristics similar to perennial or intermittent streams.~~

~~(d) "Ephemeral (stormwater) stream" means a feature that carries only stormwater in direct response to precipitation with water flowing only during and shortly after large precipitation events. An ephemeral stream may or may not have a well-defined channel, the aquatic bed is always above the water table, and stormwater runoff is the primary source of water. An ephemeral stream typically lacks the biological, hydrological, and physical characteristics commonly associated with the continuous or intermittent conveyance of water.~~

~~(e) "Forest plantation" means an area of planted trees that may be conifers (pines) or hardwoods. On a plantation, the intended crop trees are planted rather than naturally regenerated from seed on the site, coppice (sprouting), or seed that is blown or carried into the site.~~

~~(f) "High Value Tree" means a tree that meets or exceeds the following standards: for pine species, 14 inch DBH or greater or 18 inch or greater stump diameter; and, for hardwoods and wetland species, 16 inch DBH or greater or 24 inch or greater stump diameter.~~

~~(g) "Intermittent stream" means a well-defined channel that contains water for only part of the year, typically during winter and spring when the aquatic bed is below the water table. The flow may be heavily supplemented by stormwater runoff. An intermittent stream often lacks the biological and hydrological characteristics commonly associated with the conveyance of water.~~

~~(h) "Modified natural stream" means an on-site channelization or relocation of a stream channel and subsequent relocation of the intermittent or perennial flow as evidenced by topographic alterations in the immediate watershed. A modified natural stream must have the typical biological, hydrological, and physical characteristics commonly associated with the continuous conveyance of water.~~

~~(i) "Perennial stream" means a well-defined channel that contains water year round during a year of normal rainfall with the aquatic bed located below the water table for most of the year. Groundwater is the primary source of water for a perennial stream, but it also carries stormwater runoff. A perennial stream exhibits the typical biological, hydrological, and physical characteristics commonly associated with the continuous conveyance of water.~~

~~(j) "Perennial waterbody" means a natural or man-made basin that stores surface water permanently at depths sufficient to preclude growth of rooted plants, including lakes, ponds, sounds, non-stream estuaries and ocean. For the purpose of the State's riparian buffer protection program, the waterbody must be part of a natural drainageway (i.e., connected by surface flow to a stream).~~

~~(k) "Stream" means a body of concentrated flowing water in a natural low area or natural channel on the land surface.~~

~~(l) "Surface waters" means all waters of the state as defined in G.S. 143-212 except underground waters.~~

~~(m) "Tree" means a woody plant with a DBH equal to or exceeding five inches.~~

(2)~~(3)~~ APPLICABILITY. This Rule applies to all landowners and other persons including local governments, state and federal entities conducting activities within the riparian buffers as described in Item (3) of this Rule in the Tar-Pamlico River Basin, excluding Ocracoke Island.

(3) BUFFERS PROTECTED. The following minimum criteria shall be used for identifying regulated riparian buffers:

(a) A surface water shall be subject to this Rule if the feature is approximately shown on any of the following references:

(i) The most recent version of the published manuscript of the soil survey map that shows stream layers prepared by the Natural Resources Conservation Service of the United States Department of Agriculture;

(ii) The ~~most recent version of the 1:24,000 scale (7.5 minute) quadrangle topographic maps prepared by the~~ United States Geologic ~~Survey~~ Survey's

~~(USGS);~~ National Map, available online at: https://www.usgs.gov/core-science-systems/national-geospatial-program/national-map; or

(iii) Other maps approved ~~by the Geographic Information Coordinating Council and~~ by the Environmental Management Commission as more accurate than those identified in Sub-Item (3)(a)(i) and (3)(a)(ii) of this Rule. Other maps must use a hydrography dataset developed using hydrography specifications and standard metadata approved by the Geographic Information Coordinating Council (GICC) and maintained on a GICC list of the best available hydrography. Edits, deletions and additions to the hydrography dataset must follow GICC approved standards and specifications, per stewardship governance. Other maps must have their hydrography dataset and procedures for edits, deletions and additions reviewed and approved by the GICC. Other maps ~~may~~ shall be submitted to the Division for review and recommendation to the Environmental Management Commission. Prior to recommendation to the Environmental Management Commission, the Division shall issue a 30-calendar day public notice through the Division's Mailing List in accordance with 15A NCAC 02H .0503. Division staff shall present recommendations including comments received during the public notice period to the Environmental Management Commission for a final decision. Maps approved under this Sub-Item shall not apply to projects that are existing and ongoing within the meaning of this Rule as set out in Item (6) of this Rule;

(b) This Rule shall apply to activities conducted within 50-foot wide riparian buffers directly adjacent to surface waters in the Tar-Pamlico River Basin (intermittent streams, perennial streams, lakes, ponds, reservoirs and estuaries), excluding ~~wetlands.~~ wetlands;

(c) ~~Except as described in Sub-Item (4)(a)(iii) of this Rule, wetlands~~ Wetlands adjacent to surface waters or within 50 feet of surface waters shall be considered as part of the riparian buffer but are regulated pursuant to 15A NCAC 02H ~~.0506.~~ .0506;

(d) Stormwater runoff from activities conducted outside the riparian buffer shall comply with Item (9) of this Rule;

~~The riparian buffers protected by this Rule shall be measured pursuant to Item (4) of this Paragraph. For the purpose of this Rule, a surface water shall be present if the feature is approximately shown on either the most recent version of the soil survey map prepared by the Natural Resources Conservation Service of the United States Department of Agriculture or the most recent version of the 1:24,000 scale (7.5 minute) quadrangle topographic maps prepared by the United States Geologic Survey (USGS). Riparian buffers adjacent to surface waters that do not appear on either of the maps shall not be subject to this Rule. Riparian buffers adjacent to surface waters that appear on the maps shall be subject to this Rule unless one of the following applies.~~

(e) Riparian buffers protected by this Rule shall be measured pursuant to Item (8) of this Rule;

(f) A riparian buffer may be exempt from this Rule as described in Items (5), (6) and (7) of this Rule; and

(g) No new clearing, grading or development shall take place nor shall any new building permits be issued in violation of this Rule.

~~(a)~~(4) ~~EXEMPTION WHEN AN~~ ON-SITE ~~DETERMINATION SHOWS THAT SURFACE WATERS ARE NOT PRESENT.~~ DETERMINATION. When a landowner or other affected party believes that the maps listed in Sub-Items (3)(a) of this Rule have inaccurately depicted surface ~~waters,~~ waters or the specific origination point of a stream, or the specific origination point of a stream is in question or unclear, he or she shall ~~consult~~ request the ~~Division or the appropriate delegated local authority. Upon request, the Division or delegated local authority shall~~ Authority to make an on-site ~~determinations.~~ determination. On-site determinations shall be made by Authority staff that are certified pursuant to G.S. 143-214.25A. Registered Foresters under Chapter 89B of the General Statutes who are employees of the North Carolina Forest Service of the Department of Agriculture and Consumer Services can make on-site determinations for forest harvesting operations and practices. On-site determinations shall expire five years from the date of the determination. Any disputes over on-site determinations shall be referred to the Director in writing within 60 calendar days of written notification from the Authority. ~~writing. A determination of the Director as to the accuracy or application of the maps~~ The Director's determination is subject to review as provided in ~~Articles 3 and 4 of~~ G.S. 150B.

(5) EXEMPTION BASED ON ON-SITE DETERMINATION. Surface waters that appear on the maps listed in Sub-Item (3)(a) of this Rule shall not be subject to this Rule if an on-site determination shows that they fall into one of the following ~~categories.~~ categories:

~~(i)~~(a) Ditches and manmade conveyances other than modified natural streams unless constructed for navigation or boat access.

~~(ii)~~(b) Manmade ponds and lakes that are ~~located outside natural drainage ways.~~ not fed by an intermittent or perennial stream nor have a direct discharge point to an intermittent or perennial stream.

~~(iii)~~(c) Ephemeral ~~(stormwater)~~ streams.

(d) The absence on the ground of a corresponding perennial waterbody, intermittent waterbody, lake, pond or estuary.

~~(b)~~(6) EXEMPTION WHEN EXISTING USES ARE PRESENT AND ONGOING. This Rule shall not apply to portions of the riparian buffer where a use is existing and ~~ongoing according to the following:~~ ongoing.

~~(i)~~(a) A use shall be considered existing ~~if~~ if:

(i) ~~it~~ It was present within the riparian buffer as of January 1, ~~2000.~~ 2000 and has continued to exist since that time; or

(ii) It was a deemed allowable activity as listed in Item ~~(10)~~(11) of this Rule; or

(iii) It was conducted and maintained pursuant to an Authorization Certificate or Variance issued by the Authority.

(b) Existing and ongoing uses shall include, but not be limited to, agriculture, buildings, industrial facilities, commercial areas, transportation facilities, maintained ~~lawns,~~ lawns (i.e. can be mowed without a chainsaw or bush-hog), ~~maintained (i.e. vegetation management has occurred within the last 10 years)~~ existing utility ~~lines~~ line maintenance corridors and on-site sanitary sewage ~~systems.~~ systems, any of which involve either specific periodic management of vegetation or displacement of vegetation by structures or regular activity.

(c) Only the portion of the riparian buffer that contains the footprint of the existing and ongoing use is exempt from this Rule.

(d) Change of ownership through purchase or inheritance is not a change of use.

(e) Activities necessary to maintain existing and ongoing uses are allowed provided that the site remains similarly vegetated, no built upon area is added within the riparian buffer where it did not exist prior to January 1, 2000, ~~no additional vegetation is removed from Zone 1, except that grazed or trampled by livestock,~~ and the site is in compliance with Item (9) of this Rule. ~~existing diffuse flow is maintained. Grading and revegetating Zone 2 is allowed provided that the health of the vegetation in Zone 1 is not compromised, the ground is stabilized and existing diffuse flow is maintained.~~

(f) This Rule shall apply at the time an existing and ongoing use is changed to another use. Change of use shall involve the initiation of any activity not defined as existing and ongoing in Sub-Items (6)(a) through (6)(e) of this Rule.

~~(ii) At the time an existing use is proposed to be converted to another use, this Rule shall apply. An existing use shall be considered to be converted to another use if any of the following applies:~~

~~(A) Impervious surface is added to the riparian buffer in locations where it did not exist previously.~~

~~(B) An agricultural operation within the riparian buffer is converted to a non-agricultural use.~~

~~(C) A lawn within the riparian buffer ceases to be maintained.~~

(7) EXEMPTION FOR PONDS CONSTRUCTED AND USED FOR AGRICULTURAL PURPOSES. This Rule shall not apply to a freshwater pond if all of the following conditions are met:

(a) The property on which the pond is located is used for agriculture as that term is defined in G.S. 106-581.1.

(b) Except for this Rule, the use of the property is in compliance with all other water quality and water quantity statutes and rules applicable to the property before ~~July 22, 1997~~January 1, 2000.

(c) The pond is not a component of an animal waste management system as defined in G.S. 143-215.10B (3).

~~(4)~~(8) ZONES OF THE RIPARIAN BUFFER. The protected riparian buffer shall have two zones as follows:

(a) Zone 1 shall consist of a vegetated area that is undisturbed except for uses provided for in Items (9) and ~~(6)~~~~(10)~~(11) of this Rule. The location of Zone 1 shall be as follows:

(i) For intermittent and perennial streams, Zone 1 shall begin at the most landward limit of the top of bank or the rooted herbaceous vegetation and extend landward a distance of 30 feet on all sides of the ~~surface water,~~ stream measured horizontally on a line perpendicular to the ~~surface water.~~ stream (where an intermittent or perennial stream begins or ends, including when it goes underground, enters or exits a culvert, or enters or exits a wetland, the required distance shall be measured as a radius around the beginning or the end).

(ii) For ponds, lakes and reservoirs ~~located within a natural drainage way~~subject to this Rule, Zone 1 shall begin at the ~~most landward limit of the~~ normal water level ~~or the rooted herbaceous vegetation~~ and extend landward a distance of 30 feet, measured horizontally on a line perpendicular to the surface water.

(iii) For surface waters within the 20 Coastal Counties (defined in ~~15A NCAC 02B .0202)~~ Rule .0202 of this Subchapter) and within the jurisdiction of the Division of Coastal Management, Zone 1 shall begin at the most landward limit ~~of:~~

~~(A) the normal high water level;~~

~~(B) the normal water level; or~~

~~(C) the landward limit of coastal wetlands as defined by the Division of Coastal Management;~~ of the normal high water level or the normal water level and extend landward a distance of 30 feet, measured horizontally on a line perpendicular to the surface water, whichever is more restrictive.

(b) Zone 2 shall consist of a stable, vegetated area that is undisturbed except for activities and uses provided for in Items (9) and ~~(6)~~~~(10)~~(11) of this Rule. Grading and revegetating Zone 2 is allowed provided that the health of the vegetation in Zone 1 is not compromised. Zone 2 shall begin at the outer edge of Zone 1 and extend landward 20 feet as measured horizontally on a line perpendicular to the surface water. The combined width of Zones 1 and 2 shall be 50 feet on all sides of the surface water.

~~(5) DIFFUSE FLOW REQUIREMENT. Diffuse flow of runoff shall be maintained in the riparian buffer by dispersing concentrated flow and reestablishing vegetation.~~

~~(a) Concentrated runoff from new ditches or manmade conveyances shall be converted to diffuse flow before the runoff enters Zone 2 of the riparian buffer.~~

~~(b) Periodic corrective action to restore diffuse flow shall be taken if necessary to impede the formation of erosion gullies.~~

(9) STORMWATER RUNOFF THROUGH THE RIPARIAN BUFFER. Stormwater runoff into the riparian buffer shall meet dispersed flow as defined in 15A NCAC 02H .1002 except as otherwise described in this Item. Drainage conveyances include drainage ditches, roadside ditches, and stormwater conveyances. The following stormwater conveyances through the riparian buffer are either deemed allowable or allowable upon authorization, as defined in Sub-Item (10)(a) of this Rule, provided that they do not erode through the riparian buffer and do not cause erosion to the receiving waterbody. Stormwater conveyances through the riparian buffer that are not listed below shall be allowable with exception as defined in Sub-Item (10)(a)(v) of this Rule.

(a) The following are deemed allowable as defined in Sub-Item (10)(a)(i) of this Rule:

(i) New drainage conveyances from a Primary SCM, as defined in 15A NCAC 02H .1002, when the Primary SCM is designed to treat the drainage area to the conveyance and that comply with a stormwater management plan reviewed and approved under a state stormwater program or a state-approved local government stormwater program; and

(ii) New stormwater flow to existing drainage conveyances provided that the addition of new flow does not result in the need to alter the conveyance.

(b) The following are allowable upon authorization as defined in Sub-Item (10)(a)(ii) of this Rule:

(i) New drainage conveyances from a Primary SCM as defined in 15A NCAC 02H .1002 when the Primary SCM is provided to treat the drainage area to the conveyance but are not required to be approved under a state stormwater program or a state-approved local government stormwater program;

(ii) New drainage conveyances when the drainage area to the conveyance is demonstrated via approved nutrient calculation methodologies to meet the nutrient loading goals as outlined in Rule .0258(c)(1)(A) and (B) of this Subchapter;

(iii) New drainage conveyances when the flow rate of the conveyance is less than 0.5 cubic feet per second during the peak flow from the 0.75 inch per hour storm;

(iv) New stormwater runoff that has been treated through a level spreader-filter strip that complies with 15A NCAC 02H .1059;

(v) Realignment of existing roadside drainage conveyances applicable to publicly funded and maintained linear transportation facilities when retaining or improving the design dimensions provided that no additional travel lanes are added and the minimum required roadway typical section is used based on traffic and safety considerations;

(vi) Realignment of existing drainage conveyances retaining or improving the design dimensions provided that the size of the drainage area and the percent built-upon area within the drainage area remain the same;

(vii) New or altered drainage conveyances applicable to publicly funded and maintained linear transportation facilities provided that SCMs, or BMPs from the NCDOT Stormwater Best Management Practices Toolbox, are employed;

(viii) New drainage conveyances applicable to publicly funded and maintained linear transportation facilities that do not provide a stormwater management facility due to topography constraints provided other measures are employed to protect downstream water quality to the maximum extent practical; and

(ix) New drainage conveyances where the drainage area to the conveyance has no new built-upon area as defined in 15A NCAC 02H .1002 and the conveyance is necessary for bypass of existing drainage only.

~~(6)~~(10) ~~TABLE OF~~ USES. Uses within the riparian buffer, or outside the riparian buffer with hydrological impacts on the riparian buffer, shall be designated as deemed allowable, allowable upon authorization, allowable with mitigation upon authorization, or prohibited.

(a) Potential new uses shall have the following requirements:

(i) DEEMED ALLOWABLE. Uses designated as deemed allowable in Sub-Item~~Items~~ (9)(a) and Item ~~(10)(b)~~(11) of this Rule may occur within the riparian buffer. Deemed allowable uses shall be designed, constructed and maintained to minimize vegetation and soil disturbance and to provide the maximum water quality protection practicable, including construction, monitoring, and maintenance activities. In addition, deemed allowable uses shall meet the requirements listed in ~~Sub-~~Item ~~(10)(b)~~ (11) of this Rule for the specific use.

(ii) ALLOWABLE UPON AUTHORIZATION. Uses designated as allowable upon authorization in Sub-Items (9)(b) and (10)(b) of this Rule require a written Authorization Certificate from the Authority for impacts within the riparian buffer provided that there are no practical alternatives to the requested use pursuant to Rule .0611 of this Subchapter.

(iii) ALLOWABLE WITH MITIGATION UPON AUTHORIZATION. Uses designated as allowable with mitigation allowable upon authorization in ~~Sub-~~Item ~~(10)(b)~~(11) of this Rule require a written Authorization Certificate from the

Authority for impacts within the riparian buffer provided that there are no practical alternatives to the requested use pursuant to Rule .0611 of this Subchapter and an appropriate mitigation strategy has received written approval pursuant to Item ~~(11)~~(12) of this Rule.

(iv) PROHIBITED. Uses designated as prohibited in ~~Sub~~ Item ~~(10)(b)~~(11) of this Rule may not proceed within the riparian buffer unless a Variance is granted pursuant to Rule .0226 of this Subchapter. Mitigation may be required as a condition of variance approval.

(v) ALLOWABLE WITH EXCEPTION. Uses not designated as deemed allowable, allowable upon authorization, allowable with mitigation upon authorization or prohibited in ~~Sub~~ Item ~~(10)(b)~~(11) of this Rule require a written Authorization Certificate with Exception from the Authority for impacts within the riparian buffer pursuant to Rule .0611 of this Subchapter and an appropriate mitigation strategy that has received written approval pursuant to Item ~~(11)~~ (12) of this Rule.

~~(b)~~(11) TABLE OF USES: The following ~~chart~~ table sets out ~~the~~ potential new uses within the riparian buffer, or outside the riparian buffer with hydrological impacts on the riparian buffer, and designates them ~~their designation under this Rule~~ as ~~exempt,~~ deemed allowable, allowable upon authorization, or allowable with ~~mitigation, or prohibited.~~ mitigation upon authorization: ~~The requirements for each category are given in Item (7) of this Rule.~~

	~~Exempt~~ Deemed Allowable	Allowable Upon Authorization	Allowable with Mitigation Upon Authorization	Prohibited
(a) Airport facilities:				
(i) Vegetation removal activities necessary to comply with Federal Aviation Administration requirements (e.g. line of sight requirements) provided the disturbed areas are stabilized and revegetated	X			
(ii) Airport facilities that impact equal to or less than ~~150 linear feet or~~ one-third of an acre of riparian buffer		X		
(iii) Airport facilities that impact greater than ~~150 linear feet or~~ one-third of an acre of riparian buffer			X	
(b) Archaeological activities	X			
(c) Bridges:				

	~~Exempt~~ Deemed Allowable	Allowable Upon Authorization	Allowable with Mitigation Upon Authorization	Prohibited
(i) Impact equal to or less than one-tenth of an acre of riparian buffer	X			
(ii) Impact greater than one-tenth of an acre of riparian buffer		X		
(d) Dam maintenance activities:				
(i) Dam maintenance activities that do not cause additional riparian buffer disturbance beyond the footprint	X			
(ii) Dam maintenance activities that do cause additional riparian buffer disturbance beyond the footprint of the existing dam		X		
~~Drainage ditches, roadside ditches and stormwater outfalls through riparian buffers:~~				
• ~~Existing drainage ditches, roadside ditches, and stormwater outfalls provided that they are managed to minimize the sediment, nutrients and other pollution that convey to waterbodies~~	~~X~~			
• ~~New drainage ditches, roadside ditches and stormwater outfalls provided that a stormwater management facility is installed to control nitrogen and attenuate flow before the conveyance discharges through the riparian buffer~~		~~X~~		
• ~~New drainage ditches, roadside ditches and stormwater outfalls that do not provide control for nitrogen before discharging through the riparian buffer~~				~~X~~
• ~~Excavation of the streambed in order to bring it to the same elevation as the invert of a ditch~~				~~X~~

	~~Exempt~~ Deemed Allowable	Allowable Upon Authorization	Allowable with Mitigation Upon Authorization	Prohibited
(e) Drainage of a pond ~~in a natural drainage way~~ subject to Item (3) of this Rule provided that a new riparian buffer ~~that meets the requirements of Items (4) and (5) of this Rule~~ is established ~~adjacent to the new channel~~ by natural regeneration or planting, within 50 feet of any stream which naturally forms or is constructed within the drained pond area. Drained ponds shall be allowed to naturalize for a minimum of six months from completion of the draining activity before a stream determination is conducted pursuant to Item (4) of this Rule	X			
~~Driveway crossings of streams and other surface waters subject to this Rule:~~				
• ~~Driveway crossings on single family residential lots that disturb equal to or less than 25 linear feet or 2,500 square feet of riparian buffer~~	~~X~~			
• ~~Driveway crossings on single family residential lots that disturb greater than 25 linear feet or 2,500 square feet of riparian buffer~~		~~X~~		
• ~~In a subdivision that cumulatively disturb equal to or less than 150 linear feet or one third of an acre of riparian buffer~~		~~X~~		
• ~~In a subdivision that cumulatively disturb greater than 150 linear feet or one third of an acre of riparian buffer~~			~~X~~	
(f) Fences:				
(i) Fencing livestock out of surface waters	X			
(ii) Installation does not result in removal of trees from Zone 1	X			
(iii) Installation results in removal of trees from Zone 1 ~~Fences provided that disturbance is minimized and installation does not result in removal of forest vegetation~~		X		
(g) Fertilizer application:				

	~~Exempt~~ Deemed Allowable	Allowable Upon Authorization	Allowable with Mitigation Upon Authorization	Prohibited
(i) One-time fertilizer application at agronomic rates in the riparian buffer to establish replanted ~~vegetation~~ vegetation. ~~This only applies to the one-time application of fertilizer in the riparian buffer.~~ No runoff from this one-time application in the riparian buffer is allowed in the applicable surface water	X			
(ii) Ongoing fertilizer application				X
(h) Forest harvesting - see ~~Item (11) of this~~ Rule .0612 of this Subchapter				
(i) Grading ~~and revegetation~~ only in Zone 2 ~~only~~ provided that ~~diffuse flow and~~ the health of existing vegetation in Zone 1 is not ~~compromised~~ compromised, Item (9) of this Rule is complied with, and disturbed areas are stabilized and revegetated	X			
(j) ~~Greenway / hiking trails~~ Greenways, trails, sidewalks or linear pedestrian/bicycle transportation ~~system~~systems:				
(i) In Zone 2 provided that no built upon area is added within the riparian buffer	X			
(ii) In Zone 1 provided that no built upon area is added within the riparian buffer and the installation does not result in the removal of tree(s)	X			
(iii) When built upon area is added to the riparian buffer, equal to or less than 10 feet wide with 2 foot wide shoulders. ~~Must~~ Shall be located outside Zone 1 unless there is no practical alternative		X		
(iv) When built upon area is added to the riparian buffer, greater than 10 feet wide with 2 foot wide shoulders. ~~Must~~ Shall be located outside Zone 1 unless there is no practical alternative			X	
(k) Historic preservation	X			
(l) New Landfills as defined by G.S. 130A-290				X

	~~Exempt~~ Deemed Allowable	Allowable Upon Authorization	Allowable with Mitigation Upon Authorization	Prohibited
(m) ~~Periodic maintenance of~~ Maintenance access on modified natural streams or canals: a grassed travel way on one side of the ~~water body~~waterbody when less impacting alternatives are not practical. The width and specifications of the travel way shall be only that needed for equipment access and operation. The travel way shall be located to maximize stream shading ~~uch as canals and a grassed travelway on one side of the surface water when alternative forms of maintenance access are not practical~~		X		
(n) Mining activities:				
(i) Mining activities that are covered by the Mining Act provided that new riparian buffers that meet the requirements of Items ~~(4)~~(8) and ~~(5)~~(9) of this Rule are established adjacent to ~~the~~ any relocated channels		X		
(ii) Mining activities that are not covered by the Mining Act OR where new riparian buffers that meet the requirements or Items ~~(4)~~(8) and ~~(5)~~(9) of this Rule are not established ~~adjacent to the relocated channels~~			X	
(iii) Wastewater or mining dewatering wells with approved NPDES permit	X			
~~Non-electric utility lines:~~				
• ~~Impacts other than perpendicular crossings in Zone 2 only~~[3]		~~X~~		
• ~~Impacts other than perpendicular crossings in Zone 1~~[3]			~~X~~	

	~~Exempt~~ Deemed Allowable	Allowable Upon Authorization	Allowable with Mitigation Upon Authorization	Prohibited
~~Non-electric utility line perpendicular crossings of streams and other surface waters subject to this Rule[3]:~~	~~X~~			
• ~~Perpendicular crossings that disturb equal to or less than 40 linear feet of riparian buffer with a maintenance corridor equal to or less than 10 feet in width~~		~~X~~		
• ~~Perpendicular crossings that disturb equal to or less than 40 linear feet of riparian buffer with a maintenance corridor greater than 10 feet in width~~		~~X~~		
• ~~Perpendicular crossings that disturb greater than 40 linear feet but equal to or less than 150 linear feet of riparian buffer with a maintenance corridor equal to or less than 10 feet in width~~			~~X~~	
• ~~Perpendicular crossings that disturb greater than 40 linear feet but equal to or less than 150 linear feet of riparian buffer with a maintenance corridor greater than 10 feet in width~~			~~X~~	
• ~~Perpendicular crossings that disturb greater than 150 linear feet of riparian buffer~~				
(o) On-site sanitary sewage systems - new ones that use ground absorption				X
~~Overhead electric utility lines:~~				
• ~~Impacts other than perpendicular crossings in Zone 2 only[3]~~	~~X~~			
• ~~Impacts other than perpendicular crossings in Zone 1[1,2,3]~~	~~X~~			
~~Overhead electric utility line perpendicular crossings of streams and other surface waters subject to this Rule[3]:~~				
• ~~Perpendicular crossings that disturb equal to or less than 150 linear feet of riparian buffer[1]~~	~~X~~	~~X~~		
• ~~Perpendicular crossings that disturb greater than 150 linear feet of riparian buffer[1,2]~~				
(p) Pedestrian access trail and associated steps leading to a surface water, dock, canoe or kayak access, fishing pier, boat ramp or other water dependent structure:				

	~~Exempt~~ Deemed Allowable	Allowable Upon Authorization	Allowable with Mitigation Upon Authorization	Prohibited
(i) ~~Pedestrian access trail equal~~Equal to or less than six feet wide that does not result in the removal of ~~any~~ tree(s) within the riparian buffer and does not result in ~~any built upon area being added~~the addition of built upon area to the riparian buffer	X			
(ii) ~~Pedestrian access trail equal~~Equal to or less than six feet wide ~~where the installation or use~~that results in the removal of tree(s) or the addition of built upon area to the riparian buffer		X		
(iii) ~~Pedestrian access trail greater~~Greater than six feet wide			X	
(q) Playground equipment:				
(i) Playground equipment on ~~single family~~single-family lots provided that installation and use does not result in removal of vegetation	X			
(ii) Playground equipment on ~~single family~~single-family lots where installation or use results in the removal of vegetation		X		
(iii) Playground equipment installed on lands other than single-family lots ~~or that requires removal of vegetation~~		X		
(r) Ponds created or modified by impounding streams subject to ~~the~~ riparian buffers pursuant to Item (3) of this Rule and not used as stormwater control measures (SCMs): ~~ponds in natural drainage ways, excluding dry ponds:~~				
(i) New ponds provided that a riparian buffer that meets the requirements of Items ~~(4)~~(8) and ~~(5)~~(9) of this Rule is established adjacent to the pond		X		
(ii) New ponds where a riparian buffer that meets the requirements of Items ~~(4)~~(8) and ~~(5)~~(9) of this Rule is NOT established adjacent to the pond			X	

	~~Exempt~~ Deemed Allowable	Allowable Upon Authorization	Allowable with Mitigation Upon Authorization	Prohibited
(s) Protection of existing structures and facilities~~,~~ ~~structures, facilities and streambanks~~ when this requires additional disturbance ~~of~~ to the riparian buffer ~~or the stream channel~~		X		
(t) Public Safety - publicly owned spaces where it has been determined by the head of the local law enforcement agency with jurisdiction over that area that the riparian buffers pose a risk to public safety. The head of the local law enforcement agency shall notify the local government with land use jurisdiction over the publicly owned space and the Division of Water Resources of any such determination in writing	X			
~~Railroad impacts other than crossings of streams and other surface waters subject to this Rule~~			~~X~~	
~~Railroad crossings of streams and other surface waters subject to this Rule:~~ • ~~Railroad crossings that impact equal to or less than 40 linear feet of riparian buffer~~ • ~~Railroad crossings that impact greater than 40 linear feet but equal to or less than 150 linear feet or one-third of an acre of riparian buffer~~ • ~~Railroad crossings that impact greater than 150 linear feet or one-third of an acre of riparian buffer~~	~~X~~	~~X~~	~~X~~	
(u) Removal of previous fill or debris provided that ~~diffuse flow is maintained~~ Item (9) of this Rule is complied with and any vegetation removed is restored	X			

	~~Exempt~~ Deemed Allowable	Allowable Upon Authorization	Allowable with Mitigation Upon Authorization	Prohibited
(v) Residential Properties: Where application of this Rule would preclude construction or expansion of a single-family residence and necessary infrastructure, the single-family residence may encroach ~~on~~ in the riparian buffer if all of the following conditions are met: (1) the residence is set back the maximum feasible distance from the top of the bank, rooted herbaceous vegetation, normal high-water level, or normal water level, whichever is applicable, on the existing lot; (2) ~~and~~ the residence is designed to minimize encroachment into the riparian buffer; ~~(2) the residence is set back a minimum of 30 feet landward of the top of the bank, rooted herbaceous vegetation, normal high water level, or normal water level, whichever is applicable;~~ (3) the residence complies with Item (9) of this Rule; and (4) if the residence will be served by an on-site wastewater system, no part of the septic tank or drainfield may encroach into the riparian buffer:				
(i) The residence ~~and~~ or necessary infrastructure only impact Zone 2 ~~only~~		X		
(ii) The residence or necessary infrastructure impact Zone 1			X	
(iii) Impacts other than the residence or necessary infrastructure			X	
(w) Restoration or enhancement (wetland, stream) as defined in 33 CFR Part 332 available free of charge on the internet at: http://water.epa.gov/lawsregs/guidance/wetlands/wetlandsmitigation_index.cfm:				

	~~Exempt~~ Deemed Allowable	Allowable Upon Authorization	Allowable with Mitigation Upon Authorization	Prohibited
(i) Wetland or stream restoration that is part of a compensatory mitigation bank, nutrient offset bank or the In Lieu Fee program~~does not require written Division approval that results in impacts to the riparian buffer~~	X			
(ii) Wetland or stream restoration other than those listed above~~that requires written Division approval that results in impacts to the riparian buffer~~		X		
(x) ~~Road~~ Road, driveway or ~~railroad~~ railroad - impacts other than perpendicular crossings of streams and other surface waters subject to this Rule			X	
(y) ~~Road~~ Road, driveway or ~~railroads:~~ railroads - perpendicular crossings of streams and other surface waters subject to this ~~Rule~~ Rule ~~or perpendicular entry into the riparian buffer that does not cross a stream or other surface water subject to this Rule~~:				
(i) ~~Road crossings that impact~~ Impact equal to or less than one-tenth of an acre ~~40 linear feet~~ of riparian buffer	X			
(ii) ~~Road crossings that impact~~ Impact greater than one-tenth of an acre ~~40 linear feet~~ but equal to or less than ~~150 linear feet or~~ one-third of an acre of riparian buffer		X		
(iii) ~~Road crossings that impact~~ Impact greater than ~~150 linear feet or~~ one-third of an acre of riparian buffer			X	
(iv) Driveway crossings in a residential subdivision that cumulatively ~~disturb~~ impact equal to or less than one-third of an acre of riparian buffer		X		
(v) Driveway crossings in a residential subdivision that cumulatively ~~disturb~~ impact greater than one-third of an acre of riparian buffer			X	

	~~Exempt~~ Deemed Allowable	Allowable Upon Authorization	Allowable with Mitigation Upon Authorization	Prohibited
(vi) ~~Agriculture~~ Farm roads and forest roads that are exempt from permitting from the U.S. Army Corps of Engineers per Section 404(f) of the ~~federal~~ Federal Clean Water Act	X			
(z) Road relocation of existing private access roads associated with public road projects where necessary for public safety:				
(i) Less than or equal to 2,500 square feet of riparian buffer impact		X		
(ii) Greater than 2,500 square feet of riparian buffer impact			X	
(aa) Scientific studies and stream gauging	X			
(bb) Slatted uncovered decks, including steps and support posts, which are associated with a dwelling, provided that it meets the requirements of Items (8) and (9) of this Rule and:				
(i) Installation does not result in removal of vegetation in Zone 1		X		
(ii) Installation results in removal of vegetation in Zone 1			X	
(cc) Stormwater ~~management ponds excluding dry ponds:~~ Control Measure (SCM) as defined in 15A NCAC 02H .1002:				
(i) ~~New stormwater management ponds provided that a riparian buffer that meets the requirements of Items (4) and (5) of this Rule is established adjacent to the pond~~ In Zone 2 if Item (9) of this Rule is complied with		X		
(ii) ~~New stormwater management ponds where a riparian buffer that meets the requirements of Items (4) and (5) of this Rule is NOT established adjacent to the pond~~ In Zone 1			X	
~~Stream restoration~~	~~X~~			

	~~Exempt~~ Deemed Allowable	Allowable Upon Authorization	Allowable with Mitigation Upon Authorization	Prohibited
(dd) Streambank or shoreline stabilization		X		
(ee) Temporary roads, provided that the disturbed area is restored to pre-construction topographic and hydrologic conditions and replanted with comparable vegetation within two months of when construction is complete. Tree planting may occur during the dormant season. At the end of five years, ~~the~~ any restored wooded riparian buffer shall comply with the restoration criteria in Rule .0295(i) of this Subchapter: ~~roads:~~				
(i) ~~Temporary roads that disturb less~~ Less than or equal to 2,500 square feet ~~provided that vegetation is restored within six months of initial disturbance~~ of riparian buffer disturbance	X			
(ii) ~~Temporary roads that disturb greater~~ Greater than 2,500 square feet of riparian buffer disturbance ~~provided that vegetation is restored within six months of initial disturbance~~		X		
(iii) ~~Temporary roads used for~~ Associated with culvert installation or bridge construction or replacement ~~provided that restoration activities such as soil stabilization and revegetation, occur immediately after construction~~		X		
(ff) Temporary sediment and erosion control devices provided that the disturbed area is restored to preconstruction topographic and hydrologic conditions and replanted with comparable vegetation within two months of when construction is complete. Tree planting may occur during the dormant season. At the end of five years, ~~the~~ any restored wooded riparian buffer shall comply with the restoration criteria in Rule .0295(i) of this Subchapter: ~~devices:~~				

	~~Exempt~~ Deemed Allowable	Allowable Upon Authorization	Allowable with Mitigation Upon Authorization	Prohibited
(i) In Zone 2 ~~only~~ provided that ground cover is established within the timeframes required by the Sedimentation and Erosion Control Act, vegetation in Zone 1 is not compromised, ~~that the vegetation in Zone 1 is not compromised~~ and that discharge is released ~~as diffuse flow~~ in accordance with Item ~~(5)~~(9) of this Rule	X			
(ii) In Zones 1 and 2 to control impacts associated with uses ~~approved by the Authority~~identified in the Table ~~Division~~ or that have received ~~a variance~~ an Authorization Certificate with ~~exception~~ Exception provided that sediment and erosion control for upland areas is addressed ~~to the maximum extent practical~~ outside the riparian buffer		X		
(iii) In-stream temporary erosion and sediment control measures for work within a stream channel that is authorized under Sections 401 and 404 of the Federal ~~Water Pollution Control~~Clean Water Act	X			
~~(iv) In-stream temporary erosion and sediment control measures for work within a stream that has written approval from the Division and the U.S. Army Corps of Engineers under Sections 401 & 404 of the Federal Water Pollution Control Act~~		~~X~~		
~~Underground electric utility lines:~~				
• ~~Impacts other than perpendicular crossings in Zone 2 only[3]~~	~~X~~			
• ~~Impacts other than perpendicular crossings in Zone 1[4]~~	~~X~~			

	~~Exempt~~ Deemed Allowable	Allowable Upon Authorization	Allowable with Mitigation Upon Authorization	Prohibited
~~Underground electric utility line perpendicular crossings of streams and other surface waters subject to this Rule:~~ • ~~Perpendicular crossings that disturb less than or equal to 40 linear feet of riparian buffer~~ [4] • ~~Perpendicular crossings that disturb greater than 40 linear feet of riparian buffer~~ [4]	~~X~~	~~X~~		
(gg) Utility Lines - Streambank stabilization for the protection of publicly owned utility lines (not including new line installation): (i) Less than 150 feet of streambank disturbance (ii) Greater than 150 feet of streambank disturbance	X	X		
(hh) Utility – Sewer lines - Sanitary Sewer Overflows: (i) Emergency sanitary sewer overflow response activities, provided that the disturbed area within the riparian buffer outside of the existing utility line maintenance corridor~~:~~ is the minimum necessary to respond to the emergency overflow, is restored to pre-construction topographic and hydrologic conditions, and is replanted with comparable vegetation (e.g. grass with grass, hardwoods with hardwoods) within two months of when disturbance is complete	X			

	~~Exempt~~ Deemed Allowable	Allowable Upon Authorization	Allowable with Mitigation Upon Authorization	Prohibited
(ii) Emergency sanitary sewer overflow response activities that do not meet the listing above. ~~activities, provided the disturbed area within the buffer: is the minimum necessary to respond to the emergency overflow and is not fully restored to pre-construction topographic and hydrologic conditions~~. For any new proposed permanent impacts ~~proposed to remain permanently~~ that are not a "Deemed Allowable Activity", an application for an Authorization Certificate must be submitted to the ~~authority~~ Authority ~~within~~ no later than 30 calendar days of conclusion of the emergency response activities		X		
(ii) Utility - Sewer Lines – Vegetation m~~M~~aintenance a~~A~~ctivities that remove forest vegetation ~~for~~ from existing sewer utility right of ways (not including new line installation) ~~ways/corridors~~ outside of the existing utility line maintenance corridor: ~~that do not meet the criteria of existing use in Item (6) of this Rule~~:				
(i) Zone 2 impacts	X			
(ii) Zone 1 impacts: For lines that have not been maintained, the vegetation can be mowed, cut or otherwise maintained without disturbance to the soil structure for a maintenance corridor that is equal to or less than 30 feet wide ~~impacts provided no clearing within 10 feet of the stream~~	X			
~~Zone 1 impacts, provided the permanent maintenance corridor is kept to 10 feet on either side of the existing sewer line. Clearing within 10 feet of the stream may occur provided no grading or grubbing occurs within this area~~	~~X~~			

	~~Exempt~~ Deemed Allowable	Allowable Upon Authorization	Allowable with Mitigation Upon Authorization	Prohibited
~~Zone 1 impacts, provided the permanent maintenance corridor is kept to 10 feet on either side of the existing sewer line. Clearing, grading and grubbing can occur within 10 feet of the stream provided the grading and grubbing within 10 feet is less than 2,500 square feet~~		~~X~~		
(ii) Zone 1 impacts other than those listed above		X	~~X~~	
(jj) Utility - Sewer Lines –Replacement/Rehabilitation of existing sewer lines within, or adjacent to, an existing right of way but outside of an existing utility line maintenance corridor provided ~~the~~ that comparable vegetation (e.g. grass with grass, hardwoods with hardwoods) is allowed to regenerate in disturbed ~~areas~~ riparian buffers outside of the permanent maintenance corridor and riparian buffers outside of the permanent maintenance corridor are not maintained:				
(i) Permanent maintenance corridor equal to or less than 30 feet wide provided there is no grading and/or grubbing within 10 feet of the top of bank when the sewer line is parallel to the stream	X			
(ii) Grading and/or grubbing within 10 feet of the top of bank when the sewer line is parallel to the stream and permanent maintenance corridor equal to or less than 30 feet wide		X		
(iii) Permanent maintenance corridor greater than 30 feet wide. For impacts other than perpendicular crossings, mitigation is only required for Zone 1 impacts. For perpendicular crossings that disturb equal to or less than 40 linear feet, no mitigation is required. For perpendicular crossings that disturb greater than 40 linear feet, mitigation is only required for Zone 1 impacts			X	

	~~Exempt~~ Deemed Allowable	Allowable Upon Authorization	Allowable with Mitigation Upon Authorization	Prohibited
(kk) Utility - Sewer Lines – New Line Construction/Installation Activities – Perpendicular crossings of streams and other surface waters subject to this Rule or perpendicular entry into the riparian buffer that does not cross a stream or other surface water subject to this Rule provided that vegetation is allowed to regenerate in disturbed areas outside of the permanent maintenance corridor: ~~New Sewer Line Construction Activities (including replacement/rehabilitation that does not meet the criteria of existing use in Item (6) of this Rule) provided that (1) vegetative root systems and stumps are left intact to maintain the integrity of the soil except in the trench where trees are cut, and (2) vegetation is allowed to regenerate in disturbed areas, except within the permanent maintenance corridor:~~				
(i) Construction corridor of less ~~Less~~ than or equal to 40 linear feet wide ~~with~~ and a permanent maintenance corridor that is equal to or less than ~~20~~ 30 feet wide~~in width~~	X			
(ii) Construction corridor of greater ~~Greater~~ than 40 linear feet wide and less than or equal to 150 linear feet wide ~~with~~ and a permanent maintenance corridor that is equal to or less than ~~20~~ 30 feet wide~~in width~~		X		
(iii) Construction corridor of greater ~~Greater~~ than 150 linear feet wide ~~with~~ and a permanent maintenance corridor that is equal to or less than ~~20~~ 30 feet wide~~in width~~			X	

	~~Exempt~~ Deemed Allowable	Allowable Upon Authorization	Allowable with Mitigation Upon Authorization	Prohibited
(iv) Permanent maintenance corridor greater than ~~20~~ 30 linear feet wide. ~~(mitigation is required only for impacts beyond the 20 linear feet corridor width)~~ For impacts other than perpendicular crossings, mitigation is only required for Zone 1 impacts. For perpendicular crossings that disturb equal to or less than 40 linear feet, no mitigation is required. For perpendicular crossings that disturb greater than 40 linear feet, mitigation is only required for Zone 1 impacts			X	
(ll) Utility - Sewer Lines – New Line Construction/Installation Activities – Impacts other than perpendicular crossings provided that vegetation is allowed to regenerate in disturbed areas outside of the permanent maintenance corridor:				
(i) Zone 2 ~~only~~impacts	X			
(ii) Zone 1 impacts to less than 2,500 square feet when impacts are solely the result of tying into an existing utility line and when grubbing or grading within10 feet immediately adjacent to the surface water is avoided		X		
~~Zone 1 impacts for replacement/rehabilitation within an existing Right of Way when land grubbing or grading within 10 feet immediately adjacent to the surface water is avoided~~		~~X~~		
(iii) Zone 1 impacts other than those listed above			X	
(mm) Utility – Non-Sewer Underground Lines – Vegetation m~~M~~aintenance a~~A~~ctivities that remove forest vegetation from existing utility right of ways (not including new line installation) outside of the existing utility line maintenance corridor:				

	~~Exempt~~ Deemed Allowable	Allowable Upon Authorization	Allowable with Mitigation Upon Authorization	Prohibited
(i) Zone 2 impacts ~~Vegetation maintenance activities along an existing utility line beyond the footprint of an existing utility line maintenance corridor where the total maintenance corridor is equal to or less than 30 linear feet in width~~	X	~~X~~		
(ii) Zone 1 impacts: For lines that have not been maintained, the vegetation can be mowed, cut or otherwise maintained without disturbance to the soil structure for a maintenance corridor that is equal to or less than 30 feet wide	X			
(iii) Zone 1 impacts other than those listed above ~~Vegetation maintenance activities along an existing utility line beyond the footprint of an existing utility line maintenance corridor where the total maintenance corridor is greater than 30 linear feet in width~~		X	~~X~~	
(nn) Utilities – Non-~~S~~sewer ~~U~~underground ~~L~~lines. Perpendicular crossings of streams and other surface waters subject to this Rule or perpendicular entry into the riparian buffer that does not cross a stream or other surface water subject to this Rule provided that vegetation is allowed to regenerate in disturbed areas outside of the permanent maintenance corridor:				
(i) Construction ~~activities that disturb~~corridor of less than or equal to 50 linear feet wide ~~of riparian buffer provided that vegetative root systems and stumps shall be left intact to maintain the integrity of the soil except in the trench where trees are cut and that vegetation is allowed to regenerate in disturbed areas with the exception of~~ and a permanent maintenance corridor that is equal to or less than 30 feet wide~~in width~~	X			

	~~Exempt~~ Deemed Allowable	Allowable Upon Authorization	Allowable with Mitigation Upon Authorization	Prohibited
(ii) Construction ~~activities that disturb~~corridor of greater than 50 linear feet wide and less than or equal to 150 linear feet wide ~~of riparian buffer provided that vegetative root systems and stumps shall be left intact to maintain the integrity of the soil except in the trench where trees are cut and that vegetation is allowed to regenerate in disturbed areas with the exception of~~ and a permanent maintenance corridor that is equal to or less than 30 feet wide~~in width~~		X		
(iii) Construction ~~activities that disturb~~corridor of greater than 150 linear feet wide ~~of riparian buffer~~ and a permanent maintenance corridor that is equal to or less than 30 feet wide~~in width~~			X	
(iv) Permanent maintenance corridor that is greater than 30 linear feet wide (mitigation is required only for Zone 1 impacts) ~~Any activities with a permanent maintenance corridor greater than 30 feet in width~~			X	
(oo) Utility – Non-Sewer Underground Lines – Impacts other than perpendicular crossings provided that vegetation is allowed to regenerate in disturbed areas outside of the permanent maintenance corridor:				
(i) Zone 2 ~~only~~ impacts ~~Impacts in Zone Two provided vegetation is re-established after disturbance and the function of Zone 1 is not compromised~~	X			

	~~Exempt~~ Deemed Allowable	Allowable Upon Authorization	Allowable with Mitigation Upon Authorization	Prohibited
(ii) ~~Impacts in Zone One~~ Zone 1 impacts to less than 2,500 square feet when impacts are solely the result of tying into an existing utility line and when grubbing or grading ~~provided that land grubbing or grading is not conducted~~ within 10 feet immediately adjacent to the surface water is avoided		X		
(iii) Impacts in Zone One other than listed above		X	~~X~~	
(pp) Utilities – Non-~~S~~sewer ~~A~~aerial ~~L~~lines. Perpendicular crossings of streams and other surface waters subject to this Rule or perpendicular entry into the riparian buffer that does not cross a stream or other surface water subject to this Rule:				
(i) Disturb equal to or less than 150 linear feet wide of riparian buffer provided that a minimum zone of 10 feet wide immediately adjacent to the ~~water body~~waterbody is managed such that only vegetation that poses a hazard or has the potential to grow tall enough to interfere with the line is removed, that no land grubbing or grading is conducted in Zone 1, and that that poles or aerial infrastructure are not installed within 10 feet of a ~~water body~~waterbody	X			
(ii) Disturb greater than 150 linear feet wide of riparian buffer		X		
(qq) Utilities – Non-~~S~~sewer ~~A~~aerial ~~L~~lines. Impacts other than perpendicular crossings of streams and other surface waters subject to this Rule or perpendicular entry into the riparian buffer that does not cross a stream or other surface water subject to this Rule:				
(i) Impacts in Zone ~~Two~~ 2 only		X		

	~~Exempt~~ Deemed Allowable	Allowable Upon Authorization	Allowable with Mitigation Upon Authorization	Prohibited
(ii) Impacts in Zone ~~One~~ 1 provided that a minimum zone of 10 feet wide immediately adjacent to the ~~water body~~waterbody is managed such that only vegetation that poses a hazard or has the potential to grow tall enough to interfere with the line is removed, that no land grubbing or grading is conducted in Zone 1, and that that poles or aerial infrastructure are not installed within 10 feet of a ~~water body~~waterbody			X	
(rr) Vegetation management:				
(i) Emergency fire control measures provided that topography is restored	X			
(ii) Periodic mowing and harvesting of plant products only in Zone 2 ~~only~~	X			
(iii) Placement of mulch ring around restoration plantings for a period of five years from the date of planting	X			
(iv) Planting non-invasive vegetation to enhance the riparian buffer	X			
(v) Pruning forest vegetation provided that the health and function of the forest vegetation is not compromised	X			
(vi) Removal of individual ~~trees~~ trees, branches or limbs, which are in danger of causing damage to dwellings, existing utility lines, other structures or human ~~life~~ life, or are imminently endangering stability of the streambank provided that the stumps are left or ground in place without causing additional land disturbance	X			
(vii) Removal of individual trees that are dead, diseased or damaged	X			

	~~Exempt~~ Deemed Allowable	Allowable Upon Authorization	Allowable with Mitigation Upon Authorization	Prohibited
(viii) Removal or poison ~~ivy~~ ivy, oak or sumac. Removal can include application of pesticides within the riparian buffer if the pesticides are certified by EPA for use in or near aquatic sites and are applied in accordance with the manufacturer's instructions. If removal is significant, then the riparian buffer shall be replanted with non-invasive species	X			
(ix) Removal of understory nuisance vegetation as defined in: Smith, Cherri L. 2008. Invasive Plants of North Carolina. Dept. of Transportation. Raleigh, NC (available at http://portal.ncdenr.org/c/document_library/get_file?uuid=0acc6377-ea07-42dc-bb27-45a78d1c7ebe&groupId=38364) ~~998. Exotic Plant Guidelines. Dept. of Environment and Natural Resources. Division of Parks and Recreation. Raleigh, NC. Guideline #30~~ . Removal can include application of pesticides within the riparian buffer is the pesticides are certified by EPA for use in or near aquatic sites and are applied in accordance with the manufacturer's instructions. If removal is significant then the riparian buffer shall be replanted with non-invasive species	X			
(x) Removal of woody vegetation in Zone 1 provided that Item (9) of this Rule is complied with			X	
(ss) Vehicle access roads and boat ramps (excluding parking areas) leading to surface water, docks, fishing piers, and other water dependent activities:				
(i) Single vehicular access road and boat ramp to the surface water but not crossing the surface water that are restricted to the minimum width practicable not to exceed 15 feet ~~in width~~wide		X		

	~~Exempt~~ Deemed Allowable	Allowable Upon Authorization	Allowable with Mitigation Upon Authorization	Prohibited
(ii) Vehicular access roads and boat ramps to the surface water but not crossing the surface water that are restricted to the minimum width practicable and exceed 15 feet ~~in width~~wide			X	
(tt) Water dependent structures (except for boat ramps) as defined in ~~15A NCAC 2B~~ Rule .0202 of this Subchapter		X		
(uu) Water supply reservoirs: (i) New reservoirs provided that a riparian buffer that meets the requirements of Items ~~(4)~~(8) and ~~(5)~~(9) of this Rule is established adjacent to the reservoir (ii) New reservoirs where a riparian buffer that meets the requirements of Items ~~(4)~~(8) and ~~(5)~~(9) of this Rule is NOT established adjacent to the reservoir		X	X	
(vv) Water wells	X			
(ww) Wildlife passage structures		X		
~~Wetland restoration~~	~~X~~			

~~[1] Provided that, in Zone 1, all of the following BMPs for overhead utility lines are used. If all of these BMPs are not used, then the overhead utility lines shall require a no practical alternative evaluation by the Division.~~

- ~~A minimum zone of 10 feet wide immediately adjacent to the water body shall be managed such that only vegetation that poses a hazard or has the potential to grow tall enough to interfere with the line is removed.~~
- ~~Woody vegetation shall be cleared by hand. No land grubbing or grading is allowed.~~
- ~~Vegetative root systems shall be left intact to maintain the integrity of the soil. Stumps shall remain where trees are cut.~~
- ~~Rip rap shall not be used unless it is necessary to stabilize a tower.~~
- ~~No fertilizer shall be used other than a one-time application to re-establish vegetation.~~
- ~~Construction activities shall minimize the removal of woody vegetation, the extent of the disturbed area, and the time in which areas remain in a disturbed state.~~
- ~~Active measures shall be taken after construction and during routine maintenance to ensure diffuse flow of stormwater through the buffer.~~
- ~~In wetlands, mats shall be utilized to minimize soil disturbance.~~

~~[2] Provided that poles or towers shall not be installed within 10 feet of a water body unless the Division completes a no practical alternative evaluation.~~

~~[3] Perpendicular crossings are those that intersect the surface water at an angle between 75° and 105°.[4] Provided that, in Zone 1, all of the following BMPs for underground utility lines are used. If all of these BMPs are not used, then the underground utility line shall require a no practical alternative evaluation by the Division.~~

- ~~Woody vegetation shall be cleared by hand. No land grubbing or grading is allowed.~~
- ~~Vegetative root systems shall be left intact to maintain the integrity of the soil. Stumps shall remain, except in the trench, where trees are cut.~~
- ~~Underground cables shall be installed by vibratory plow or trenching.~~
- ~~The trench shall be backfilled with the excavated soil material immediately following cable installation.~~
- ~~No fertilizer shall be used other than a one-time application to re-establish vegetation.~~
- ~~Construction activities shall minimize the removal of woody vegetation, the extent of the disturbed area, and the time in which areas remain in a disturbed state.~~
- ~~Active measures shall be taken after construction and during routine maintenance to ensure diffuse flow of stormwater through the buffer.~~
- ~~In wetlands, mats shall be utilized to minimize soil disturbance.~~

~~(7) REQUIREMENTS FOR CATEGORIES OF USES. Uses designated as exempt, allowable, allowable with mitigation and prohibited in Item (6) of this Rule shall have the following requirements:~~

~~(a) EXEMPT. Uses designated as exempt are allowed within the riparian buffer. Exempt uses shall be designed, constructed and maintained to minimize soil disturbance and to provide the maximum water quality protection practicable. In addition, exempt uses shall meet requirements listed in Item (6) of this Rule for the specific use.~~

~~(b) ALLOWABLE. Uses designated as allowable may proceed within the riparian buffer provided that there are no practical alternatives to the requested use pursuant to Item (8) of this Rule. These uses require written authorization from the Division or the delegated local authority.~~

~~(c) ALLOWABLE WITH MITIGATION. Uses designated as allowable with mitigation may proceed within the riparian buffer provided that there are no practical alternatives to the requested use pursuant to Item (8) of this Rule and an appropriate mitigation strategy has been approved pursuant to Item (10) of this Rule. These uses require written authorization from the Division or the delegated local authority.~~

~~(d) PROHIBITED. Uses designated as prohibited may not proceed within the riparian buffer unless a variance is granted pursuant to Item (9) of this Rule. Mitigation may be required as one condition of a variance approval.~~

~~(8) DETERMINATION OF ANO PRACTICAL ALTERNATIVES." Persons who wish to undertake uses designated as allowable or allowable with mitigation shall submit a request for a "no practical alternatives" determination to the Division or to the delegated local authority. The applicant shall~~

~~certify that the criteria identified in Sub-Item (8)(a) of this Rule are met. The Division or the delegated local authority shall grant an Authorization Certificate upon a "no practical alternatives" determination. The procedure for making an Authorization Certificate shall be as follows:~~

~~(a) For any request for an Authorization Certificate, the Division or the delegated local authority shall review the entire project and make a finding of fact as to whether the following requirements have been met in support of a "no practical alternatives" determination:~~

~~(i) The basic project purpose cannot be practically accomplished in a manner that would better minimize disturbance, preserve aquatic life and habitat, and protect water quality.~~

~~(ii) The use cannot practically be reduced in size or density, reconfigured or redesigned to better minimize disturbance, preserve aquatic life and habitat, and protect water quality.~~

~~(iii) Best management practices shall be used if necessary to minimize disturbance, preserve aquatic life and habitat, and protect water quality.~~

~~(b) Requests for an Authorization Certificate shall be reviewed and either approved or denied within 60 days of receipt of a complete submission based on the criteria in Sub-Item (8)(a) of this Rule by either the Division or the delegated local authority. Failure to issue an approval or denial within 60 days shall constitute that the applicant has demonstrated "no practical alternatives." The Division or the delegated local authority may attach conditions to the Authorization Certificate that support the purpose, spirit and intent of the riparian buffer protection program. Complete submissions shall include the following:~~

~~(i) The name, address and phone number of the applicant;~~

~~(ii) The nature of the activity to be conducted by the applicant;~~

~~(iii) The location of the activity, including the jurisdiction;~~

~~(iv) A map of sufficient detail to accurately delineate the boundaries of the land to be utilized in carrying out the activity, the location and dimensions of any disturbance in riparian buffers associated with the activity, and the extent of riparian buffers on the land;~~

~~(v) An explanation of why this plan for the activity cannot be practically accomplished, reduced or reconfigured to better minimize disturbance to the riparian buffer, preserve aquatic life and habitat and protect water quality; and~~

~~(vi) Plans for any best management practices proposed to be used to control the impacts associated with the activity.~~

~~(c) Any disputes over determinations regarding Authorization Certificates shall be referred to the Director for a decision. The Director's decision is subject to review as provided in Articles 3 and 4 of G.S. 150B.~~

~~(9) VARIANCES. Persons who wish to undertake uses designated as prohibited may pursue a variance. The Division or the appropriate delegated local authority may grant minor variances. The variance request procedure shall be as follows:~~

~~(a) For any variance request, the Division or the delegated local authority shall make a finding of fact as to whether the following requirements have been met:~~

~~(i) There are practical difficulties or unnecessary hardships that prevent compliance with the strict letter of the riparian buffer protection requirements. Practical difficulties or unnecessary hardships shall be evaluated in accordance with the following:~~

~~(A) If the applicant complies with the provisions of this Rule, he/she can secure no reasonable return from, nor make reasonable use of, his/her property. Merely proving that the variance would permit a greater profit from the property shall not be considered adequate justification for a variance. Moreover, the Division or delegated local authority shall consider whether the variance is the minimum possible deviation from the terms of this Rule that shall make reasonable use of the property possible.~~

~~(B) The hardship results from application of this Rule to the property rather than from other factors such as deed restrictions or other hardship.~~

~~(C) The hardship is due to the physical nature of the applicant's property, such as its size, shape, or topography, which is different from that of neighboring property.~~

~~(D) The applicant did not cause the hardship by knowingly or unknowingly violating this Rule.~~

~~(E) The applicant did not purchase the property after the effective date of this Rule, and then request an appeal.~~

~~(F) The hardship is unique to the applicant's property, rather than the result of conditions that are widespread. If other properties are equally subject to the hardship created in the restriction, then granting a variance would be a special privilege denied to others, and would not promote equal justice;~~

~~(ii) The variance is in harmony with the general purpose and intent of the State's riparian buffer protection requirements and preserves its spirit; and~~

~~(iii) In granting the variance, the public safety and welfare have been assured, water quality has been protected, and substantial justice has been done.~~

~~(b) MINOR VARIANCES. A minor variance request pertains to activities that are proposed only to impact any portion of Zone 2 of the riparian buffer. Minor variance requests shall be reviewed and approved based on the criteria in Sub-Item (9)(a) of this Rule by the either the Division or the delegated local authority pursuant to G.S. 153A Article 18, or G.S. 160A Article 19. The Division or the delegated local authority may attach conditions to~~

~~the variance approval that support the purpose, spirit and intent of the riparian buffer protection program. Requests for appeals of decisions made by the Division shall be made to the Office of Administrative Hearings. Request for appeals made by the delegated local authority shall be made to the appropriate Board of Adjustment under G.S. 160A-388 or G.S. 153A-345.~~

~~(c) MAJOR VARIANCES. A major variance request pertains to activities that are proposed to impact any portion of Zone 1 or any portion of both Zones 1 and 2 of the riparian buffer. If the Division or the delegated local authority has determined that a major variance request meets the requirements in Sub-Item (9)(a) of this Rule, then it shall prepare a preliminary finding and submit it to the Commission. Preliminary findings on major variance requests shall be reviewed by the Commission within 90 days after receipt by the Director. Requests for appeals of determinations that the requirements of Sub-Item (9)(a) of this Paragraph have not been met shall be made to the Office of Administrative Hearings for determinations made by the Division or the appropriate Board of Adjustments under G.S. 160A-388 or G.S. 153A-345 for determinations made by the delegated local authority. The purpose of the Commission's review is to determine if it agrees that the requirements in Sub-Item (9)(a) of this Rule have been met. Requests for appeals of decisions made by the Commission shall be made to the Office of Administrative Hearings. The following actions shall be taken depending on the Commission's decision on the major variance request:~~

~~(i) Upon the Commission's approval, the Division or the delegated local authority shall issue a final decision granting the major variance.~~

~~(ii) Upon the Commission's approval with conditions or stipulations, the Division or the delegated local authority shall issue a final decision, which includes these conditions or stipulations.~~

~~(iii) Upon the Commission's denial, the Division or the delegated local authority shall issue a final decision denying the major variance.~~

~~(10)~~(11)(12) MITIGATION. Persons who wish to undertake uses designated as allowable with mitigation upon authorization as defined in Sub-Item (10)(a)(iii) of this Rule or allowable with exception as defined in Sub-Item (10)(a)(v) of this Rule shall meet the following requirements in order to proceed with their proposed use.

(a) Obtain ~~a determination of "no practical alternatives" to the proposed use~~ an Authorization Certificate pursuant to ~~Item (8) of this Rule.~~ Rule .0295 of this Subchapter; and

(b) Obtain written approval for a mitigation proposal pursuant to ~~15A NCAC 02B .0260.~~ Rule .0295 of this Subchapter.

~~(11) REQUIREMENTS SPECIFIC TO FOREST HARVESTING. The following requirements shall apply for forest harvesting operations and practices.~~

~~(a) The following measures shall apply in the entire riparian buffer:~~

~~(i) Logging decks and sawmill sites shall not be placed in the riparian buffer.~~

~~(ii) Access roads and skid trails shall be prohibited except for temporary and permanent stream crossings established in accordance with 15A NCAC 01I .0203. Temporary stream crossings shall be permanently stabilized after any site disturbing activity is completed.~~

~~(iii) Timber felling shall be directed away from the stream or water body.~~

~~(iv) Skidding shall be directed away from the stream or water body and shall be done in a manner that minimizes soil disturbance and prevents the creation of channels or ruts.~~

~~(v) Individual trees may be treated to maintain or improve their health, form or vigor.~~

~~(vi) Harvesting of dead or infected trees or application of pesticides necessary to prevent or control extensive tree pest and disease infestation shall be allowed. These practices must be approved by the Division of Forest Resources for a specific site. The Division of Forest Resources must notify the Division of all approvals.~~

~~(vii) Removal of individual trees that are in danger of causing damage to structures or human life shall be allowed.~~

~~(viii) Natural regeneration of forest vegetation and planting of trees, shrubs, or ground cover plants to enhance the riparian buffer shall be allowed provided that soil disturbance is minimized. Plantings shall consist primarily of native species.~~

~~(ix) High intensity prescribed burns shall not be allowed.~~

~~(x) Application of fertilizer shall not be allowed except as necessary for permanent stabilization.~~

~~(xi) Broadcast application of fertilizer or herbicides to the adjacent forest stand shall be conducted so that the chemicals are not applied directly to or allowed to drift into the riparian buffer.~~

~~(b) In Zone 1, forest vegetation shall be protected and maintained. Selective harvest as provided for below is allowed on forest lands that have a deferment for use value under forestry in accordance with G.S. 105-277.2 through G.S. 277.6 or on forest lands that have a forest management plan prepared or approved by a registered professional forester. Copies of either the approval of the deferment for use value under forestry or the forest management plan shall be produced upon request. For such forest lands, selective harvest is allowed in accordance with the following:~~

~~(i) Tracked or wheeled vehicles are not permitted except at stream crossings designed, constructed and maintained in accordance with 15A NCAC 01I .0203.~~

~~(ii) Soil disturbing site preparation activities are not allowed.~~

~~(iii) Trees shall be removed with the minimum disturbance to the soil and residual vegetation.~~

~~(iv) The following provisions for selective harvesting shall be met:~~

~~(A) The first 10 feet of Zone 1 directly adjacent to the stream or waterbody shall be undisturbed except for the removal of individual high value trees as defined provided that no trees with exposed primary roots visible in the streambank be cut.~~

~~(B) In the outer 20 feet of Zone 1, a maximum of 50 percent of the trees greater than five inches dbh may be cut and removed. The reentry time for harvest shall be no more frequent than every 15 years, except on forest plantations where the reentry time shall be no more frequent than every five years. In either case, the trees remaining after harvest shall be as evenly spaced as possible.~~

~~(C) In Zone 2, harvesting and regeneration of the forest stand shall be allowed provided that sufficient ground cover is maintained to provide for diffusion and infiltration of surface runoff.~~

~~(12)~~(13) REQUIREMENTS SPECIFIC TO LOCAL GOVERNMENTS WITH STORMWATER PROGRAMS FOR NITROGEN CONTROL. Local governments ~~in the Tar-Pamlico River Basin~~ that are required to have local stormwater programs ~~to control nitrogen loading~~ pursuant to Rule .0258 of this Subchapter shall have two options for ensuring protection of riparian buffers on new developments within their jurisdictions as follows.

(a) Obtain authority to implement a local riparian buffer protection program pursuant to ~~15A NCAC 02B .0261.~~ Rule .0735 of this Section; or~~.~~

(b) Refrain from issuing local approvals for new development projects unless either:

(i) The person requesting the approval does not propose to impact the riparian buffer ~~of a surface water that appears on either the most recent versions of the soil survey maps prepared by the Natural Resources Conservation Service of the United States Department of Agriculture or the most recent versions of the 1:24,000 scale (7.5 minute quadrangle) topographic maps prepared by the United States Geologic Survey (USGS).~~ as described in Item (3) of this Rule; or~~.~~

(ii) The person requesting the approval proposes to impact the riparian buffer ~~of a surface water that appears on the maps~~ as described in ~~Sub-Item (12)(b)(i) of this Paragraph~~ Item (3) of this Rule and either:

(A) Has received an on-site determination from the ~~Division~~ Authority pursuant to ~~Sub-Item (3)(a)~~ Item (4) of this Rule that surface waters are not present in the location of the proposed impact;

(B) The activity is designated as exempt under this Rule;

~~(B)~~(C) Has received an Authorization Certificate from the Authority ~~Division~~ pursuant to ~~Item (8) of this~~ Rule .0611 of this Subchapter for uses designated as ~~Allowable~~ allowable upon authorization under this Rule;

~~(C)~~(D) Has received an Authorization Certificate from the Authority ~~Division~~ pursuant to ~~Item (8) of this~~ Rule .0611 of this Subchapter and obtained the ~~Division's~~ Authority's approval on a mitigation plan pursuant to Item ~~(10)~~(11) of this Rule for uses designated as ~~Allowable~~ allowable with Mitigation upon authorization under this Rule; ~~or~~

~~(D)~~(E) Has received ~~a variance from the Commission~~ an exception from the Authority pursuant ~~to Item (9) of this Rule.~~ Rule .0611 of this Subchapter; or

(F) Has received a Variance pursuant to Rule .0611 of this Subchapter.~~.~~

~~(13)~~(14) OTHER LAWS, REGULATIONS AND PERMITS. In all cases, compliance with this Rule does not preclude the requirement to comply with all federal, state and local regulations and laws.

History Note: *Authority 143-214.1; 143-214.7; 143-215.3(a)(1); 143-215.6A; 143-215.6B; 143-215.6C; 143B-282(d); S.L. 1999, c. 329, s. 7.1; S.L 2011, c. 394; S.L 2012, c. 200; S.L 2013, c. 413; S.L 2015 c. 246; S.L. 2017, c. 209*

Temporary Adoption Eff. January 1, 2000;

Eff. August 1, 2000.

Readopted Eff. [New Date].

The provisions of this Rule were transferred from 15A NCAC 02B .0259. The provisions of item (2) of 15A NCAC 02B .0259 were transferred to 15A NCAC 02B .0610. The provisions of item (8) & (9) of 15A NCAC 02B .0259 were transferred to 15A NCAC 02B .0611. The provisions of item (11) of 15A NCAC 02B .0259 were transferred to 15A NCAC 02B .0612.

15A NCAC 02B ~~.0261~~ .0735 TAR-PAMLICO RIVER BASIN - NUTRIENT SENSITIVE WATERS MANAGEMENT STRATEGY: DELEGATION OF AUTHORITY FOR THE PROTECTION AND MAINTENANCE OF EXISTING RIPARIAN BUFFERS

This Rule sets out the ~~following~~ requirements for delegation of the responsibility for implementing and enforcing the Tar-Pamlico Basin riparian buffer protection program, as described in Rule ~~15A NCAC 2B .0259,~~ .0734 of this Section, to local governments:

(1) PROCEDURES FOR GRANTING ~~AND RESCINDING~~ DELEGATION. The Commission shall grant ~~and rescind~~ local government delegation of the Tar-Pamlico River Basin Riparian Buffer Protection requirements, as described in Rule ~~15A NCAC 2B. 0259,~~ .0734 of this Section according to the following ~~procedures.~~ procedures:

(a) Local governments within the Tar-Pamlico River Basin may submit a written request to the Commission for authority to implement and enforce the Tar-Pamlico River Basin riparian buffer protection requirements within their ~~jurisdiction.~~ jurisdiction by establishing a riparian buffer program to meet the requirements of Rule .0734 of this Section. The written request to establish a riparian buffer program shall ~~be accompanied by information which shows:~~ include the following:

(i) ~~The~~ Documentation that the local government has land use jurisdiction for the riparian ~~buffer~~ buffer. This can be demonstrated by delineating the local land use jurisdictional boundary on the USGS 1:24,000 topographical map(s) or other finer scale map(s);

(ii) ~~The~~ Documentation that the local government has the administrative organization, staff, legal authority, financial resources and other resources necessary to implement and enforce the Tar-Pamlico River Basin riparian buffer protection requirements based on its size and projected amount of development;

(iii) The local government ~~has adopted~~ ordinances, resolutions, or regulations necessary to establish ~~and maintain the Tar-Pamlico Basin riparian buffer protection requirements; and~~ a riparian buffer program to meet the requirements of Rule .0734 of this Section and G.S. 143-214.23A;

(iv) Documentation that the local government's riparian buffer program ~~complies~~ will comply with all requirements set forth in G.S. 143-214.23A; and

~~(iv)~~(v) ~~The local government has provided a~~ A plan to address violations with appropriate remedies and actions including, but not limited to, civil or criminal remedies that shall restore riparian buffer nutrient removal functions on violation sites and provide a deterrent against the occurrence of future violations.

(b) Within 90 days after the Commission has received the request for delegation, the Commission shall notify the local government whether it has been approved, approved with modifications, or denied.

~~(c) The Commission, upon determination that a delegated local authority is failing to implement or enforce the Tar-Pamlico Basin riparian buffer protection requirements in keeping with a request approved under Sub-item (1)(b) of this Rule, shall notify the delegated local authority in writing of the local program's inadequacies. If the delegated local authority has not corrected the deficiencies within 90 days of receipt of the written notification, then the Commission shall rescind the delegation of authority to the local government and shall implement and enforce the Tar-Pamlico Basin riparian buffer protection requirements.~~

~~(d) The Commission may delegate its duties and powers for granting and rescinding local government delegation of the Tar-Pamlico Basin riparian buffer protection requirements, in whole or in part, to the Director.~~

(2) APPOINTMENT OF A RIPARIAN BUFFER PROTECTION ADMINISTRATOR. Upon receiving delegation, local governments shall appoint a Riparian Buffer Protection Administrator(s) who shall coordinate the implementation and enforcement of the program. The Administrator(s) shall attend an initial training session by the Division and ~~subsequent annual training sessions.~~ be certified to make on-site determinations pursuant to G.S. 143-214.25A. The Administrator(s) shall ensure that local government ~~staff~~ staffs working directly with the program receive training to understand, implement and enforce the ~~program.~~ program and are certified to make on-site determinations pursuant to G.S. 143-214.25A. If a local government does not have anyone on staff certified to make on-site determinations pursuant to G.S. 143-214.25A, they shall immediately notify the Division and indicate a proposed schedule to secure a certified staff member. The local government shall coordinate with the Division to provide on-site determinations until a new certified staff member is secured by the local government.

(3) PROCEDURES FOR USES WITHIN RIPARIAN BUFFERS THAT ARE ALLOWABLE UPON AUTHORIZATION AND ALLOWABLE WITH ~~MITIGATION.~~ MITIGATION UPON AUTHORIZATION. Upon receiving delegation, local ~~authorities~~ governments shall review ~~proposed uses within the riparian buffer and issue approvals if the uses meet the Tar-Pamlico Basin riparian buffer protection requirements. Delegated local authorities shall issue an Authorization Certificate for uses if the proposed use meets the Tar-Pamlico Basin riparian buffer protection requirements, or provides for appropriate mitigated provisions to the Tar-Pamlico Basin riparian buffer protection requirements. The Division may challenge a decision made by a delegated local authority for a period of 30 days after the Authorization Certificate is issued. If the Division does not challenge an Authorization Certificate within 30 days of issuance, then the delegated local~~

~~authority's decision shall stand.~~ applications requesting an Authorization Certificate pursuant to the requirements set forth in Rule .0705 of this Section.

(4) ~~VARIANCES.~~ EXCEPTIONS. ~~After~~ Upon receiving delegation, local governments shall review applications requesting an Authorization Certificate with Exception pursuant to the requirements set forth in Rule .0705 of this Section. ~~variance requests, provide approvals for minor variance requests and make recommendations to the Commission for major variance requests pursuant to the Tar-Pamlico Basin riparian buffer protection program.~~

(5) LIMITS OF DELEGATED LOCAL AUTHORITY. The ~~Commission~~ Division shall have jurisdiction to the exclusion of local governments to implement the Tar-Pamlico Basin riparian buffer protection requirements for the following types of activities:

(a) Activities conducted under the authority of the State;

(b) Activities conducted under the authority of the United States;

(c) Activities conducted under the authority of multiple jurisdictions;

(d) Activities conducted under the authority of local units of ~~government.~~ government;

(e) Forest harvesting activities described in Rule .0706 of this Section; and

(f) Agricultural activities.

(6) RECORD-KEEPING REQUIREMENTS. Delegated local ~~authorities~~ governments shall maintain on-site records for a minimum of 5 years~~. Delegated local authorities governments must~~ and shall furnish a copy of these records to the ~~Director~~ Division within 30 calendar days of receipt of a written request for ~~the records~~them. ~~The Division shall inspect local riparian buffer protection programs to ensure that the programs are being implemented and enforced in keeping with a request approved under Sub-item (1)(b) of this Rule.~~ Each delegated local ~~authority's~~ government's records shall include the following:

(a) A copy of ~~variance~~ all Authorization Certificates with Eexception requests;

(b) ~~The~~ Findings on all ~~variance~~ Authorization Certificates with Eexception ~~request's finding of fact;~~requests;

(c) The results of ~~the~~ all ~~variance~~ Authorization Certificates with Eexception proceedings;

(d) A record of complaints and action taken as a result of the complaints;

(e) Records for on-site determinations as described in Item (4) of this Rule~~stream origin calls and stream ratings~~; and

(f) Copies of all requests for authorization, records approving authorization and Authorization Certificates.

(7) AUDITS OF LOCAL AUTHORITIES. The Division shall regularly audit delegated local governments to ensure the local programs are being implemented and enforced in keeping with the requirements of this Rule and Rule .0734 of this Section. The audit shall consist of a review of all local government activities with regards to implementation of the Rules.

(8) PROCEDURES FOR RESCINDING DELEGATION. Upon determination by the Division that a delegated local government is failing to implement or enforce the Tar-Pamlico Basin riparian buffer protection requirements in keeping with the request approved under Sub-Item (1)(b) of this Rule, the Commission shall notify the delegated local government in writing of the local program's inadequacies. If the delegated local government has not corrected the deficiencies within 90 calendar days of receipt of the written notification, then the Commission shall rescind the delegation of authority to the local government and the Division shall implement and enforce the Tar-Pamlico River Basin riparian buffer protection requirements within their jurisdiction

(9) DELEGATION. The Commission may delegate its duties and powers for granting and rescinding local government delegation of the Tar-Pamlico River Basin riparian buffer protection requirements, in whole or in part, to the Director.

History Note: *Authority G S. 143-214.1; 143-214.7; 143-215.3(a)(1); 143-215.6A; 143-215.6B; 143-215.6C; 143B-282(d); S.L. 1999; c. 329, s. 7.1;*
Temporary Adoption Eff. January 1, 2000;
Eff. August 1, 2000.
Readoption Eff. [New Date].
The provisions of this Rule were transferred from 15A NCAC 02B .0261.

15A NCAC 02B .0402 SCOPE

Effluent limits established herein shall apply to all effluents discharged from pretreatment facilities and from outlets and point sources to the waters of the state.

History Note: *Authority G.S. 143-215; 143-215.1; 143-215.3(a)(1);*
Eff. February 1, ~~1976.~~1976;
Readopted Eff. <date>.

15A NCAC 02B .0403 DEFINITION OF TERMS

The terms used in this Section shall be as defined in G.S. ~~143-213~~ 143-212 and 143-213; the federal Clean Water Act (33 U.S.C. 1251 et seq.); 40 CFR Parts 122, 124, and 125; and as follows:

(1) ~~The term "commission"~~ "Commission" means the Environmental Management Commission or its successor.

(2) "Conventional pollutants" means biochemical oxygen demand (BOD(5)), Total Suspended Solids (TSS), pH, fecal coliform, oil and grease, and any other pollutants the USEPA designates as conventional in applicable regulations.

~~(2)~~(3) ~~The term "director"~~ "Director" means the Director of the Division of ~~Environmental Management,~~ Water Resources or Division of Energy, Mineral and Land Resources, or both, Department of ~~Natural Resources and Community Development.~~ Environmental Quality, whichever is the permitting authority in a particular instance; or his designee.

(4) "Division" means the Division of Water Resources or the Division of Energy, Mineral and Land Resources, or both, Department of Environmental Quality, whichever is the permitting authority in a particular instance.

~~(4) The term "BPCTCA" shall mean best practicable control technology currently available. Effluent limitations determined as BPCTCA are immediately applicable and shall be complied with not later than July 1, 1977.~~

~~(5) The term "BPWTT" shall mean best practicable waste treatment technology. Effluent limitations established by this designation shall be complied with not later than July 1, 1983.~~

~~(6) The term "BCT" shall mean best conventional pollutant control technology. Effluent limitations designated as BCT will control the discharge of pollutants determined to be conventional in nature and these limitations shall be complied with not later than July 1, 1984.~~

~~(7) The term "BAT" shall mean best available technology economically achievable. Effluent limitations designated as BAT will control the discharge of pollutants determined to be nonconventional in nature and these limitations will come into effect on July 1, 1984, and shall be complied with not later than July 1, 1987.~~

~~(8) The term "BAT/BMP'S" shall mean best available technology economically achievable/best management practices. Effluent limitations designated as BAT/BMP's will control the discharge of pollutants determined to be toxic in nature. Compliance with these designated effluent limitations must be maintained not later than three years after such limitations are developed, or not later than July 1, 1984, whichever is later, but in no case later than July 1, 1987.~~

~~(9) The term "new source performance standards" shall mean the effluent limitations required of an industrial discharger determined under the guidance of 15A NCAC 2B .0407 to be a new source.~~

~~(14)~~(5) ~~The term "effluent~~ "Effluent limited segment" means a segment where it is known that water quality is meeting and will continue to meet applicable water quality standards or where there is adequate

demonstration that water quality will meet applicable water quality standards after the application of minimum treatment requirements.

~~(12)~~(6) ~~The term "minimum~~ "Minimum treatment requirements" means the minimum technology-based effluent limitations that a specific discharge would be required to ~~comply with the designations secondary treatment as defined in 15A NCAC 2B .0406, BPWTT, BPCTCA, BCT, BAT and/or BMP's as required of a specific wastewater discharge.~~ meet in order to satisfy applicable treatment standards, including the following:

(a) "Secondary treatment" is the minimum standard of treatment for POTWs.

(b) "Best waste stabilization pond technology" is the standard of treatment for waste stabilization ponds treating municipal or similar wastewaters only.

(c) "Best practicable waste treatment technology," or "BPWTT," is an advanced standard of treatment for POTWs.

(d) "Best practicable pollutant control technology," or "BPT," is the minimum standard of treatment for existing industrial dischargers.

(e) "Best conventional pollutant control technology," or "BCT," is a standard of treatment for existing industrial dischargers and typically applies to conventional pollutants.

(f) "Best available technology economically achievable," or "BAT" is a standard of treatment for industrial dischargers and typically applies to nonconventional and priority pollutants.

(g) "New source performance standards" is the standard of treatment for industrial dischargers determined to be a new source pursuant to 15A NCAC 02B .0407.

Minimum treatment requirements must be met even if the receiving waters affected can or are expected to be able to accept higher pollutant-load levels and still meet applicable water quality standards.

(7) "Nonconventional pollutant" means any pollutant not categorized as a conventional or priority pollutant parameter.

~~(16)~~(8) ~~The term "oxygen~~ "Oxygen consuming wastes" means those wastewater discharge components recognized as being oxygen demanding in the aquatic environment. These are generally limited by BOD(5) and NH(3)-N.

(9) "Priority pollutant" means any chemical pollutant listed in 40 CFR Part 423, Appendix A, which is hereby adopted by reference, including any subsequent amendments and editions.

(10) "Publicly owned treatment works," or "POTW," means a treatment works owned by a State or a municipality and is as defined more fully in 40 CFR 403.3, which is hereby incorporated by reference including any subsequent amendments or editions. The current version of this regulation can be accessed free of charge at http://www.gpo.gov/fdsys/.

~~(15)~~(11) ~~The term "settleable~~ "Settleable solids" means the volumetric measurement of solids after a specified settling time. The determination of settleable solids shall be made in the following manner: one liter of the wastewater is placed in a standard Imhoff cone and allowed to settle for 45 minutes. After 45

minutes settling, the liquid layer is gently stirred and allowed to settle for 15 additional minutes. The volume of solids is immediately read in milliliter per liter (ml/l).

~~(3)~~(12) ~~The term "staff"~~ "Staff" means the ~~division of environmental management,~~ Division, or its successor.

(13) "Technology-based effluent limitations (or limits)," or "TBELs," means those effluent limits that are based on a required level of treatment performance.

~~(10)~~(14) ~~The term "waste~~ "Waste stabilization pond" (also called "lagoons" or "oxidation ponds") ~~shall mean~~ means a large, relatively shallow basin designed for long term detention of wastewater which may or may not have received prior treatment. While in the basin, the wastewater is biologically treated to reduce biochemical oxygen demand and suspended solids. Stabilization ponds are further defined as:

(a) Photosynthetic Pond. A pond which is designed to rely on photosynthetic oxygenation (i.e., oxygen from algae) for any portion of the oxygen needed for waste treatment; This includes oxidation ponds and facultative lagoons. These ponds may have supplemental aeration by mechanical means. With regard to hydraulic flow, photosynthetic ponds are either of the:

(i) flow-through type, in which the pond discharges relatively continuously throughout the year; or

(ii) controlled-discharge type, in which the pond is designed to retain the wastewater without discharge from six months to one year, followed by controlled discharge over a short time interval (typically about one to three weeks);

(b) Aerated Pond. A pond which is not designed to rely on any photosynthetic oxygenation to provide oxygen needed for biological waste treatment; ~~Air~~ air is supplied by mechanical means. Aerated ponds are ~~either:~~ either of the:

(i) ~~complete-mix,~~ complete-mix type, in which sufficient energy is imparted to the wastewater to prevent deposition of solids in the pond; or

(ii) ~~partial-mix,~~ partial-mix type, in which only sufficient energy is used to dissolve and mix oxygen in the wastewater. Solid materials settle in the partial-mix pond and are decomposed anaerobically. There will be algae in the partial-mix aerated pond, but usually far fewer than in a photosynthetic pond.

This definition does not include polishing or holding ponds which are preceded by other biochemical or physical/chemical secondary treatment processes and designed to increase their efficiency. The pond may be single-cell or multi-cell.

~~(11) The term "best waste stabilization pond technology" shall mean a monthly average effluent suspended solids concentration of 90 mg/l and a weekly maximum average effluent suspended solids concentration of 135 mg/l for those waste stabilization ponds that are achieving the level of effluent quality established for biochemical oxygen demand in .0406(a)(2) of this Section.~~

(15) "Water quality-based effluent limitations (or limits)," or "WQBELs," means those effluent limits that are established to ensure that a discharge does not cause or contribute to a contravention of state surface water quality standards.

~~(13)~~(16) ~~The term "water~~ "Water quality limited segment" means a segment where it is known that water quality does not meet applicable water quality standards or is not expected to meet them even after the application of minimum treatment requirements.

History Note: *Authority G.S. 143 - - 215; 143 - - 215.1; 143 - - 215.3(a)(1);*
Eff. February 1, 1976;
Amended Eff. August 12, 1979; November 1, 1978; December 1, ~~1976.~~ 1976;
Readopted <date>.

15A NCAC 02B .0404 WATER QUALITY BASED EFFLUENT LIMITATIONS ~~IN WATER QUALITY LIMITED SEGMENTS~~

(a) Effluent limitations more stringent than minimum treatment requirements shall be developed by the staff and approved by the Director for all existing or proposed ~~dischargers~~ discharges to water quality limited segments of the surface waters of the ~~state.~~ state and for discharges that are found, through statistical analysis of effluent data or other appropriate means, to have a reasonable potential to cause or contribute to exceedance of applicable water quality standards. The basis of these water quality effluent limitations shall be maintenance of water quality standards.

(b) The staff shall also provide on a case-by-case basis for seasonal variation in the discharge of oxygen-consuming wastes. In order to be considered eligible for seasonal effluent limitations, a request must be submitted to the Director along with a rationale as to the need for such limitations. Permit reissuance or modification during the remaining time of an existing permit will be considered on the basis of demonstrated need. In no case shall this variation cause or be expected to cause a receiving water body to violate applicable water quality standards.

(c) For the purpose of determining seasonal effluent limitations, the year shall consist of a summer and a winter discharge period. The summer period will begin April 1 and extend through October 31. The winter period shall be that portion of the year from November 1 to March 31. The summer oxygen-consuming wasteload allocation shall be developed using the flow criteria specified in 15A NCAC 02B .0206. The winter oxygen-consuming wasteload allocation shall in no case be less stringent than two times the summer oxygen-consuming waste load limitations nor shall it be less restrictive than minimum treatment requirements.

(d) No domestic sewage regardless of the treatment proposed and no other wastes which could adversely affect the taking of shellfish for market purposes shall be discharged into water classified "SA", into unnamed waters tributary to "SA" waters classified "C" or "SC" in accordance with 15A NCAC 02B .0301(i)(1)(B) and (C) or into other waters in such close proximity as to adversely affect such "SA" waters. Wastes discharged into other waters tributary to waters classified "SA" shall be treated in such manner as to assure that no impairment of water quality in the "SA" segments shall occur. No permits shall be issued for discharges into waters classified "SA" unless Shellfish Sanitation, Division of Marine Fisheries, Department of Environmental Quality, provides written concurrence that the discharge would not adversely affect shellfish water quality or the propagation of shellfish.

(e) The discharge of wastewaters to the Atlantic Ocean shall follow the guidelines and requirements set forth in the United States Environmental Protection Agency regulation Ocean Discharge Criteria, 40 C.F.R. 125.120 through 125.124, which is hereby adopted by reference, including any subsequent amendments and editions.

History Note: *Authority G.S. 143-215; 143-215.1; 143-215.3(a)(1); 143-214.2(c)*
Eff. February 1, 1976;
Amended Eff. August 12, ~~1979.~~ 1979;
Readopted <date>.

15A NCAC 02B .0406 TECHNOLOGY BASED EFFLUENT ~~LIMITS IN EFFLUENT LIMITED SEGMENTS~~ LIMITATIONS

(a) Municipal (POTW) Wastewaters and Other Similar Discharges

(1) Applicability. This Regulation is applicable to all municipal wastewater treatment discharges and all discharges consisting primarily of domestic sewage. In addition to the limits contained herein, limits applicable to industrial categories contained in .0406(b) of this Section will be applicable to any municipality ~~having industrial~~ if influent waste discharges from industries in any single category ~~which discharges~~ account for 10 or more percent of ~~the~~ its average daily wastewater flow ~~to the municipal system~~ or ~~where~~ the industrial discharges significantly impact the municipal system ~~and the~~ or its effluent ~~discharge is significantly impacted.~~ discharge.

(2) Effluent Limitations Except for Waste Stabilization Ponds ~~Included in (3) of This Subsection~~ Subject to Subparagraph (3) of this Paragraph. In ~~mg/l~~ mg/L expressed as monthly average and weekly maximum average:

~~Effluent Characteristic~~	~~SECONDARY~~ ~~Monthly Avg.~~	~~Weekly Avg. Max.~~	~~"BPWTT"~~ ~~Avg.~~	~~Max.~~
~~BOD(5)~~	~~30 mg/l~~	~~45 mg/l~~	~~Reserved~~	
~~TSS~~	~~30 mg/l~~	~~45 mg/l~~	~~Reserved~~	
~~Fecal Coliform~~	~~(Effluent limitations for coliform bacteria and pH shall be imposed only if necessary to maintain compliance with applicable water quality standards.)~~		~~Reserved~~	
~~pH~~			~~Reserved~~	

	SECONDARY		"BPWTT"	
Effluent Characteristic	Monthly Avg.	Weekly Avg. Max.	Avg.	Max.
BOD(5)	30 mg/l	45 mg/l	Reserved	
TSS	30 mg/l	45 mg/l	Reserved	
Fecal Coliform	(Effluent limitations for coliform bacteria and pH shall be imposed only if necessary to maintain compliance with applicable water quality standards.)		Reserved	
pH			Reserved	

(3) Effluent limitations for waste stabilization ponds provided that:

(A) Waste stabilization ponds are the sole process used for secondary treatment;

(B) The maximum facility design capacity is two million gallons per day or less; and

(C) Operation and maintenance data indicate that the requirements for TSS of Part (2) of this Subsection cannot be achieved. In ~~mg/l~~ mg/L expressed as monthly average and weekly maximum average:

	~~SECONDARY~~		~~"BPWTT"~~	
~~Effluent Characteristic~~	~~Monthly Avg.~~	~~Weekly Avg. Max.~~	~~Avg.~~	~~Max.~~
~~BOD(5)~~	~~30 mg/l~~	~~45 mg/l~~	~~Reserved~~	
~~TSS~~	~~90 mg/l~~	~~135 mg/l~~	~~Reserved~~	
~~Fecal Coliform~~	~~(Effluent limitations for coliform bacteria and pH shall be imposed only if~~		~~Reserved~~	
~~pH~~	~~necessary to maintain compliance with applicable water quality standards.)~~		~~Reserved~~	

	SECONDARY		"BPWTT"	
Effluent Characteristic	Monthly Avg.	Weekly Avg. Max.	Avg.	Max.
BOD(5)	30 mg/L	45 mg/L	Reserved	
TSS	90 mg/L	135 mg/L	Reserved	
Fecal Coliform	(Effluent limitations for coliform bacteria and pH shall be imposed only if necessary to maintain compliance with applicable water quality standards.)		Reserved	
pH			Reserved	

(b) Industrial Waste Discharges. Effluent limits for industrial waste discharges are set forth in ~~the Environmental Protection Agency~~ guidelines and standards ~~listed in this Rule which~~ promulgated by the Environmental Protection Agency, including those in 40 CFR Chapter I, Subpart N – Effluent Guidelines and Standards. Such guidelines and standards are ~~adopted~~ hereby incorporated by ~~reference as amended through June 1, 1984:~~ reference, including any subsequent amendments and editions.

40 CFR Part 129 -- EPA Toxic Pollutant Effluent Standards

40 CFR Part 401 -- EPA General Provisions for Effluent Guidelines and Standards
40 CFR Part 405 -- EPA Effluent Guidelines and Standards for Dairy Products
40 CFR Part 406 -- EPA Effluent Guidelines and Standards for Grain Mills
40 CFR Part 407 -- EPA Effluent Guidelines and Standards for Canned and Preserved Fruits and Vegetables
40 CFR Part 408 -- EPA Effluent Guidelines and Standards for Canned and Preserved Seafood
40 CFR Part 409 -- EPA Effluent Guidelines and Standards for Sugar Processing
40 CFR Part 410 -- EPA Effluent Guidelines and Standards for Textiles
40 CFR Part 411 -- EPA Cement Manufacturing Effluent Guidelines and Standards
40 CFR Part 412 -- EPA Effluent Guidelines and Standards for Concentrated Animal Feeding Operations (CAFO)
40 CFR Part 413 -- EPA Effluent Guidelines and Standards for Electroplating
40 CFR Part 414 -- EPA Effluent Guidelines and Standards for Organic Chemicals
40 CFR Part 415 -- EPA Effluent Guidelines and Standards for Inorganic Chemicals
~~40 CFR 416 -- EPA Effluent Guidelines and Standards for Plastics and Synthetics~~
40 CFR Part 417 -- EPA Effluent Guidelines and Standards for Soaps and Detergents
40 CFR Part 418 -- EPA Effluent Guidelines and Standards for Fertilizer Manufacturing
40 CFR Part 419 -- EPA Effluent Guidelines and Standards for Petroleum Refining
40 CFR Part 420 -- EPA Effluent Guidelines and Standards for Iron and Steel Manufacturing
40 CFR Part 421 -- EPA Effluent Guidelines and Standards for Nonferrous Metals
40 CFR Part 422 -- EPA Phosphate Manufacturing Effluent Guidelines and Standards
40 CFR Part 423 -- EPA Effluent Guidelines and Standards for Steam Electric Power Generating
40 CFR Part 424 -- EPA Effluent Guidelines for Ferroalloy Manufacturing
40 CFR Part 425 -- EPA Effluent Guidelines and Standards for Leather Tanning and Finishing
40 CFR Part 426 -- EPA Effluent Guidelines and Standards for Glass Manufacturing
40 CFR Part 427 -- EPA Effluent Guidelines and Standards for Asbestos Manufacturing
40 CFR Part 428 -- EPA Effluent Guidelines for Rubber Processing
40 CFR Part 429 -- EPA Effluent Guidelines and Standards for Timber Products
40 CFR Part 430 -- EPA Effluent Guidelines and Standards for Pulp, Paper, and Paper Board
~~40 CFR 431 -- EPA Effluent Guidelines and Standards for Builders Paper and Board Mills~~
40 CFR Part 432 -- EPA Effluent Guidelines and Standards for Meat Products
40 CFR Part 433 -- EPA Effluent Guidelines and Standards for Metal Finishing
40 CFR Part 434 -- EPA Effluent Guidelines and Standards for Coal Mining
40 CFR Part 435 -- EPA Effluent Guidelines and Standards for Offshore Oil and Gas Extraction
40 CFR Part 436 -- EPA Effluent Guidelines and Standards for Mineral Mining and Processing
40 CFR Part 437 -- EPA Effluent Guidelines and Standards for Centralized Waste Treatment
40 CFR Part 438 -- EPA Effluent Guidelines and Standards for Metals Products and Machinery
40 CFR Part 439 -- EPA Effluent Guidelines and Standards for Pharmaceutical Manufacturing
40 CFR Part 440 -- EPA Effluent Guidelines and Standards for Ore Mining and Dressing

40 CFR Part 441 – EPA Effluent Limitations Guidelines and Standards for the Dental Category

40 CFR Part 442 -- EPA Effluent Guidelines and Standards for Transportation Equipment Cleaning

40 CFR Part 443 -- EPA Effluent Guidelines and Standards for Paving and Roofing Materials

40 CFR Part 444 -- EPA Effluent Guidelines and Standards for Waste Combustors

40 CFR Part 445 -- EPA Effluent Guidelines and Standards for Landfills

40 CFR Part 446 -- EPA Effluent Guidelines and Standards for Paint Formulating

40 CFR Part 447 -- EPA Effluent Guidelines and Standards for Ink Formulating

40 CFR Part 449 -- EPA Effluent Guidelines and Standards for Airport Deicing

40 CFR Part 450 -- EPA Effluent Guidelines and Standards for Construction and Development

40 CFR Part 451 -- EPA Effluent Guidelines and Standards for Concentrated Aquatic Animal Production (Aquaculture)

40 CFR Part 454 -- EPA Effluent Guidelines and Standards for Gum and Wood Chemicals Manufacturing

40 CFR Part 455 -- EPA Effluent Guidelines for Pesticide Chemicals Manufacturing

40 CFR Part 457 -- EPA Effluent Guidelines and Standards for Explosives Manufacturing

40 CFR Part 458 -- EPA Effluent Guidelines and Standards for Carbon Black Manufacturing

40 CFR Part 459 -- EPA Effluent Guidelines and Standards for Photographic Processing

40 CFR Part 460 -- EPA Effluent Guidelines and Standards for Hospitals

40 CFR Part 461 -- EPA Effluent Guidelines and Standards for Battery Manufacturing

40 CFR Part 463 -- EPA Effluent Guidelines and Standards for Plastic Molding and Forming

40 CFR Part 464 -- EPA Effluent Guidelines and Standards for Metal Molding and Casting (Foundries)

40 CFR Part 465 -- EPA Effluent Guidelines and Standards for Coil Coating

40 CFR Part 466 -- EPA Effluent Guidelines and Standards for Porcelain Enameling

40 CFR Part 467 -- EPA Effluent Guidelines and Standards for Aluminum Forming

40 CFR Part 468 -- EPA Effluent Guidelines and Standards for Copper Forming

40 CFR Part 469 -- EPA Effluent Guidelines and Standards for Electrical and Electronic Components

40 CFR Part 471 -- EPA Effluent Guidelines and Standards for Nonferrous Metals Forming and Metal Powders

(c) ~~Copies of these~~ The current version of these Federal Regulations can be accessed free of charge at http://www.gpo.gov/fdsys/. ~~are on file at:~~

~~(1) Division of Environmental Management~~
~~Department of Natural Resources and Community Development~~
~~P.O. Box 27687, Raleigh, N.C. 27611~~

~~(2) Asheville Regional Office~~
~~Interchange Building, 59 Woodfin Place~~
~~Asheville, N.C. 28802~~

~~(3) Fayetteville Regional Office~~
~~Wachovia Building, Suite 714~~
~~Fayetteville, N.C. 28301~~

~~(4) Mooresville Regional Office~~
~~919 North Main Street~~
~~Mooresville, N.C. 28115~~
~~(5) Raleigh Regional Office~~
~~3800 Barrett Drive~~
~~Raleigh, N.C. 27609~~
~~(6) Washington Regional Office~~
~~1502 North Market Street~~
~~Washington, N.C. 27889~~
~~(7) Wilmington Regional Office~~
~~7225 Wrightsville Avenue~~
~~Wilmington, N.C. 28403.~~
~~(8) Winston-Salem Regional Office~~
~~8003 North Point Boulevard~~
~~Winston-Salem, N.C. 27106~~

(d) In cases where effluent limits established by Paragraph (b) of this Rule are not adequate to control settleable solids, the staff shall establish effluent limits for settleable solids. Such effluent limitations for settleable solids will be applicable only when the projected average solids concentration exceeds 5.0 ml/l and the limitations established shall lie within the range of 0.1 ml/l to 5.0 ml/l. The establishment of such limitations for any discharge shall be approved by the Director of the Division of ~~Environmental Management~~ Water Resources or the Division.

(e) For industrial categories or parts of categories for which effluent limits and guidelines have not been published and adopted, effluent limitations for existing industrial waste discharges, or new industrial waste discharges shall be calculated by the staff using the projected limits of the Environmental Protection Agency, the Environmental Protection Agency development document and other available information in order to achieve the purposes of Article 21. Such limits developed by the staff shall be subject to approval by the Director.

History Note: *Authority G.S. 143-215; 143 - 215.1; 143-215.3(a)(1), (4);*
Eff. February 1, 1976;
Amended Eff. July 1, 1988; December 1, 1984; November 1, 1978; December 1, ~~1976.~~ 1976;
Readopted <date>.

15A NCAC 02B .0407 GUIDANCE FOR DETERMINING A NEW SOURCE

(a) A source should be considered a new source by the Director provided on the date of publication of any applicable new source performance standard there has not been any:

(1) significant site preparation work, such as major clearing or excavation; or

(2) placement, assembly, or installation of unique facilities or equipment at the premises where such facilities or equipment will be used; or

(3) contractual obligation to purchase such unique facilities or equipment; Facilities and equipment shall include only the major items listed below, provided that the value of such items represents a substantial commitment to construct the facility:

(A) structures, or

(B) structural materials, or

(C) machinery, or

(D) process equipment, or

(E) construction equipment.

(4) contractual obligation with a firm to design, engineer and erect a completed facility (i.e., a turnkey plant).

(b) A modification to an existing source will be considered a new source if the alteration is of such magnitude to, in effect, create a new facility. In making such a determination, the Director shall find that the permit modification procedures are not appropriate and shall consider, among other relevant factors, whether as a result of the alteration, the source can reasonably achieve the standard of performance. Only those portions of a facility determined to be a new source shall be required to achieve new source performance standards.

History Note: *Authority G.S. 143-215; 143-215.1; 143-215.3(a)(1), (4);*
Eff. December 1, ~~1976.~~1976;
Readopted Eff. <date>.

15A NCAC 02B .0408 INCORPORATION BY REFERENCE

(a) The following sections of Title 40 of the Code of Federal Regulations (CFR) are incorporated by reference, including subsequent amendments and editions, and shall apply throughout this Section except where procedural details of the federal rules differ from procedures adopted elsewhere in this section, in which case the separately adopted procedure governs. The current version of these regulations can be accessed free of charge at http://www.gpo.gov/fdsys/.

(1) 40 CFR 122.2, 124.2, and 125.2: Definitions;

(2) 40 CFR 122.4: Prohibitions):

(3) 40 CFR 122.5 (a) and (b): Effect of permit;

(4) 40 CFR 122.7 (b) and (c): Confidential information;

(5) 40 CFR 122.21 (a)-(b), (c)(2), (e)-(k), (m)-(p), (q), and (r): Application for a permit;

(6) 40 CFR 122.22: Signatories;

(7) 40 CFR 122.23: Concentrated animal feeding operations;

(8) 40 CFR 122.24: Concentrated aquatic animal production facilities;

(9) 40 CFR 122.25: Aquaculture projects;

(10) 40 CFR 122.26: Storm water discharges;

(11) 40 CFR 122.27: Silviculture;

(12) 40 CFR 122.28: General permits;

(13) 40 CFR 122.29 (a), (b), and (d): New sources and new dischargers;

(14) 40 CFR 122.30: NPDES stormwater regulations for small MS4s: objectives;

(15) 40 CFR 122.31: NPDES stormwater regulations: role of Tribes;

(16) 40 CFR 122.32: NPDES stormwater regulations for small MS4s: applicability;

(17) 40 CFR 122.33: NPDES stormwater regulations for small MS4s: application for permit;

(18) 40 CFR 122.34: NPDES stormwater regulations for small MS4s: permit requirements;

(19) 40 CFR 122.35: NPDES stormwater regulations for small MS4s: shared responsibilities;

(20) 40 CFR 122.36: NPDES stormwater regulations for small MS4s: compliance;

(21) 40 CFR 122.37: NPDES stormwater regulations for small MS4s: evaluation;

(22) 40 CFR 122.41 (a)(1) and (b) through (n): Applicable permit conditions;

(23) 40 CFR 122.42: Conditions applicable to specified categories of permits;

(24) 40 CFR 122.43: Establishing permit conditions;

(25) 40 CFR 122.44: Establishing NPDES permit conditions;

(26) 40 CFR 122.45: Calculating permit conditions;

(27) 40 CFR 122.46: Duration;

(28) 40 CFR 122.47 (a): Schedules of compliance;

(29) 40 CFR 122.48: Monitoring requirements;

(30) 40 CFR 122.50: Disposal into wells;

(31) 40 CFR 122.61: Permit transfer;

(32) 40 CFR 122.62: Permit modification;

(33) 40 CFR 122.64: Permit termination;

(34) 40 CFR 124.3 (a): Application for a permit;

(35) 40 CFR 124.5 (a), (c), (d), and (f): Modification of permits;

(36) 40 CFR 124.6 (a), (c), (d), and (e): Draft permit;

(37) 40 CFR 124.8: Fact sheets;

(38) 40 CFR 124.10 (a)(1)(ii), (a)(1)(iii), (a)(1)(v), (b), (c), (d), and (e): Public notice;

(39) 40 CFR 124.11: Public comments and requests for hearings;

(40) 40 CFR 124.12 (a): Public hearings;

(41) 40 CFR 124.17 (a) and (c): Response to comments;

(42) 40 CFR 124.56: Fact sheets;

(43) 40 CFR 124.57 (a): Public notice;

(44) 40 CFR 124.59: Comments from government agencies;

(45) 40 CFR 124.62: Decision on variances;

(46) 40 CFR Part 125, Subparts A (Technology-Based Treatment Requirements), B (Aquaculture), D (Fundamentally Different Factors), H (Alternative Limitations, CWA Section 316(a)), I (Cooling Water Intake Structures, New Facilities, CWA Section 316(b)), J (Cooling Water Intake Structures, Existing Facilities, CWA Section 316(b)), and N (Cooling Water Intake Structures, Offshore Oil and Gas Facilities, CWA Section 316(b));

(47) 40 CFR Parts 129 (Toxic Pollutant Effluent Standards) and 133 (Secondary Treatment Regulation), and Subchapter N (Effluent Guidelines and Standards);

(48) 40 CFR Part 3: Electronic reporting;

(49) 40 CFR Part 136: Guidelines for establishing test procedures for the analysis of pollutants; and

(50) 40 CFR 401.15: List of toxic pollutants pursuant to CWA Section 307(a)(1).

(b) This Rule is not an exclusive list of federal regulations adopted by reference in this Section. Other rules of the Section incorporate some of these same federal regulations for clarity or emphasis and may incorporate additional regulations not listed in Paragraph (a) of this Rule.

History Note: *Authority G.S. 143-211(c); 143-215.1(b)(4); 143B-282(5);*
Eff. <date>.

15A NCAC 02B .0501 PURPOSE

The purpose of this Section is to set forth the requirements of the Environmental Management Commission for monitoring and reporting the quantity and quality of wastewater discharges to, and their effects upon, the water resources of the state.

History Note: *Authority G.S. 143-215.64; 143-215.68;*
Eff. February 1, 1976;
Amended Eff. December 1, ~~1984.~~1984;
Readopted Eff. <date>.

15A NCAC 02B .0502 SCOPE

This Section shall apply to all persons subject to the provisions of G.S. 143-215.1.

History Note: *Authority G.S. 143-215.64; 143-215.68;*
Eff. February 1, ~~1976.~~1976;
Readopted Eff. <date>.

15A NCAC 02B .0503 DEFINITIONS

Unless the context otherwise requires, the terms used herein shall be as defined in G.S. ~~143-213~~ 143-212 and 143-213; the federal Clean Water Act (33 U.S.C. 1251 et seq.); 40 CFR Parts 122, 124, and 125; and as follows:

(1) "Biological monitoring" shall mean the sampling or testing of the biological integrity of surface waters and measurements of impacts including accumulations of pollutants in tissue, toxicity monitoring, and characterization of instream biological populations.

(2) "Classified water pollution control facility" means a treatment works classified by the Water Pollution Control System Operator Certification Commission pursuant to Chapter 90A of the North Carolina General Statutes as class I, class II, class III, or class IV facility, or such other classifications as the Water Pollution Control System Operator Certification Commission may hereafter adopt.

(3) "Commercial laboratory" means any laboratory which analyzes water samples for a fee.

(4) "Composite sample" ~~means:~~ means a sample gathered over a 24 hour period by continuous sampling or combining grab samples in such a manner as to result in a total sample which is representative of the wastewater discharge during the sample period. This sample may be obtained by methods given below, however, the Director may designate the most appropriate method, number and size of aliquots necessary and the time interval between grab samples on a case-by-case basis. Samples may be collected manually or automatically.

(a) Continuous - a single, continuous sample collected over a 24 hour period proportional to the rate of flow.

(b) Constant time/variable volume - a series of grab samples collected at equal time intervals over a 24 hour period of discharge and combined proportional to the rate of flow measured at the time of individual sample collection, or

(c) Variable time/constant volume - a series of grab samples of equal volume collected over a 24 hour period with the time intervals between samples determined by a preset number of gallons passing the sampling point. Flow measurement between sample intervals shall be determined by use of a flow recorder and totalizer, and the preset gallon interval between sample collection fixed at no greater than 1/24 of the expected total daily flow at the treatment system, or

(d) Constant time/constant volume - a series of grab samples of equal volume collected over a 24 hour period at a constant time interval. This method may be used in situations where effluent flow rates vary less than 15 percent. The grab samples shall be taken at intervals of no greater than 20 minutes apart during any 24 hour period and must be of equal size and of no less than 100 milliliters. Use of this method requires prior approval by the Director.

(5) "Daily" means every day on which a wastewater discharge occurs except Saturdays, Sundays and legal holidays unless otherwise specified by the Director.

(6) "Design flow" means the average daily volume of wastewater which a water pollution control facility was designed, approved and constructed to treat.

(7) "Design treatment capability" means a water pollution control facility's capacity to achieve a specified degree of reduction in waste constituents at a specified design flow, to meet specified limits or removal efficiencies.

(8) "Director" means the Director of the Division of ~~Environmental Management,~~ Water Resources or Division of Energy, Mineral and Land Resources, or both, Department of ~~Environment, Health, and Natural Resources.~~ Environmental Quality, whichever is the permitting authority in a particular instance; or his designee.

(9) "Division" means the Division of ~~Environmental Management,~~ Water Resources or the Division of Energy, Mineral and Land Resources, or both, Department of ~~Environment, Health, and Natural Resources.~~ Environmental Quality, whichever is the permitting authority in a particular instance.

(10) "Domestic wastewater" means water-carried human wastes together with all other water-carried wastes normally present in wastewater from non-industrial processes.

(11) "Downstream" means locations in the receiving waters below (downstream of) a point of waste discharge after a reasonable opportunity for dilution and mixture as specified in the Commission's "Rules, Regulations, Classifications and Water Quality Standards Applicable to the Surface Waters of North Carolina."

(12) "Effluent" means wastewater discharged following all treatment processes from a water pollution control facility or other point source whether treated or untreated.

(13) "Flow" means the total volume of wastewater discharged from an outlet during any given period.

(14) "Grab sample" means an individual sample collected instantaneously. Samples of this type must be representative of the discharge or the receiving waters.

(15) "Industrial establishment" means any industrial, business, commercial or governmental enterprise which produces water carried wastes.

(16) "Influent" means the wastewater entering a water pollution control facility.

(17) "Monitoring" means a program of sample collection, analysis, and observation sufficient to quantify various aspects of waste streams, treatment plant operations and environmental impacts.

(18) "North American Industry Classification System" (NAICS) code means those six-digit numeric designations used to classify business establishments according to the processes employed to produce goods or services. For the purposes of this Section, each industry or unit of government shall be classified by NAICS codes applicable to each activity carried on by such establishment or unit which results in a discharge of wastewater. In addition, any industrial establishment or unit of government which collects or discharges domestic sewage is hereby assigned NAICS number 221320. The North American Industry Classification System Manual, as used in this Section, is hereby incorporated by reference, including any subsequent amendments and editions. The

classifications found in the manual may also be accessed at https://www.census.gov/eos/www/naics/.

(19) "Point source" means any discernible, confined, and discrete conveyance, including, but not specifically limited to, any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, or concentrated animal feeding operation from which waste is or may be discharged to the waters of the state.

~~(19)~~(20) "Quarterly" means occurring four times during a 12-month period at a frequency of once per each interval of three consecutive months.

~~(20)~~(21) "Quarterly Average" means the average of all samples taken over a quarterly period.

~~(21)~~(22) "Sample" means a representative portion of the wastewater from water pollution control facilities or of receiving waters.

~~(22)~~(23) "Standard Industrial Classification" (SIC) code means those four-digit numerical designations set forth in "The Standard Industrial Classification Manual," ~~(Superintendent of Documents, U.S. Government Printing Office)~~ classifying industries according to the type of activity (relating to major products manufactured or principle services furnished) in which they are engaged. For the purposes of this Section, each industry or unit of government shall be classified by SIC numbers applicable to each activity carried on by such establishment or unit which results in a discharge of wastewater. In addition, any industrial establishment or unit of government which collects or discharges domestic sewage is hereby assigned SIC number 4952. The Standard Industrial Classification Manual, as used in this Section, is hereby incorporated by reference, including any subsequent amendments and editions. A copy is available for inspection at the central office of the Division of ~~Environmental Management~~ Water Resources, 512 North Salisbury Street, Raleigh, North Carolina. ~~Copies~~ The classifications found in the manual may also be ~~obtained~~ accessed at ~~the GPO Bookstore, Room 100, 275 Peachtree Street NE, or Post Office Box 56445, Atlanta GA 30343 at a cost of twenty-four dollars ($24.00).~~ https://www.osha.gov/pls/imis/sic_manual.html.

~~(23)~~(24) "Storet number" means a number which designates a test or measurement according to the analytical procedure used or a method of measurement and units of measurement. Storet is an acronym for the water quality data storage and retrieval computer system of the Environmental Protection Agency.

~~(24)~~(25) "Toxic substances" means any substance, or combinations of substances, including disease-causing agents, which, after discharge, and upon exposure, ingestion, inhalation, or assimilation into any organism, either directly from the environment or indirectly by ingestion through food chains, has the potential to cause death, disease, behavioral abnormalities, cancer, genetic mutations, physiological malfunctions (including malfunctions or suppression of reproduction or growth) or physical deformities in such organisms or their offspring or other adverse health effects.

~~(25)~~(26) "Toxicity monitoring" means controlled toxicity testing procedures employed to measure lethality or other harmful effects as measured by either aquatic populations or indicator species used as test

organisms from exposure to a specific chemical or mixture of chemicals (as in an effluent) or ambient stream conditions.

~~(26)~~(27) "Unit of government" means any incorporated city, town or village, county, sanitary district, metropolitan sewerage district, water or sewer authority, special purpose district, other municipality, or any agency, board, commission, department or political subdivision or public corporation of the state, now or hereafter created or established, empowered to provide wastewater collection systems or wastewater treatment works.

~~(27)~~(28) "Upstream" means locations in the receiving waters near but above (upstream of) a point of wastewater discharge and unaffected by the discharge.

~~(28)~~(29) "Water pollution control facilities" or "facility" means "treatment works" as defined in G.S. 143-213.

History Note: *Authority G.S. 143-213; 143-215.68;*
Eff. February 1, 1976;
Amended Eff. April 1, 1993; December 1, ~~1984.~~ 1984;
Readopted <date>.

15A NCAC 02B .0504 CLASSIFICATION OF WASTE SOURCES

(a) All persons subject to the requirements of these Rules shall determine the standard industrial classification (SIC) number or North American Industry Classification System number or both, as specified by the Director, for each type of activity (required to be reported under Rule .0506 of this Section) in which they are engaged by reference to the ~~Standard Industrial Classification Manual~~appropriate classification manuals.

(b) Environmental Management Commission hereby assigns SIC number 4952 and NAICS number 221320 to every industrial establishment or unit of government which collects or discharges domestic wastewater, whether from on-premises bathrooms, restrooms, kitchens, dining rooms, water pollution control facilities, or from any other source.

(c) The owner or person in responsible charge of every water pollution control ~~facility,~~facility which receives a wastewater influent from more than one ~~source,~~source shall determine and report to the Department of ~~Environment, Health, and Natural Resources~~Environmental Quality the name and ~~standard~~ industrial classification number(s) for each applicable activity(ies) of every industrial establishment contributing wastes containing toxic substances, in toxic quantities, and also every industrial establishment contributing an average daily wastewater influent of one percent or more of the design flow of the facility or in excess of 100,000 gallons per day, whichever is less, and shall report such other information as is required by Rule .0505 of this Section; provided; however, that it is not required that the name and SIC or NAICS number of any source contributing domestic sewage influent only be reported hereunder.

(d) The average daily influent volume contributed by any one source may be computed by dividing the total volume of wastewater discharged by the source during the reporting year by the total number of days that the source operated during the reporting year.

History Note: *Authority G.S. 143-215.64; 143-215.68;*
Eff. February 1, 1976;
Amended Eff. April 1, 1993; December 1, 1984; November 1, ~~1978.~~1978;
Readopted <date>.

15A NCAC 02B .0505 MONITORING REQUIREMENTS

(a) General. Every person subject to this Section shall be required to establish, operate and maintain a monitoring program consistent with their National Pollutant Discharge Elimination System (NPDES) Permit or as required by the Director.

(b) Wastewater and Stream Flow Measurement.

(1) A device or method, approved by the Director for determining the rate of flow of all discharges of wastewater whether treated or untreated shall be provided at those point sources of which monthly reports of monitoring tests and measurements are required unless specifically excepted by the Director as not significant. All water pollution control facilities shall install, operate, and maintain continuous flow measuring with recording devices or totalizing devices, if approved by the Director, or shall employ other flow measuring or flow control methods approved by the Director and shall submit monthly reports of such data as required in Rule .0506 of this Section. The permittee shall install appropriate flow measurement devices consistent with approved engineering and scientific practices to ensure the accuracy and reliability of measurements of the volume of monitored discharges. Devices selected shall be capable of measuring flows with a maximum deviation of less than 10 percent from true discharge volumes. Flow measurement devices shall be accurately calibrated at a minimum of once per year and maintained to ensure that the accuracy of the measurements is consistent with the accepted capability of that type of device. The flow measurement device and location shall be approved by the Director prior to installation. Records of flow measurement device calibration shall be kept on file by the permittee for a period of at least three years. At a minimum, data to be included in this documentation shall be:

(A) Date of flow measurement device calibration

(B) Name of person performing calibration.

(2) A reading of the U.S. Geological Survey stream flow staff gauge or reference point shall be made at the time of stream sampling in those instances so determined the Director.

(c) Sampling.

(1) Frequency and Location. Except as otherwise provided herein, all industrial establishments and units of government shall take influent, effluent and stream samples at such locations and with such frequency as shall be necessary to conduct the tests and analyses required by Rule .0508 of this Section.

(2) Establishment of Sampling Points:

(A) Sampling points as required in Rule .0508 of this Section shall be established for collecting influent and effluent samples for each facility.

(B) Sampling points shall be established in the receiving waters at one or more upstream locations and at one or more downstream locations. These locations shall be specified by the Director.

(3) Collection of Samples:

(A) Samples collected in receiving waters shall be grab samples.

(B) Samples of the influent and effluent of the water pollution control facility or other point source shall be composite samples, except as provided in Rule .0505 (c)(3)(C) of this Section, or for facilities with design flows of 30,000 gallons per day or less unless required by the Director. The Director may specify the methods of sample collection as to type of sample and type of composite sampling required.

(C) The following influent and effluent tests shall be made on grab samples and shall not be made on composite samples:

(i) dissolved oxygen,

(ii) temperature,

(iii) settleable matter,

(iv) turbidity,

(v) pH,

(vi) residual chlorine,

(vii) coliform bacteria (fecal or total),

(viii) cyanide,

(ix) oil and grease,

(x) sulfides,

(xi) phenols,

(xii) volatile organics.

(4) Stream sampling may be discontinued at such times as flow conditions in the receiving waters or extreme weather conditions will result in a substantial risk of injury or death to persons collecting samples. In such cases, on each day that sampling is discontinued, written justification for the discontinuance shall be specified in the monitoring report for the month in which the event occurred. This provision shall be strictly construed and may not be utilized to avoid the requirements of this Section when performance of these requirements is attainable. When there is a discontinuance pursuant to this provision, stream sampling shall be resumed at the first opportunity after the risk period has ceased.

(d) Biological and Toxicity Monitoring. Biological and Toxicity monitoring may be required when, in the opinion of the Director, such monitoring is necessary to establish whether the designated best use of the waters as determined by the Environmental Management ~~Commission,~~ Commission is being or may be impaired or when toxic substances are known or suspected to be present in the facility's discharge.

(e) Tests and Analyses.

(1) If a water pollution control facility receives waste influent from two or more sources, every test required by Rule .0508 of this Section for the standard industrial classification number applicable to the sources shall be performed one time, and it shall not be necessary to repeat such tests for each

source; however, the tests shall be performed at the intervals specified by Rule .0508 of this Section for the applicable industrial classification requiring the most frequent test interval.

(2) If analyses of samples of any effluent or any receiving water (collected by the state or a public agency) indicate a violation of effluent ~~limitations,~~ limitations or water quality standards ~~or indicate exceedances of stream action levels~~ or that a violation of water quality standards ~~or exceedances of stream action levels~~ may result under any projected ~~conditions~~ conditions, including minimum stream flow and temperature extremes, the Director may require the person responsible for the violation or potential violation to monitor the pollutants or parameters at such points and with such frequency as he determines appropriate. If the source of the pollutant is unknown, the Director may require monitoring for specific pollutants from any suspected discharger.

(3) If the wastewaters discharged by any water pollution control facility violate any effluent limitations or water quality standards ~~or exceeds any stream action levels~~ or contribute to the violation of water quality standards ~~or exceedance of stream action levels~~ established by the Environmental Management ~~Commission~~ Commission, the facility shall perform and report such additional tests and measurements at such frequencies and for such periods of time as the Director may require.

(4) Approved Methods of Analysis.

(a) Methods. The methods used in collection, preservation and analysis of samples shall conform to the guidelines of the Environmental Protection Agency codified as 40 CFR Part 136, which is hereby incorporated by reference including any subsequent amendments and editions. ~~Copies may be obtained from the New Orders, Superintendent of Documents, PO Box 371954, Pittsburgh, PA 15250-7954 at a cost of three hundred forty dollars ($340.00) per edition. The single volume containing 40 CFR Part 136 may be obtained at a cost of thirty dollars ($30.00).~~ The current version of these regulations can be accessed free of charge at http://www.gpo.gov/fdsys/. Other analytical procedures shall conform to those found in either the most recent approved edition of "Standard Methods for the Examination of Water and Wastewater", (published jointly by the American Public Health Association, the American Water Works Association, and the Water Environment Federation), or "Methods for Chemical Analysis of Waters and Wastes", 1983, or subsequent editions or other methods as approved by the Director. Standard Methods for the Examination of Water and Wastewater is hereby incorporated by reference including any subsequent approved amendments and approved editions. ~~Copies may be obtained from the American Water Works Association, 6666 West Quincy Avenue, Denver CO 82535 at a cost of one hundred sixty dollars ($160.00) per edition.~~ The current version of these methods may be viewed at http://www.standardmethods.org. Methods for Chemical Analysis of Waters and Wastes is hereby incorporated by reference including any subsequent amendments and editions. These methods (document EPA-600-4-79-020) can be accessed free of charge at http://nepis.epa.gov. ~~Copies may be obtained from the NTIS, 5285 Port Royal Road,~~

~~Springfield, VA 22161 at a cost of fifty dollars ($50.00) per edition. All material incorporated by reference in this Rule is available for inspection at the Central office of the Division of Environmental Management, 512 North Salisbury Street, Raleigh, North Carolina 27626-0535~~

(b) Method Sensitivity. ~~All test procedures must produce detection and reporting levels that are below the permit discharge requirements and all data generated must be reported to the approved detection level or lower reporting level of the procedure.~~ Monitoring required for permit application or to determine compliance with effluent limitations or applicable water quality standards shall be performed using sufficiently sensitive methods in accordance with 40 CFR 122.21(e)(3) or 122.44(i), which are hereby incorporated by reference, including any subsequent amendments and editions. ~~If no approved methods are determined capable of achieving detection and reporting levels below permit discharge requirements, then the approved method with the lowest detection and reporting level must be used.~~ Biological testing shall be performed in accordance with 15A NCAC 02B .0103(b).

(5) Approval of Laboratories. Analytical determinations made pursuant to the monitoring and reporting requirements of this Section shall be made in adequately equipped laboratories staffed by person(s) competent to perform tests. Only monitoring programs which provide for the making of analytical determinations by qualified employees of the owner or by a laboratory certified by the Division under 15A NCAC 02H .0800 or 15A NCAC 02H .1100 will be considered adequate.

(f) Process Control Monitoring Testing: The Director may require, on a case-by-case basis, process control monitoring testing suitable for the size and classification of the facility.

History Note: *Authority G.S. 143-215.64; 143-215.66; 143-215.68;*
Eff. February 1, 1976;
Amended Eff. April 1, 1993; December 1, 1984; November 1, ~~1978.~~ 1978;
Readopted <date>.

15A NCAC 02B .0506 REPORTING REQUIREMENTS

(a) General:

(1) Every person subject to this Section shall file certified monitoring reports setting forth the results of tests and measurements conducted pursuant to NPDES permit monitoring requirements.

(A) Monthly monitoring reports shall be filed no later than 30 calendar days after the end of the reporting period for which the report is made.

(B) Reports filed pursuant to the requirements of Subparagraph (a)(1) of this Rule shall be submitted in a manner consistent with the requirements of 40 CFR Part 3, which is hereby incorporated by reference including subsequent amendments and additions. Where submittal of printed documents is allowed, ~~of~~ such submittals shall be made on forms ~~furnished~~ or in a format provided or approved by the Director and shall be submitted in duplicate to:

ATTN: CENTRAL FILES
DIVISION OF ~~ENVIRONMENTAL MANAGEMENT~~ WATER RESOURCES
~~POST OFFICE BOX 29535~~
MAIL SERVICE CENTER 1617
RALEIGH, NORTH CAROLINA ~~27626-0535.~~ 27699-1617

(C) A copy of all reports submitted to the Director pursuant to this Section shall be retained by the owner of each ~~water pollution control~~ permitted facility for a period of at least three years from the date of submission and be readily available to the Division for inspection.

(D) In order to document information contained in reports submitted to the Director pursuant to this Section, the owner of each pollution control facility is required to retain or have readily available for inspection by the ~~Division,~~ Division the following items for a period of at least three years from report submission:

(i) the original laboratory reports from any certified laboratory utilized for sample analysis. Such reports must be signed by the laboratory supervisor, and must indicate the date and time of sample collection and analysis, and the analysts' name;

(ii) bench notes and data logs for sample analyses performed by the pollution control facility staff or operator in responsible charge, whether or not the facility has a certified lab; and

(iii) copies of all process control testing.

(E) In situations where no discharge has occurred from the facility during the report period, the permittee is required to submit a monthly monitoring report giving all required information and indicating "NO FLOW" unless the Director agrees to waive the reporting requirement during extended conditions of no discharge.

(2) Every person subject to this Section shall report by telephone to either the central office or appropriate regional office of the Division as soon as possible but no later than 24 hours after occurrence or on the next working day ~~(however, if the occurrence is one which may endanger the public health, or fish or wildlife, and contact with the central office or the appropriate regional office cannot be made, such person shall report as soon as possible to the State Highway Patrol Warning Point in state 1-800-662-7956 or out of state 919-733-3861)~~ following the occurrence or first knowledge of the occurrence of any of the following:

(A) Any failure of a collection system, pumping station or treatment facility resulting in a by-pass without treatment of all or any portion of the ~~wastewater.~~ wastewater;

(B) Any occurrence at the water pollution control facility which results in the discharge of significant amounts of wastes which are abnormal in quantity or characteristic, such as the dumping of the contents of a sludge digester, the known passage of a hazardous substance through the facility, or any other unusual ~~circumstances.~~ circumstances; or

(C) Any process unit failure, due to known or unknown reasons, that renders the facility incapable of adequate wastewater treatment, such as mechanical or electrical failures of pumps, aerators, compressors, ~~etc.~~ etc.;

except that if the occurrence is one which may endanger the public health or fish or wildlife, and if contact with the central office or the appropriate regional office cannot be made, such person shall report as soon as possible to the NC Emergency Operations Center 24/7 at 1-800-858-0368 (toll-free) or 919-733-3300.

(3) Persons reporting such occurrences by telephone shall also provide a written report to the Division in letter or electronic form setting out the information required in Subparagraph (a)(4) of this Rule and pertinent information pertaining to the occurrence. This report must be received by the Division within five days following first knowledge of the occurrence.

(4) All reports required to be filed by this Section shall contain the following information in addition to such other information as is required for the particular report:

(A) name of facility,

(B) water pollution control facility location,

(C) the class assigned to the water pollution control facility,

(D) the water pollution control facility permit number assigned by the Department of ~~Environment, Health, and Natural Resources~~ Environmental Quality to the permit or other approval document issued by the Environmental Management Commission under which the discharge is made,

(E) contact ~~name and~~ name, telephone ~~number~~ number, email address, and mailing address,

(F) estimated nature and extent of environmental damage caused by the incident.

(5) Any person desiring confidentiality for any influent information submitted shall specify the influent information for which confidentiality is sought and shall justify such request to the Department of

~~Environment, Health, and Natural Resources,~~ Environmental Quality, ~~and~~ and, if such request is approved by the ~~Director~~ Director, shall by an appropriate ~~stamp,~~ stamp indicate the location of such information on each report filed thereafter.

(b) Monthly Monitoring Reports:

(1) Every person operating a monitoring system required by this Section shall file a monitoring report once each month which includes the data for the samples collected during the month. This report shall be filed no later than 30 calendar days after the end of the reporting period for which the report is made.

(2) Monthly monitoring reports shall be reviewed, compliance status determined, certified by signature, and submitted by the following:

(A) For a corporation: by a responsible corporate officer. For the purpose of the Section, a responsible corporate officer means:

(i) a president, secretary, treasurer or vice president of the corporation in charge of a principal business function, or any other person who performs similar policy or decision-making functions for the corporation, or

(ii) the manager of one or more manufacturing production or operating facilities employing more than 250 persons or having gross annual sales or expenditures exceeding twenty-five million dollars ($25,000,000)(in second quarter 1980 dollars), if authority to sign documents had been assigned or delegated to the manager in accordance with corporate procedures.

(B) For a partnership or sole proprietorship: by a general partner or the proprietor, respectively; or

(C) For a municipality, State, Federal, County, or other public agency: by either a principal executive officer or ranking elected official;

(D) Duly authorized representative of the person described in Paragraphs (b)(2)(A), (B) and (C). A person is a duly authorized representative only if:

(i) The authorization is made in writing by a person described in Paragraphs (b)(2)(A), (B) and (C);

(ii) The authorization specified either an individual or a position having responsibility for the overall operation of the regulated facility or activity, such as the position of plant manager, operator of a well or well field, superintendent, a position of equivalent responsibility, or an individual or position having overall responsibility for environmental matters for the company. (A duly authorized representative may thus be either a named individual or any individual occupying a named position.); and

(iii) The written authorization is submitted to the Permit Issuing Authority. ~~Permittees~~ A permittee authorizing another individual to sign as representative in no way

relinquishes any responsibility for the permit or his responsibility to remain familiar with the permit ~~conditions,~~ conditions and limits, including any modifications, and for the compliance data reports for the permit.

~~(E)~~(3) ~~Permittee~~ Certification by Signature.

(A) The permittee signing the report certifies to the following statement: "I certify, under penalty of law, that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who managed the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fines and imprisonment for knowing violations."

(B) The monthly report shall also be certified by the operator in responsible charge of a classified treatment facility or by the manager of an industrial establishment which has a point source of waste discharge and which does not have a classified water pollution control facility.

~~(3)~~(4) In addition to the information required on all reports [see Subparagraph (a)(4) of this Rule] the following information shall be submitted in monthly monitoring reports:

(A) ~~name~~ Name of person or group collecting sample or making observation;

(B) ~~name~~ Name of person or group that analyzed sample;

(C) ~~name~~ Name of operator in responsible charge of the facility and the grade certificate held;

(D) ~~sampling~~ Sampling point for each sample;

(E) ~~date~~ Date and time (on 2400 hour clock basis) at which each grab sample was collected;

(F) For composite samples:

(i) date on which collection of composite samples is commenced,

(ii) time of starting and ending of composite sample period on 2400 hour clock basis;

(G) ~~wastewater~~ Wastewater flow in million gallons per day ~~(MGD);~~ (MGD), or in units specified in the permit;

(H) Results of analyses (reported to the designated number of figures with a properly placed decimal point as indicated on each report sheet) together with the proper storet number (to be furnished by the Division) for the analytical procedure used and the reporting units shall be those specified by the NPDES permit or current enforcement document, unless modified by the Director;

(I) Only numeric values will be accepted in reporting results of fecal coliform testing. The reporting of "too numerous to count" (TNTC) as a value will constitute a violation;

(J) The results of all tests on the characteristics of the effluent, including but not limited to NPDES Permit Monitoring Requirements, shall be reported on monthly report forms;

(K) The monthly average of analysis for each parameter and the maximum and minimum values for the month shall be reported;

(L) Certification by the Operator in Responsible Charge (ORC) as to the accuracy and completeness of the report and that he/she has performed and documented the required visitation and process control.

(c) Additional Reporting/Monitoring Requirements:

(1) When a facility is operated on an independent contract basis, the operator in responsible charge shall notify the owner of the facility in writing of any existing or anticipated conditions at the facility which may interfere with its proper operation and which need corrective action by the owner. The notice shall include recommendations for corrective action.

(2) Two ~~copies~~ printed copies, or an electronic copy, of the signed notice to the owner shall be sent to the Division ~~as an attachment to~~ no later than the next monthly monitoring report.

(3) A log demonstrating visitation at the proper frequency for the assigned classification, including dates and times of visits, and documentation of proper process control monitoring shall be maintained and shall be submitted to the Division upon request. Copies of all information must be readily available for inspection for a period of three years.

(d) All information submitted will be classified as public information unless determined otherwise by the ~~Director.~~ Director in accordance with 15A NCAC 02H .0115.

History Note: *Authority G.S. 143-215.1(b); 143-215.64; 143-215.65; 143-215.68;*
Eff. February 1, 1976;
Amended Eff. August 2, 1993; April 1, 1993; December 1, 1984; November 1, ~~1978.~~ 1978;
Readopted <date>.

15A NCAC 02B .0508 TESTS AND MEASUREMENTS APPLICABLE TO SICS

(a) Determination of Type and Frequency of Tests and Measurements:

(1) Introduction. The tables set forth in this Rule are designed to indicate, for any particular water pollution control facility or point source, the minimum standard tests and measurements which are to be performed, the minimum frequency with which the tests and measurements are to be conducted, and the location and minimum number of sampling points that are required.

(2) Determination of Facility Class and SIC Numbers. Before these tables may be applied, the standard industrial classification(s) of the activities discharging to the water pollution control facility must be determined from The Standard Industrial Classification Manual. The classification of the facility as determined by the Water Pollution Control System Operators Certification Commission, must also be known.

(b) Modification of Test(s) or Measurement(s) Requirements:

(1) If it is demonstrated to the satisfaction of the Director that any of the tests and measurements, sampling points, or frequency of sampling requirements, as required in this Rule for a particular SIC group, are not applicable to the discharge of a particular water pollution control facility, or if it can be demonstrated that the objectives of this Section can be achieved by other acceptable means, then such requirements may be waived or modified to the extent that the Director determines to be appropriate.

(2) In addition to the tests and measurements as listed in this Rule applicable to each of the SIC groups, persons subject to this Section may be required to perform such additional tests and measurements at such sampling points and with such frequency as are determined by the Director to be necessary to adequately monitor constituents of the waste discharge and their effect upon the receiving waters. This monitoring may ~~include,~~ include but not be limited to weekends and holidays as deemed necessary by the Director to ensure representative sampling and proper operation and maintenance of any facility.

(c) Unclassified Activities:

(1) Any person owning or operating a water pollution control facility who determines that a major SIC group(s) is not listed in this Rule for an activity subject to this Section shall so notify the Division.

(2) The Director shall prescribe the number and location of sampling points and the frequency with which tests and measurements must be made for such pollutant or pollutant effects as it shall deem necessary to properly monitor the quantity or quality of waste discharges resulting from any activity subject to this Section which is not included in the major SIC groups set forth in this Rule and to properly monitor effects of the discharges upon the waters of this state.

(d) Index of Major Standard Industrial Groups:

SIC Number	Major Products or Services
1400-1499	Mining

2000-2199	Food, Beverage and Tobacco Processing
2200-2299	Textile Processing
2400-2599	Lumber and Wood Products Except Wet Decking
2600-2699	Paper and Allied Products
2800-2899	Chemical and Allied Products
2900-2999	Petroleum Refining and Related Industries
3100-3199	Leather and Leather Products
3400-3699	Fabricated Metal Products Except Ordnance, Machinery and Transportation Equipment Machinery Electrical Machinery, Equipment and Supplies
4900-4939	Electric, and Gas Services
4941	Water Supply
4952	Wastewater and all facilities discharging primarily domestic wastewater
7000-8999	Services

Abbreviations for sampling locations and frequencies to be used with SIC monitoring requirements:

"I" means influent "E" means effluent "U" means upstream "D" means downstream

"2/month" means samples are collected twice per month with a required 10 day interval between the collection of the samples

"3/week" means samples are collected three times per week on three separate days

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MINING

MINIMUM REQUIREMENTS FOR SIC 1400-1499

	REQUIRED TEST	LOCATION	FREQUENCY			
			CLASS I	CLASS II	CLASS III	CLASS IV
1.	Turbidity	E	Monthly	Monthly	Monthly	Monthly
2.	Settleable Matter	E	Monthly	Monthly	Monthly	Monthly
3.	TSS	E	Monthly	Monthly	Monthly	Monthly
4.	pH	E	Monthly	Monthly	Monthly	Monthly
5.	Toxics and Toxicity		**	**	**	**

FOOD AND BEVERAGE PROCESSING AND TOBACCO PROCESSING

MINIMUM REQUIREMENTS FOR SIC 2000-2199

EFFLUENT LIMITED

	REQUIRED TEST	LOCATION	FREQUENCY			
			CLASS I	CLASS II	CLASS III	CLASS IV
1.	pH	E	Weekly	Weekly	3/week	Daily
2.	Temperature, °C	E	Weekly	Weekly	3/week	Daily
3.	BOD, 5-day, 20°C	E	2/month	Weekly	3/week	Daily
4.	TSS	E	2/month	Weekly	3/week	Daily
5.	Ammonia Nitrogen	E	Monthly	2/month	Weekly	Weekly
6.	Total Nitrogen	E	*	*	*	*
7.	Total Phosphorus	E	*	*	*	*
8.	Toxics and Toxicity		**	**	**	**

WATER QUALITY LIMITED

1.	Dissolved Oxygen	E	Weekly	Weekly	3/week	Daily
2.	Dissolved Oxygen	U,D	Weekly	Weekly	3/week+	3/week+
3.	pH	E	Weekly	Weekly	3/week	Daily
4.	Temperature, °C	E	Weekly	Weekly	3/week	Daily
5.	Temperature, °C	U,D	Weekly	Weekly	3/week+	3/week+
6.	BOD, 5-day, 20°C	E	2/month	Weekly	3/week	Daily
7.	TSS	E	2/month	Weekly	3/week	Daily
8.	Ammonia Nitrogen	E	2/month	Weekly	3/week	Daily
9.	Total Nitrogen	E	*	*	*	*
10.	Total Phosphorus	E	*	*	*	*
11.	Toxics and Toxicity		**	**	**	**
12.	Conductivity	E	Weekly	Weekly	3/week	Daily
13.	Conductivity	U,D	Weekly	Weekly	3/week+	3/week+

TEXTILE PROCESSING

MINIMUM REQUIREMENTS FOR SIC 2200-2299

EFFLUENT LIMITED

	REQUIRED TEST	LOCATION	FREQUENCY			
			CLASS I	CLASS II	CLASS III	CLASS IV
1.	pH	E	Weekly	Weekly	3/week	Daily

2.	Temperature, °C	E	Weekly	Weekly	3/week	Daily
3.	BOD, 5-day, 20°C	E	2/month	Weekly	3/week	Daily
4.	COD	E	2/month	Weekly	3/week	Daily
5.	TSS	E	2/month	Weekly	3/week	Daily
6.	Total Nitrogen	E	*	*	*	*
7.	Total Phosphorus	E	*	*	*	*
8.	Toxics and Toxicity		**	**	**	**

WATER QUALITY LIMITED

	REQUIRED TEST	LOCATION	FREQUENCY			
			CLASS I	CLASS II	CLASS III	CLASS IV
1.	Dissolved Oxygen	E	Weekly	Weekly	3/week	Daily
2.	Dissolved Oxygen	U,D	Weekly	Weekly	3/week+	3/week+
3.	pH	E	Weekly	Weekly	3/week	Daily
4.	Temperature, °C	E	Weekly	Weekly	3/week	Daily
5.	Temperature, °C	U,D	Weekly	Weekly	3/week+	3/week+
6.	BOD, 5-day, 20°C	E	2/month	Weekly	3/week	Daily
7.	COD	E	2/month	Weekly	Weekly	Weekly
8.	TSS	E	2/month	Weekly	3/week	Daily
9.	Total Nitrogen	E	*	*	*	*
10.	Total Phosphorus	E	*	*	*	*
11.	Toxics and Toxicity		**	**	**	**
12.	Conductivity	E	Weekly	Weekly	3/week	Daily
13.	Conductivity	U,D	Weekly	Weekly	3/week+	3/week+

LUMBER AND WOOD PRODUCTS (EXCLUDING WET DECKING)

MINIMUM REQUIREMENTS FOR SIC 2400-2599

EFFLUENT LIMITED

	REQUIRED TEST	LOCATION	FREQUENCY			
			CLASS I	CLASS II	CLASS III	CLASS IV
1.	pH	E	Weekly	Weekly	3/week	Daily
2.	Temperature, °C	E	Weekly	Weekly	3/week	Daily

3.	BOD, 5-day, 20°C	E	2/month	Weekly	3/week	Daily
4.	COD	E	Monthly	2/month	Weekly	3/week
5.	Total Phenols	E	2/month	Weekly	3/week	Daily
6.	TSS	E	2/month	Weekly	3/week	Daily
7.	Total Nitrogen	E	*	*	*	*
8.	Total Phosphorus	E	*	*	*	*
9.	Toxics and Toxicity		**	**	**	**

WATER QUALITY LIMITED

1.	Dissolved Oxygen	E	Weekly	Weekly	3/week	Daily
2.	Dissolved Oxygen	U,D	Weekly	Weekly	3/week+	3/week+
3.	pH	E	Weekly	Weekly	3/week	Daily
4.	Temperature, 0C	E	Weekly	Weekly	3/week	Daily
5.	Temperature, 0C	U,D	Weekly	Weekly	3/week+	3/week+
6.	BOD, 5-day, 200C	E	2/month	Weekly	3/week	Daily
7.	COD	E	2/month	Weekly	3/week	Daily
8.	Total Phenols	E	2/month	Weekly	3/week	Daily
9.	TSS	E	2/month	Weekly	3/week	Daily
10.	Total Nitrogen	E	*	*	*	*
11.	Total Phosphorus	E	*	*	*	*
12.	Toxics and Toxicity		**	**	**	**
13.	Conductivity	E	Weekly	Weekly	3/week	Daily
14.	Conductivity	U,D	Weekly	Weekly	3/week+	3/week+

PAPER AND ALLIED PRODUCTS

MINIMUM REQUIREMENTS FOR SIC 2600-2699

EFFLUENT LIMITED

	REQUIRED TEST	LOCATION	FREQUENCY			
			CLASS I	CLASS II	CLASS III	CLASS IV
1.	pH	E	Weekly	Weekly	3/week	Daily
2.	Temperature, °C	E	Weekly	Weekly	3/week	Daily
3.	BOD, 5-day, 20°C	E	2/month	Weekly	3/week	Daily
4.	TSS	E	2/month	Weekly	3/week	Daily

5.	Total Nitrogen	E	*	*	*	*
6.	Total Phosphorus	E	*	*	*	*
7.	Toxics and Toxicity		**	**	**	**

WATER QUALITY LIMITED

1.	Dissolved Oxygen	E	Weekly	Weekly	3/week	Daily
2.	Dissolved Oxygen	U,D	Weekly	Weekly	3/week+	3/week+
3.	pH	E	Weekly	Weekly	3/week	Daily
4.	Temperature, °C	E	Weekly	Weekly	3/week	Daily
5.	Temperature, °C	U,D	Weekly	Weekly	3/week+	3/week+
6.	BOD, 5-day, 20°C	E	2/month	Weekly	3/week	Daily
7.	TSS	E	2/month	Weekly	3/week	Daily
8.	Total Nitrogen	E	*	*	*	*
9.	Total Phosphorus	E	*	*	*	*
10.	Toxics and Toxicity		**	**	**	**
11.	Conductivity	E	Weekly	Weekly	3/week	Daily
12.	Conductivity	U,D	Weekly	Weekly	3/week+	3/week+

CHEMICAL AND ALLIED PRODUCTS

MINIMUM REQUIREMENTS FOR SIC 2800-2899

EFFLUENT LIMITED

	REQUIRED TEST	LOCATION	FREQUENCY			
			CLASS I	CLASS II	CLASS III	CLASS IV
1.	pH	E	Weekly	Weekly	3/week	Daily
2.	Temperature, °C	E	Weekly	Weekly	3/week	Daily
3.	BOD, 5-day, 20°C	E	2/month	Weekly	3/week	Daily
4.	TSS	E	2/month	Weekly	3/week	Daily
5.	Total Nitrogen	E	*	*	*	*
6.	Total Phosphorus	E	*	*	*	*
7.	Toxics and Toxicity		**	**	**	**

WATER QUALITY LIMITED

1.	Dissolved Oxygen	E	Weekly	Weekly	3/week	Daily
2.	Dissolved Oxygen	U,D	Weekly	Weekly	3/week+	3/week+
3.	pH	E	Weekly	Weekly	3/week	Daily
4.	Temperature, °C	E	Weekly	Weekly	3/week	Daily
5.	Temperature, °C	U,D	Weekly	Weekly	3/week+	3/week+
6.	BOD, 5-day, 20°C	E	2/month	Weekly	3/week	Daily
7.	TSS	E	2/month	Weekly	3/week	Daily
8.	Total Nitrogen	E	*	*	*	*
9.	Total Phosphorus	E	*	*	*	*
10.	Toxics and Toxicity		**	**	**	**
11.	Conductivity	E	Weekly	Weekly	3/week	Daily
12.	Conductivity	U,D	Weekly	Weekly	3/week+	3/week+

PETROLEUM REFINING AND RELATED INDUSTRIES

MINIMUM REQUIREMENTS FOR SIC 2900-2999

EFFLUENT LIMITED

	REQUIRED TEST	LOCATION	FREQUENCY			
			CLASS I	CLASS II	CLASS III	CLASS IV
1.	pH	E	Weekly	Weekly	3/week	Daily
2.	Temperature, °C	E	Weekly	Weekly	3/week	Daily
3.	BOD, 5-day, 20°C	E	2/month	Weekly	3/week	Daily
4.	TSS	E	2/month	Weekly	3/week	Daily
5.	Total Phenols	E	2/month	Weekly	3/week	Daily
6.	Oil and Grease	E	2/month	Weekly	3/week	Daily
7.	Total Nitrogen	E	*	*	*	*
8.	Total Phosphorus	E	*	*	*	*
9.	Toxics and Toxicity		**	**	**	**

WATER QUALITY LIMITED

1.	Dissolved Oxygen	E	Weekly	Weekly	3/week	Daily
2.	Dissolved Oxygen	U,D	Weekly	Weekly	3/week+	3/week+
3.	pH	E	Weekly	Weekly	3/week	Daily
4.	Temperature, °C	E	Weekly	Weekly	3/week	Daily

5.	Temperature, °C	U,D	Weekly	Weekly	3/week+	3/week+
6.	BOD, 5-day, 20°C	E	2/month	Weekly	3/week	Daily
7.	TSS	E	2/month	Weekly	3/week	Daily
8.	Total Phenols	E	2/month	Weekly	3/week	Daily
9.	Oil and Grease	E	2/month	Weekly	3/week	Daily
10.	Total Nitrogen	E	*	*	*	*
11.	Total Phosphorus	E	*	*	*	*
12.	Toxics and Toxicity		**	**	**	**
13.	Conductivity	E	Weekly	Weekly	3/week	Daily
14.	Conductivity	U,D	Weekly	Weekly	3/week+	3/week+

LEATHER AND LEATHER PRODUCTS

MINIMUM REQUIREMENTS FOR SIC 3100-3199

EFFLUENT LIMITED

	REQUIRED TEST	LOCATION	FREQUENCY			
			CLASS I	CLASS II	CLASS III	CLASS IV
1.	pH	E	Weekly	Weekly	3/week	Daily
2.	Temperature, °C	E	Weekly	Weekly	3/week	Daily
3.	BOD, 5-day, 20°C	E	2/month	Weekly	3/week	Daily
4.	TSS	E	2/month	Weekly	3/week	Daily
5.	COD	E	2/month	Weekly	Weekly	Daily
6.	Ammonia Nitrogen	E	Monthly	Weekly	Weekly	Weekly
7.	Oil and Grease	E	2/month	Weekly	3/week	Daily
8.	Turbidity	E	Weekly	3/week	Daily	Daily
9.	Total Nitrogen	E	*	*	*	*
10.	Total Phosphorus	E	*	*	*	*
11.	Toxics and Toxicity		**	**	**	**

WATER QUALITY LIMITED

1.	Dissolved Oxygen	E	Weekly	Weekly	3/week	Daily
2.	Dissolved Oxygen	U,D	Weekly	Weekly	3/week+	3/week+
3.	pH	E	Weekly	Weekly	3/week	Daily
4.	Temperature, °C	E	Weekly	Weekly	3/week	Daily

5.	Temperature, °C	U,D	Weekly	Weekly	3/week+	3/week+
6.	BOD, 5-day, 20°C	E	2/month	Weekly	3/week	Daily
7.	TSS	E	2/month	Weekly	3/week	Daily
8.	COD	E	2/month	Weekly	3/week	Daily
9.	Ammonia Nitrogen	E	2/month	Weekly	3/week	Daily
10.	Oil and Grease	E	2/month	Weekly	3/week	Daily
11.	Turbidity	E	Weekly	Weekly	3/week	Daily
12.	Total Nitrogen	E	*	*	*	*
13.	Total Phosphorus	E	*	*	*	*
14.	Toxics and Toxicity		**	**	**	**
15.	Conductivity	E	Weekly	Weekly	3/week	Daily
16.	Conductivity	U,D	Weekly	Weekly	3/week+	3/week+

FABRICATED METAL PRODUCTS EXCEPT ORDINANCE:MACHINERY AND TRANSPORTATION EQUIPMENT MACHINERYELECTRICAL MACHINERY, EQUIPMENT AND SUPPLIES

MINIMUM REQUIREMENTS FOR SIC 3400-3699

EFFLUENT LIMITED

	REQUIRED TEST	LOCATION	FREQUENCY			
			CLASS I	CLASS II	CLASS III	CLASS IV
1.	pH	E	Weekly	Weekly	3/week	Daily
2.	Temperature, °C	E	Weekly	Weekly	3/week	Daily
3.	Oil and Grease	E	2/month	Weekly	3/week	Daily
4.	Total Nitrogen	E	*	*	*	*
5.	Total Phosphorus	E	*	*	*	*
6.	Toxics and Toxicity		**	**	**	**
7.	Dissolved Oxygen	E	Weekly	Weekly	3/week	Daily

WATER QUALITY LIMITED

1.	Dissolved Oxygen	E	Weekly	Weekly	3/week	Daily
2.	pH	E	Weekly	Weekly	3/week	Daily
3.	Temperature, °C	E	Weekly	Weekly	3/week	Daily
4.	Oil and Grease	E	2/month	Weekly	3/week	Daily
5.	Total Nitrogen	E	*	*	*	*

6.	Total Phosphorus	E	*	*	*	*
7.	Toxics and Toxicity		**	**	**	**

ELECTRICAL AND GAS SERVICES

MINIMUM REQUIREMENTS FOR SIC 4900-4939

EFFLUENT LIMITED

	REQUIRED TEST	LOCATION	FREQUENCY			
			CLASS I	CLASS II	CLASS III	CLASS IV
1.	pH	E	Weekly	Weekly	Weekly	Weekly
2.	Temperature, °C	E	Weekly	Weekly	Weekly	Weekly
3.	Total Nitrogen	E	*	*	*	*
4.	Total Phosphorus	E	*	*	*	*
5.	Toxics and Toxicity		**	**	**	**

WATER QUALITY LIMITED

1.	Dissolved Oxygen	E	Weekly	Weekly	Weekly	Weekly
2.	pH	E	Weekly	Weekly	Weekly	Weekly
3.	Temperature, °C	E	Weekly	Weekly	Weekly	Weekly
4.	Total Nitrogen	E	*	*	*	*
5.	Total Phosphorus	E	*	*	*	*
6.	Toxics and Toxicity		**	**	**	**

Note: The following monitoring for steam electric generating establishments discharging once through cooling water or cooling tower blowdown shall be required whether or not the discharge is from a classified facility.

	REQUIRED TEST	LOCATION	FREQUENCY			
			CLASS I	CLASS II	CLASS III	CLASS IV
1.	Temperature, °C	E	Cont.	Cont.	Cont.	Cont.
2.	Temperature, °C	U, D	3/week+	3/week+	3/week+	3/week+
3.	Flow		Continuous during discharge	Continuous during discharge	Continuous during discharge	Continuous during discharge

WATER SUPPLY PLANTS

MINIMUM REQUIREMENTS FOR SIC 4941

EFFLUENT LIMITED

	REQUIRED TEST	LOCATION	FREQUENCY			
			CLASS I	CLASS II	CLASS III	CLASS IV
1.	Settleable Solids	E	Weekly	Weekly	Weekly	Weekly
2.	TSS	E	2/month	2/month	2/month	2/month
3.	Turbidity	E	Weekly	Weekly	Weekly	Weekly
4.	pH	E	Weekly	Weekly	Weekly	Weekly
5.	Chloride	E	Weekly	Weekly	Weekly	Weekly

DOMESTIC WASTEWATER AND OTHER FACILITIES DISCHARGING PRIMARILY DOMESTIC

MINIMUM REQUIREMENTS FOR SIC 4952

EFFLUENT LIMITED

	REQUIRED TEST	LOCATION	FREQUENCY			
			CLASS I	CLASS II	CLASS III	CLASS IV
1.	pH	E	2/month	Weekly	3/week	Daily
2.	Temperature, °C	E	Weekly	Weekly	3/week	Daily
3.	BOD, 5-day, 20°C	I,E	2/month	Weekly	3/week	Daily
4.	TSS	I,E	2/month	Weekly	3/week	Daily
5.	Ammonia Nitrogen	E	Monthly	2/month	Weekly	3/week
6.	Fecal Coliform	E	2/month	Weekly	3/week	Daily
7.	Total Nitrogen	E	*	*	*	*
8.	Total Phosphorus	E	*	*	*	*
9.	Toxics and Toxicity		**	**	**	**

WATER QUALITY LIMITED

1.	Dissolved Oxygen	E	Weekly	Weekly	3/week	Daily
2.	Dissolved Oxygen	U,D	Weekly	Weekly	3/week+	3/week+

3.	pH	E	2/month	Weekly	3/week	Daily
4.	Temperature, °C	E	Daily	Daily	Daily	Daily
5.	Temperature, °5	U,D	Weekly	Weekly	3/week+	3/week+
6.	BOD, 5-day, 20°C	~~E,I~~ I,E	2/month	Weekly	3/week	Daily
7.	TSS	~~E,I~~ I,E	2/month	Weekly	3/week	Daily
8.	Ammonia Nitrogen	E	2/month	Weekly	3/week	Daily
9.	Residual Chlorine	E	2/week	2/week	3/week	Daily
10.	Fecal Coliform	E	2/month	Weekly	3/week	Daily
11.	Fecal Coliform	U,D	2/month	Weekly	3/week+	3/week+
12.	Conductivity	E	Weekly	Weekly	3/week	Daily
13.	Conductivity	U,D	Weekly	Weekly	3/week+	3/week+
14.	Total Nitrogen	E	*	*	*	*
15.	Total Phosphorus	E	*	*	*	*
16.	Toxics and Toxicity		**	**	**	**

SERVICES

MINIMUM REQUIREMENTS FOR SIC 7000-8999

EFFLUENT LIMITED

	REQUIRED TEST	LOCATION	FREQUENCY			
			CLASS I	CLASS II	CLASS III	CLASS IV
1.	pH	E	Weekly	Weekly	3/week	Daily
2.	Temperature, °C	E	Weekly	Weekly	3/week	Daily
3.	BOD, 5-day, 20°C	E	2/month	Weekly	3/week	Daily
4.	TSS	E	2/month	Weekly	3/week	Daily
5.	Ammonia Nitrogen	E	Monthly	2/month	Weekly	3/week
6.	Detergents (MBAS)	E	2/month	Weekly	3/week	Daily
7.	Fecal Coliform	E	2/month	Weekly	3/week	Daily
8.	Total Nitrogen	E	*	*	*	*
9.	Total Phosphorus	E	Monthly	2/month	Weekly	3/week
10.	Toxics and Toxicity		**	**	**	**

WATER QUALITY LIMITED

1.	Dissolved Oxygen	E	Weekly	Weekly	3/week	Daily

2.	Dissolved Oxygen	U,D	Weekly	Weekly	3/week+	3/week+
3.	pH	E	Weekly	Weekly	3/week	Daily
4.	Temperature, °C	E	Weekly	Weekly	3/week	Daily
5.	Temperature, °C	U,D	Weekly	Weekly	3/week+	3/week+
6.	BOD, 5-day, 20°C	E	2/month	Weekly	3/week	Daily
7.	TSS	E	2/month	Weekly	3/week	Daily
8.	Ammonia Nitrogen	E	Monthly	2/month	Weekly	3/week
9.	Detergents (MBAS)	E	2/month	Weekly	3/week	Daily
10.	Fecal Coliform	E	2/month	Weekly	3/week	Daily
11.	Total Nitrogen	E	*	*	*	*
12.	Total Phosphorus	E	*	*	*	*
13.	Toxics and Toxicity		**	**	**	**
14.	Conductivity	E	Weekly	Weekly	3/week	Daily
15.	Conductivity	U,D	Weekly	Weekly	3/week+	3/week+

+ Upstream and Downstream monitoring in water quality limited waters is to be conducted three times per week during June, July, August, and September, and once per week during the rest of the year.

* Total Nitrogen and Phosphorus Monitoring

(1) Monitoring Requirements

(A) All facilities equal to or greater than 50,000 gpd, shall monitor for total N and P.

(B) Facilities less than 50,000 gpd shall monitor for total N and P when discharging into nutrient sensitive waters as designated by the Division.

(2) Monitoring frequency for total N and P is based on river subbasins in two separate areas of the state as follows:

(A) Western area includes the French Broad, Broad, Savannah, New, Watauga, Little Tennessee, and Hiwassee:

	Facility Design Capacity:	Frequency
(i)	50,000 gpd or higher	Semi-annually
(ii)	1,000,000 gpd or higher	Quarterly.

(B) Piedmont and Eastern area includes the Catawba, Lumber, Yadkin, Cape Fear, Chowan, Neuse, Pasquotank, Roanoke, Tar-Pamlico, and White Oak:

	Facility Design Capacity	Frequency
(i)	50,000 gpd or higher	Quarterly
(ii)	1,000,000 gpd or higher	Monthly.

(3) Definition for Total Nitrogen and Total Phosphorus:

(A) Total Nitrogen shall be the sum of total ~~kjeldahl~~ Kjeldahl nitrogen, nitrate nitrogen, and nitrite nitrogen expressed as "N" in milligrams per liter ~~(mg/l).~~ (mg/L).

(B) Total Phosphorus shall include all orthophosphates and condensed phosphates, both dissolved and particulate, organic and inorganic, expressed as "P" in milligrams per liter ~~(mg/l).~~ (mg/L).

** Specific test type, conditions, and limitations will be defined by permit. Toxicity limits will be applied to all major discharges and all discharges of complex wastewater. Toxicity limitations and monitoring requirements may be applied to permits for other discharges when, in the opinion of the Director, such discharge may impair the best use of the receiving water by the discharge of toxic substances in toxic amounts.

Specific frequency will be defined by individual permit conditions. For most facilities with continuous and regularly occurring discharges, frequency will be defined as a minimum of quarterly.

History Note: *Authority G.S. 143-215.65; 143-215.66; 143-215.68;*
Eff. February 1, 1976;
Amended Eff. April 1, 1993; December 1, 1984; November 1, ~~1978.~~ 1978;
Readopted <date>.

15A NCAC 02B .0511 INCORPORATION BY REFERENCE

(a) The following sections of Title 40 of the Code of Federal Regulations (CFR) are incorporated by reference, including subsequent amendments and editions, and shall apply throughout this Section except where procedural details of the federal rules differ from procedures adopted elsewhere in this section, in which case the separately adopted procedure governs. The current version of these regulations can be accessed free of charge at http://www.gpo.gov/fdsys/.

(1) 40 CFR 122.2, 124.2, and 125.2: Definitions;

(2) 40 CFR 122.4: Prohibitions):

(3) 40 CFR 122.5 (a) and (b): Effect of permit;

(4) 40 CFR 122.7 (b) and (c): Confidential information;

(5) 40 CFR 122.21 (a)-(b), (c)(2), (e)-(k), (m)-(p), (q), and (r): Application for a permit;

(6) 40 CFR 122.22: Signatories;

(7) 40 CFR 122.23: Concentrated animal feeding operations;

(8) 40 CFR 122.24: Concentrated aquatic animal production facilities;

(9) 40 CFR 122.25: Aquaculture projects;

(10) 40 CFR 122.26: Storm water discharges;

(11) 40 CFR 122.27: Silviculture;

(12) 40 CFR 122.28: General permits;

(13) 40 CFR 122.29 (a), (b), and (d): New sources and new dischargers;

(14) 40 CFR 122.30: NPDES stormwater regulations for small MS4s: objectives;

(15) 40 CFR 122.31: NPDES stormwater regulations: role of Tribes;

(16) 40 CFR 122.32: NPDES stormwater regulations for small MS4s: applicability;

(17) 40 CFR 122.33: NPDES stormwater regulations for small MS4s: application for permit;

(18) 40 CFR 122.34: NPDES stormwater regulations for small MS4s: permit requirements;

(19) 40 CFR 122.35: NPDES stormwater regulations for small MS4s: shared responsibilities;

(20) 40 CFR 122.36: NPDES stormwater regulations for small MS4s: compliance;

(21) 40 CFR 122.37: NPDES stormwater regulations for small MS4s: evaluation;

(22) 40 CFR 122.41 (a)(1) and (b) through (n): Applicable permit conditions;

(23) 40 CFR 122.42: Conditions applicable to specified categories of permits;

(24) 40 CFR 122.43: Establishing permit conditions;

(25) 40 CFR 122.44: Establishing NPDES permit conditions;

(26) 40 CFR 122.45: Calculating permit conditions;

(27) 40 CFR 122.46: Duration;

(28) 40 CFR 122.47 (a): Schedules of compliance;

(29) 40 CFR 122.48: Monitoring requirements;

(30) 40 CFR 122.50: Disposal into wells;

(31) 40 CFR 122.61: Permit transfer;

(32) 40 CFR 122.62: Permit modification;

(33) 40 CFR 122.64: Permit termination;

(34) 40 CFR 124.3 (a): Application for a permit;

(35) 40 CFR 124.5 (a), (c), (d), and (f): Modification of permits;

(36) 40 CFR 124.6 (a), (c), (d), and (e): Draft permit;

(37) 40 CFR 124.8: Fact sheets;

(38) 40 CFR 124.10 (a)(1)(ii), (a)(1)(iii), (a)(1)(v), (b), (c), (d), and (e): Public notice;

(39) 40 CFR 124.11: Public comments and requests for hearings;

(40) 40 CFR 124.12 (a): Public hearings;

(41) 40 CFR 124.17 (a) and (c): Response to comments;

(42) 40 CFR 124.56: Fact sheets;

(43) 40 CFR 124.57 (a): Public notice;

(44) 40 CFR 124.59: Comments from government agencies;

(45) 40 CFR 124.62: Decision on variances;

(46) 40 CFR Part 125, Subparts A (Technology-Based Treatment Requirements), B (Aquaculture), D (Fundamentally Different Factors), H (Alternative Limitations, CWA Section 316(a)), I (Cooling Water Intake Structures, New Facilities, CWA Section 316(b)), J (Cooling Water Intake Structures, Existing Facilities, CWA Section 316(b)), and N (Cooling Water Intake Structures, Offshore Oil and Gas Facilities, CWA Section 316(b));

(47) 40 CFR Parts 129 (Toxic Pollutant Effluent Standards) and 133 (Secondary Treatment Regulation), and Subchapter N (Effluent Guidelines and Standards);

(48) 40 CFR Part 3: Electronic reporting;

(49) 40 CFR Part 136: Guidelines for establishing test procedures for the analysis of pollutants; and

(50) 40 CFR 401.15: List of toxic pollutants pursuant to CWA Section 307(a)(1).

(b) This Rule is not an exclusive list of federal regulations adopted by reference in this Section. Other rules of the Section incorporate some of these same federal regulations for clarity or emphasis and may incorporate additional regulations not listed in Paragraph (a) of this Rule.

History Note: *Authority G.S. 143-211(c); 143-215.1(b)(4); 143B-282(5);*
Eff. <date>.

15A NCAC 02B .0601 SITE SPECIFIC WATER QUALITY MANAGEMENT PLAN FOR THE GOOSE CREEK WATERSHED (YADKIN PEE-DEE RIVER BASIN): PURPOSE

The Goose Creek watershed in the Yadkin Pee-Dee River Basin provides habitat for an aquatic animal species that is listed as federally endangered by the U.S. Fish and Wildlife Service under the provisions of the Endangered Species Act, 16 U.S.C. 1531-1544. Maintenance and recovery of the water quality conditions required to sustain and recover the federally-listed endangered species thereby protects the biological integrity of the waters. The Goose Creek watershed, which includes Goose Creek (Index # 13-17-18), Stevens Creek (Index # 13-17-18-1), Paddle Branch (Index # 13-17-18-2), Duck Creek (Index # 13-17-18-3) and all tributaries, shall be protected by the site-specific management strategy described in Rules .0601 through ~~.0609~~ .0608 of this Section.

The purpose of the actions required by this site-specific management strategy is for the maintenance and recovery of the water quality conditions required to sustain and recover the federally endangered Carolina heelsplitter (Lasmigona decorata) species. Management of the streamside zones to stabilize streambanks and prevent sedimentation are critical measures to restore water quality to sustain and enable recovery of the federally endangered Carolina heelsplitter. Site-specific management strategies shall be implemented to:

(1) control stormwater for projects disturbing one acre or more of land as described in Rule ~~.0602,~~ .0602 of this Section;

(2) control wastewater discharges as described in Rule ~~.0603,~~ .0603 of this Section;

(3) control toxicity to streams supporting the Carolina heelsplitter as described in Rule ~~.0604,~~ .0604 of this Section; and

(4) maintain riparian buffers as described in Rules .0605 through ~~.0609.~~ .0608 of this Section.

History Note: *Authority G.S. 143-214.1; 143-215.3(a)(1); 143-215.8A;*
Eff. January 1, 2009.
Readopted Eff. [New Date].

15A NCAC 02B .0602 SITE SPECIFIC WATER QUALITY MANAGEMENT PLAN FOR THE GOOSE CREEK WATERSHED (YADKIN PEE-DEE RIVER BASIN): STORMWATER CONTROL REQUIREMENTS

(a) Any new development activity that disturbs one acre or more of land within the Goose Creek watershed and will result in addition of impervious surface shall control and treat the difference in the stormwater runoff from the predevelopment and post-development conditions for the one-year, 24-hour storm, with ~~structural~~ stormwater ~~controls,~~ control measures (SCMs), with the exception of NC Department of Transportation ~~and NC Turnpike Authority~~ activities that shall be regulated in accordance with provisions of that agency's National Pollutant Discharge Elimination System ~~NPDES~~ (NPDES) Stormwater Permit. Development and redevelopment shall implement stormwater management measures that promote infiltration of flows and groundwater recharge for the purpose of maintaining stream base flow or the delegated local government shall maintain a written explanation when it is not practical to use infiltration methods.

(b) ~~Structural stormwater controls~~ SCMs shall ~~meet the following requirements:~~

~~(1) Remove an 85 percent average annual amount of Total Suspended Solids;~~

~~(2) Draw down the treatment volume no faster than 48 hours, but no slower than 120 hours, for detention ponds;~~

~~(3) Discharge the storage volume at a rate equal or less than the pre-development discharge rate for the one-year, 24-hour storm; and~~

~~(4) Meet Design of Stormwater Management Measures set forth in 15A NCAC 02H .1008.~~ meet the relevant Minimum Design Criteria (MDC) set forth in 15A NCAC 02H .1050 through .1062.

(c) Local governments may submit a written request to the Commission for authority to implement and enforce the state's stormwater protection requirements of G.S. 143-214.7 and S.L. 2006-246 within their jurisdiction. The written request shall be accompanied by information that shows:

(1) The local government has land use jurisdiction for the riparian buffer demonstrated by delineating the local land use jurisdictional boundary on USGS 1:24,000 topographical map(s) or other finer scale map(s);

(2) The local government has the administrative organization, staff, legal authority, financial and other resources necessary to implement and enforce the state's stormwater requirements based on its size and projected amount of development;

(3) The local government has adopted ordinances, resolutions, or regulations necessary to establish and maintain the state's stormwater requirements; and

(4) The local government has provided a plan to address violations with civil or criminal remedies and actions as well as remedies that shall restore buffer functions on violation sites and provide a deterrent against the occurrence of future violations.

(d) Within 90 days after the Commission has received the request for delegation, the Commission shall notify the local government based on standards as set out in Paragraph (c) of this Rule whether it has been approved, approved with modifications, or denied.

(e) The Commission, upon determination that a delegated local authority is failing to implement or enforce the requirements in keeping with a delegation, shall notify the delegated local authority in writing of the local program's inadequacies. If the delegated local authority has not corrected the deficiencies within 90 days of receipt of the written notification, then the Commission shall rescind the delegation of authority to the local government and shall implement and enforce the state's stormwater requirements.

(f) Limits of delegated local authority are as follows: The Commission shall have jurisdiction to the exclusion of local governments to implement the state's stormwater protection requirements for the following types of activities:

(1) Activities undertaken by the State;

(2) Activities undertaken by the United States;

(3) Activities undertaken by multiple jurisdictions; and

(4) Activities undertaken by local units of government.

(g) Recordkeeping requirements are as follows: Delegated local authorities shall maintain on-site records for a minimum of five years~~. Delegated local authorities must~~ and shall furnish a copy of these records to the Director within 30 days of receipt of a written request for ~~the records~~them. The Division of ~~Water Quality Resources~~Energy, Mineral and Land Resources shall ~~inspect~~ audit local stormwater programs to ensure that the programs are being implemented and enforced in keeping with an approved delegation.

History Note: *Authority G.S. 143-214.1; 143-215.3(a)(1); 143-215.8A;143-214.7, S.L. 2006-246;*
Eff. February 1, 2009.
Readopted Eff. [New Date].

15A NCAC 02B .0603 SITE SPECIFIC WATER QUALITY MANAGEMENT PLAN FOR THE GOOSE CREEK WATERSHED (YADKIN PEE-DEE RIVER BASIN): WASTEWATER CONTROL REQUIREMENTS

No new National ~~Pollution~~ Pollutant Discharge Elimination System "NPDES" wastewater discharges or expansions to existing discharges shall be permitted.

History Note: *Authority G.S. 143-214.1; 143-215.3(a)(1); 143-215.8A;*
Eff. January 1, 2009.
Readopted Eff. [New Date].

15A NCAC 02B .0604 SITE SPECIFIC WATER QUALITY MANAGEMENT PLAN FOR THE GOOSE CREEK WATERSHED (YADKIN PEE-DEE RIVER BASIN): CONTROL TOXICITY INCLUDING AMMONIA

No activity that results in direct or indirect discharge is allowed if it causes toxicity to the Carolina heelsplitter (*Lasmigona decorata)* endangered mussel. For any direct or indirect discharge that may cause ammonia toxicity to the Carolina heelsplitter freshwater mussel, action shall be taken to reduce ammonia (NH_3-N) inputs to achieve 0.5 milligrams per liter or less of total ammonia based on chronic toxicity defined in ~~15A NCAC 02B .0202.~~ Rule .0202 of this Subchapter. This level of total ammonia is based on ambient water temperature equal to or greater than 25 degrees Celsius.

History Note: *Authority G.S. 143-214.1; 143-215.3(a)(1); 143-215.8A;*
Eff. February 1, 2009.
Readopted Eff. [New Date].

15A NCAC 02B .0605 SITE SPECIFIC WATER QUALITY MANAGEMENT PLAN FOR THE GOOSE CREEK WATERSHED (YADKIN PEE-DEE RIVER BASIN): RIPARIAN BUFFER WIDTHS

In ~~this~~ the Goose Creek watershed, ~~undisturbed~~ riparian buffers are required within 200 feet of waterbodies within the 100-Year Floodplain and within 100 feet of waterbodies that are not within the 100-Year Floodplain. The 100-Year Floodplain is the one percent Annual Chance Floodplain as delineated by the North Carolina Floodplain Mapping Program in the Division of Emergency Management. The riparian buffer shall consist of a vegetated area that is undisturbed except for uses provided in Rule .0607 of this Section. ~~Within the buffer areas that are regulated by this Rule, redevelopment is allowed for residential structures and redevelopment of non-residential structures is allowed provided that less than an additional half acre is disturbed during the redevelopment activity for non-residential structures. Redevelopment is defined in 15A NCAC 02H .1002(14). Exceptions to undisturbed forested riparian buffer requirements are set forth in Rule .0607 of this Section. Activities shall require stormwater control as required by Rule .0602 of this Section.~~

History Note: *Authority G.S. 143-214.1; 143-215.3(a)(1); 143-215.8A;*
Eff. January 1, 2009.
Readopted Eff. [New Date].

15A NCAC 02B .0606 SITE SPECIFIC WATER QUALITY MANAGEMENT PLAN FOR THE GOOSE CREEK WATERSHED (YADKIN PEE-DEE RIVER BASIN): ~~VARIANCE FOR ACTIVITIES WITHIN RIPARIAN BUFFERS~~ AUTHORIZATION CERTIFICATES

(a) PURPOSE. ~~Persons~~ The following requirements shall apply to persons who wish to undertake uses designated as allowable upon authorization, allowable with mitigation upon authorization, or allowable with exception ~~prohibited~~ within the protected riparian buffer area ~~may pursue a variance.~~ as specified in Rule .0607 of this Section. ~~Persons who wish to undertake forest harvesting beyond the requirements set forth in 15A NCAC 02B .0608 may pursue a variance.~~

(b) AUTHORIZATION CERTIFICATES. Persons who wish to undertake uses designated in Rule .0607 of this Section as allowable upon authorization or allowable with mitigation upon authorization shall submit an application requesting an Authorization Certificate from the Authority.

(1) The application shall specify:

(A) The name, address and phone number of the applicant;

(B) If the property owner is different than the applicant, specify the name, address and phone number of the property owner and provide authorization from the owner for the application;

(C) If the applicant is a corporation, the state in which it is domesticated, the name of its principal officers, the name and address of the North Carolina process agency, and the name, address and phone number of the individual who shall be primarily responsible for the conduct of the activity for which certification is sought;

(D) The nature of the activity to be conducted by the applicant;

(E) The location of the activity, including the jurisdiction;

(F) A map of sufficient detail to accurately delineate the boundaries of the land to be utilized in carrying out the activity, the location and dimensions of any disturbance in riparian buffers associated with the activity, and the extent of riparian buffers on the land;

(G) An explanation of why this plan for the activity cannot be practically accomplished, reduced, relocated or reconfigured to avoid or better minimize disturbance to the riparian buffer, preserve aquatic life and habitat and protect water quality;

(H) Plans for any best management practices proposed to be used to control the impacts associated with the activity; and

(I) For uses designated as allowable with mitigation upon authorization or allowable with exception, a mitigation proposal in accordance with Rule ~~.0704~~ .0295 of this Subchapter.

(2) The applicant shall certify that the project meets all the following criteria for finding no practical alternatives:

(A) The basic project purpose cannot be practically accomplished in a manner that would better minimize disturbance, preserve aquatic life and habitat, and protect water quality;

(B) The use cannot practically be reduced in size or density, reconfigured or redesigned to better minimize disturbance, preserve aquatic life and habitat, and protect water quality;

(C) Best management practices shall be used if necessary to minimize disturbance, preserve aquatic life and habitat, and protect water quality; and

(D) Why alternatives cannot be practically accomplished to avoid or minimize the disturbance.

(3) The Authority must consider the impacts that may affect conditions required to sustain and recover the federally endangered Carolina heelsplitter (Lasmigona decorata).

(4) Within 60 calendar days of receipt of a complete application package that addresses Subparagraph (b)(1) and (b)(2) of this Rule, the Authority shall issue an Authorization Certificate if the Authority makes a finding of "no practical alternatives" and the applicant also satisfies other applicable requirements as described in Subparagraph (b)(1) through (b)(3) of this Rule. Failure to act within 60 calendar days of receipt of a complete application shall be construed as a finding of "no practical alternatives" and an Authorization Certificate shall be issued by the Authority to the applicant unless one of the following occurs:

(A) The applicant agrees, in writing, to a longer period;

(B) The applicant fails to furnish information necessary for the Authority's decision;

(C) The applicant refuses Authority staff access to its records or premises for the purpose of gathering information necessary for the Authority's decision; or

(D) Information necessary for the Authority's decision is unavailable.

(5) The Authority may attach conditions to the Authorization Certificate that support the purpose, spirit and intent of the riparian buffer protection program.

(6) Requests for appeals of Authorization Certificates issued by the Division shall be made pursuant to G.S. 150B. Request for appeals of Authorization Certificates issued by the delegated local authority shall be made to the appropriate Board of Adjustment under G.S. 153A-345 or G.S. 160A-388.

(c) AUTHORIZATION CERTIFICATES WITH EXCEPTIONS. Persons who wish to undertake uses designated in Rule .0607 of this Section as allowable with exception shall submit an application requesting an Authorization Certificate with Exception. The ~~variance~~ Authorization Certificate with Exception review ~~request~~ procedure shall be as follows:

(1) ~~For any variance request, the Division of Water Quality shall make a finding of fact as to whether the following requirements have been met:~~ An Authorization Certificate with Exception shall require that all of the following conditions are met:

~~(a)~~(A) There are practical difficulties or unnecessary hardships that prevent compliance with the ~~strict letter of the~~ riparian buffer protection requirements. ~~Practical difficulties or unnecessary hardships shall be evaluated in accordance with the following:~~

~~(i)~~(B) If the applicant complies with the provisions of the riparian buffer requirements, ~~he/she~~ he or she can secure no reasonable return from, nor make reasonable use of, ~~his/her~~ his or her property. Merely proving that the ~~variance~~ Authorization Certificate with Exception would

~~permit~~ allow a greater profit from the property is not adequate justification ~~for a variance.~~ for an Authorization Certificate with Exception. Moreover, the ~~Division of Water Quality~~ Authority shall consider whether the ~~variance~~ Authorization Certificate with Exception is the minimum possible deviation from the terms of the riparian buffer requirements that will make reasonable use of the property possible.

~~(ii) The hardship results from application of the buffer requirements to the property rather than from other factors such as deed restrictions or other hardship.~~

~~(iii)~~(C) The hardship is due to the physical nature of the applicant's ~~property and is unique to the applicant's~~ property, such as its size, shape, or ~~topography, such that compliance with provision of this Rule would not allow reasonable use of the property.~~ topography.

~~(iv)~~(D) The applicant did not cause the ~~hardship by knowingly or unknowingly violating the buffer requirements.~~ hardship.

~~(v) The applicant did not purchase the property after the effective date of this Rule, and then request a variance.~~

~~(b)~~(E) The ~~variance~~ requested Authorization Certificate with Exception is in harmony with the general spirit, purpose and intent of the State's riparian buffer protection ~~requirements and preserves its spirit; and~~

~~(c) In granting the variance, the public safety and welfare have been assured, water quality has been protected, and substantial justice has been done.~~ requirements, will protect water quality, will secure public safety and welfare, and will preserve substantial justice.

(2) MINOR EXCEPTIONS. An Authorization Certificate with Minor Exception request pertains to allowable with exception activities that are proposed to impact equal to or less than one-third of an acre of riparian buffer.

(A) Authorization Certificate with Minor Exception requests shall be reviewed based on the criteria in Paragraph (b) and Subparagraph (c)(1) of this Rule.

(B) Within 60 calendar days of receipt of a complete application package that addresses Subparagraphs (b)(1), (b)(2) and (c)(1) of this Rule, the Authority shall issue an Authorization Certificate with Minor Exception if the Authority makes a finding that the criteria in Subparagraph (b)(2) and (c)(1) of this Rule have been met and the applicant satisfies other applicable requirements as described in Paragraph (b) and Subparagraph (c)(1) of this Rule. If the Authority determines that all of the requirements in Subparagraphs (b)(2) and (c)(1) of this Rule have not been met, the Authority shall issue a final decision denying the Authorization Certificate with Minor Exception.

(3) MAJOR EXCEPTIONS. ~~A variance~~ An Authorization Certificate with Major Exception request pertains to ~~any activity that is proposed to impact any portion~~ allowable with exception activities that are proposed to impact greater than one-third of an acre of the riparian buffer. ~~If the Division~~

~~of Water Quality has determined that a major variance request meets the requirements in Item (1) of this Rule, then it~~

(A) Authorization Certificate with Major Exception requests shall be reviewed based on the criteria in Paragraph (b) and Subparagraph (c)(1) of this Rule.

(B) ~~shall prepare a preliminary finding~~ Within 60 calendar days of receipt of a complete application package that addresses Subparagraphs (b)(1), (b)(2) and (c)(1) of this Rule, the Authority shall prepare a preliminary finding as to whether the criteria in Subparagraphs (b)(2) and (c)(1) of this Rule have been met. ~~and submit it to the Environmental Management Commission.~~

(C) Notice of each pending complete application for an Authorization Certificate with Major Exception, including the primary findings prepared by the Authority, shall be posted on the Division's website and sent to all individuals on the Mailing List, as described in 15A NCAC 02H .0503 (g), at least 30 calendar days prior to proposed final action by the Authority on the application.

(D) ~~Preliminary findings on variance requests shall be reviewed by the Commission within 90 days after receipt by the Director. Requests for appeals of determinations that the requirements of Item (1) of this Rule have not been met shall be made to the Office of Administrative Hearings for determinations made by the Division of Water Quality or the appropriate Board of Adjustments under G.S. 160A-388 or G.S. 153A-345 for determinations made by the delegated local authority. The purpose of the Commission's review is to determine if it agrees~~ Within 60 calendar days following the notice as described in Part (c)(3)(C) of this Rule, upon the Authority's determination that all of the requirements in ~~Item (1)~~ Subparagraphs (b)(2) and (c)(1) of this Rule have been ~~met. Requests for appeals of decisions made by the Commission shall be made to the Office of Administrative Hearings.~~ met, the Authority shall issue an Authorization Certificate with Major Exception. If the Authority determines that all of the requirements in Subparagraphs (b)(2) and (c)(1) of this Rule have not been met, the Authority shall issue a final decision denying the Authorization Certificate with Major Exception. ~~The following actions shall be taken depending on the Commission's decision on the major variance request:~~

~~(a) Upon the Commission's approval, the Division of Water Quality shall issue a final decision granting the variance.~~

~~(b) Upon the Commission's approval with conditions or stipulations, the Division of Water Quality shall issue a final decision, which includes these conditions or stipulations.~~

~~(c) Upon the Commission's denial, the Division of Water Quality shall issue a final decision denying the variance.~~

(3) The Authority may attach conditions to the Authorization Certificate with Exception that support the purpose, spirit and intent of the riparian buffer protection program.

(4) Requests for appeals of Authorization Certificates with Exception issued by the Division shall be made pursuant to G.S. 150B. Requests for appeals of Authorization Certificates with Exception issued by the delegated local authority shall be made to the appropriate Board of Adjustment under G.S 153A-345 or G.S. 160A-388.

History Note: *Authority G.S. 143-214.1; 143-215.3(a)(1); 143-215.8A;*
Eff. February 1, 2009.
Readopted Eff. [New Date]
The provisions of paragraph (b) of this Rule were previously codified in 15A NCAC 02B .0607(e).

15A NCAC 02B .0607 SITE SPECIFIC WATER QUALITY MANAGEMENT PLAN FOR THE GOOSE CREEK WATERSHED (YADKIN PEE-DEE RIVER BASIN): BUFFER TYPES AND MANAGING ACTIVITIES WITHIN RIPARIAN BUFFERS

(a) DEFINITIONS. For the purpose of this Rule and Rules .0605, .0606 and .0608 of this Section, these terms shall be defined as found in Rule .0610 of this Section and as follows:

(1) 'Authority' means either the Division or a local government that has been delegated pursuant this Rule to implement the riparian buffer program.

(2) 'Riparian buffer' means the area as defined in Paragraph (c) of this Rule.

(b) APPLICABILITY. This Rule applies to all landowners and other persons including local governments, state and federal entities conducting activities within the riparian buffers as described in Paragraph (c) of this Rule in the Goose Creek Watershed.

~~(a)~~(c) ~~RIPARIAN BUFFER.~~ BUFFERS PROTECTED. ~~The protected riparian buffer shall consist of an area that is undisturbed except for uses provided for in the table in this Rule. A waterbody shall be considered to be present if the feature is shown as described in the applicability paragraph of 15A NCAC 02B .0233 (3) and 02B .0233(3)(a)(i) (iii). The location of the riparian buffer shall be as follows:~~ The following minimum criteria shall be used for identifying regulated riparian buffers:

(1) A surface water shall be subject if the feature is approximately shown on any of the following references:

(A) The most recent version of the published manuscript of the soil survey map that shows stream layers prepared by the Natural Resources Conservation Service of the United States Department of Agriculture;

(B) The ~~most recent version of the 1:24,000 scale (7.5 minute) quadrangle topographic maps prepared by the~~ United States Geologic ~~Survey (USGS):~~ Survey's (USGS) National Map, available online at: https://www.usgs.gov/core-science-systems/national-geospatial-program/national-map; or

(C) Other maps approved ~~by the Geographic Information Coordinating Council and~~ by the Environmental Management Commission as more accurate than those identified in Part (c)(~~4~~41)(A) and (c)(~~4~~41)(B) of this Rule. Other maps must use a hydrography dataset developed using hydrography specifications and standard metadata approved by the Geographic Information Coordinating Council (GICC) and maintained on a GICC list of the best available hydrography. Edits, deletions and additions to the hydrography dataset must follow GICC approved standards and specifications, per stewardship governance. Other maps must have their hydrography dataset and procedures for edits, deletions and additions reviewed and approved by the GICC. Other maps ~~may~~ shall be submitted to the Division for review and recommendation to the Environmental Management Commission. Prior to recommendation to the Environmental Management Commission, the Division shall issue a 30-calendar day public notice through the Division's Mailing List in

accordance with 15A NCAC 02H .0503. Division staff shall present recommendations including comments received during the public notice period to the Environmental Management Commission for a final decision. Maps approved under this Subparagraph shall not apply to projects that are existing and ongoing within the meaning of this Rule as set out in Paragraph (e) of this Rule.

(2) This Rule shall apply to activities conducted within riparian buffers as set forth in Rule .0605 of this Section.

(3) Wetlands adjacent to surface waters or within the riparian buffer width as set forth in Rule .0605 of this Section shall be considered as part of the riparian buffer but are regulated pursuant to 15A NCAC 02H .0506.

(4) Stormwater runoff from activities conducted outside the riparian buffer shall comply with Paragraph (h) of this Rule.

~~(1)~~(5) For streams, the riparian buffer shall begin at the most landward limit of the top of bank or the rooted herbaceous vegetation and extend landward on all sides of the ~~surface water,~~ stream, measured horizontally on a line perpendicular to the ~~surface water.~~ stream (where a stream begins or ends, including when it goes underground, enters or exits a culvert, or enters or exits a wetland, the required distance shall be measured as a radius around the beginning or the end).

~~(2)~~(6) For ponds, lakes and reservoirs located within a natural drainage way, the riparian buffer shall begin at ~~the most landward limit of~~ the normal water level ~~or the rooted herbaceous vegetation~~ and extend landward, measured horizontally on a line perpendicular to the surface water.

(7) A riparian buffer may be exempt from this Rule as described in Paragraphs (e), (f) and (g) of this Rule.

(8) No new clearing, grading or development shall take place nor shall any new building permits be issued in violation of this Rule.

(d) ON-SITE DETERMINATION. When a landowner or other affected party believes that the maps listed in Subparagraph (c)(1) of this Rule have inaccurately depicted surface waters or the specific origination point of a stream, or the specific origination point of a stream is in question or unclear, he or she shall request the Authority to make an on-site determination. On-site determinations shall be made by Authority staff that are certified pursuant to G.S. 143-214.25A. Registered Foresters under Chapter 89B of the General Statutes who are employees of the North Carolina Forest Service of the Department of Agriculture and Consumer Services can make on-site determinations for forest harvesting operations and practices. On-site determinations shall expire five years from the date of the determination. Any disputes over on-site determinations shall be referred to the Director in writing within 60 calendar days of written notification from the Authority. The Director's determination is subject to review as provided in Articles 3 and 4 of G.S. 150B.

(e) EXEMPTION BASED ON ON-SITE DETERMINATION. Surface waters that appear on the maps listed in Subparagraph (c)(1) of this Rule shall not be subject to this Rule if an on-site determination shows that they fall into one of the following categories:

(1) Ditches and manmade conveyances other than modified natural streams unless constructed for navigation or boat access.

(2) Manmade ponds and lakes that are not fed by an intermittent or perennial stream nor have a direct discharge point to an intermittent or perennial stream.

(3) Ephemeral ~~(stormwater)~~ streams.

(4) The absence on the ground of a corresponding perennial waterbody, intermittent waterbody, lake, or pond ~~or estuary~~.

~~(b)~~(f) EXEMPTION WHEN EXISTING USES ARE PRESENT AND ONGOING. The riparian buffer requirements in this Rule ~~do~~ shall not apply to portions of the riparian buffer where a use is existing and ongoing.

(1) A use ~~that~~ shall be considered existing if:

(A) It was present within the riparian buffer as of the ~~effective date of this Rule~~ January 1, 2009 and has continued to exist since that time;~~.~~

(B) It was a deemed allowable activity as listed in Paragraph (i) of this Rule;~~,~~ or

(C) It was conducted and maintained pursuant to an Authorization Certificate or Variance issued by the Authority;~~,~~ or

(D) The project or proposed development are determined by the Authority to meet at least one of the following criteria:

(i) Project requires a 401 Certification/404 Permit and these were issued prior to January 1, 2009 and are still valid; or

(ii) Project requires a state permit, such as a landfill, NPDES wastewater discharge, land application residuals and road construction activities, and has begun construction or is under contract to begin construction and has received all required state permits prior to January 1, 2009; or

(iii) Project is being reviewed through the Clean Water Act Section 404/National Environmental Policy Act Merger 01 Process or Safe Accountable Flexible Efficient Transportation Equity Act; a Legacy for Users (published by the US Army Corps of Engineers and Federal Highway Administration, 2003) or its immediate successor and that have reached agreement with Department on avoidance and minimization by January 1, 2009; or

(iv) Project is not required to be reviewed by the Clean Water Act Section 404/National Environmental Policy Act Merger 01 Process or Safe Accountable Flexible Efficient Transportation Equity Act; a Legacy for Users (published by the US Army Corps of Engineers and Federal Highway Administration, 2003) or its immediate successor if a Finding of No Significant Impact has been issued for the project and the project has the written approval of the Division prior to January 1, 2009.

(2) Existing and ongoing uses shall ~~include~~ include, but not be limited to, agriculture, buildings, industrial facilities, commercial areas, transportation facilities, maintained lawns ~~lawns,~~ (i.e. can be mowed without a chainsaw or bush-hog), ~~maintained (i.e. vegetation management has occurred within the last ten years)~~ existing utility ~~lines~~ line maintenance corridors and on-site sanitary ~~sewage systems.~~ sewage systems, any of which involve either specific periodic management of vegetation or displacement of vegetation by structures or regular activity.

(3) Only the portion of the riparian buffer that contains the footprint of the existing and ongoing use is except from the riparian buffer requirements of this Rule.

(4) Change of ownership through purchase or inheritance is not a change of use.

(5) Activities necessary to maintain existing and ongoing uses are allowed provided that the site remains similarly vegetated, no ~~impervious surface~~ built upon area is added within the riparian buffer area where it did not exist ~~as of the effective date of this Rule~~ prior to January 1, 2009, and ~~existing diffuse flow is maintained.~~ the site is in compliance with Paragraph (h) of this Rule.

~~(2) A use that can be documented to the Division of Water Quality that meets at least one of the following criteria:~~

~~(A) Project requires a 401 Certification/404 Permit, issued prior to the effective date of this Rule and are still valid;~~

~~(B) Project requires a state permit, such as a landfill, NPDES wastewater discharge, land application residuals and road construction activities, and has begun construction or is under contract to begin construction and has received all required state permits prior to the effective date of this Rule;~~

~~(C) Project is being reviewed through the Clean Water Act Section 404/National Environmental Policy Act Merger 01 Process or Safe Accountable Flexible Efficient Transportation Equity Act; a Legacy for Users (published by the US Army Corps of Engineers and Federal Highway Administration, 2003) or its immediate successor and that have reached agreement with Department of Environment and Natural Resources on avoidance and minimization by the effective date of this Rule; or~~

~~(D) Project is not required to be reviewed by the Clean Water Act Section 404/National Environmental Policy Act Merger 01 Process or Safe Accountable Flexible Efficient Transportation Equity Act; a Legacy for Users (published by the US Army Corps of Engineers and Federal Highway Administration, 2003) or its immediate successor if a Finding of No Significant Impact has been issued for the project and the project has the written approval of the Division of Water Quality prior to the effective date of this Rule.~~

~~(5)~~(6) ~~At~~ This Rule shall apply at the time an existing and ongoing use is changed to another use. ~~use, the buffer requirement of this Rule shall apply. Change of use includes the following:~~ Change of use shall involve the initiation of any activity not defined as existing and ongoing in Subparagraphs (f)(1) through (f)(5) of this Rule.

~~(A) To add impervious surface within the riparian buffer;~~

~~(B) An agricultural operation within the riparian buffer is converted to a non-agricultural; or~~

~~(C) a lawn within the riparian buffer ceases to be maintained.~~

(g) EXEMPTION FOR PONDS CONSTRUCTED AND USED FOR AGRICULTURAL PURPOSES. This Rule shall not apply to a freshwater pond if all of the following conditions are met:

(1) The property on which the pond is located is used for agriculture as that term is defined in G.S. 106-581.1.

(2) Except for this Rule, the use of the property is in compliance with all other water quality and water quantity statutes and rules applicable to the property before January 1, 2009.

(3) The pond is not a component of an animal waste management system as defined in G.S. 143-215.10B (3).

~~(c) DIFFUSE FLOW REQUIREMENT. Diffuse flow of runoff shall be maintained in the riparian buffer by dispersing concentrated flow and reestablishing vegetation, as follows:~~

~~(1) Concentrated runoff from new ditches or manmade conveyances shall be converted to diffuse flow before the runoff enters the riparian buffer; and~~

~~(2) Periodic corrective action to restore diffuse flow shall be taken if necessary to impede the formation of erosion gullies.~~

(h) STORMWATER RUNOFF THROUGH THE RIPARIAN BUFFER. Stormwater runoff into the riparian buffer shall meet dispersed flow as defined in 15A NCAC 02H .1002 except as otherwise described in this Item. Drainage conveyances include drainage ditches, roadside ditches, and stormwater conveyances. The following stormwater conveyances through the riparian buffer are either deemed allowable or allowable upon authorization, as defined in Subparagraph (i)(1) of this Rule, provided that they do not erode through the riparian buffer and do not cause erosion to the receiving waterbody. Stormwater conveyances through the riparian buffer that are not listed below shall be allowable with exception as defined in Part (i)(1)(E) of this Rule

(1) The following are deemed allowable as defined in Part (i)(1)(A) of this Rule:

(A) New drainage conveyances from a Primary SCM, as defined in 15A NCAC 02H .1002, when the Primary SCM is designed to treat the drainage area to the conveyance and that comply with a stormwater management plan reviewed and approved under a state stormwater program or a state-approved local government stormwater program; and

(B) New stormwater flow to existing drainage conveyances provided that the addition of new flow does not result in the need to alter the conveyance.

(2) The following are allowable upon authorization as defined in Part (i)(1)(B) of this Rule:

(A) New drainage conveyances from a Primary SCM as defined in 15A NCAC 02H .1002 when the Primary SCM is provided to treat the drainage area to the conveyance but are not required to be approved under a state stormwater program or a state-approved local government stormwater program;

(B) New drainage conveyances when the flow rate of the conveyance is less than 0.5 cubic feet per second during the peak flow from the 0.75 inch per hour storm;

(C) New stormwater runoff that has been treated through a level spreader-filter strip that complies with 15A NCAC 02H .1059;

(D) Realignment of existing drainage conveyances applicable to publicly funded and maintained linear transportation facilities when retaining or improving the design dimensions provided that no additional travel lanes are added and the minimum required roadway typical section is used based on traffic and safety considerations;

(E) Realignment of existing drainage conveyances retaining or improving the design dimensions provided that the size of the drainage area and the percent built-upon area within the drainage area remain the same;

(F) New or altered drainage conveyances applicable to publicly funded and maintained linear transportation facilities provided that SCMs, or BMPs from the NCDOT Stormwater Best Management Practices Toolbox, are employed;

(G) New drainage conveyances applicable to publicly funded and maintained linear transportation facilities that do not provide a stormwater management facility due to topography constraints provided other measures are employed to protect downstream water quality to the maximum extent practical; and

(H) New drainage conveyances where the drainage area to the conveyance has no new built-upon area as defined in 15A NCAC 02H .1002 and the conveyance is necessary for bypass of existing drainage only.

~~(d)~~(i) ~~REQUIREMENTS FOR CATEGORIES OF USES AND MITIGATION.~~ USES. Uses within the riparian buffer, or outside the riparian buffer with hydrological impacts on the riparian buffer, shall be designated as ~~exempt,~~ deemed allowable, ~~potentially allowable,~~ allowable upon authorization, allowable with mitigation upon authorization, allowable with exception or prohibited. ~~and prohibited location in the chart of uses in this Rule shall have the following requirements:~~

(1) Potential new uses shall have the following requirements:

~~(1)~~(A) ~~EXEMPT.~~ DEEMED ALLOWABLE. Uses designated as ~~exempt~~ deemed allowable in Subparagraphs (h)(1) and (i)(3) of this Rule may occur ~~are allowed~~ within the riparian buffer. ~~Exempt~~ Deemed allowable uses shall be designed, constructed and maintained to minimize vegetation and soil disturbance and to provide the maximum water quality protection ~~practicable.~~ practicable, including construction, monitoring and maintenance activities. In addition, ~~exempt~~ deemed allowable uses shall meet requirements listed in ~~the table~~ Subparagraph (h)(3) of this Rule for the specific use.

~~(2)~~(B) ~~POTENTIALLY ALLOWABLE.~~ ALLOWABLE UPON AUTHORIZATION. Uses designated as ~~potentially~~ allowable upon authorization in Subparagraphs (h)(2) and (i)(3) of this Rule require a written Authorization Certificate from the Authority for impacts ~~may~~

~~proceed~~ within the riparian buffer pursuant to Rule .0606 of this Section. ~~provided that there are no practical alternatives to the requested use pursuant to this Rule. These uses require written authorization from the Division of Water Quality. Some of these uses require mitigation, as indicated in the chart in this Rule.~~

(C) ALLOWABLE WITH MITIGATION UPON AUTHORIZATION. Uses designated as allowable with mitigation upon authorization in Subparagraph (i)(3) of this Rule require a written Authorization Certificate from the Authority for impacts within the riparian buffer pursuant to Rule .0606 of this Section and an appropriate mitigation strategy that has received written approval pursuant to Paragraph (j) of this Rule.

~~(3)~~(D) PROHIBITED. Uses designated as prohibited ~~or not included in this table~~ in Subparagraph (i)(3) of this Rule may not proceed within the riparian buffer unless a V~~v~~ariance is granted pursuant to Rule ~~.0606. Site specific mitigation~~ .0226 of this Subchapter. Mitigation may be required as ~~one~~ a condition of ~~a~~ variance approval.

(E) ALLOWABLE WITH EXCEPTION. Uses not designated as deemed allowable, allowable upon authorization, allowable with mitigation upon authorization or prohibited in Subparagraph (i)(3) of this Rule require a written Authorization Certificate with Exception from the Authority for impacts within the riparian buffer pursuant to Rule .0606 of this Section and an appropriate mitigation strategy that has received written approval pursuant to Paragraph (j) of this Rule.

~~(4) MITIGATION. Persons who wish to undertake uses designated as allowable with mitigation shall obtain approval for a mitigation proposal pursuant to 15A NCAC 02B .0609.~~

(2) The United States Environmental Protection Agency Endangered Species Protection Program at www.epa.gov/espp and NC Pesticide Board regulates pesticide application (see rules at 02 NCAC 09L .2201 through .2203).

(3) The following table sets out potential new uses within the riparian buffer, or outside the riparian buffer with hydrological impacts on the riparian buffer, and designates them as deemed allowable, allowable upon authorization, allowable with mitigation upon authorization or prohibited:

	Deemed Allowable	Allowable Upon Authorization	Allowable with Mitigation Upon Authorization	Prohibited
(A) Airport facilities:				
(i) Vegetation removal activities necessary to comply with Federal Aviation Administration requirements (e.g. line of sight requirements) provided the disturbed areas are stabilized and revegetated	X			

	Deemed Allowable	Allowable Upon Authorization	Allowable with Mitigation Upon Authorization	Prohibited
(ii) Airport facilities that impact equal to or less than one-third of an acre of riparian buffer		X		
(iii) Airport facilities that impact greater than one-third of an acre of riparian buffer			X	
(B) Archaeological activities	X			
(C) Bridges:				
(i) Impact equal to or less than one-tenth of an acre of riparian buffer	X			
(ii) Impact greater than one-tenth of an acre of riparian buffer		X		
(D) Dam maintenance activities:				
(i) Dam maintenance activities that do not cause additional riparian buffer disturbance beyond the footprint of the existing dam	X			
(ii) Dam maintenance activities that do cause additional riparian buffer disturbance beyond the footprint of the existing dam		X		
(E) Drainage of a pond subject to Paragraph (c) of this Rule provided that a new riparian buffer is established by natural regeneration or planting, within 50 feet of any stream which naturally forms or is constructed within the drained pond area. Drained ponds shall be allowed to naturalize for a minimum of six months from completion of the draining activity before a stream determination is conducted pursuant to Paragraph (d) of this Rule	X			
(F) Fences:				
(i) Fencing livestock out of surface waters	X			
(ii) Installation does not result in removal of trees	X			
(iii) Installation results in removal of trees		X		
(G) Fertilizer application:				

	Deemed Allowable	Allowable Upon Authorization	Allowable with Mitigation Upon Authorization	Prohibited
(i) One-time fertilizer application at agronomic rates in the riparian buffer to establish replanted vegetation. ~~This only applies to the one-time application of fertilizer in the riparian buffer.~~ No runoff from this one-time application in the riparian buffer is allowed in the applicable surface water	X			
(ii) Ongoing fertilizer application				X
(H) Forest harvesting - see Rule .0608 of this Section				
(I) Greenways, trails, sidewalks or linear pedestrian/bicycle transportation ~~systems~~systems:				
(i) In outer riparian buffer (landward of 50 feet) provided that no built upon area is added within the riparian buffer	X			
(ii) In the inner riparian buffer provided that no built upon area is added within the riparian buffer and the installation does not result in the removal of tree(s)	X			
(iii) When built upon area is added to the riparian buffer, equal to or less than 10 feet wide with 2 foot wide shoulders. ~~Must~~ Shall be located landward of 50 feet unless there is no practical alternative		X		
(iv) When built upon area is added to the riparian buffer, greater than 10 feet wide with 2 foot wide shoulders. ~~Must~~ Shall be located landward of 50 feet unless there is no practical alternative			X	
(J) Historic preservation	X			
(K) New Landfills as defined by G.S. 130A-290				X
(L) Maintenance access on modified natural streams or canals: a grassed travelway on one side of the waterbody when less impacting alternatives ~~forms~~ are not practical. The width and specifications of the travel way shall be only that needed for equipment access and operation. The travel way shall be located to maximize stream shading		X		
(M) Mining activities:				

	Deemed Allowable	Allowable Upon Authorization	Allowable with Mitigation Upon Authorization	Prohibited
(i) Mining activities that are covered by the Mining Act provided that new riparian buffers that meet the requirements of Paragraph (h) of this Rule and Rule .0605 of this Section are established adjacent to ~~the~~ any relocated channels		X		
(ii) Wastewater or mining dewatering wells with approved NPDES permit			X	
(N) On-site sanitary sewage systems - new ones that use ground absorption				X
(O) Pedestrian access trail and associated steps leading to a surface water, dock, canoe or kayak access, fishing pier, boat ramp or other water dependent structure:				
(i) ~~Pedestrian access trail equal~~Equal to or less than six feet wide that does not result in the removal of any tree(s) within the riparian buffer and does not result in ~~any built upon area being added~~the addition of built upon area to the riparian buffer	X			
(ii) ~~Pedestrian access trail equal~~Equal to or less than six feet wide ~~where the installation or use~~that results in the removal of tree(s) or the addition of built upon area to the riparian buffer		X		
(iii) ~~Pedestrian access trail greater~~Greater than six ~~six~~ feet wide			X	
(P) Playground equipment:				
(i) Playground equipment on ~~single-family~~single-family lots provided that installation and use does not result in removal of vegetation	X			
(ii) Playground equipment on ~~single-family~~single-family lots where installation or use results in the removal of vegetation		X		
(iii) Playground equipment installed on lands other than single-family lots		X		

	Deemed Allowable	Allowable Upon Authorization	Allowable with Mitigation Upon Authorization	Prohibited
(Q) Ponds created or modified by impounding streams subject to riparian buffers pursuant to Paragraph (c) of this Rule and not used as stormwater control measures (SCMs):				
(i) New ponds provided that a riparian buffer that meets the requirements of Paragraph (h) of this Rule and Rule .0605 of this Section is established adjacent to the pond		X		
(R) Protection of existing structures and facilities when this requires additional disturbance ~~of~~ to the riparian buffer		X		
(S) Public Safety - publicly owned spaces where it has been determined by the head of the local law enforcement agency with jurisdiction over that area that the riparian buffers pose a risk to public safety. The head of the local law enforcement agency shall notify the local government with land use jurisdiction over the publicly owned space and the Division of Water Resources of any such determination in writing	X			
(T) Removal of previous fill or debris provided that Paragraph (h) of this Rule is complied with and any vegetation removed is restored	X			
(U) Restoration or enhancement (wetland, stream) as defined in 33 CFR Part 332 available free of charge on the internet at: http://water.epa.gov/lawsregs/guidance/wetlands/wetlands mitigation_index.cfm:				
(i) Wetland or stream restoration that is part of a compensatory mitigation bank, nutrient offset bank or the In Lieu Fee program~~does not require written Division approval that results in impacts to the riparian buffer~~	X			
(ii) Wetland or stream restoration other than those listed above~~that requires written Division approval that results in impacts to the riparian buffer~~		X		

	Deemed Allowable	Allowable Upon Authorization	Allowable with Mitigation Upon Authorization	Prohibited
(V) Road, driveway or ~~railroad~~ railroad - impacts other than perpendicular crossings of streams and other surface waters subject to this Rule			X	
(W) Road, driveway or ~~railroads:~~ railroad - perpendicular crossings of streams and other surface waters subject to this Rule ~~or perpendicular entry into the riparian buffer that does not cross a stream or other surface water subject to this Rule~~:				
(i) Impact equal to or less than one-tenth of an acre of riparian buffer	X			
(ii) Impact greater than one-tenth of an acre but equal to or less than one-third of an acre of riparian buffer		X		
(iii) Impact greater than one-third of an acre of riparian buffer			X	
(iv) Driveway crossings in a residential subdivision that cumulatively ~~disturb~~ impact equal to or less than one-third of an acre of riparian buffer		X		
(v) Driveway crossings in a residential subdivision that cumulatively ~~disturb~~ impact greater than one-third of an acre of riparian buffer			X	
(vi) ~~Agriculture~~ Farm roads and forest roads that are exempt from permitting from the U.S. Army Corps of Engineers per Section 404(f) of the ~~F~~federal Clean Water Act	X			
(X) Road relocation of existing private access roads associated with public road projects where necessary for public safety:				
(i) Less than or equal to 2,500 square feet of riparian buffer impact		X		
(ii) Greater than 2,500 square feet of riparian buffer impact			X	
(Y) Scientific studies and stream gauging	X			

	Deemed Allowable	Allowable Upon Authorization	Allowable with Mitigation Upon Authorization	Prohibited
(Z) Slatted uncovered decks, including steps and support posts, which are associated with a dwelling, provided that it meets the requirements of Paragraph (h) of this Rule and Rule .0605 of this Section and installation does not result in removal of vegetation		X		
(AA) Stormwater Control Measure (SCM) as defined in 15A NCAC 02H .1002:				
(i) In the outer riparian buffer (landward of 50 feet) if Paragraph (h) of this Rule is complied with		X		
(ii) In the outer riparian buffer (landward of 50 feet) if Paragraph (h) of this Rule is not complied with			X	
(BB) Streambank or shoreline stabilization		X		
(CC) Temporary roads, provided that the disturbed area is restored to pre-construction topographic and hydrologic conditions and replanted with comparable vegetation within two months of when construction is complete. Tree planting may occur during the dormant season. At the end of five years, ~~the~~ any restored wooded riparian buffer shall comply with the restoration criteria in Paragraph (i) of Rule .0295 of this Subchapter:				
(i) Less than or equal to 2,500 square feet of riparian buffer disturbance	X			
(ii) Greater than 2,500 square feet of riparian buffer disturbance		X		
(iii) Associated with culvert installation or bridge construction or replacement		X		

	Deemed Allowable	Allowable Upon Authorization	Allowable with Mitigation Upon Authorization	Prohibited
(DD) Temporary sediment and erosion control devices provided that the disturbed area is restored to preconstruction topographic and hydrologic conditions and replanted with comparable vegetation within two months of when construction is complete. Tree planting may occur during the dormant season. At the end of five years, ~~the~~ any restored wooded riparian buffer shall comply with the restoration criteria in Rule .0295(i) of this Subchapter:				
(i) ~~In Zone 2~~In the outer riparian buffer (landward of 50 feet) ~~only~~ provided that ground cover is established within the timeframes required by the Sedimentation and Erosion Control Act, vegetation in ~~Zone 1~~in the outer riparian buffer is not compromised, and that discharge is released in accordance with Paragraph (h) of this Rule	X			
(ii) ~~In Zones 1 and 2~~In the inner and outer riparian buffer to control impacts associated with uses identified in this Table or ~~approved by the Authority or~~ uses that have received an A~~a~~uthorization C~~c~~ertificate with E~~e~~xception provided that sediment and erosion control for upland areas is addressed outside the riparian buffer		X		
(iii) In-stream temporary erosion and sediment control measures for work within a stream channel that is authorized under Sections 401 and 404 of the Federal ~~Water Pollution Control~~Clean Water Act	X			
~~(iv) In stream temporary erosion and sediment control measures for work within a stream channel that has written approval from the Division and the U.S. Army Corps of Engineers under Sections 401 & 404 of the Federal Water Pollution Control Act~~		~~X~~		

	Deemed Allowable	Allowable Upon Authorization	Allowable with Mitigation Upon Authorization	Prohibited
(EE) Utility Lines - Streambank stabilization for the protection of publicly owned utility lines (not including new line installation):				
(i) Less than 150 feet of streambank disturbance	X			
(ii) Greater than 150 feet of streambank disturbance		X		
(FF) Utility – Sewer L~~l~~ines~~, provided that both gravity and force main collection systems are made of ductile iron and 50 percent of the collection system is cleaned annual~~ - Sanitary Sewer Overflows:				
(i) Emergency sanitary sewer overflow response activities, provided that the disturbed area within the riparian buffer outside of the existing utility line maintenance corridor~~:~~: is the minimum necessary to respond to the emergency overflow, is restored to pre-construction topographic and hydrologic conditions, and is replanted with comparable vegetation (e.g. grass with grass, hardwoods with hardwoods) within two months of when disturbance is complete	X			
(ii) Emergency sanitary sewer overflow response activities that do not meet the listing above. ~~activities, provided the disturbed area within the buffer: is the minimum necessary to respond to the emergency overflow and is not fully restored to pre-construction topographic and hydrologic conditions~~. For any new proposed permanent impacts ~~proposed to remain permanently that~~ are not a "Deemed Allowable Activity", an application for an Authorization Certificate must be submitted to the ~~authority~~ Authority ~~within~~ no later than 30 calendar days of conclusion of the emergency response activities		X		

	Deemed Allowable	Allowable Upon Authorization	Allowable with Mitigation Upon Authorization	Prohibited
(GG) Utility - Sewer Lines – Vegetation m~~M~~aintenance a~~A~~ctivities that remove forest vegetation ~~for~~ from existing sewer utility right of ways (not including new line installation) ~~ways/corridors~~ outside of the existing utility line maintenance corridor: ~~that do not meet the criteria of existing use in Item (6) of this Rule~~:				
(i) Impacts outside of the inner 50 feet nearest the stream	X			
(ii) Impacts in the inner 50 feet nearest the stream: For lines that have not been maintained, the vegetation can be mowed, cut or otherwise maintained without disturbance to the soil structure for a maintenance corridor that is equal to or less than 30 feet wide ~~impacts provided no clearing within 10 feet of the stream~~	X			
~~Impacts in the inner 50 feet nearest the stream, provided the permanent maintenance corridor is kept to 10 feet on either side of the existing sewer line. Clearing within 10 feet of the stream may occur provided no grading or grubbing occurs within this area~~	~~X~~			
~~Impacts in the inner 50 feet nearest the stream, provided the permanent maintenance corridor is kept to 10 feet on either side of the existing sewer line. Clearing, grading and grubbing can occur within 10 feet of the stream provided the grading and grubbing within 10 feet is less than 2,500 square feet~~		~~X~~		
(v) Impacts in the inner 50 feet nearest the stream other than those listed above		X	~~X~~	

	Deemed Allowable	Allowable Upon Authorization	Allowable with Mitigation Upon Authorization	Prohibited
(HH) Utility – Sewer L~~l~~ines - Replacement/Rehabilitation of existing sewer lines within, or adjacent to, an existing right of way but outside of an existing utility line maintenance corridor provided that comparable ~~the~~ vegetation (e.g. grass with grass, hardwoods with hardwoods) is allowed to regenerate in disturbed riparian buffers ~~areas~~ outside of the permanent maintenance corridor and riparian buffers outside of the permanent maintenance corridor are not maintained:				
(i) Permanent maintenance corridor equal to or less than 30 feet wide provided there is no grading and/or grubbing within 10 feet of the top of bank when the sewer line is parallel to the stream	X			
(ii) Grading and/or grubbing within 10 feet of the top of bank when the sewer line is parallel to the stream and permanent maintenance corridor equal to or less than 30 feet wide		X		
(iii) Permanent maintenance corridor greater than 30 feet wide. For impacts other than perpendicular crossings, mitigation is only required for impacts in the inner 50 feet nearest the stream. For perpendicular crossings that disturb equal to or less than 40 linear feet, no mitigation is required. For perpendicular crossings that disturb greater than 40 linear feet, mitigation is only required for impacts in the inner 50 feet nearest the stream			X	

	Deemed Allowable	Allowable Upon Authorization	Allowable with Mitigation Upon Authorization	Prohibited
(II) Utility - Sewer Lines – New Line Construction/Installation Activities – Perpendicular crossings of streams and other surface waters subject to this Rule or perpendicular entry into the riparian buffer that does not cross a stream or other surface water subject to this Rule provided ~~that provided that any of the installation methods are used to minimize the sediment, nutrient and other pollution through the riparian buffer: underground directional boring methods, bore and jack techniques or another appropriate microtunnelling method and~~ that vegetation is allowed to regenerate in disturbed areas outside of the permanent maintenance corridor: ~~New Sewer Line Construction Activities (including replacement/rehabilitation that does not meet the criteria of existing use in Item (6) of this Rule) provided that (1) vegetative root systems and stumps are left intact to maintain the integrity of the soil except in the trench where trees are cut, and (2) vegetation is allowed to regenerate in disturbed areas, except within the permanent maintenance corridor:~~				
(i) Construction corridor of less ~~Less~~ than or equal to 40 linear feet wide ~~with~~ and a permanent maintenance corridor that is equal to or less than ~~20~~ 30 feet ~~in width~~wide	X			
(ii) Construction corridor of greater ~~Greater~~ than 40 linear feet wide and less than or equal to 150 linear feet wide ~~with~~ and a permanent maintenance corridor that is equal to or less than ~~20~~ 30 feet wide~~in width~~		X		
(iii) Construction corridor of greater ~~Greater~~ than 150 linear feet wide ~~with~~ and a permanent maintenance corridor that is equal to or less than ~~20~~ 30 feet wide~~in width~~			X	

	Deemed Allowable	Allowable Upon Authorization	Allowable with Mitigation Upon Authorization	Prohibited
(iv) Permanent maintenance corridor that is greater than ~~20~~ 30 linear feet wide. ~~(mitigation is required only for Zone 1 impacts beyond the 20 linear feet corridor width)~~ For impacts other than perpendicular crossings, mitigation is only required for impacts in the inner 50 feet nearest the stream. For perpendicular crossings that disturb equal to or less than 40 linear feet, no mitigation is required. For perpendicular crossings that disturb greater than 40 linear feet, mitigation is only required for impacts in the inner 50 feet nearest the stream			X	
(JJ) Utility - Sewer Lines – New Line Construction/Installation Activities – Impacts other than perpendicular crossings provided ~~that any of the installation methods are used to minimize the sediment, nutrient and other pollution through the riparian buffer: underground directional boring methods, bore and jack techniques or another appropriate microtunnelling method and~~ that vegetation is allowed to regenerate in disturbed areas outside of the permanent maintenance corridor:				
(i) Impacts outside of the inner 50 feet nearest the stream	X			
(ii) Less than 2,500 square feet of impacts in the inner 50 feet nearest the stream when impacts are solely the result of tying into an existing utility line and when grubbing or grading within 10 feet immediately adjacent to the surface water is avoided		X		
~~Impacts in the inner 50 feet nearest the stream for replacement/rehabilitation within the inner 50 feet nearest the stream within an existing Right of Way when land grubbing or grading within 10 feet immediately adjacent to the surface water is avoided~~		~~X~~		
(iii) Impacts to the inner 50 feet nearest the stream other than noted above			X	

	Deemed Allowable	Allowable Upon Authorization	Allowable with Mitigation Upon Authorization	Prohibited
~~Lift stations require Supervisory Control and Data Acquisition System (SCADA), telemetry, audio and visual alarms, signage with emergency contact, daily visitation (365 days/year), and documentation must be maintained for 3 years of all of the above and available upon request~~			~~X~~	
(KK) Utilities – Non-~~S~~sewer ~~U~~underground ~~L~~lines. Vegetation m~~M~~aintenance a~~A~~ctivities that remove forest vegetation from existing utility right of ways (not including new line installation) outside of the existing utility line maintenance corridor:				
(i) Impacts outside of the inner 50 feet nearest the stream ~~Vegetation maintenance activities along an existing utility line beyond the footprint of an existing utility line maintenance corridor where the total maintenance corridor is equal to or less than 30 linear feet in width~~	X	~~X~~		
(ii) Impacts in the inner 50 feet nearest the stream: For lines that have not been maintained, the vegetation can be mowed, cut or otherwise maintained without disturbance to the soil structure for a maintenance corridor that is equal to or less than 30 feet wide	X			
(iii) Impacts in the inner 50 feet nearest the stream other than those listed above ~~Vegetation maintenance activities along an existing utility line beyond the footprint of an existing utility line maintenance corridor where the total maintenance corridor is greater than 30 linear feet in width~~		X	~~X~~	
(LL) Utilities – Non-~~S~~sewer ~~U~~underground ~~L~~lines. Perpendicular crossings of streams and other surface waters subject to this Rule or perpendicular entry into the riparian buffer that does not cross a stream or other surface water subject to this Rule provided that vegetation is allowed to regenerate in disturbed areas outside of the permanent maintenance corridor:				

	Deemed Allowable	Allowable Upon Authorization	Allowable with Mitigation Upon Authorization	Prohibited
(i) Construction ~~activities that disturb~~ corridor of less than or equal to 50 linear feet wide ~~of riparian buffer provided that vegetative root systems and stumps shall be left intact to maintain the integrity of the soil except in the trench where trees are cut and that vegetation is allowed to regenerate in disturbed areas with the exception of~~ and a permanent maintenance corridor that is equal to or less than 30 feet ~~in width~~wide	X			
(ii) Construction ~~activities that disturb~~corridor of greater than 50 linear feet wide and less than or equal to 150 linear feet wide ~~of riparian buffer provided that vegetative root systems and stumps shall be left intact to maintain the integrity of the soil except in the trench where trees are cut and that vegetation is allowed to regenerate in disturbed areas with the exception of~~ and a permanent maintenance corridor that is equal to or less than 30 feet ~~in width~~wide		X		
(iii) Construction ~~activities that disturb~~corridor of greater than 150 linear feet wide ~~of riparian buffer~~ and a permanent maintenance corridor that is equal to or less than 30 feet ~~in width~~wide			X	
(iv) Permanent maintenance corridor that is greater than 30 linear feet wide (mitigation is required only for ~~Zone 1~~ impacts within the inner 50 feet nearest the stream) ~~Any activities with a permanent maintenance corridor greater than 30 feet in width~~			X	
(MM) Utilities – Non-~~S~~sewer ~~U~~underground ~~L~~lines. Impacts other than perpendicular crossings provided that vegetation is allowed to regenerate in disturbed areas outside of the permanent maintenance corridor::				

	Deemed Allowable	Allowable Upon Authorization	Allowable with Mitigation Upon Authorization	Prohibited
(i) Impacts outside of the inner 50 feet nearest the stream ~~provided vegetation is re-established after disturbance and the function of the inner 50 feet nearest the stream is not compromised~~	X			
(ii) Impacts in the inner 50 feet nearest the stream to less than 2,500 square feet when impacts are a result of tying to an existing utility line and when grubbing or grading ~~provided that land grubbing or grading is not conducted~~ within 10 feet immediately adjacent to the surface water is avoided		X		
(iii) Impacts in the inner 50 feet nearest the stream other than listed above			X	
(NN) Utilities – Non-~~S~~sewer ~~a~~Aerial ~~L~~lines. Perpendicular crossings of streams and other surface waters subject to this Rule or perpendicular entry into the riparian buffer that does not cross a stream or other surface water subject to this Rule:				
(i) Disturb equal to or less than 150 linear feet wide of riparian buffer provided that a minimum zone of 10 feet wide immediately adjacent to the ~~water body~~waterbody is managed such that only vegetation that poses a hazard or has the potential to grow tall enough to interfere with the line is removed, that no land grubbing or grading is conducted in the inner 50 feet nearest the stream, and that that poles or aerial infrastructure are not installed within 10 feet of a ~~water body~~waterbody	X			
(ii) Disturb greater than 150 linear feet wide of riparian buffer		X		
(OO) Utilities – Non-~~S~~sewer ~~A~~aerial ~~L~~lines. Impacts other than perpendicular crossings of streams and other surface waters subject to this Rule or perpendicular entry into the riparian buffer that does not cross a stream or other surface water subject to this Rule:				

	Deemed Allowable	Allowable Upon Authorization	Allowable with Mitigation Upon Authorization	Prohibited
(i) Impacts outside of the inner 50 feet nearest the stream	X			
(ii) Impacts in the inner 50 feet nearest the stream provided that a minimum zone of 10 feet wide immediately adjacent to the ~~water body~~waterbody is managed such that only vegetation that poses a hazard or has the potential to grow tall enough to interfere with the line is removed, that no land grubbing or grading is conducted in the inner 50 feet nearest the stream, and that that poles or aerial infrastructure are not installed within 10 feet of a ~~water body~~waterbody		X		
(PP) Vegetation management:				
(i) Emergency fire control measures provided that topography is restored	X			
(ii) Placement of mulch ring around restoration plantings for a period of five years from the date of planting	X			
(iii) Planting non-invasive vegetation to enhance the riparian buffer	X			
(iv) Pruning forest vegetation provided that the health and function of the forest vegetation is not compromised	X			
(v) Removal of individual trees, branches or limbs which are in danger of causing damage to dwellings, existing utility lines, other structures or human life, or are imminently endangering stability of the streambank provided that the stumps are left or ground in place without causing additional land disturbance	X			
(vi) Removal of individual trees that are dead, diseased or damaged	X			
(vii) Removal of poison ivy, oak or sumac. If removal is significant, then the riparian buffer shall be replanted with non-invasive species	X			

	Deemed Allowable	Allowable Upon Authorization	Allowable with Mitigation Upon Authorization	Prohibited
(viii) Removal of understory nuisance vegetation as defined in: Smith, Cherri L. 2008. Invasive Plants of North Carolina. Dept. of Transportation. Raleigh, NC (available at http://portal.ncdenr.org/c/document_library/get_file?uuid=0acc6377-ea07-42dc-bb27-45a78d1c7ebe&groupId=38364). If removal is significant then the riparian buffer shall be replanted with non-invasive species	X			
(ix) Removal of woody vegetation ~~in Zone 1~~the riparian buffer provided that Paragraph (h) of this Rule is complied with			X	
(QQ) Vehicle access roads and boat ramps (excluding parking areas) leading to surface water, docks, fishing piers, and other water dependent activities:				
(i) Single vehicular access road and boat ramp to the surface water but not crossing the surface water that are restricted to the minimum width practicable not to exceed 15 feet ~~in width~~wide		X		
(ii) Vehicular access roads and boat ramps to the surface water but not crossing the surface water that are restricted to the minimum width practicable and exceed 15 feet ~~in width~~wide			X	
(RR) Water dependent structures (except for boat ramps) as defined in Rule .0202 of this Subchapter		X		
(SS) Water wells	X			
(TT) Wildlife passage structures		X		

~~(e) DETERMINATION OF "NO PRACTICAL ALTERNATIVES." Persons who wish to undertake uses designated as potentially allowable shall submit a request for a "no practical alternatives" determination to the Division of Water Quality. The applicant shall certify that the criteria identified in Subparagraph (e)(1) of this Rule are met. The Division shall grant an Authorization Certificate upon a "no practical alternatives" determination. The procedure for making an Authorization Certificate shall be as follows:~~

~~(1) For any request for an Authorization Certificate, the Division shall review the entire project and make a finding of fact as to whether the following requirements have been met in support of a "no practical alternatives" determination:~~

~~(A) The basic project purpose cannot be practically accomplished in a manner that would better minimize disturbance, preserve aquatic life and habitat, and protect water quality.~~

~~(B) The use cannot practically be reduced in size or density, reconfigured or redesigned to better minimize disturbance, preserve aquatic life and habitat, and protect water quality.~~

~~(C) Plans for practices shall be used if necessary to minimize disturbance, preserve aquatic life and habitat, and protect water quality.~~

~~(D) The Division of Water Quality must consider the impacts that may affect conditions required to sustain and recover the federally endangered Carolin heelsplitter (Lasmigona decorata).~~

~~(2) Requests for an Authorization Certificate shall be either approved or denied within 60 days of receipt of a complete submission based on the criteria in Subparagraph (e)(1) of this Rule by the Division. Failure to issue an approval or denial within 60 days shall constitute that the applicant has demonstrated "no practical alternatives." The Division of Water Quality may attach conditions to the Authorization Certificate that support the purpose, spirit and intent of the riparian buffer protection program. Complete submissions shall include the following:~~

~~(A) The name, address and phone number of the applicant;~~

~~(B) The nature of the activity to be conducted by the applicant;~~

~~(C) The location of the activity, including the jurisdiction;~~

~~(D) A map of sufficient detail to accurately delineate the boundaries of the land to be utilized in carrying out the activity, the location and dimensions of any disturbance in riparian buffers associated with the activity, and the extent of riparian buffers on the land;~~

~~(E) An explanation of why this plan for the activity cannot be practically accomplished, reduced or reconfigured to better minimize disturbance to the riparian buffer, preserve aquatic life and habitat and protect water quality; and~~

~~(F) Plans for any practices proposed to be used to control the impacts associated with the activity.~~

~~(3) Any disputes over determinations regarding Authorization Certificates shall be referred to the Director for a decision. The Director's decision is subject to review as provided in Articles 3 and 4 of G.S. 150B.~~

(j) MITIGATION. Persons who wish to undertake uses designated as allowable upon authorization with mitigation as defined in Part (i)(1)(C) of this Rule or allowable with exception as defined in Part (i)(1)(E) of this Rule shall meet the following requirements in order to proceed with their proposed use.

(1) Obtain an Authorization Certificate pursuant to Rule .0606 of this Section; and

(2) Obtain written approval for a mitigation proposal pursuant to Rule .0295 of this Subchapter.

~~(f)~~(k) DELEGATION OF AUTHORITY FOR THE PROTECTION AND MAINTENANCE OF EXISTING RIPARIAN BUFFERS. The following set out the requirements for delegation of the responsibility for implementing and enforcing the Goose Creek Watershed riparian buffer protection program, as described in Rules .0605 through .0608 of this Section, to local governments.

(1) The Commission shall grant ~~and rescind~~ local government delegation of the Goose Creek Watershed Riparian Buffer Protection requirements as described in Rules .0605 through .0608 of this Section according to the following procedures:

~~(1)~~(A) Local governments within the Goose Creek Watershed may submit a written request to the Commission for authority to implement and enforce the ~~State's~~ Goose Creek Watershed riparian buffer protection requirements within their ~~jurisdiction.~~ jurisdiction by establishing a riparian buffer program to meet the requirements of Rules .0605 through .0608 of this Section. The written request to establish a riparian buffer program shall ~~be accompanied by information that shows:~~ include the following:

~~(A)~~(i) ~~The~~ Documentation that the local government has land use jurisdiction for the riparian ~~buffer~~ buffer. This can be demonstrated by delineating the local land use jurisdictional boundary on the USGS 1:24,000 topographical map(s) or other finer scale map(s);

~~(B)~~(ii) ~~The~~ Documentation that the local government has the administrative organization, staff, legal authority, financial resources and other resources necessary to implement and enforce the State's riparian buffer protection requirements based on its size and projected amount of development;

~~(C)~~(iii) The local government ~~has adopted~~ ordinances, resolutions, or regulations necessary to establish ~~and maintain the State's riparian buffer protection requirements; and~~ a riparian buffer program to meet the requirements of Rules .0605 through .0608 of this Section and G.S. 143-214.23A;

(iv) Documentation that the local government's riparian buffer program ~~complies~~ will comply with all requirements set forth in G.S. 143-214.23A; and

~~(D)~~(v) The local government has provided a plan to address violations with civil or criminal remedies and actions as well as remedies that shall restore riparian buffer functions on violation sites and provide a deterrent against the occurrence of future violations.

~~(2)~~(B) Within 90 days after the Commission has received the request for delegation, the Commission shall ~~approve the request if the local government has complied with all of Subparagraph (f)(1) of this Rule and~~ notify the local government whether it has been approved, approved with modifications, or denied.

~~(3) The Commission, upon determination that a delegated local authority is failing to implement or enforce the riparian buffer protection requirements in keeping with an approved delegation, shall~~

~~notify the delegated local authority in writing of the local program's inadequacies. If the delegated local authority has not corrected the deficiencies within 90 days of receipt of the written notification, then the Commission shall rescind the delegation of authority to the local government and shall implement and enforce the State's riparian buffer protection requirements.~~

~~(g)~~(2) APPOINTMENT OF A RIPARIAN BUFFER PROTECTION ADMINISTRATOR. Upon receiving delegation, local governments shall appoint a Riparian Buffer Protection ~~Administrator~~ Administrator(s) who shall coordinate the implementation and enforcement of the program. The Administrator(s) ~~Administrator~~ shall attend an initial training session by the Division ~~of Water Quality~~ and ~~subsequent annual training sessions.~~ be certified to make on-site determinations pursuant to G.S. 143-214.25A. The Administrator(s) ~~Administrator~~ shall ensure that local government ~~staffs~~ staff working directly with the program receive training to understand, implement and enforce the program and are certified to make on-site determinations pursuant to G.S. 143-214.25A. At any time that a local government does not have a certified individual retained on staff to make on-site determinations pursuant to G.S. 143-214.25A, they shall immediately notify the Division and indicate a proposed schedule to secure a certified staff member. ~~program.~~ The local government shall coordinate with the Division to provide on-site determinations until a new certified staff member is secured by the local government.

~~(h)~~(3) PROCEDURES FOR USES WITHIN RIPARIAN BUFFERS THAT ARE ALLOWABLE UPON AUTHORIZATION, ~~AND~~ ALLOWABLE WITH ~~MITIGATION.~~ MITIGATION UPON AUTHORIZATION AND ALLOWABLE WITH EXCEPTION. Upon receiving delegation, local governments shall review applications requesting Authorization Certificate pursuant to the requirements set forth in Rule .0606 of this Section.

~~(1) Upon receiving delegation, local authorities shall review proposed uses within the riparian buffer and issue approvals if the uses meet the riparian buffer protection requirements.~~

~~(2) Delegated local authorities shall issue an Authorization Certificate for uses if the proposed use meets the requirements including provisions for mitigation set forth in Rule .0609.~~

~~(3) The Division of Water Quality may challenge a decision made by a delegated local authority for a period of 30 days after the Authorization Certificate is issued. If the Division of Water Quality does not challenge an Authorization Certificate within 30 days of issuance, then the delegated local authority's decision shall stand.~~

~~(i) VARIANCES. After receiving delegation, local governments shall review variance requests and make recommendations to the Commission for approval.~~

~~(j)~~(4) LIMITS OF DELEGATED LOCAL AUTHORITY. The ~~Commission~~ Division ~~has~~ shall have jurisdiction to the exclusion of local governments to ~~implement~~ administer the requirements of this Rule for the following types of activities:

~~(1)~~(A) Activities undertaken by the State;

~~(2)~~(B) Activities undertaken by the United States;

~~(3)~~(C) Activities undertaken by multiple jurisdictions; ~~and~~

~~(4)~~(D) Activities undertaken by local units of ~~government.~~ government;

(E) Forest harvest activities described in Rule .0608 of this Section; and

(F) Agricultural activities.

~~(k)~~(5) RECORD-KEEPING REQUIREMENTS. Delegated local ~~authorities~~ governments shall maintain on-site records for a minimum of five years~~. Delegated local authorities governments must~~ and shall furnish a copy of these records to the ~~Director~~ Division within 30 calendar days of receipt of a written request for ~~the records~~them. ~~The Division of the Water Quality shall inspect local riparian buffer protection programs to ensure that the programs are being implemented and enforced.~~ Each delegated local ~~authority's~~ government's records shall include the following:

~~(1)~~(A) A copy of ~~variance~~ all Authorization Certificates with Eexception requests;

~~(2)~~(B) Findings on all ~~The~~ ~~variance~~ Authorization Certificates with Eexception requests~~'s~~ ~~finding of fact~~;

~~(3)~~(C) The results of ~~the~~ all ~~variance~~ Authorization Certificates with eException proceedings;

~~(4)~~(D) A record of complaints and action taken as a result of the complaint;

~~(5)~~(E) Records for ~~stream origin calls and stream ratings~~on-site determinations as described in Paragraph (d) of this Rule; and

~~(6)~~(F) Copies of all requests for authorization, records approving authorization and Authorization Certificates.

(6) AUDITS OF LOCAL AUTHORITIES. The Division shall regularly audit delegated local governments to ensure the local programs are being implemented and enforced in keeping with the requirements of Rules .0605 through .0608 of this Section. The audit shall consist of a review of all local government activities with regards to implementation of the Rules.

(7) PROCEDURES FOR RESCINDING DELEGATION. Upon determination by the Division that a delegated local government is failing to implement or enforce the Goose Creek Watershed riparian buffer protection requirements in keeping with the request approved under Part (k)(1)(D) of this Rule, the Commission shall notify the delegated local government in writing of the local program's inadequacies. If the delegated local government has not corrected the deficiencies within 90 calendar days of receipt of the written notification, then the Commission shall rescind the delegation of authority to the local government and the Division shall implement and enforce the Goose Creek Watershed riparian buffer protection requirements within their jurisdiction.

(8) DELEGATION. The Commission may delegate its duties and powers for granting and rescinding local government delegation of the Goose Creek Watershed riparian buffer protection requirements, in whole or in part, to the Director.

(l) OTHER LAWS, REGULATIONS AND PERMITS. In all cases, compliance with this Rule does not preclude the requirement to comply with all federal, state and local regulations and laws.

~~(l) Riparian buffers along surface waters in this watershed shall be maintained. Some uses within riparian buffers are exempt and some uses are potentially allowable. Any exempt or potentially allowed use shall require stormwater control as outlined in Rule .0602 if the one acre threshold is met. The following chart sets out the uses and their designation under this Rule as exempt, potentially allowable requiring DWQ approval or potentially allowable requiring both DWQ approval and mitigation, or prohibited as described above. The United States Environmental Protection Agency Endangered Species Protection Program at www.epa.gov/espp and NC Pesticide Board regulates pesticide application (see rules at 02 NCAC 09L .2201 through .2203).~~

	~~Exempt~~	**~~Potentially allowable requiring DWQ approval or Potentially allowable requiring both DWQ approval and mitigation* Note: the asterisk (X*) identifies those uses that require both DWQ approval and mitigation.~~**	**~~Prohibited~~**
~~Airport facilities that impact equal to or less than 150 linear feet or one-third of an acre of riparian buffer~~ ~~Airport facilities that impact greater than 150 linear feet or one-third of an acre of riparian buffer~~		~~X~~ ~~X*~~	
~~Archaeological activities~~	~~X~~		
~~Bridges~~		~~X~~	
~~Dam maintenance activities~~	~~X~~		
~~Drainage ditches, roadside ditches and stormwater outfalls through riparian buffers:~~ • ~~Existing drainage ditches, roadside ditches, and stormwater outfalls provided that they are managed to minimize the sediment, nutrients including ammonia and other pollution that convey to waterbodies~~ • ~~New drainage ditches, roadside ditches and stormwater outfalls provided that a stormwater management facility is installed to minimize the sediment, nutrients including ammonia and other pollution and attenuate flow before the conveyance discharges through the riparian buffer~~ • ~~New drainage ditches, roadside ditches and stormwater outfalls that do not minimize the sediment, nutrients~~	~~X~~	~~X~~	~~X~~

~~including ammonia and other pollution and attenuate flow before discharging through the riparian buffer~~ • ~~Excavation of the streambed in order to bring it to the same elevation as the invert of a ditch~~			~~X~~
~~Drainage of a pond in a natural drainage way provided that a new riparian buffer that meets the diffuse flow requirements of this Rule is established adjacent to the new channel~~	~~X~~		
~~Driveway crossings of streams and other surface waters subject to this Rule:~~ • ~~Driveway crossings on single family residential lots that disturb equal to or less than 25 linear feet in width and are perpendicular~~ [3] • ~~Driveway crossings on single family residential lots that disturb greater than 25 linear feet in width and are perpendicular~~[3] • ~~In a subdivision that cumulatively disturbs equal to or less than 150 linear feet in width and are perpendicular~~ • ~~In a subdivision that cumulatively disturbs greater than 150 linear feet in width and are perpendicular~~	~~X~~	~~X~~ ~~X~~ ~~X*~~	
~~Fences provided that disturbance is minimized and installation does not result in removal of forest vegetation~~	~~X~~		
~~Forest harvesting – see Rule .0608~~			
~~Fertilizer application:~~ • ~~One time fertilizer application at agronomic rates to establish replanted vegetation~~ • ~~Ongoing fertilizer application~~	~~X~~		~~X~~
~~Greenway/hiking trails~~		~~X~~	
~~Historic preservation~~	~~X~~		
~~Landfills as defined by G.S. 130A-290~~			~~X~~
~~Mining activities:~~ • ~~Mining activities that are covered by the Mining Act provided that new riparian buffers that meet the diffuse flow requirements of this Rule are established adjacent to the relocated channels~~ • ~~Mining activities that are not covered by the Mining Act OR where new riparian buffers that meet the diffuse flow~~		~~X~~	~~X~~

~~requirements of this Rule are not established adjacent to the relocated channels~~ • ~~Wastewater or mining dewatering wells with approved NPDES permit~~		~~X*~~	
~~Non-electric utility lines with impacts other than perpendicular crossings[3]~~ • ~~If activity is within 50 feet of the stream~~ • ~~If activity is outside of the inner 50 feet nearest the stream~~ • ~~Wastewater collection system utility lines and lift station lines may impact the riparian zone if both gravity and force main collections systems are made of ductile iron and 50% of the collection system is cleaned annually.~~ • ~~Lift Stations require Supervisory Control and Data Acquisition System (SCADA), telemetry, audio and visual alarms, signage with emergency contact, daily visitation (365 days/year), and documentation must be maintained for 3 years of all of the above and available upon request [note: this requirement also applies to collection system perpendicular crossings, detailed below.]~~		~~X*~~ ~~X~~ ~~X*~~ ~~X*~~	
~~Non-electric utility line perpendicular crossing of streams and other surface waters subject to this Rule that are not collection systems[3]:~~ • ~~Perpendicular crossings that disturb equal to or less than 40 linear feet of riparian buffer with a maintenance corridor equal to or less than 10 feet in width~~ • ~~Perpendicular crossings that disturb equal to or less than 40 linear feet of riparian buffer with a maintenance corridor greater than 10 feet in width~~ • ~~Perpendicular crossings that disturb greater than 40 linear feet but equal to or less than 150 linear feet of riparian buffer with a maintenance corridor equal to or less than 10 feet in width~~ • ~~Perpendicular crossings that disturb greater than 40 linear feet but equal to or less than 150 linear feet of riparian buffer with a maintenance corridor greater than 10 feet in width~~	~~X~~	~~X~~ ~~X~~ ~~X*~~ ~~X*~~	

• ~~Perpendicular crossings that disturb greater than 150 linear feet of riparian buffer~~ ~~Non-electric perpendicular utility line crossings that are collections systems as defined in Rule 15A NCAC 02T .0300 (note: must follow constraints listed under wastewater collection system utility lines and lift stations, above):~~ • ~~That use any of the following installation methods to minimize the sediment, nutrient and other pollution through the riparian buffer: underground directional boring methods, bore and jack techniques or another appropriate microtunnelling method.~~ • ~~That does not minimize the sediment, nutrient and other pollution through the riparian buffer by the most appropriate exempt method.~~		~~X~~	~~X~~
~~On-site sanitary sewage systems – new ones that use ground absorption~~			~~X~~
~~Overhead electric utility lines[1,2,3]:~~ • ~~Stream crossings that disturb equal to or less than 150 linear feet of riparian buffer~~ • ~~Stream crossings that disturb greater than 150 linear feet of riparian buffer~~	~~X~~	~~X*~~	
~~Periodic maintenance of modified natural streams such as canals and a grassed travelway on one side of the surface water~~		~~X~~	
~~Playground equipment:~~ • ~~Playground equipment on single-family lots provided that installation and use does not result in removal of vegetation~~ • ~~Playground equipment installed on lands other than single-family lots or that requires removal of vegetation~~	~~X~~	~~X~~	
~~Ponds in natural drainage ways, excluding dry ponds:~~ • ~~New ponds provided that a riparian buffer that meets the diffuse flow requirements of this Rule is established adjacent to the pond~~ • ~~New ponds where a riparian buffer that meets the diffuse flow requirements of this Rule is NOT established adjacent to the pond~~		~~X~~	~~X~~

~~Protection of existing structures, facilities and streambanks when this requires additional disturbance of the riparian buffer or the stream channel~~		~~X~~	
~~Railroad impacts other than crossings of streams and other surface waters subject to this Rule~~			~~X~~
~~Railroad crossings of streams and other surface waters subject to this Rule:~~ • ~~Railroad crossings that impact equal to or less than 40 linear feet of riparian buffer~~ • ~~Railroad crossings that impact greater than 40 linear feet but equal to or less than 150 linear feet of riparian buffer~~ • ~~Railroad crossings that impact greater than 150 linear feet of riparian buffer~~	~~X~~	~~X~~	~~X~~
~~Removal of previous fill or debris provided that diffuse flow is maintained and any vegetation removed is restored~~	~~X~~		
~~Road impacts other than crossings of streams and other surface waters subject to this Rule~~		~~X*~~	
~~Road crossings of streams and other surface waters subject to this Rule:~~ • ~~Road crossings that impact equal to or less than 40 linear feet of riparian buffer and is perpendicular~~ • ~~Road crossings that impact greater than 40 linear feet but equal to or less than 150 linear feet and is perpendicular~~ • ~~Road crossings that impact greater than 150 linear feet of riparian buffer~~	~~X~~	~~X~~ ~~X*~~	
~~Scientific studies and stream gauging~~	~~X~~		
~~Stormwater management ponds excluding dry ponds:~~ • ~~New stormwater management ponds provided that a riparian buffer that meets the diffuse flow requirements of this Rule is established adjacent to the pond~~ • ~~New stormwater management ponds where a riparian buffer that meets the diffuse flow requirements of this Rule is NOT established adjacent to the pond~~		~~X~~	~~X~~
~~Stream restoration~~	~~X~~		
~~Streambank stabilization~~		~~X~~	
~~Temporary roads:~~			

• ~~Temporary roads that disturb less than or equal to 2,500 square feet provided that vegetation is restored within six months of initial disturbance~~ • ~~Temporary roads that disturb greater than 2,500 square feet provided that vegetation is restored within six months of initial disturbance~~ • ~~Temporary roads used for bridge construction or replacement provided that restoration activities, such as soil stabilization and revegetation, are conducted immediately after construction~~	~~X~~	~~X~~ ~~X~~	
~~Temporary sediment and erosion control devices:~~ • ~~To control impacts associated with uses approved by the Division or that have received a variance provided that sediment and erosion control for upland areas is addressed to the maximum extent practical outside the buffer~~ • ~~In stream temporary erosion and sediment control measures for work within a stream channel~~	~~X~~	~~X~~	
~~Underground electric utility lines:~~ • ~~Impacts other than perpendicular crossings~~ [3,4]	~~X~~		
~~Underground electric utility line perpendicular crossings of streams and other surface waters subject to this Rule:~~ • ~~Perpendicular crossings that disturb less than or equal to 40 linear feet of riparian buffer~~[3,4] • ~~Perpendicular crossings that disturb greater than 40 linear feet of riparian buffer~~[3,4]	~~X~~	~~X~~	
~~Vegetation management:~~ • ~~Emergency fire control measures provided that topography is restored~~ • ~~Planting vegetation to enhance the riparian buffer~~ • ~~Pruning forest vegetation provided that the health and function of the forest vegetation is not compromised~~ • ~~Removal of individual trees which are in danger of causing damage to dwellings, other structures or human life~~ • ~~Removal of poison ivy~~	~~X~~ ~~X~~ ~~X~~ ~~X~~ ~~X~~ ~~X~~		

• ~~Removal of understory nuisance vegetation as defined in: Smith, Cherri L. 1998. Exotic Plant Guidelines. Department of Environment and Natural Resources. Division of Parks and Recreation. Raleigh, NC. Guideline #30~~			
~~Water dependent structures as defined in 15A NCAC 02B .0202~~		~~X~~	
~~Water wells~~	~~X~~		
~~Wetland restoration~~	~~X~~		

~~1~~ ~~Provided that all of the following BMPs for overhead utility lines are used. If all of these BMPs are not used, then the overhead utility lines shall require a no practical alternatives evaluation by the Division of Water Quality.~~

- ~~A minimum zone of 10 feet wide immediately adjacent to the water body shall be managed such that only vegetation that poses a hazard or has the potential to grow tall enough to interfere with the line is removed.~~
- ~~Woody vegetation shall be cleared by hand. No land grubbing or grading is allowed.~~
- ~~Vegetative root systems shall be left intact to maintain the integrity of the soil. Stumps shall remain where trees are cut.~~
- ~~Rip rap shall not be used unless it is necessary to stabilize a tower.~~
- ~~No fertilizer shall be used other than a one-time application to re-establish vegetation.~~
- ~~Construction activities shall minimize the removal of woody vegetation, the extent of the disturbed area, and the time in which areas remain in a disturbed state.~~
- ~~Active measures shall be taken after construction and during routine maintenance to ensure diffuse flow of stormwater through the buffer.~~
- ~~In wetlands, mats shall be utilized to minimize soil disturbance.~~

~~2~~ ~~Provided that poles or towers shall not be installed within 10 feet of a water body unless the Division of Water Quality completes a no practical alternatives evaluation.~~

~~3~~ ~~Perpendicular crossings are those that intersect the surface water at an angle between 75 degrees and 105 degrees.~~

~~4~~ ~~Provided that all of the following BMPs for underground utility lines are used.~~

~~If all of these BMPs are not used, then the underground utility line shall require a no practical alternatives evaluation by the Division of Water Quality.~~

- ~~Woody vegetation shall be cleared by hand. No land grubbing or grading is allowed.~~
- ~~Vegetative root systems shall be left intact to maintain the integrity of the soil. Stumps shall remain, except in the trench, where trees are cut.~~
- ~~Underground cables shall be installed by vibratory plow or trenching.~~

- ~~The trench shall be backfilled with the excavated soil material immediately following cable installation.~~
- ~~No fertilizer shall be used other than a one-time application to re-establish vegetation.~~
- ~~Construction activities shall minimize the removal of woody vegetation, the extent of the disturbed area, and the time in which areas remain in a disturbed state.~~
- ~~Active measures shall be taken after construction and during routine maintenance to ensure diffuse flow of stormwater through the buffer.~~
- ~~In wetlands, mats shall be utilized to minimize soil disturbance.~~

History Note: *Authority G.S. 143-214.1; 143-215.8A; 143-214.7; 143-214.23, 143-214.23A, S.L. 2013, c. 413; S.L. 2017, c. 209*
Eff. February 1, 2009.
Readopted Eff. [New Date].
The provisions of paragraph (e) of this Rule were transferred to 15A NCAC 02B .0606(b).

15A NCAC 02B .0608 SITE SPECIFIC WATER QUALITY MANAGEMENT PLAN FOR THE GOOSE CREEK WATERSHED (YADKIN PEE-DEE RIVER BASIN): MANAGE ACTIVITIES WITHIN RIPARIAN BUFFERS: FOREST HARVESTING REQUIREMENTS

(a) PURPOSE. The following requirements shall apply ~~for~~ to all forest harvesting operations and practices ~~in the riparian areas.~~ subject to riparian buffer requirements under Rules .0601 through .0608 of this Section.

(b) REQUIREMENTS THROUGHOUT THE BUFFER. The following requirements shall apply:

(1) All forest harvest activities within the buffer shall comply with Forest Practice Guidelines Related to Water Quality as defined in 02 NCAC 60C;

~~(1)~~(2) Logging decks and sawmill sites shall not be placed in the riparian ~~buffer.~~ buffer;

~~(2) Access roads and skid trails are prohibited except for temporary and permanent stream crossings established in accordance with 15A NCAC 01I .0203. Temporary stream crossings shall be permanently stabilized after any site disturbing activity is completed.~~

(3) Timber felling shall be directed away from the stream or water ~~body.~~ body;

(4) Skidding shall be directed away from the stream or water body and shall be done in a manner that minimizes soil disturbance and prevents the creation of channels or ~~ruts.~~ ruts;

(5) Individual trees may be treated to maintain or improve their health, form or ~~vigor.~~ vigor;

(6) Harvesting of dead or infected trees or application of pesticides necessary to prevent or control extensive tree pest and disease infestation is allowed, when approved by the ~~Division of~~ North Carolina Forest ~~Resources~~ Service for a specific site in accordance with G.S. 113-60.4. ~~A copy of the Division of Forest Resources approval must be provided to the Division of Water Quality in accordance with Session Law 2001-404.~~ The North Carolina Forest Service must notify the Division of all approvals within 60 calendar days;

(7) Removal of individual trees that are in danger of causing damage to structures or human life is ~~allowed.~~ allowed;

(8) Natural regeneration of forest vegetation and planting of trees, shrubs, or ground cover plants to enhance the riparian buffer is allowed provided that soil disturbance is ~~minimized.~~ minimized; ~~Plantings shall consist primarily of native species.~~

(9) ~~High intensity prescribed~~ Prescribed burns shall ~~not~~ be ~~allowed.~~ allowed when conducted for forest management purposes; and

(10) ~~Application of~~ One-time fertilizer ~~is not allowed except as necessary for permanent stabilization.~~ to establish replanted vegetation shall be allowed. This only applies to the one-time application of fertilizer in the riparian buffer. No runoff from this one-time application in the riparian buffer is allowed in the applicable surface water.

~~(11) Broadcast application of fertilizer or herbicides to the adjacent forest stand shall be conducted so that the chemicals are not applied directly to or allowed to drift into the riparian buffer.~~

~~(b)~~(c) SELECTIVE HARVEST. ~~In the riparian buffer, forest vegetation shall be protected and maintained.~~ Selective ~~harvest as~~ forest harvesting is allowed provided that: ~~for below is allowed on forest lands that have a deferment for use value under forestry in accordance with G.S. 105-277.2 through G.S. 277.6 or on forest lands that have a forest management plan prepared or approved by a registered professional forester. Copies of either the approval of the deferment for use value under forestry or the forest management plan shall be produced upon request. For such forest lands, selective harvest is allowed in accordance with the following:~~

(1) The forest lands have a deferment for use value under forestry in accordance with G.S. 105-277.2 through 277.6 or the forest lands have a forest management plan prepared or approved by a registered professional forester. Copies of either the approval of the deferment for use value under forestry or the forest management plan shall be produced upon request by the North Carolina Forest Service or the Division;

~~(1)~~(2) Tracked or wheeled vehicles are ~~not permitted within the first 50 feet the riparian buffer top of bank landward except at stream crossings designed, constructed and maintained in accordance with 15A NCAC 01I .0203.~~ only used for the purpose of selective timber harvesting where there is no other practical alternative for removal of individual trees;

~~(2)~~(3) ~~Soil disturbing~~ No tracked or wheeled vehicles shall be used to conduct site preparation ~~activities are not allowed.~~ activities;

~~(3)~~(4) Trees shall be removed with the minimum disturbance to the soil and ~~residual~~ remaining ~~vegetation.~~ vegetation;

~~(4)~~(5) The first 10 feet of the riparian buffer directly adjacent to the stream or waterbody shall be ~~undisturbed.~~ undisturbed, except for the removal of individual high value trees. The removal of individual high value tress shall only be allowed provided that no trees with exposed roots visible in the streambank are cut, unless they meet Subparagraphs (b)(6) or (b)(7) of this Rule;

~~(5)~~(6) In the ~~zone~~ area from 10 feet to 50 feet of the riparian buffer, a maximum of 50 percent of the trees greater than five inches diameter breast height (dbh) may be cut and removed. The reentry time for harvest shall be no more frequent than every 15 years, except on forest plantations as defined in ~~15A NCAC 02B .0233(e)~~ 15A NCAC 02B .0702, where the reentry time shall be no more frequent than every five years. In either case, the trees remaining after harvest shall be as evenly spaced as ~~possible.~~ possible; and

~~(6)~~(7) In the outer riparian buffer (landward of 50 feet), harvesting and regeneration of the forest stand ~~is allowed~~ shall be allowed, provided that sufficient ground cover is maintained to provide for diffusion and infiltration of surface runoff.

(d) EXCEPTIONS. Persons who wish to undertake forest harvesting operations or practices different from the requirements set forth in this Rule may request an Authorization Certificate with Exception pursuant to Rule .0606 of this Section.

History Note: *Authority G.S. 143-214.1; 143-215.3(a)(1); 143-215.8A;*

Eff. February 1, 2009.

Readopted Eff. [New Date].

15A NCAC 02B .0610 MANAGING ACTIVITIES WITHIN RIPARIAN BUFFERS: DEFINITIONS

Unless the context indicates otherwise, the following words and phrases shall be interpreted as follows for the purposes of this Section:

(1) "Airport Facilities" means all properties, facilities, buildings, structures, and activities that satisfy or otherwise fall within the scope of one or more of the definitions or uses of the words or phrases "air navigation facility", "airport", or "airport protection privileges" under G.S. 63-1; the definition of "aeronautical facilities" in G.S. 63-79(1); the phrase "airport facilities" as used in G.S. 159-48(b)(1); the phrase "aeronautical facilities" as defined in G.S. 159-81 and G.S. 159-97; and the phrase "airport facilities and improvements" as used in Article V, Section 13, of the North Carolina Constitution, which shall include, without limitation, any and all of the following: airports, airport maintenance facilities, aeronautic industrial facilities that require direct access to the airfield, clear zones, drainage ditches, fields, hangars, landing lighting, airport and airport-related offices, parking facilities, related navigational and signal systems, runways, stormwater outfalls, terminals, terminal shops, and all appurtenant areas used or suitable for airport buildings or other airport facilities, and all appurtenant rights-of-way; restricted landing areas; any structures, mechanisms, lights, beacons, marks, communicating systems, or other instrumentalities or devices used or useful as an aid, or constituting an advantage or convenience to the safe taking off, navigation, and landing of aircraft, or the safe and efficient operation or maintenance of an airport or restricted landing area; easements through, or interests in, air space over land or water, interests in airport hazards outside the boundaries of airports or restricted landing areas, and other protection privileges, the acquisition or control of which is necessary to ensure safe approaches to the landing areas of airports and restricted landing areas, and the safe and efficient operation thereof and any combination of any or all of such facilities. Notwithstanding the foregoing, the following shall not be included in the definition of "airport facilities":

(a) Satellite parking facilities;

(b) Retail and commercial development outside of the terminal area, such as rental car facilities; and

(c) Other secondary development, such as hotels, industrial facilities, free-standing offices and other similar buildings, so long as these facilities are not directly associated with the operation of the airport, and are not operated by a unit of government or special governmental entity such as an airport authority, in which case they are included in the definition of "airport facilities".

(2) "Archaeological activities" means activities conducted by a Registered Professional Archaeologist (RPA).

(3) "Authority" means either the Division or a local government that has been delegated pursuant this Section to implement a riparian buffer program.

(4) "Bridge" means any spanning structure that begins and ends at the outer edge of the approach slabs and includes any support structures such as bents, pilings, footings, etc.

(5) "Built-upon area" means the same as defined in G.S. 143-214.7(b2).

(6) "Channel" means a natural water-carrying trough cut vertically into low areas of the land surface by erosive action of concentrated flowing water or a ditch or canal excavated for the flow of water.

(7) "Coastal wetlands" means marshland as defined in G.S. 113-229.

(8) "Dam" means the same as defined in G.S. 143-215.25.

(9) "DBH" means diameter at breast height of a tree measured at 4.5 feet above ground surface level.

(10) "Development" means the same as defined in G.S. 143-214.7.

(11) "Director" means the Director of the Division.

(12) "Ditch or canal" means a man-made, open drainage way or channel other than a modified natural stream in or into which excess surface water or groundwater from land, stormwater runoff, or floodwaters flow either ephemerally, intermittently or perennially. On the coastal plain, ditches are typically dug through inter-stream divide areas.

(13) "Division" means the Division of Water Resources of the North Carolina Department of Environmental Quality and its successors.

(14) "Ephemeral stream" means a feature that carries only stormwater in direct response to precipitation with water flowing only during and shortly after large precipitation events. An ephemeral stream may or may not have a well-defined channel, the aquatic bed is always above the perched or seasonal high water table, and stormwater runoff is the primary source of water. An ephemeral stream typically lacks the biological, hydrological, and physical characteristics commonly associated with the continuous or intermittent conveyance of water.

(15) "Existing lot" in Randleman Lake watershed means a lot of two acres in size or less that was platted and recorded in the office of the appropriate county Register of Deeds prior to the effective date of a local ordinance or ordinances enforcing Rule .0724 of this Subchapter. For activities listed in Rule .0724(~~15~~12)(b) of this Subchapter, 'existing lot' in the Randleman Lake watersheds means a lot of two acres in size or less that was platted and recorded in the office of the appropriate county Register of Deeds prior to April 1, 1999. "Existing lot" in the Neuse and Tar-Pamlico river basins means a lot of two acres in size or less that was platted and recorded in the office of the appropriate county Register of Deeds prior to August 1, 2000.

(16) "Existing utility line maintenance corridor" means the portion of a utility right of way that was established as a permanent maintenance corridor prior to the effective date of the rule, or was approved as a permanent maintenance corridor through an Authorization Certificate or Variance issued by the Authority, and in which the vegetation has been ~~mowed, cut or otherwise~~ maintained (e.g. can be mowed without a chainsaw or bush-hog) ~~within the last 10 years.~~

(17) "Fertilizer" means the same as defined in Rule .0202 of this Subchapter.

(18) "Forest management plan" means the same as defined in G.S. 160A-458.5.

(19) "Forest plantation" means an area of planted trees that may be conifers (pines) or hardwoods. On a plantation, the intended crop trees are planted rather than naturally regenerated from seed on the site, coppice (sprouting), or seed that is blown or carried into the site.

(20) "Forest vegetation" means the same as defined in Rule .0202 of this Subchapter.

(21) "Freshwater" means the same as defined in Rule .0202 of this Subchapter.

(22) "Greenway / Hiking Trails" means pedestrian trails constructed of pervious and impervious surfaces and related structures including but not limited to boardwalks, steps, rails, and signage, and that generally run parallel to the surface water.

(23) "High value tree" means a tree that meets or exceeds the following standards: for pine species, 14-inch DBH or greater or 18-inch or greater stump diameter; or for non-pine species, 16-inch DBH or greater or 24-inch or greater stump diameter.

(24) "Intermittent stream" means a well-defined channel that contains water for only part of the year, typically during winter and spring when the aquatic bed is below the perched or seasonal high water table. The flow may be heavily supplemented by stormwater runoff. An intermittent stream often lacks the biological and hydrological characteristics commonly associated with the continuous conveyance of water.

(25) "Local government" means the same as defined in Rule .0202 of this Subchapter.

(26) "Modified natural stream" means an on-site channelization or relocation of a stream channel and subsequent relocation of the intermittent or perennial flow as evidenced by topographic alterations in the immediate watershed. A modified natural stream must have the typical biological, hydrological, and physical characteristics commonly associated with at least an intermittent conveyance of water.

(27) "Natural drainageway" means any water course, channel, ditch or similar physiographic feature draining water from land to down gradient areas.

(28) "Normal water level" means the water level within a pond, lake or other type of impoundment, natural or man-made (including beaver ponds), at the elevation of the outlet structure or spillway (i.e., the elevation of the permanent pool). The normal water level can often be identified by the lowest edge of the terrestrial vegetation.

(29) "Perched water table" means a saturated soil horizon or horizon subdivision, with free water surface periodically observed in a bore hole or shallow monitoring well, but generally above the normal water table, or may be identified by drainage mottles or redoximorphic features, and caused by a less permeable lower horizon.

(30) "Perennial stream" means a well-defined channel that contains water year round during a year of normal rainfall with the aquatic bed located below the perched or seasonal high water table for most of the year. Groundwater is the primary source of water for a perennial stream, but it also carries stormwater runoff. A perennial stream exhibits the typical biological, hydrological, and physical characteristics commonly associated with the continuous conveyance of water.

(31) "Perennial waterbody" means a natural or man-made watershed that stores surface water permanently at depths sufficient to preclude growth of rooted plants, including lakes, ponds, sounds, non-stream estuaries and ocean.

(32) "Perpendicular" means leading toward the nearest subject surface water at an angle between 75 and 105 degrees.

(33) "Pruning" means the removal of dead tree or shrub branches or live tree or shrub branches with a diameter of less than four inches.

(a) Pruning for Deciduous Trees: If pruning must be done on deciduous trees, then it should only be performed once a year during the dormant season or immediately following an "act of God" situation, such as a hurricane or ice storm that causes tree damage. Dead branches on trees can be removed any time.

(b) Pruning for Coniferous Trees: Conifers may be pruned any time of year. Dead branches on trees can be removed any time.

(c) Pruning for Shrubs: Shrubs may be pruned by selectively removing branches while maintaining the natural shape of the plant. Cutting the branches of a shrub down to its main trunk is not a selective removal of branches and could compromise the plant.

(34) "Seasonal high water table" means the highest level that groundwater, at atmospheric pressure, reaches in the soil in most years. The seasonal high water table is usually detected by the mottling of the soil which results in mineral leaching.

(35) "Streambank or shoreline stabilization" is the in-place stabilization of an eroding streambank or shoreline.

(36) "Stormwater Control Measure" or "SCM," also known as "Best Management Practice" or "BMP," means the same as defined in 15A NCAC 02H .1002.

(37) "Stump diameter" means the diameter of a tree measured at six inches above the ground surface level.

(38) "Temporary road" means a road constructed temporarily for access or to maintain public traffic during construction and is restored upon completion of construction.

(39) "Transportation facility" means the existing road surface, road shoulders, fill slopes, ferry terminal fill areas, and constructed stormwater conveyances or drainage canals adjacent to and directly associated with the road.

(40) "Tree" means a woody plant with a DBH equal to or exceeding five inches or a stump diameter exceeding six inches.

(41) "Wetlands" means the same as defined in Rule .0202 of this Subchapter.

History Note: *Authority G.S. 143-214.1, 143-215.8A, 143-214.7, 143-214.23, 143-214.23A, 143-215.3(a)(1); S.L. 1995, c. 572; S.L. 1999, c. 329; S.L. 2011, c. 394; S.L. 2012, c. 200; S.L. 2013, c. 413, S.L. 2015, c.246*

Eff. DATE

The provisions of this Rule were previously codified in 15A NCAC 02B .0233(2), 15A NCAC 02B .0243(2), 15A NCAC 02B .0250(2) and 15A NCAC 02B .0259(2).

15A NCAC 02B .0611 MANAGING ACTIVITIES WITHIN RIPARIAN BUFFERS: AUTHORIZATION CERTIFICATES

(a) PURPOSE. The following requirements shall apply to persons who wish to undertake uses designated as allowable upon authorization, allowable with mitigation upon authorization, or allowable with exception within the protected riparian buffer area as specified in the applicable riparian buffer protection rule of this Section and Section .0700 of this Subchapter.

(b) AUTHORIZATION CERTIFICATES. Persons who wish to undertake uses designated in the applicable riparian buffer protection rule of this Section as allowable upon authorization or allowable with mitigation upon authorization shall submit an application requesting an Authorization Certificate from the Authority.

(1) The application shall specify:

(A) The name, address and phone number of the applicant;

(B) If the property owner is different than the applicant, specify the name, address and phone number of the property owner and provide authorization from the owner for the application;

(B) If the applicant is a corporation, the state in which it is domesticated, the name of its principal officers, the name and address of the North Carolina process agency, and the name, address and phone number of the individual who shall be primarily responsible for the conduct of the activity for which certification is sought;

(C) The nature of the activity to be conducted by the applicant;

(D) The location of the activity, including the jurisdiction;

(E) A map of sufficient detail to accurately delineate the boundaries of the land to be utilized in carrying out the activity, the location and dimensions of any disturbance in riparian buffers associated with the activity, and the extent of riparian buffers on the land;

(F) An explanation of why this plan for the activity cannot be practically accomplished, reduced, relocated or reconfigured to avoid or better minimize disturbance to the riparian buffer, preserve aquatic life and habitat and protect water quality;

(G) Plans for any best management practices proposed to be used to control the impacts associated with the activity; and

(H) For uses designated as allowable with mitigation upon authorization or allowable with exception, a mitigation proposal in accordance with Rule .0704 of this Subchapter.

(2) The applicant shall certify that the project meets all the following criteria for finding "no practical alternatives":

(A) The basic project purpose cannot be practically accomplished in a manner that would better minimize disturbance, preserve aquatic life and habitat, and protect water quality;

(B) The use cannot practically be reduced in size or density, reconfigured or redesigned to better minimize disturbance, preserve aquatic life and habitat, and protect water quality;

(C) Best management practices shall be used if necessary to minimize disturbance, preserve aquatic life and habitat, and protect water quality; and

(D) Why alternatives cannot be practically accomplished to avoid or minimize the disturbance.

(3) Within 60 calendar days of receipt of a complete application package that addresses Subparagraphs (b)(1) and (b)(2) of this Rule, the Authority shall issue an Authorization Certificate if the Authority makes a finding of "no practical alternatives" and the applicant satisfies other applicable requirements as described in Subparagraphs (b)(1) and (b)(2) of this Rule. Failure to act within 60 calendar days of receipt of a complete application shall be construed as a finding of "no practical alternatives" and an Authorization Certificate shall be issued by the Authority to the applicant unless one of the following occurs:

(A) The applicant agrees, in writing, to a longer period;

(B) The applicant fails to furnish information necessary for the Authority's decision;

(C) The applicant refuses Authority staff access to its records or premises for the purpose of gathering information necessary for the Authority's decision; or

(D) Information necessary for the Authority's decision is unavailable.

(4) The Authority may attach conditions to the Authorization Certificate that support the purpose, spirit and intent of the riparian buffer protection program.

(5) Requests for appeals of Authorization Certificates issued by the Division shall be made pursuant to G.S. 150B. Requests for appeals of Authorization Certificates issued by the delegated local authority shall be made to the appropriate Board of Adjustment under G.S. 153A-345 or G.S. 160A-388.

(c) AUTHORIZATION CERTIFICATES WITH EXCEPTION. Persons who wish to undertake uses designated in the applicable riparian buffer protection rule of this Section as allowable with exception shall submit an application requesting an Authorization Certificate with Exception. The Authorization Certificate with Exception review procedure shall be as follows:

(1) An Authorization Certificate with Exception shall require that all of the following conditions are met:

(A) There are practical difficulties or unnecessary hardships that prevent compliance with the riparian buffer protection requirements.

(B) If the applicant complies with the provisions of this Rule, he or she can secure no reasonable return from, nor make reasonable use of, his or her property. Merely proving that the Authorization Certificate with Exception would allow a greater profit from the property shall not be considered adequate justification for an Authorization Certificate with Exception. Moreover, the Authority shall consider whether the Authorization Certificate with Exception is the minimum possible deviation from the terms of this Rule that shall make reasonable use of the property possible;

(C) The hardship is due to the physical nature of the applicant's property, such as its size, shape, or topography;

(D) The applicant did not cause the hardship;

(E) The requested Authorization Certificate with Exception is in harmony with the general spirit, purpose and intent of the State's riparian buffer protection requirements, will protect water quality, will secure public safety and welfare, and will preserve substantial justice.

(2) MINOR EXCEPTIONS. An Authorization Certificate with Minor Exception request pertains to allowable with exception activities that are proposed to impact equal to or less than one-third of an acre of riparian buffer.

(A) Authorization Certificate with Minor Exception requests shall be reviewed based on the criteria in Paragraph (b) and Subparagraph (c)(1) of this Rule.

(B) Within 60 calendar days of receipt of a complete application package that addresses Subparagraphs (b)(1), (b)(2) and (c)(1) of this Rule, the Authority shall issue an Authorization Certificate with Minor Exception if the Authority makes a finding that the criteria in Subparagraph (b)(2) and (c)(1) of this Rule have been met and the applicant satisfies other applicable requirements as described in Paragraph (b) and Subparagraph (c)(1) of this Rule. If the Authority determines that all of the requirements in Subparagraphs (b)(2) and (c)(1) of this Rule have not been met, the Authority shall issue a final decision denying the Authorization Certificate with Minor Exception.

(3) MAJOR EXCEPTIONS. An Authorization Certificate with Major Exception request pertains to allowable with exception activities that are proposed to impact greater than one-third of an acre of riparian buffer.

(A) Authorization Certificate with Major Exception requests shall be reviewed based on the criteria in Paragraph (b) and Subparagraph (c)(1) of this Rule.

(B) Within 60 calendar days of receipt of a complete application package that addresses Subparagraphs (b)(1), (b)(2) and (c)(1) of this Rule, the Authority shall prepare a preliminary finding as to whether the criteria in Subparagraphs (b)(2) and (c)(1) of this Rule have been met.

(C) Notice of each pending complete application for an Authorization Certificate with Major Exception, including the preliminary finding prepared by the Authority, shall be posted on the Division's website and sent to all individuals on the Mailing List, as described in 15A NCAC 02H .0503(g), at least 30 calendar days prior to proposed final action by the Authority on the application.

(D) Within 60 calendar days following the notice as described in Part (c)(3)(C) of this Rule, upon the Authority's determination that all of the requirements in Subparagraphs (b)(2) and (c)(1) of this Rule have been met, the Authority shall issue an Authorization Certificate with Major Exception. If the Authority determines that all of the requirements in Subparagraphs (b)(2) and (c)(1) of this Rule have not been met, the Authority shall issue a final decision denying the Authorization Certificate with Major Exception.

(4) The Authority may attach conditions to the Authorization Certificate with Exception that support the purpose, spirit and intent of the riparian buffer protection program.

(5) Requests for appeals of Authorization Certificates with Exception issued by the Division shall be made pursuant to G.S. 150B. Requests for appeals of Authorization Certificates with Exception issued by the delegated local authority shall be made to the appropriate Board of Adjustment under G.S. 153A-345 or G.S. 160A-388.

History Note: *Authority G.S. 143-214.1; 143-215.8A; 143-214.7; 143-214.23; 143-214.23A; 143-215.3(a)(1); S.L. 1995, c. 572; S.L. 1999, c. 329; S.L. 2011, c. 394; S.L. 2012, c. 200; S.L. 2013, c. 413; S.L. 2015, c.246*

Eff. DATE

The provisions of this Rule were previously codified in 15A NCAC 02B .0233(8) & (9), 15A NCAC 02B .0243(8) & (9), 15A NCAC 02B .0250(11) & (12) and 15A NCAC 02B .0259(8) & (9).

15A NCAC 02B .0612 MANAGING ACTIVITIES WITHIN RIPARIAN BUFFERS: FOREST HARVESTING REQUIREMENTS

(a) PURPOSE. The following requirements shall apply to all forest harvesting operations and ~~practices~~ forestry-related land-disturbing activities subject to riparian buffer requirements ~~under rules of this Section and Section .0700 of this Subchapter, except for the Goose Creek Water Quality Management Plan [15A NCAC 02B .0605 to .0608]. Those Rules include:~~ in the following River Basins and Watersheds:

(1) Catawba River Basin ~~[~~ as specified in 15A NCAC 02B .0614~~]~~;

(2) Neuse River Basin as specified in ~~[~~15A NCAC 02B .0714~~]~~;

(3) Randleman Lake Watershed as specified in ~~[~~15A NCAC 02B .0724~~]~~; and

(4) Tar-Pamlico River Basin as specified in ~~[~~15A NCAC 02B .0734~~]~~.

(b) REQUIREMENTS THROUGHOUT THE BUFFER. The following requirements shall apply:

(1) All forest harvest activities within the buffer shall comply with Forest Practice Guidelines Related to Water Quality as defined in 02 NCAC 60C;

(2) Logging decks and sawmill sites shall not be placed in the riparian buffer;

(3) Timber felling shall be directed away from the stream or waterbody;

(4) Skidding shall be directed away from the stream or water body and shall be done in a manner that minimizes soil disturbance and prevents the creation of channels or ruts;

(5) Individual trees may be treated to maintain or improve their health, form or vigor;

(6) Harvesting of dead or infected trees or application of pesticides as necessary to prevent or control the spread of tree pest and disease infestation shall be allowed. These practices must be approved by the North Carolina Forest Service for a specific site. The North Carolina Forest Service must notify the Division of all approvals within 60 calendar days;

(7) Removal of individual trees that are in danger of causing damage to structures or human life shall be allowed;

(8) Natural regeneration of forest vegetation and planting of trees, shrubs, or ground cover plants to enhance the riparian buffer shall be allowed provided that soil disturbance is minimized;

(9) Prescribed burns shall be allowed when conducted for forest management purposes; and

(10) One-time fertilizer application to establish replanted vegetation shall be allowed. This only applies to the one-time application of fertilizer in the riparian buffer. No runoff from this one-time application in the riparian buffer is allowed in the applicable surface water.

(c) REQUIREMENTS IN ZONE 1 OF THE BUFFER. Selective forest harvesting is allowed In Zone 1, as defined by the applicable Rule of this Section, provided that:

(1) The forest lands have a deferment for use value under forestry in accordance with G.S. 105-277.2 through 277.6 or the forest lands have a forest management plan prepared or approved by a registered professional forester. Copies of either the approval of the deferment for use value under forestry or the forest management plan shall be produced upon request by the North Carolina Forest Service or the Division;

(2) Tracked or wheeled vehicles are only used for the purpose of selective timber harvesting where there is no other practical alternative for removal of individual trees;

(2) No tracked or wheeled vehicles shall be used to conduct site preparation activities;

(3) Trees are removed in a manner that minimizes ~~with the minimum~~ disturbance to the soil and remaining vegetation;

(4) The first 10 feet of Zone 1 directly adjacent to the stream or waterbody shall be undisturbed, except for the removal of individual high value trees. The removal of individual high value trees shall only be allowed provided that no trees with exposed primary roots visible in the streambank are cut, unless they meet Subparagraphs (b)(6) or (b)(7) of this Rule; and

(5) A maximum of 50 percent of the trees greater than five inches DBH may be cut and removed. The reentry time for harvest shall be no more frequent than every 15 years, except on forest plantations as defined in 15A NCAC 02B .0702 where the reentry time shall be no more frequent than every five years. In either case, the trees remaining after harvest shall be as evenly spaced as possible.

(d) REQUIREMENTS IN ZONE 2 OF THE BUFFER. In Zone 2, harvesting and regeneration of the forest stand shall be allowed, provided that sufficient ground cover is maintained to provide for diffusion and infiltration of surface runoff.

(e) EXCEPTIONS. Persons who wish to undertake forest harvesting operations or practices different from the requirements set forth in this Rule may request an Authorization Certificate with Exception pursuant to Rule .0705 of this Subchapter.

History Note: *Authority G.S. 143-214.1, 143-215.8A, 143-214.7, 143-214.23, 143-214.23A, 143-215.3(a)(1); S.L. 1995, c. 572; S.L. 1999, c. 329; S.L. 2011, c. 394; S.L. 2012, c. 200; S.L. 2013, c. 413, S.L. 2015, c.246*

Eff. DATE

The provisions of this Rule were previously codified in 15A NCAC 02B .0233(11), 15A NCAC 02B .0243(11), 15A NCAC 02B .0250(16) and 15A NCAC 02B .0259(11).

15A NCAC 02H .0101 PURPOSE

(a) ~~These~~ The Rules ~~implement G.S. 143-215.1 which requires permits for control of sources of water pollution by providing~~ of this Section set forth the requirements and procedures for application and issuance of state ~~NPDES~~ permits pursuant to G.S. 143-215.1, et seq., for the control of point sources of water pollution. ~~a discharge from an outlet, point source, or disposal system discharging to the surface waters of the state, and for the construction, entering a contract for construction, and operation of treatment works with such a discharge (see Section .0200 of this Subchapter regarding permits for disposal systems not discharging to the surface waters of the state). These Rules also contain the requirements and procedures for issuance of state permits for pretreatment facilities. (See Section .0900 of this Subchapter for rules for permits issued by local pretreatment programs).~~ These Rules apply to the following state permits and authorizations:

(1) NPDES permits for the discharge of waste or stormwater from an outlet, point source, or disposal system to surface waters of the state,

(2) NPDES permits for the discharge of stormwater in accordance with Rule .0126 of this Section,

(3) authorizations or permits for the construction, entering a contract for construction, and operation of treatment works with such a discharge, and

(4) permits for the discharge of waste from a pretreatment facility to a disposal system that discharges to surface waters of the state.

(b) Rules and Statutes referenced in this Section ~~may be obtained by writing or visiting the Division of Environmental Management, Water Quality Section's offices at the following locations:~~ can be accessed free of charge through the Department of Environmental Quality web site (http://deq.nc.gov/).

~~Permits and Engineering Unit, Archdale Building~~
~~P.O. Box 29535,512 N. Salisbury St., Raleigh, N.C. 27626-0535~~
~~Raleigh Regional Office~~
~~3800 Barrett Dr., Raleigh, N.C. 27611~~
~~Asheville Regional Office~~
~~59 Woodfin Pl.,~~
~~Asheville, N.C. 28802~~
~~Mooresville Regional Office~~
~~919 N. Main St.,~~
~~Mooresville, N.C. 28115~~
~~Fayetteville Regional Office~~
~~Wachovia Bldg. Suite 714,~~
~~Fayetteville, N.C. 28301~~
~~Washington Regional Office~~
~~1424 Carolina Avenue,~~
~~Washington, N.C. 27889~~
~~Wilmington Regional Office~~

~~127 Cardinal Drive Extension,~~
~~Wilmington, N.C. 28405-3845~~
~~Winston-Salem Regional Office~~
~~8025 North Point Blvd.,~~
~~Winston-Salem, N.C. 27106~~

History Note: *Authority G.S. 143-215.3(a)(1); 143-215.1;*
Eff. February 1, 1976;
Amended Eff. August 3, 1992; August 1, 1988; October 1, 1987; December 1, ~~1984.~~ 1984;
Readopted Eff. <date>.

15A NCAC 02H .0102 SCOPE

(a) These Rules apply to all persons:

(1) discharging or proposing to discharge ~~waste~~ waste, directly or indirectly, from a point source to the surface waters of the state; or

(2) constructing or proposing to construct a treatment or pretreatment works with a discharge as described in ~~Part~~ Subparagraph (1) ~~or (2)~~ of this ~~Rule;~~ Paragraph; or

(3) ~~operate~~ operating or ~~propose~~ proposing to operate a treatment works with a discharge as described in ~~Part~~ Subparagraph (1) ~~or (2)~~ of this ~~Rule;~~ Paragraph; or

(4) discharging or proposing to discharge stormwater which results in water pollution.

(b) ~~This Rule does~~ These Rules do not apply ~~to~~ to:

(1) those persons who have obtained a permit from a local pretreatment control ~~authority,~~ authority that is authorized to issue such ~~permits, and whose~~ permits under a local pretreatment program ~~was~~ approved in accordance with Section .0900 of this ~~Subchapter.~~ Subchapter;

(2) sanitary sewage systems or solid waste management facilities that are permitted under the authority of the Commission for Public Health; and

(3) other persons or activities specifically exempted in these Rules.

History Note: *Authority G.S. 143-215.3(a)(1); 143-215.1; 143-215.3(a)(14);*
Eff. February 1, 1976;
Amended Eff. March 1, 1993; November 1, 1987; December 1, ~~1984.~~ 1984;
Readopted Eff. <date>.

15A NCAC 02H .0103 DEFINITION OF TERMS

The terms used in this Section shall be as defined in G.S. ~~143-213~~ 143-212 and G.S. 143-213; the federal Clean Water Act (33 U.S.C. 1251 et seq.); 40 CFR Parts 122, 124, and 125; and as follows:

(1) "Authorization to Construct" means a permit required for the construction of water pollution control facilities necessary to comply with the terms and conditions of an NPDES permit.

(2) "Certificate of Coverage" means the approval given dischargers that meet the requirements of coverage under a general permit.

(3) "Commission" means the Environmental Management Commission.

(4) "Committee" means the NPDES committee of the Environmental Management Commission.

(5) "Decontamination" means the physical or chemical process of reducing contamination and preventing the spread of contamination from persons and equipment at biological or chemical agent incidents.

(6) "Department" means the Department of ~~Environment and Natural Resources.~~ Environmental Quality or its successor.

(7) "Director" means the Director of the Division of Water ~~Quality,~~ Resources or Division of Energy, Mineral and Land Resources, or both, Department of ~~Environment and Natural Resources~~ Environmental Quality, whichever is the permitting authority in a particular instance; or ~~his designee.~~ his designee.

(8) "Discharges associated with biological or chemical decontamination" means the wastewater that is produced during activities intended to reduce potential biological or chemical contaminants and that are performed under the specific conditions listed in 15A NCAC 02H .0106(f)(11).

(9) "Division" means the Division of Water ~~Quality,~~ Resources or the Division of Energy, Mineral and Land Resources, or both, Department of ~~Environment and Natural Resources.~~ Environmental Quality, whichever is the permitting authority in a particular instance.

(10) "EPA" means the United States Environmental Protection Agency.

(11) "Existing", with respect to implementing the NPDES permitting program, means:

(a) Facilities which physically exist and have been legally constructed, i.e., health department or other agency approval or constructed prior to any regulatory requirements.

(b) Facilities which have received an NPDES Permit and have received an Authorization to Construct and have constructed or begun significant construction of any wastewater treatment facilities within the term of the current permit.

(c) Facilities which have received a phased NPDES Permit and have received an Authorization to Construct for a phase of the permitted flow and have constructed or begun significant construction of the phased wastewater treatment facilities.

For the purpose of this definition, significant construction shall be considered as more than a token or nominal investment of money or other resources in the actual construction of the wastewater

treatment facility, based on the facility size, complexity, cost and the required construction time for completion.

(12) "General Permit" means a "permit" issued under G.S. 143-215.1(b)(3) and (4) and 40 CFR 122.28 authorizing a category of similar discharges to surface waters.

(13) "Mine dewatering" means discharges of uncontaminated infiltrate and stormwater from mine excavation and the water that is removed to lower the water table to allow mining in an area.

(14) "Municipality" means a city, town, borough, county, parish, district, or other public body created by or under State law.

(15) "NPDES Permit" means a National Pollutant Discharge Elimination System permit required for the operation of point source discharges in accordance with the requirements of Section 402 of the Federal Water Pollution Control Act, 33 U.S.C. Section 1251 et seq.

(16) "New", with respect to implementing the NPDES permitting program, means:

(a) Proposed facilities that do not have ~~a~~ an NPDES Permit nor have any facilities constructed.

(b) Facilities which physically exist, however are illegally constructed, i.e., no required agency approvals.

(c) Facilities which have received an NPDES Permit and have received an Authorization to Construct but have not begun significant construction of any wastewater treatment facilities within the term of the current permit.

Any increases in treatment plant hydraulic capacity, which has not received an Authorization to Construct shall be considered new and new effluent limitations and other requirements, if applicable, would be imposed for the entire facility.

For the purpose of this definition, significant construction shall be considered as more than a token or nominal investment of money or other resources in the actual construction of the wastewater treatment facility, based on the facility size, complexity, cost and the required construction time for completion.

(17) "New Source" means any industrial ~~installation,~~ installation from which there may be a discharge, the construction or modification of which is commenced on or after the date of publication of new source performance standards or pretreatment standards for new sources by the Environmental Protection Agency.

(18) "New Source Performance Standards" means those standards of performance applied to industrial discharges defined as new sources.

(19) "Notice of Intent" means formal written notification to the Division that a discharge, facility or activity is intended to be covered by a general permit and takes the place of "application" used with individual permits.

(20) "Oil terminal storage facilities" means petroleum bulk storage, product transfer, loading, unloading, and related areas but does not include marinas or facilities primarily engaged in the retail sale of

petroleum products. Oil/water separators such as those at maintenance garages, gas stations, and National Guard and military reserve facilities are included in this definition.

(21) "Once-through non-contact cooling water" means water taken from wells, surface waters, or water supply systems and used in a non-contact cooling system without the addition of biocides or other chemical additives. Boiler blowdown waters are included in this definition. Nuclear and fossil fuel electric generating plants are not included in this definition.

(22) "Point Source ~~Discharge~~ " means any discernible, confined, and discrete conveyance, including, but specifically not limited to, any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, or concentrated animal-feeding operation from which wastes are or may be discharged to the surface waters of the State.

(23) "POTW" means Publicly Owned Treatment Works.

(24) "Pretreatment standard" means any regulation containing pollutant discharge limits for indirect dischargers for ensuring compliance with Section 307(b) and (c) of the Clean Water Act, 33 U.S.C. Section 1251 et seq. This term includes prohibited discharge limits and local sewer use ordinance limits.

(25) "Primary industry" means an industry listed in 40 CFR 122, Appendix ~~A~~ A, which is hereby incorporated by reference including any subsequent ~~amendments.~~ amendments and editions. ~~Copies of this publication are available from the Government Institutes. Inc., 4 Research Place, Suite 200, Rockville, MD 20850-1714 for a cost of thirty-six ($36.00) each plus four dollars ($4.00) shipping and handling. Copies are also available at the Division of Water Quality, Resources, Archdale Building, 512 N. Salisbury Street, Raleigh, North Carolina 27604.~~ The current version of these regulations can be accessed free of charge at http://www.gpo.gov/fdsys/.

(26) "Professional Engineer" means a person who is presently registered and licensed as a professional engineer by the North Carolina ~~State~~ Board of ~~Registration~~ Examiners For ~~Professional~~ Engineers and ~~Land~~ Surveyors.

(27) "Sand dredge" means a facility to remove sand from river bottoms. No other mining activities are included in this definition.

(28) "Seafood packing facility" means a business which is engaged in the sorting and packing of fresh seafood and which has a discharge consisting entirely of washdown and rinse water. Trout packing facilities are included in this definition. Wastewaters from seafood processing plants are not included in this definition.

(29) "Seafood processing facility" means a business which is engaged in the removal of heads, entrails, fins or scales, filleting, cooking, canning, or preparation of fresh seafood.

(30) "Staff" means the ~~staff of the Division of Water Quality, Department of Environment and Natural Resources.~~ Division, or its successor.

(31) "Stormwater" is defined in G.S. 143, Article 21.

(32) "Swimming pool filter backwash" means normal filter backwash water from both public and private swimming pools ~~as well as~~ or from spas with backwash filter facilities.

(33) "Tourist Gem Mine" means a business which is engaged in the recreational practice of removing gems and semi-precious stones from mined material.

(34) "Trout farm" means a facility for the commercial production of trout.

(35) "Water filtration facility" means backwash filters and sludge disposal systems associated with water treatment plants and backwash filters associated with wells.

History Note: *Authority G.S. 106-399.4; 143-215.1(a); 143-215.3(a)(1);*
Eff. February 1, 1976;
Amended Eff. September 1, 1995; March 1, 1993; August 3, 1992; August 1, 1991;
Temporary Amendment Eff. May 11, 2001;
Temporary Amendment Expired on February 26, 2002;
Amended Eff. April 1, ~~2003.~~ 2003;
Readopted Eff. <date>.

15A NCAC 02H .0105 APPLICATION: PERMIT FEES: ASSESSMENT FOR NEW SOURCES

(a) Except as provided in Paragraphs (d) and (e) of this Rule, any person who discharges or who proposes to discharge pollutants to the surface waters of the state or to a POTW when pretreatment of the wastewater is required shall complete, sign, and submit, in ~~triplicate,~~ triplicate, or in an electronic format allowed by law and acceptable to the Director, an application ~~accompanied by the~~ form and processing fee as described herein for each ~~application~~ application. Payment of fees shall be made in the form of a check or money order made payable to N.C. Department of ~~Environment, Health, and Natural Resources.~~ Environmental Quality, or by electronic means allowed by law and acceptable to the Director.

(1) Application for state NPDES or pretreatment permits shall be made on state or EPA forms provided by the Director. State forms shall conform with applicable information requirements specified in 40 CFR 122.21, which is hereby incorporated by reference, including any subsequent amendments and editions. The current version of these regulations can be accessed free of charge at http://www.gpo.gov/fdsys/. ~~The State NPDES application forms to be used for the various types of discharges are as follows:~~

~~Std. Form A: All municipal systems greater than or equal to 1.0 MGD and any municipal system receiving industrial waste from a primary industry.~~

~~Short Form A: Any municipal system not covered by Std. Form A.~~

~~Short Form B: All agriculture related discharges.~~

~~Std. Form C: All primary industries as listed in 40 CFR 122.21, Appendix A and all other industrial or process and commercial discharges except~~

~~EPA Forms 1 and 2 C: cooling waters, cooling tower blowdown, and boiler blowdown.~~

~~EPA Forms 1 and 2F: Discharges consisting entirely of stormwater associated with industrial activity.~~

~~EPA Forms 1 and 2D: Discharges consisting of stormwater and non-stormwater.~~

~~Short Form C: Cooling waters, cooling tower blowdown, and boiler blowdown.~~

~~Short Form D: All domestic waste discharges not covered by Std. Form A and Short Form A.~~

(2) ~~The Authorization to Construct and~~ Notice of Intent to seek coverage under a general permit shall be made on ~~application~~ forms ~~to be used will be supplied by the Division.~~ provided by the Director or in a form consistent with that specified in the general permit.

(3) Application for an Authorization to Construct shall be made on forms provided by the Director.

(b) Permit Fees.

(1) ~~Permit~~ Application Processing Fees. ~~For every~~ Every application for a new ~~or renewed~~ NPDES ~~permits,~~ permit or major modification of an existing NPDES permit, every Notice of Intent to be covered by a general ~~permit~~ permit, ~~or Authorization to Construct,~~ and every application for a special order by consent or judicial order shall include a nonrefundable application processing fee in the amount stated in ~~Subparagraph (b)(5) of this Rule shall be submitted at the time of application.~~ G.S. 143-215.3D.

(A) Each ~~permit or renewal~~ such application or notice of intent is incomplete until the application processing fee is received.

(B) For a facility with multiple discharges under a single permit, the application processing fee shall be set by the single discharge to the waters of the state with the highest fee in the fee schedule.

(C) No application processing fee will be charged for modification of unexpired permits when the modifications are initiated by the Director.

~~(D) An application processing fee of one hundred dollars ($100.00) will be charged for the minor modifications listed in Rule .0114(b) of this Section.~~

~~(E)~~(D) ~~A full~~ The application processing fee ~~will be charged~~ for major permit modifications ~~other than those listed in Rule .0114(b) of this Section; this fee~~ requested by the permittee will be in the same amount as ~~shown in Subparagraph (5) of Paragraph (c) of this Rule~~ for applications for new ~~applications/modifications.~~ permits. Modifications other than those minor modifications listed in Rule .0114(b) of this Section are major modifications.

(E) No application processing fee will be charged for renewal of an existing NDPES permit except that, if the permittee also requests a major modification for new or increased flows or other change that requires a substantial evaluation of permit conditions, such as in Paragraph (c) of this Rule, an application processing fee for such major modification shall be charged.

~~(F) Permittees requesting special orders by consent, judicial orders or flow increases under G.S. 143-215.67(b), will pay a fee of four hundred dollars ($400.00).~~

(2) Annual ~~Administering and Compliance Monitoring~~ Fees. An annual fee ~~for administering and compliance monitoring~~ shall be charged in each year of the term of every NPDES permit, according to the schedule in ~~Subparagraph (b)(5) of this Rule.~~ G.S. 143-215.3D.

(A) ~~Collection of annual fees shall begin on the effective date of this Rule.~~ If a new permit or major modification is issued, the application fee shall be accepted as payment for the ensuing annual fee for that permit; if the permit or modification is not issued, the application fee shall not be refunded.

(B) If an existing permit expires but qualifies for administrative extension under Rule .0112 of this Section, ~~Annual~~ annual fees ~~must be paid for any facility operating on an expired permit after the effective date of this Rule.~~ shall continue to be charged as long as the permit remains in effect. The Director shall establish an anniversary date for such a facility and notify the responsible party of the requirement to pay annual ~~administering and compliance monitoring~~ fees.

(C) For a facility with multiple discharges under a single permit, the annual ~~administering and compliance monitoring~~ fee shall be set by the single discharge to the waters of the state with the highest fee in the fee schedule.

(D) A person with only one permit will be billed annually on an anniversary date to be determined by the Division. This will normally be the first day of the month of permit issuance.

(E) A person with multiple permits may have annual fees consolidated into one annual bill.

(F) ~~Any permittee which has maintained full compliance with all permit conditions during the previous calendar year will have its administering and monitoring annual fee reduced by 25 percent. Permittees operating under interim limits, judicial orders, or special orders by consent will not be eligible for any discount. Full compliance will be established if it can be certified by the Director that no Notice of Noncompliance or a Notice of Violation was sent to the permittee during the compliance period being considered. If a Notice of Noncompliance or a Notice of Violation was based on erroneous information, the Director can send a letter of correction to the permittee clearing the record for compliance purposes.~~ Each application or notice of intent submitted pursuant to Paragraph (a) of this Rule is incomplete until annual fees due at the time of application, if any, are received by the Division.

(G) Permit Application Processing Fees and Annual ~~Administering and Compliance Monitoring~~ Fees for pretreatment facilities permitted by the Division shall be at the same rate as provided in ~~Subparagraph (b)(5) of this Rule.~~ G.S. 143-215.3D for NPDES facilities.

(3) No fees are required to be paid under this Rule by a farmer who submits an application or receives a permit that pertains to farming operations.

(4) Failure to pay an annual fee within 30 days after being billed ~~may cause~~ is grounds for the Division to initiate action to revoke the permit.

(5) Schedule of Fees: This SubParagraph is repealed pursuant to G.S. 143-215.3D.

~~Category~~	~~Permit Application Processing Fee~~		~~Annual Administerint And Compliance Monitoring~~	
	~~New Applications/ Modifications/ Late Renewals~~	~~Timely Renewals Without Modifications~~	~~Standard~~	~~In Compliance~~
~~>10,000,000 GPD~~				
~~Industrial Domestic/Cooling Water~~	~~$400. 400.~~	~~$400. 400.~~	~~$1500. 1500.~~	~~$1125. 1125.~~

~~1,000,001 – 10,000,000 GPD~~				
~~Industrial~~	~~400.~~	~~300.~~	~~1500.~~	~~1125.~~
~~Domestic/Cooling Water~~	~~400.~~	~~300.~~	~~1200.~~	~~900.~~
~~100,001 – 1,000,000 GPD~~				
~~Industrial~~	~~400.~~	~~250.~~	~~800.~~	~~600.~~
~~Domestic/Cooling Water~~	~~400.~~	~~250.~~	~~600.~~	~~450.~~
~~1,001 – 100,000 GPD~~				
~~Industrial~~	~~400.~~	~~200.~~	~~600.~~	~~450.~~
~~Domestic/Cooling Water~~	~~400.~~	~~200.~~	~~450.~~	~~300.~~
~~</=1,000 GPD and~~				
~~Single family dwelling~~	~~240.~~	~~240.~~	~~0~~	~~0~~
~~Stormwater –~~				
~~Municipal Separate~~				
~~Stormwater System~~	~~400.~~	~~400.~~	~~600.~~	~~450.~~
~~Industrial – Activity Stormwater~~	~~400.~~	~~400.~~	~~600.~~	~~450.~~
~~General Permits~~				
~~Construction (Stormwater)~~	~~50.~~	~~50.~~	~~n/a~~	~~n/a~~
~~Domestic~~	~~240.~~	~~240.~~	~~n/a~~	~~n/a~~
~~Others~~	~~400.~~	~~400.~~	~~n/a~~	~~n/a~~
~~Authorization to Construct~~				
~~(Permitted Flow)~~				
~~>=100,001 GPD~~	~~200.~~	~~n/a~~	~~n/a~~	~~n/a~~
~~<=100,000 GPD~~	~~150.~~	~~n/a~~	~~n/a~~	~~n/a~~
~~<=1,000 GPD~~	~~100.~~	~~n/a~~	~~n/a~~	~~n/a~~

~~(6) If the total payment for fees required for all permits under G.S. 143-215.3(a)(1b) for any single facility will exceed seventy-five hundred dollars ($7,500.00) per year, the total for all these fees will be reduced for this facility so that the total payment is seventy-five hundred dollars ($7,500.00) per year.~~

~~(7) A portion of the permit application processing fees shown in the fee schedule in Subparagraph (b)(5) of this Rule will be transferred into the Wastewater Treatment Works Emergency Maintenance, Operation and Repair Fund according to the following schedule:~~

~~(A) All nonmunicipal facilities treating wastewater which is predominantly domestic waste with design flows of 100,000 gallons per day or less, except single family dwellings, seventy-five dollars ($75.00);~~

~~(B) Single family dwellings, forty dollars ($40.00);~~

~~(C) All other facilities, zero.~~

~~(8) When the total value of the Wastewater Treatment Works Emergency Maintenance, Operation and Repair Fund, as certified by the State Treasurer, is at least seven hundred fifty thousand dollars ($750,000.00) at the end of a quarter, the permit application processing fees for facilities with discharges of one hundred thousand gallons per day (100,000 GPD) or less shall be reduced by the amounts being transferred under Subparagraph (7) of this Paragraph. This reduction shall continue until, at the end of some subsequent quarter, the State Treasurer certifies that the fund's balance is less than seven hundred fifty thousand dollars ($750,000.00), in which case the full amount of the permit application processing fees as listed in Subparagraph (b)(5) of this Rule shall be charged.~~

~~(9) In order to avoid violation of the statutory limit that total permit fees collected in any year not exceed 30 percent of the total budgets from all sources of environmental permitting and compliance programs, the Division shall in the first half of each state fiscal year project revenues from all sources including fees for the next fiscal year. If this projection shows that the statutory limit will be exceeded, rulemaking shall be commenced in order to have an appropriately adjusted fee schedule which will avoid excessive revenue collection from permit fees.~~

~~(10)~~(6) Any applicant whose facility qualifies for a general permit under Rule .0127 of this Section ~~may pay the lower fees set in Subparagraph (b)(5) of this Rule~~ shall be charged the amount provided in G.S. 143-215.3D for the appropriate general permit.

(c) Engineering Alternatives Analysis. Applicants for ~~new~~ NPDES permits for new or expanding discharges requiring construction of water pollution control facilities shall in addition to applications required in Paragraph (a) of this Rule, file, in ~~triplicate,~~ triplicate or in an electronic format allowed by law and acceptable to the Director, an engineering proposal setting forth the following information:

(1) a description of the origin, type and flow of waste which is proposed to be discharged. ~~Justification~~ The proposal shall include a rationale and a demonstration of need ~~shall be provided~~ for ~~expected~~ the projected flow volumes. Flow shall be determined in accordance with 15A NCAC ~~2H .0219(1);~~ 02T .0114;

(2) a summary of the available waste treatment and disposal options that were considered and why the proposed system and point of discharge were selected; the summary should have sufficient detail to ~~assure~~ establish that the most environmentally sound alternative was selected from the reasonably cost effective options; in all cases where connection to an area-wide sewerage system is feasible, such connection thereto shall be required;

(3) a narrative description of the proposed treatment works including type and arrangement of major components, in sufficient detail to assure that the proposed facility has the capability to comply with the permit limits; for commonly used treatment system ~~or~~ components or those with well established treatment capabilities, detailed plans and specifications need not be submitted until the application for the authorization to construct; however, detailed plans and specifications shall be required with the permit application for any system or component without well established treatment capabilities for the ~~nature~~ type of waste to be treated or degree of treatment needed to meet the permit limits;

(4) a general location map, showing orientation of the facility with reference to at least two geographic references (numbered roads, named streams/rivers, etc.);

(5) a scale location plan of the site showing location of the proposed treatment works and the proposed point of discharge;

(6) special studies or modeling ~~may be required~~ in cases where the impacts of the discharge cannot be readily determined by the Division;

(7) a statement to demonstrate financial qualification and substantial previous compliance with federal and state laws, regulations, and rules for the protection of the environment as required by G.S. 143-215.1(b)(4)(b).

(d) Applicants for new individual NPDES permits requiring construction of stormwater control facilities shall in addition to applications required in Paragraph (a) of this Rule, design and construct the facilities in accordance with criteria approved by the ~~Director,~~ Director or shall file ~~in triplicate,~~ an engineering proposal setting forth the information required in Paragraph (c) of this Rule.

(e) Applications for permit renewals shall be ~~accomplished~~ made by filing the appropriate application form or forms, as listed in Paragraph (a) of this Rule, with the applicable ~~processing fee described herein in the form of a check or money order made payable to N.C. Department of Environment, Health, and Natural Resources,~~ fee, if any, as specified in Paragraph (b) of this Rule, at least 180 days prior to expiration of a permit. ~~Renewal requests received less than 180 days prior to permit expiration will be required to pay the new application/modification/late renewal fee rather than the timely renewal without modification fee.~~ Payment shall be in the form of a check or money order made payable to the N.C. Department of Environmental Quality or made by other lawful means acceptable to the Director. The notice and public participation procedures set forth in Rules .0109 and .0111 of this Section shall be followed for each request for permit renewal. An acceptable residuals management plan shall be submitted with the application for permit renewal in accordance with Rule .0138(b)(8) of this Section. Authorizations to Construct permits for wastewater control facilities will not be subject to the notice and public participation procedures set forth in Rules .0109 and .0111 of this Section. Authorizations to Construct may be issued for any length of time, however, the

NPDES permit must be in effect at time of construction. All applications are incomplete until required processing fees are received, and incomplete applications may be returned to the applicant.

(f) Applications for permits for pretreatment facilities shall be made in triplicate upon forms approved by the Director and submitted along with applicable supporting information to the Division of ~~Environmental Management.~~ Water Resources.

(g) Applications for permits for new or modified discharges ~~which propose to discharge industrial process or domestic wastewater in excess of 500,000 gallons per day or 10 MGD of cooling water~~ to the surface waters that meet the criteria established in or pursuant to G.S. 113A, Article 1, shall ~~file,~~ include, in addition to the ~~applications~~ application forms, fees, and supporting documents required in Paragraphs (a) and ~~(b)~~(e) of this Rule, an environmental assessment which shall meet the requirements of ~~1~~ 01 NCAC 25 ~~.0502.~~ .0500. Any assessment which is required by any other state agency or any federal agency shall be deemed to comply with requirements of this Subsection provided aquatic impacts are adequately addressed.

(h) Permits which result in construction of facilities which will be funded by public monies may require environmental documentation pursuant to North Carolina Environmental Policy Act, G.S. 113A. NPDES permit applications for which such documentation is required will be considered incomplete until supported by the required documentation.

(i) Applicants for permits for new nonmunicipal domestic wastewater discharges shall file a notarized statement indicating whether or not each city or county government having jurisdiction over any part of the lands on which the proposed facility is to be located has a zoning or subdivision ordinance in effect, and, if such an ordinance is in effect, whether or not the proposed facility is consistent with the ordinance.

(j) For NPDES permits, a full disclosure of all known toxic components that can be reasonably expected to be in the discharge, including but not limited to those contained in a priority pollutant analysis, must be submitted for all primary industrial direct discharges in accordance with 40 CFR 122.21 Appendix ~~D~~ D, which ~~are~~ is hereby incorporated by reference including any subsequent amendments and editions, and for other direct discharges as required by the Director. ~~This material is available for inspection at the Department of Environment, Health, and Natural Resources, Division of Environmental Management, 512 N. Salisbury Street, Raleigh, North Carolina. Copies may be obtained from the Superintendent of Documents, U.S. Government Printing Office, Washington D.C. 20402-9325 at a cost of thirty dollars ($30.00).~~ The current version of these regulations can be accessed free of charge at http://www.gpo.gov/fdsys/.

History Note: *Authority G.S. 143-215.1(c); 143-215.1(c)(6); 143-215.3(a); ~~143-215.3B;~~ 143-215.3D;*
Eff. February 1, 1976;
Amended Eff. March 1, 1993; August 1, 1991; October 1, 1990; August 1, ~~1988.~~ 1988;
Readopted Eff. <date>.

15A NCAC 02H .0106 FILING APPLICATIONS

(a) Permit applications shall be filed with the Director, Division of Water ~~Quality,~~ Resources, 1617 Mail Service Center, Raleigh, North Carolina, 27699-1617.

(b) All NPDES permit applications, except those addressed in Paragraph (d) of this Rule, shall be filed at least 180 days ~~in advance of the date on which an existing permit expires or in sufficient time prior to the proposed commencement of a waste discharge to ensure compliance with all legal procedures.~~ before the date on which the discharge is to commence and, thereafter, at least 180 days before the expiration date of the existing permit, unless permission for a later date has been granted by the Director. Persons proposing a new discharge are encouraged to submit their applications in advance of the 180-day requirement.

(c) All Authorization to Construct applications shall be filed at least 90 days in advance of the proposed commencement date of construction of water pollution control facilities but no earlier than the establishment of effluent limitations.

(d) All NPDES stormwater construction permit applications shall be filed in advance of the proposed commencement date of land disturbing activity which results in a stormwater discharge.

(e) Permit applications filed with the Director shall be signed as follows:

(1) in the case of corporations, by a principal executive officer of at least the level of vice-president, or his duly authorized representative, if such representative is responsible for the overall operation of the facility from which the discharge described in the permit application form originates;

(2) in the case of a partnership or a limited partnership, by a general partner;

(3) in the case of a sole proprietorship, by the proprietor; and

(4) in the case of a municipal, state, or other public entity by either a principal executive officer, ranking elected official or other duly authorized employee.

(f) The following discharges are deemed to be permitted pursuant to G.S. 143-215.1(c) provided that no water quality standards are contravened, or expected to be contravened, and it shall not be necessary for the Division to issue separate permits for these activities:

(1) filter backwash and draining associated with swimming pools;

(2) filter backwash from raw water intake screening devices;

(3) condensate from residential or commercial air conditioning units;

(4) individual non-commercial vehicle washing operations;

(5) flushing and hydrostatic testing water associated with utility distribution systems;

(6) discharges associated with emergency removal and treatment activities for spilled oil authorized by the federal or state on-scene coordinator when such removals are undertaken to minimize overall environmental damage due to an oil spill;

(7) groundwaters generated by well construction or other construction activities;

(8) landscape irrigation, foundation or footing drains, or water from crawl space pumps;

(9) street wash water;

(10) flows from fire fighting; and

(11) excluding the provision in Subparagraph (f)(6) of this Rule, discharges associated with biological or chemical decontamination activities performed as a result of an emergency declared by the Governor or the Director of the Division of Emergency Management and that are conducted by or under the direct supervision of the federal or state on-scene coordinator and that meet the following specific conditions:

(A) the volume of discharge produced by the decontamination activity is too large to be contained on-site;

(B) the Division of Water ~~Quality~~ Resources is informed prior to commencement of the discharge from the decontamination activity;

(C) overland flow or other non-discharge options are deemed to be impractical by the authorities conducting the decontamination activity; and

(D) the discharge is not radiologically contaminated.

(g) Continued Applicability of Permit. A wastewater treatment facility or treatment unit that is taken out of service but contains waste or residuals that could be discharged to surface waters or otherwise present an environmental or public health risk under foreseeable circumstances, including severe weather events, shall remain subject to NPDES permit requirements until such materials are properly disposed.

History Note: *Authority G.S. 106-399.4; 143-215.1(c); 143-215.1(b)(3); 143-215.3(a)(1);*
Eff. February 1, 1976;
Amended Eff. March 1, 1993; November 1, 1987; January 1, 1984; November 1, 1978;
Temporary Amendment Eff. May 11, 2001;
Temporary Amendment Expired on February 26, 2002;
Amended Eff. April 1, ~~2003.~~ 2003;
Readopted Eff. <date>.

15A NCAC 02H .0107 STAFF REVIEW AND EVALUATION

(a) The Director is authorized to accept applications for the Commission and shall refer all applications to the staff for review and evaluation. Additionally, the Director shall refer NPDES Permit applications for the discharge of waste into waters classified as sources of public water supply (WS classification) and shellfish waters classified SA to the Public Water Supply Section, Division of Water Resources, and the Shellfish Sanitation Program, Division of ~~Environmental Health,~~ Marine Fisheries, respectively, both of the Department of ~~Environment, Health, and Natural Resources,~~ Environmental Quality, for review and written approval.

(b) The Director shall acknowledge receipt of ~~a complete~~ an NPDES or Authorization to Construct permit application upon verifying that the application is administratively complete, that is, includes the completed and signed application forms specified in Rule .0105(a) of this Section, any necessary supplemental information, and any associated fees in accordance with Rules .0105 and .0106 of this Section.

(1) If an application is ~~or, if~~ not administratively complete, the Director may return the application to the applicant as incomplete or request the additional information required. The applicant may be given up to 60 days to provide the information to make the application complete.

(2) If technical review of the application reveals that additional information is necessary for staff to properly evaluate the proposed discharge, the Director will notify the applicant of the additional information required. The applicant may be given up to 60 days to provide the information to make the application complete.

(c) Tentative Determination and Draft individual NPDES Permit.

(1) The staff shall conduct a site investigation and shall prepare its written evaluation and tentative determination to issue or deny the NPDES permit. On-site investigations will not be necessary for Authorization to Construct permits, activities covered under general ~~permits~~ permits, and renewal of individual permits with no ~~modifications.~~ modifications warranting such investigation.

(2) If the staff's tentative determination in ~~Paragraph~~ Subparagraph (1) of this ~~Subdivision~~ Paragraph is to issue the permit, it shall if necessary make the following additional determinations in writing:

(A) proposed effluent limitations for those pollutants proposed to be limited;

(B) a proposed schedule of compliance, including interim dates and requirements, for meeting the proposed effluent limitations; and

(C) a brief description of any other proposed special conditions which will have significant impact upon the discharge described in the application.

(3) The staff shall organize the determinations made pursuant to ~~Paragraphs~~ Subparagraphs (1) and (2) of this ~~Subdivision~~ Paragraph into a draft permit.

(d) In the case of permits for which ~~notice of intent~~ Notice of Intent is given on forms as described in Rule .0105(a) of this Section, a Certificate of Coverage under a general permit may be prepared and issued directly to the applicant in lieu of any other acknowledgment. If the Notice of Intent is unacceptable, it will be returned to the applicant with an explanation of the inadequacies.

History Note: *Authority G.S. 130-161; 143-215.3(a)(1); 143-215.3(a)(4); 143-215.1(a); 143-215.1(c);*
Eff. February 1, 1976;
Amended Eff. March 1, 1993; August 1, 1991; August 1, 1988; October 1, ~~1987.~~ 1987;
Readopted Eff. <date>.

15A NCAC 02H .0108 FACT SHEETS

(a) For all discharges which do not qualify for a general NPDES permit and which have a total volume of 500,000 or more gallons on any day, a fact sheet providing a brief synopsis of the application shall be prepared by the staff and made available upon request following issuance of the public notice. The contents of such fact sheets shall include at least the following information:

(1) a ~~sketch~~ sketch, map, or detailed description of the location of the discharge described in the application;

(2) a quantitative and qualitative description of the discharge described in the application which includes at least the following:

(A) the rate or frequency of the proposed discharge; if the discharge is continuous, the average daily flow in gallons per day or million gallons per day;

(B) for thermal discharges subject to limitation under the act, the average summer and winter temperatures in degrees Fahrenheit; ~~and~~

(C) the average daily discharge in pounds per day of any pollutants which are present in significant quantities or which are subject to limitations or prohibition; and

(D) the type and characteristics of the wastes to be discharged.

(3) the tentative determinations required under Rule .0107 of this Section;

(4) a brief citation of the water quality standards and effluent standards and limitations applied to the proposed discharge, including a brief identification of the uses for which the receiving waters have been classified; and

(5) a more detailed description of the procedures for the formulation of final determinations than that given in a public notice including:

(A) the 30-day comment period required by ~~Rule .0110~~ Rules .0109 and .0111 of this Section,

(B) procedures for requesting a public ~~meeting~~ hearing and the nature thereof, and

(C) any other procedures by which the public may participate in the formulation of the final determinations.

(b) Any person, upon request, will be furnished, without charge, one copy of any fact sheet.

History Note: *Authority G.S. 143-215.3(a)(1); 143-215.1(c)(2)(a);*
Eff. February 1, 1976;
Amended Eff. March 1, 1993; August 1, 1988; October 1, ~~1987.~~ 1987;
Readopted Eff. <date>.

15A NCAC 02H .0109 PUBLIC NOTICE

(a) Notice of Application

(1) ~~Public~~ The Director shall provide public notice of each ~~complete~~ tentative determination to issue an individual or general NPDES ~~permit application and each general NPDES permit~~ permit, or to deny such permit, ~~shall be circulated~~ in the geographical ~~areas~~ area of the proposed discharge ~~by the Director~~ at least 45 days prior to any proposed final action:

(A) by publishing the notice one time in a newspaper having general circulation in said ~~county;~~ county, provided that, to the extent publication by electronic means is lawful, such publication may be substituted for newspaper publication; and

(B) by mailing the notice or transmitting the notice electronically to all persons or agencies listed in ~~Subsection~~ Paragraphs (c) and (d) of this Rule.

(2) The notice shall allow at least 30 days for public comment on the draft permit and the proposed final action.

(3) The notice shall set forth at least the following:

(A) name, address, and phone number of the agency issuing the public notice;

(B) name and address of each applicant;

(C) brief description of each applicant's activities or operations which result in the discharge described in the NPDES application;

(D) name of waterway to which each discharge is made and a short description of the location of each discharge on the waterway indicating whether such discharge is a new or an existing discharge;

(E) a statement of the tentative determination to issue or deny an NPDES permit for the discharge described in the NPDES ~~application;~~ application or general permit;

(F) a brief description of the procedures for the formulation of final determinations, including a 30-day comment period and any other means by which interested persons may influence or comment upon the determinations; and

(G) address and phone number of state agency premises at which interested persons may obtain further information, request a copy of the draft permit, request a copy of the fact sheet, and inspect and copy NPDES application forms and related documents. Copies of the fact sheet shall be made available free upon request. Copies of the information on file, other than fact sheets, will be made available upon request and payment of the cost of reproduction.

~~(3)~~(4) Public notice for those activities covered by Certificates of Coverage issued pursuant to a general permit and for Authorizations to Construct shall not be required.

(b) Notice of Public ~~Meeting~~ Hearing

(1) Notice of public ~~meeting~~ hearing on any NPDES permit application shall be circulated in the geographical ~~areas~~ area of the proposed discharge by the Director at least 30 days prior to the date of the ~~meeting:~~ hearing:

(A) by publishing the notice one time in a newspaper having general circulation in said ~~county;~~ county, provided that, to the extent publication by electronic means is lawful, such publication may be substituted for newspaper publication;

(B) by mailing the notice or transmitting the notice electronically to all persons and government agencies which received a copy of the notice or the fact sheet for the NPDES application; and

(C) by mailing the notice or transmitting the notice electronically to any person or group upon request.

(2) The notice of any public ~~meeting~~ hearing shall include at least the following:

(A) name, address, and phone number of agency holding the public ~~meeting;~~ hearing;

(B) name and address of each applicant whose application will be considered at the ~~meeting;~~ hearing;

(C) name of waterway to which each discharge is made and a short description of the location of each discharge on the waterway;

(D) a brief reference to the public notice issued for each NPDES application including identification number and date of issuance;

(E) information regarding the time and location for the ~~meeting;~~ hearing;

(F) the purpose of the ~~meeting;~~ hearing;

(G) address and phone number of premises at which interested persons may obtain further information, request a copy of each draft NPDES permit, request a copy of each fact sheet, and inspect and copy NPDES forms and related documents; and

(H) a brief description of the nature of the ~~meeting~~ hearing including the rules and procedures to be ~~followed;~~ followed. The notice shall also state that additional information is on file with the ~~Division of Environmental Management,~~ Department of ~~Environment, Health, and Natural Resources,~~ Environmental Quality, Division of Water Resources, at the Archdale Building at 512 North Salisbury Street, Raleigh, North Carolina, and may be inspected at any time during normal working hours. Copies of the information on file will be made available upon request and payment of cost of reproduction.

(c) ~~Mailing Lists. Any person may request to receive copies of all notices required under this Rule and the Director shall mail such notice to any such person. An annual charge of twenty-five dollars ($25.00) may be charged for any person desiring to be placed and maintained on the NPDES Permit mailing list.~~ The Director shall also give notice of draft NPDES permits and related public hearings to the ~~following for NPDES permits:~~ following:

(1) State water pollution control agency for the States of Virginia, South Carolina, Tennessee, and Georgia;

(2) Appropriate district engineer, U.S. Army Corps of Engineers;

(3) Lead agency responsible for preparation of plan pursuant to Section 208(b) of the Clean Water Act, 33 U.S.C. Section 1251 et seq, in approved 208 areas;

(4) State agency responsible for the preparation of plans pursuant to Section 303(e) of the Clean Water Act, 33 U.S.C. Section 1251 et seq;

(5) ~~North Carolina Department of Environment, Health, and Natural Resources, Division of Environmental Health;~~ any user identified in the permit application of a privately owned treatment works; and

(6) Any other federal, state, or local agency upon request.

(d) Mailing Lists. Any person may request to receive copies of all notices required under this Rule, and the Director shall provide such copies to any such person. The Director shall establish and maintain an NPDES mailing list for this purpose. An annual printing and mailing charge of twenty-five dollars ($25.00) may be charged for any person on the list requesting paper copies of the notices. The Director may distribute notices, or otherwise make them available, by electronic means at no charge.

History Note: *Authority G.S. 143-215.1(a)(1); 143-215.1(c); 143-215.4(a); 143-215.4(c);*
Eff. February 1, 1976;
Amended Eff. March 1, 1993; August 1, 1988; October 1, 1987; December 1, ~~1984.~~ 1984;
Readopted Eff. <date>.

15A NCAC 02H .0111 ~~MEETINGS AND~~ PUBLIC HEARINGS

(a) Public ~~Meetings:~~ Hearings:

(1) The Director shall provide an opportunity for the applicant, any affected state, any affected interstate agency, the regional administrator, or any interested agency, person, or group of persons to request or petition for a public ~~meeting~~ hearing with respect to NPDES permit applications. Any person who desires a public ~~meeting~~ hearing on any NPDES permit application shall so request in writing to the Director within 30 days following the publication date of the notice of application. Any such request or petition for public ~~meeting~~ hearing shall indicate the interest of the party filing such request and the reasons why a ~~meeting~~ hearing is warranted.

(2) The Director is delegated authority to determine if a public ~~meeting~~ hearing shall be held in accordance with G.S. 143-215.1(c)(3) and to issue public notice and conduct such ~~meeting~~ hearing for the Commission.

(3) All comments received within 30 days following the publication date of the notice of NPDES permit application shall be made part of the application file and shall be considered by the Director prior to taking final action on the application.

(4) Any ~~meeting~~ hearing brought pursuant to this Subsection shall be held in the geographical area of the proposed discharge or other appropriate area, in the discretion of the Director, and may, as appropriate, consider related groups of permit applications.

(b) Adjudicatory Hearings and appeals shall be conducted in accordance with Article 3 of Chapter 150B of the General Statutes.

History Note: *Authority G.S. 143-215.3(a)(1); 143-215.1(c)(1); 143-215.3(a)(3); 143-215.3(a)(4); 143-215.5; 143-215.1(e);*
Eff. February 1, 1976;
Amended Eff. March 1, 1993; November 1, ~~1987.~~ 1987;
Readopted Eff. <date>.

15A NCAC 02H .0112 FINAL ACTION ON PERMIT APPLICATIONS

(a) The Director shall take final action on all NPDES applications not later than 60 days following notice of intent to issue or ~~deny,~~ deny; or, if a public ~~meeting~~ hearing is held, within 90 days following the closing of the record of the ~~meeting or~~ hearing; or, in the case of an Authorization to Construct ~~permit~~ permit, 90 days after the receipt of a complete ~~application~~ application; or, if a public ~~meeting~~ hearing is held concerning the Authorization to Construct, within 90 days following the closing of the record of the ~~meeting.~~ hearing.

(b) The Director is authorized to:

(1) issue a permit containing such conditions as are necessary to effectuate the purposes of G.S. 143-215.1 and G.S. 143-215.67;

(2) issue a permit containing time schedules for achieving compliance with applicable effluent standards and limitations, water quality standards, and other legally applicable requirements;

(3) modify or revoke any permit upon giving 60 days notice to the person affected pursuant to Rule .0114(a) of this Section;

(4) suspend a permit pursuant to Rule .0114(a) of this Section;

(5) rescind a permit upon request by the permittee;

(6) deny a permit application:

(A) where necessary to effectuate the purposes of Article 21 Chapter 143,

(B) for a discharge prohibited by G.S. 143-214.2(a),

(C) where the Secretary of the Army finds the discharge would substantially impair anchorage and navigation,

(D) for a discharge to which the regional administrator of EPA has objected as provided in Section 402(d) of the Clean Water Act as amended, 33 U.S.C. Section 1251 et seq,

(E) for any point discharge which conflicts with a plan approved pursuant to Section 208(b) of the Clean Water Act as amended, 33 U.S.C. Section 1251 et seq, effective February 4, 1987.

(c) The permit applicant has the burden of providing sufficient evidence to reasonably ensure that the proposed system will comply with all applicable water quality standards and requirements. No permit may be issued when the imposition of conditions cannot reasonably ensure compliance with applicable water quality standards and regulations of all affected states.

(d) Permits shall be issued or renewed for a period of time deemed reasonable by the Director except in no case shall state NPDES permits be issued for a period to exceed five years.

(e) Continuation of expiring permits

(1) Notwithstanding Paragraph (d) of this Rule, the conditions of an expired permit continue in force until the effective date of a new permit, or until otherwise terminated, if:

(A) The permittee has submitted a timely and complete application under Rule .0106 of this Section; and

(B) The Director, through no fault of the permittee, does not issue a new permit with an effective date on or before the expiration date of the previous permit (for example, when issuance is impracticable due to time or resource constraints).

(2) Effect. Permits continued under this Paragraph remain fully effective and enforceable.

(f) Enforcement. When the permittee is not in compliance with the conditions of the expiring or expired permit, the Director may choose to do any or all of the following:

(1) Initiate enforcement action based upon the permit which has been continued;

(2) Issue a notice of intent to deny the new permit under Paragraph (b) of this Rule. If the permit is denied, the owner or operator shall cease the activities authorized by the continued permit or be subject to enforcement action for operating without a permit;

(3) Issue a new permit under this Subchapter with appropriate conditions; or

(4) Take other actions authorized by G.S. 143-215.1 and these regulations.

History Note: *Authority G.S. 143-215.3(a)(1); 143-215.1(c)(4); 143-215.1(b); 143-215.3(a)(3); 143-215.3(a)(4); 143-215.1(c)(5); 143-214.2(a); 143-215; 143-215.2(a);*
Eff. February 1, 1976;
Amended Eff. March 1, 1993; October 1, 1987; September 1, 1986; December 1, ~~1984.~~ 1984;
Readopted Eff. <date>.

15A NCAC 02H .0113 NOTIFICATION OF APPLICANTS

The Director shall notify an applicant of the final decision of the applicant's permit application. Notifications of denial shall be made by certified mail and shall specify the reasons therefor and the proposed changes which in the opinion of the Director will be required to obtain the permit.

History Note: *Authority G.S. 143-215.3(a)(1); 143-215.1(a); 143-215.3(a)(4);*
Eff. February 1, 1976;
Amended Eff. October 1, ~~1987.~~1987;
Readopted Eff. <date>.

15A NCAC 02H .0114 MODIFICATION AND REVOCATION OF PERMITS

(a) Any permit issued pursuant to this Section is subject to revocation or modification in whole or part pursuant to 40 CFR 122.62 or for any of the following:

(1) violation of any terms or conditions of the permit;

(2) obtaining a permit by misrepresentation or failure to disclose fully all relevant facts;

(3) a change in any condition that requires either a temporary or permanent reduction or limitation of the permitted discharge; ~~and~~

(4) unlawful refusal of the permittee to permit the Director or his authorized representative upon presentation of proper credentials:

(A) to enter upon permittee's premises in which an effluent source is located or in which any records are required to be kept under terms and conditions of the permit,

(B) to have access to any copy and records required to be kept under terms and conditions of the permit,

(C) to inspect any monitoring equipment or method required in the permit, or

(D) to sample any discharge of ~~pollutants.~~ pollutants;

(5) failure to pay the annual ~~fee for administering and compliance monitoring.~~ permit fee.

(b) Modifications and reissuance of permits shall be subject to the same public notice and other procedural requirements as the issuance of permits except as follows:

(1) modifications of the monitoring program contained in the permit,

(2) name changes or changes in the ownership of the discharge when no other change in the permit is indicated,

(3) a single modification of any compliance schedule not in excess of four months,

(4) modification of compliance schedules (construction schedules) in permits for new sources where the new source will not begin to discharge until control facilities are operational,

(5) modifications to include or amend pretreatment program requirements,

(6) issuance of permits revoked for failure to pay the annual ~~administering and compliance monitoring~~ permit fee,

(7) modifications determined by the Director to be minor, such as typographical errors, incorrect maps, and similar minor changes.

History Note: *Authority G.S. 143-215.3(a)(1); 143-215.1(b)(3);*
Eff. February 1, 1976;
Amended Eff. March 1, 1993; September 1, 1988; November 1, ~~1987.~~ 1987;
Readopted Eff. <date>.

15A NCAC 02H .0115 PUBLIC ACCESS TO RECORDS

(a) ~~All records, reports, and information required to be submitted to the Commission or the Director; any public comment on these records, reports or information; and the draft and final permits shall be disclosed upon request to the public unless the person submitting the information can show that such information, if made public, would disclose methods or processes entitled to protection as trade secrets.~~ All materials, including records, reports, data, maps, diagrams, draft or final permits, fact sheets, or other documents or information and any public comments, in printed or electronic form, submitted to the Commission, the Secretary, or the Director are public records in accordance with Chapter 132 of the General Statutes and are subject to disclosure pursuant to G.S. 132-6 unless the material qualifies as confidential information as defined in G.S. 132-2.1.

~~(b) The Director is authorized to determine information which is entitled to confidential treatment. In the event the Director determines that such information (other than effluent data) is entitled to confidential treatment, he shall take steps to protect such information from disclosure. He shall submit the information considered to be confidential to the Regional Administrator, EPA, Region IV, for concurrence in his determination of confidentiality.~~

~~(c)~~(b) The Director shall:

(1) provide facilities for the inspection of information relating to permit applications and permits,

(2) ensure that the staff handle ~~request~~ requests for such inspections ~~promptly,~~ in a timely manner, and

(3) ensure that copying machines or other devices or means of providing copies of such documents are available for a reasonable fee.

(c) Confidentiality of Information.

(1) Any claim of confidentiality shall be made by marking "confidential" or "trade secret" on each page containing such information or, in the case of information in electronic form, by other means acceptable to the Director.

(2) Until a claim of confidentiality is made, all materials submitted pursuant to the permitting rules are public records and subject to disclosure as described in Paragraph (a) of this Rule.

(3) Upon receiving a request for confidentiality, the Director shall maintain the affected materials separately from public record documents and shall not disclose the materials unless or until he determines that the materials do not qualify as confidential information.

(4) The Director may consult with the EPA Region 4 Administrator regarding whether materials marked as "confidential" or "trade secret" qualify as confidential information.

(3) Upon reviewing a request for confidentiality, the Director shall notify the applicant of his findings. If the Director determines that the materials or any portions thereof do not qualify as confidential information, those portions shall not be released for at least 60 days following the notification of findings. If the applicant files a contested case in response to the Director's decision, the materials shall not be released until conclusion of the contested case and then according to the court's decision. If the Director determines that the materials or any portions thereof qualify as confidential information, the Director shall continue to protect such information from disclosure.

(d) The following information may not be claimed as "confidential" or "trade secret":

(1) The name and address of any permit applicant or permittee;

(2) Permit applications, including information or data required to be disclosed on the NPDES application forms provided by the Director pursuant to Rule .0105 of this Section or in printed or electronic attachments or appendices to such NPDES application forms.

(3) Permits and effluent data.

History Note: *Authority G.S. 143-215.3(a)(1); 143-215.3(a)(2); 143-215.3(a)(4); 132-6; 143-215.65;*
Eff. February 1, 1976;
Amended Eff. March 1, 1993; October 1, ~~1987.~~ 1987;
Readopted Eff. <date>.

15A NCAC 02H .0116 EMERGENCY PROCEDURES

If the Director determines any threatened or continuing violations exist which warrant immediate action, the Director shall so notify the Commission or the secretary ~~who~~ in order that they may exercise the emergency powers granted them pursuant to G.S. 143-215.3(a)(8), 143-215.13(d), ~~143-215.6(c),~~ 143-215.6C, or 143-215.3(a)(12).

History Note: *Authority G.S. 143-215.3(a)(8); 143-215.13(d); ~~143-215.6(c);~~ 143-215.6C; 143-215.3(a)(12);*
Eff. February 1, 1976;
Amended Eff. December 1, 1984; November 1, ~~1978.~~ 1978;
Readopted Eff. <date>.

15A NCAC 02H .0117 INVESTIGATIONS: MONITORING: AND REPORTING

(a) Staff of the Department of ~~Environment, Health, and Natural Resources~~ Environmental Quality are authorized to conduct any investigations as provided in G.S. 143-215.3(a)(2), (7), and (9) for the purpose of determining compliance with water quality standards, effluent limitations, permit conditions and any duly adopted rule of the Commission.

(b) Any person subject to the provisions of G.S. 143-215.1 shall comply with the monitoring and reporting requirements of Rules in Section 15A NCAC 02B .0500.

(c) Any person subject to the provisions of G.S. 143-215.1 shall allow the Director or his authorized representative upon presentation of proper credentials and other necessary documents as may be required by law:

(1) to enter upon permittee's premises in which an effluent source is located or in which any records are required to be kept under terms and conditions of the permit,

(2) to have access to any copy and records required to be kept under terms and conditions of the permit,

(3) to inspect any monitoring equipment or method required in the permit, or

(4) to sample any discharge of pollutants.

History Note: *Authority G.S. 143-215.3(a)(1); 143-215.3(a)(4); 143-215.3(a)(2); 143-215.3(a)(7); 143-215.1(b)(1); 143-215.3(a)(9); 143-215.63;*
Eff. February 1, 1976;
Amended Eff. March 1, 1993; October 1, 1987; December 1, 1984; November 1, ~~1978.~~ 1978;
Readopted Eff. <date>.

15A NCAC 02H .0118 EFFLUENT LIMITATIONS AND STANDARDS

Any state NPDES permit will contain effluent limitations and standards required by 15A NCAC ~~2B~~ 02B .0400 and the Clean Water Act which is hereby incorporated by reference including any subsequent amendments and editions. ~~This material is available for inspection at the Department of Environment, Health, and Natural Resources, Division of Environmental Management, 512 N. Salisbury Street, Raleigh, North Carolina.~~ 15A NCAC 02B .0400 contains the effluent standards and limitations for ensuring compliance with Sections 301, 302, 306, and 307 of the Clean Water Act (33 USC 1251, et seq.). For water quality limited stream segments, the rules provide that effluent limitations be calculated by the staff, and approved by the Director, to comply with Section 301(b)(1)(C) of the federal act. The current version of the state rules can be accessed free of charge at http://www.oah.state.nc.us/rules/. ~~Copies of the~~ The Clean Water Act ~~may~~ (33 U.S.C. 1251, et seq.) can be ~~obtained from the Superintendent of Documents, U.S. Government Printing Office, Washington D.C. 20402-9325 at a cost of fifty dollars ($50.00).~~ accessed free of charge at http://www.gpo.gov/fdsys/. ~~That rule contains the effluent standards and limitations for ensuring compliance with Sections 301, 302, 306, and 307 of the Clean Water Act. For effluent limited stream segments, the rule incorporates by reference federal effluent limitations and guidelines as state effluent limitations and guidelines. For water quality limited stream segments, the rules provide that effluent limitations be calculated by the staff and approved by the Director, to comply with Section 301(b)(1)(C) of the federal act.~~

History Note: *Authority G.S. 143-213(23); 143-215; 143-215.1(b)(1); 143-215.3(a)(1);*
Eff. February 1, 1976;
Amended Eff. March 1, 1993; November 1, ~~1987.~~ 1987;
Readopted Eff. <date>.

15A NCAC 02H .0120 LIMITATION ON DELEGATION

The Director is authorized to delegate any or all of the functions contained in this Section except the following:

(1) denial of a permit application,

(2) suspension of a permit,

(3) revocation of a permit not requested by the permittee,

(4) modification of a permit where initiated by the Division and which does not fall within the exceptions listed in Rule .0114(b) of this Section, or

(5) determination of confidentiality.

History Note: *Authority G.S. 143-215.3(a)(1); 143-215.3(a)(4);*
Eff. February 1, 1976;
Amended Eff. March 1, ~~1993.~~1993;
Readopted Eff. <date>.

15A NCAC 02H .0121 SUSPENSION OF REQUIREMENT FOR STATE NPDES PERMITS

(a) The Commission finds that an NPDES Permit issued by the U.S. Environmental Protection Agency will serve in lieu of a State Permit under 15A NCAC 2H .0104 and G.S. 143-215.1 so long as the Federal Permit is valid.

(b) Nothing in this Rule shall prevent the Commission from enforcing laws and regulations which by their terms are applicable without a G.S. 143-215.1 permit.

History Note: *Authority G.S. 143-215.3(a)(1); 143-215.1; 143B-282;*
Eff. December 1, 1976;
Amended Eff. December 1, ~~1984.~~1984;
Readopted Eff. <date>.

15A NCAC 02H .0124 RELIABILITY

All facilities shall provide adequate reliability measures, which, in the opinion of the Director, will ~~insure~~ ensure continued treatment and disinfection where the interruption of such treatment would render the waters unsafe for their best intended uses. The reliability measures shall include the following:

(1) For new or hydraulically expanding facilities with mechanically operated components, and for any facility designated by the Director, multiple (dual at a minimum) components such as pumps, chemical feed systems, aeration equipment and disinfection equipment; and

(2) At least one of the following:

(a) dual or standby power supply on site, or

(b) approval by the Director that the facility:

(i) serves a private water distribution system which has automatic shut-off at power failure and no elevated water storage tanks, and

(ii) has sufficient storage capacity that no potential for overflow exists, or

(iii) can tolerate septic wastewater due to prolonged detention, and

(iv) would have de minimus impacts as a result of power failure, or

(c) a demonstration that the waters that would be impacted by a power failure are classified as C Waters, the applicant may be allowed to show a history of power reliability that would demonstrate that an alternative power source would not be needed or demonstrate other measures which provide comparable assurances that surface waters will not be impacted during power failures;

(3) For new or hydraulically expanding mechanical facilities, the treatment plant must contain parallel units for components in the liquid line (screening, primary sedimentation, biological treatment units, chemical and physical treatment units, clarifiers, disinfection and effluent filters), unless the applicant can demonstrate to the satisfaction of the Director that this requirement is unwarranted for a particular case; and

(4) For mechanical facilities with a design capacity equal to or greater than 5.0 mgd, continuous operation, 24 hours, seven days per week, with each shift staffed by at least one certified wastewater operator shall be provided on or before October 1, 1993, unless the applicant can demonstrate to the satisfaction of the Director that this requirement is unwarranted for a particular case; and

(5) For facilities permitted under this Section, the permittee must designate an Operator in Responsible Charge and a back-up operator as required by the Water Pollution Control System Operators Certification Commission as established in 15A NCAC ~~8A .0202;~~ 08G .0201; and

(6) In order to ~~insure~~ ensure the proper operation and maintenance of facilities permitted under this Section, the Operator in Responsible Charge, or back-up operator when appropriate, must operate and visit the facility as required by the Water Pollution Control System Operators Certification Commission as established in 15A NCAC ~~8A .0202;~~ 08G .0200 et seq.; and

(7) Compliance with other reliability measures that, in the opinion of the Director, are necessary in a particular case.

History Note: *Authority G.S. 143-214.1; 143-215.1(b); 143-215.3(a)(1);*
Eff. December 1, 1984;
Amended Eff. March 1, 1993; October 1, ~~1987.~~ 1987;
Readopted Eff. <date>.

15A NCAC 02H .0125 PERMIT REQUIREMENTS FOR PEAT MINING

(a) Policy. Studies on peat mining in North Carolina have identified effects that could adversely impact the existing uses of the waters of the state. As there is no experience with peat mining in similar ecological systems, the effectiveness of proposed control and mitigation measures has not been demonstrated and must be estimated by using methods of analyses that are not well tested by experience. Many of the impacts of large-scale peat mining and subsequent reclamation may be irreversible and may not be realized until years or decades after peat mining is initiated. In addition, the estuarine/wetland systems have intricate interconnections which are not well understood at present and which are essential to the viability of the very valuable public estuarine resources. Recognizing the unknowns associated with peat mining, this Rule specifies procedures and requirements that are necessary to ensure compliance with the water quality standards and protection of the uses of the waters affected by peat mining operations. The water quality standards and uses of the waters shall be protected during all phases of a peat mining project, and the cumulative impacts of other peat mining or land uses shall be considered in the evaluation of each permit.

(b) Applicability. The requirements of this Rule are to be met during mining, reclamation, and, to the extent necessary to protect water quality standards, after reclamation for all peat mining operations that could contribute significant increases in pollution (including freshwater) into estuarine nursery areas, or any other area, identified by the Commission on a case-by-case basis when it is determined that potential exists for significant adverse effects on water quality and existing uses. Estuarine nursery areas are areas that function as important breeding or development grounds for estuarine or marine fishes, crustaceans or molluscs. These areas include:

(1) all designated Primary Nursery Areas,

(2) all designated Secondary Nursery Areas,

(3) all anadromous fish spawning grounds and nursery areas identified in publications of the N.C. Division of Marine Fisheries, and

(4) all other nursery areas designated or otherwise identified by the Marine Fisheries Commission, or the Wildlife Resources Commission.

(c) Drainage:

(1) Canals draining peat mines shall not outlet directly into estuarine nursery areas and shall be directed towards appropriate freshwater bodies if possible.

(2) If the drainage could contribute significant flow, directly or indirectly, into estuarine nursery areas or other areas determined by the Commission to require this protection, the project must be designed such that the total annual water released from the site would not exceed that expected from the site covered with mature natural vegetation. Mature natural vegetation is the assemblage of indigenous plants expected to occur on a proposed project site if it were allowed to develop undisturbed. This expectation may include periodic disturbance by fire at natural frequencies and intensities. Also, the peak flows from the site shall be controlled by the use of basins or other management techniques which moderate release rates so that flows do not exceed those expected from the site undrained and with mature natural vegetation. For purposes of this Rule, undrained is the state of the proposed project site without structures or features imposed by human agency intended to facilitate removal

of surface or subsurface water. In modelling or other analysis required by this Rule, major canals existing at the time of rule adoption, at a density no greater than one per mile by one per 1/2 mile (or 320 acre blocks), may be allowed at the discretion of the Commission when it is determined that accurate evaluation of "undrained" conditions is not practicable. Water management systems must be designed to meet these criteria utilizing models or other quantitative methods in accordance with Paragraph (g) of this Rule and considering a wide range of rainfall conditions. The frequency-duration distribution for flows leaving the site during and after mining should as much as possible match the distribution that would occur if the site were undrained and covered with mature natural vegetation.

(3) An initial transition period may be allowed such that the entire permitted mining site comes into compliance with these limitations within four years. Reduction in runoff volumes must occur at a rate achieving constant yearly improvements as stipulated in the permit, and at no time exceed those expected under conditions existing at the time of permit issuance.

(d) Nutrients. The project shall be designed so that nutrient loadings discharged from the site are no greater than would occur if the site were covered with mature natural vegetation. An initial transition period may be allowed such that the entire permitted mining site comes into compliance within four years, and shows constant yearly improvements in nutrient loadings as outlined in the proposed project plan. However, in accordance with Rule .0404(c) of this Subchapter, more stringent conditions may be established for nutrient discharges to waters that are excessively eutrophic.

(e) Sediment. Best management practices, including settling basins on field ditches, should be utilized to control sediment in drainage waters. The levels of sediment discharged must be predicted for the different stages of the operation and evidence provided that these levels will not adversely affect the uses of the receiving waters. The deposition of windblown dust into both drainage and adjacent waters and the effects during and after fires must be included in this analysis. Details on the rate of sediment buildup and the frequency and procedures for removal in the various components for the water control system, including canals and settling basins, must be provided. Adequate sediment controls must be provided during maintenance and expansion of canals and water control structures.

(f) Other pollutants. The characteristics of the drainage water leaving the site must be described fully for all phases of the project. Any substances which may be discharged during some phase of the project must be evaluated as part of the application and adequately controlled to comply with the water quality standards and to protect the uses of the waters. Possible runoff or leachate from storage piles of peat, ash, or other substances on site must be included in this analysis. Adequate means of disposal of solid wastes must be assured and discussed in the application in order to assure reliable control of pollution from on-site storage piles.

(g) Quantitative methods of evaluation. The design and evaluation of proposed peat mining projects relies on predictive models to an unusual degree since there is no experience with large-scale peat mining or the effectiveness of pollution control measures in similar situations. Modelling or quantitative methods of analyses must, at a minimum, meet the following requirements:

(1) All factors which may affect the quality or quantity of the discharge must be included in the design and evaluation of the water control system, including factors such as very large storm events, sequential storm events, fires, various land uses during different stages of the project, recharge or discharge to the groundwater, and construction, expansion, filling-in and maintenance of ditches, canals, settling basins, and impoundments;

(2) The complete assumptions for each analysis or condition must be listed and possible errors and the effects of such errors, including interactions, must be evaluated for each assumption;

(3) Situations under which the predictions would be inaccurate must be identified and evaluated;

(4) Conditions under which the proposed water control system would fail to provide adequate controls must be evaluated, including mechanical failures, and descriptions of the storage and flow capacities of all system components along with the intensities and durations of storms which would be expected to exceed the capacity of the various components during each phase of the project. The impact of such failures on water quality and flows must be evaluated;

(5) To provide maximum information about the operation of the proposed system under all conditions and to minimize the possibility of error or inapplicable assumptions, various methods of analyses should be utilized, including detailed models using historical rainfall data, as well as methods based on individual design storms and runoff coefficients.

(h) Wetland or swamp discharges. While wetlands and swamps are waters of the state and cannot be considered as part of a treatment and disposal system, their assimilative capacity and water storage capabilities may play a role in protecting the uses of downstream waters. For purposes of this Rule, wetlands are as defined in the federal NPDES regulations in 40 CFR 122.2, ~~as existing on July 1, 1985.~~ <u>including any subsequent amendments and editions. The current version of these regulations can be accessed free of charge at http://www.gpo.gov/fdsys/.</u> ~~Copies may be obtained from the Director, Division of Environmental Management, Raleigh.~~ Where available, determinations of wetland status by the U.S. Environmental Protection Agency or the U.S. Army Corps of Engineers may be used in making wetland evaluations. The Commission may also make determinations of wetland status in defining where water quality standards and uses must be protected. A discharge to a wetland or swamp must protect the uses of these waters. The water quality benefits of a wetland filter area should be estimated conservatively. Detailed information on the size, topography, soils, flows, water depths, channels, vegetation, wildlife resources, uses by wildlife and man, and other characteristics of a proposed filter area must be provided in order to demonstrate that the discharge will flow in the desired direction, that sheet flow and water quality benefits will be maintained over the long-term, and that water quality and existing uses of the area will not be threatened. The effects of storms or high water levels on these benefits and characteristics must also be evaluated. A description of the means of diffusion to provide sheet flow is particularly important. The terms wildlife and wildlife resources are used as defined in G.S. 113-129.

(i) Effects on groundwater. The impacts of the proposed project and water control system on groundwater must be fully evaluated and found to ensure compliance with Title 15A, Subchapter 2L, Classification and Water Quality Standards Applicable to the Groundwaters of North Carolina. Groundwater monitoring wells may be required to verify compliance with this requirement.

(j) Effects on adjacent landowners. The effects of the proposed project on water quality in adjacent lands and nearby wildlife refuges, parks, and other publicly owned lands, must be evaluated. Hydrologic and other alterations must not threaten the uses in nearby waters. A brief description of the project and summary of the expected impacts on water quality and uses must be sent to adjacent landowners and a copy attached to the permit application.

(k) Assurance of continued operation. As part of the permit application, legal mechanisms must be developed to assure continuous proper long-term use and operation and maintenance of water control systems during all times when permitted peat mining or reclamation activities are being carried out that could adversely impact the waters of the state and thereafter where no other acceptable options are available to protect water quality. These mechanisms must include paying for the costs of operating and maintaining the system. These assurances must be provided by current owners and will be required through all changes in ownership during this time. Assurances of implementation of these mechanisms prior to the initiation of mining activity shall be a condition of the permit.

(l) Abandonment. The consequences of abandonment of the drainage and water control systems must be fully described for each phase of the project and particularly after the reclamation plan is implemented. If the area of the project is abandoned at any time, the drainage discharges must come into compliance with the design requirements of this Rule within four years or on a schedule approved by the Commission such that pollution never exceeds levels existing at the start of the project. The analyses must verify that the mining bond and reclamation plan after the bond is released are both adequate to meet this condition. Further, it must be determined whether the mined area would flood, and if so, the depth of the water and points and rates of overflow must be described along with the impacts on adjacent lands and waters.

(m) Characteristics of treatment systems. If an impoundment lagoon, canal or ditch does not meet all of the characteristics listed in Subparagraphs (1) through (4) of this Paragraph, the water in the structure may be considered classified waters of the state. Standards are not required to be met in waste treatment systems. However, if public uses were established, such as fishing, the Commission may determine that continual protection of that use be achieved which could preclude some benefits desired as a waste treatment system. The characteristics of a treatment system are that the structure:

(1) is manmade and is utilized primarily for water management and water pollution control;

(2) is entirely on a single tract of privately owned land with the owner or owners controlling the inflows and outflows;

(3) has controls at the outlet(s) so water may flow out, but under normal hydrological conditions not into the structure or facility through the outlet(s);

(4) is not an integral part of the ecosystem of the receiving waters so that if the operation causing the pollution is discontinued, the structure or facility can be removed from use without adversely impacting the hydrology or water quality of the receiving waters.

(n) Identification of outlet points. Water in treatment systems need not meet the water quality standards nor maintain public uses. Waters downstream from an outlet point must be protected to meet the standards and public uses. Canals are generally classified waters of the state, either as named stream segments in the Schedule of Classifications or as unnamed tributaries. The following factors can be used as guidance in determining the outlet point:

(1) The outlet point must be entirely on the property of the permit applicant;

(2) The outlet point must be selected so that the owner can block, obstruct, or open the outlet point:

(A) without removing any established uses of the waters including navigation, fishing, and wildlife, and

(B) without adversely affecting drainage by other landowners;

(3) Once a point has been designated as an outlet, the receiving waters cannot be obstructed by any landowner without approval and a permit modification by the Commission;

(4) Outlet designations may require declassifications.

(o) Application Information. The permit application must contain full information to evaluate and assure compliance with the requirements of this Rule, including maps, diagrams, calculations, assumptions, engineering specifications, and any proposed deed restrictions, easements, contracts or other legal means of assuring long-term compliance. Applications for all permits required by G.S. 143-215.1 for the project site, including permits for waste disposal for sanitary facilities, on-site power plants, or energy conversion facilities, should be submitted together where possible in order to evaluate the full impacts of the proposed project.

History Note: *Authority G.S. 143-214.1; 143-215(a); 143-215(b); 143-215.1; 143-215.3(a)(1);*
Eff. September 1, ~~1986.~~ 1986;
Readopted Eff. <date>.

15A NCAC 02H .0127 GENERAL PERMITS

(a) In accordance with the provisions of G.S. 143.215.1 (b)(3) and (4), general permits may be developed by the Division and issued by the Director for categories of activities shown in this Rule. All those dischargers in the State that received a "Certificate of Coverage" for that category from the Division will be deemed covered under that general permit. Each of the general permits will be issued individually under G.S. 143-215.1, using all procedural requirements specified for individual NPDES or state permits including application and public notice. Each general permit must be approved by the U.S. EPA, before it becomes effective. Dischargers covered under general permits, developed in accordance with this Rule, will be subject to the same effluent standards and limits, management practices, enforcement authorities, and rights and privileges as specified in the general permit. Procedural requirements for application and permit approval, unless specifically designated as applicable to individuals proposed to be covered under the general permits, apply only to the issuance of the general permits. After issuance of the general permit by the Director and approval by EPA, dischargers in the applicable categories may request coverage under the general permit, and the Director or his designee shall grant appropriate certification. General permits may be written to regulate categories of other discharges that all: Involve the same or substantially similar operations; Have similar discharge characteristics; Require the same effluent limitations or operating conditions; Require the same or similar monitoring; and In the opinion of the Director are more appropriately controlled by a general permit such as:

(1) once-through non-contact cooling waters with no biocidal additives;

(2) mine dewatering facilities;

(3) water filtration facilities;

(4) swimming pool filter backwash facilities;

(5) seafood packing facilities;

(6) oil terminal storage facilities;

(7) tourist gem mines;

(8) sand dredges;

(9) trout farms;

(10) aquifer restoration;

(11) stormwater discharges;

(12) other discharges that meet the criteria in Paragraph (a) of this Rule.

(b) General permits will only be granted for discharge into waters classified either WS or SA following review and approval by the Shellfish Sanitation Program, Division of Marine Fisheries, and the Public Water Supply Section, Division of ~~Environmental Health,~~ Water Resources, both of the Department of ~~Environment, Health, and Natural Resources.~~ Environmental Quality.

(c) No provision in any general permit ~~issues~~ issued under this Rule shall be interpreted as allowing the permittee to violate state water quality standards or other applicable environmental standards.

(d) For one of these general permits to apply to a facility, a Notice of Intent to be covered by the general permit must be given using forms described in Rule .0105(a) of this Section and, as appropriate, following the application procedures specified in Rules .0105 and .0106 of this Section. If all requirements are met, coverage under the general

permit may be granted. If all requirements are not met, a long form application and full application review procedure will be required.

(e) General permits will be effective for a term not to exceed five years at the end of which the Division may renew them. All public notice requirements shall be satisfied prior to renewal of general permits. Dischargers covered by general permits need not submit new Notices of Intent or renewal requests unless so directed by the Division. If the Division chooses not to renew a general permit, all facilities covered under that general permit shall be notified to submit applications for individual permits.

(f) All previous state water quality permits issued to a facility which can be covered by a general permit, whether for construction or operation, are revoked upon request of the permittee, termination of the individual permit and issuance of the Certification of Coverage.

(g) Anyone engaged in activities covered by the general permit rules but not permitted in accordance with this Section will be considered in violation in G.S. 143-215.1.

(h) Any individual covered or considering coverage under a general permit may choose to pursue an individual permit for any facility covered by this Rule.

(i) The Director may require any person, otherwise eligible for coverage under a general permit, to apply for an individual NPDES permit by notifying that person that an application is required. Notification shall consist of a written description of the reason(s) for the decision, appropriate permit application forms and application instructions, a statement establishing the required date for submission of the application, and a statement informing the person that coverage by the general permit shall automatically terminate upon issuance of the individual permit. Reasons for requiring application for an individual permit may be:

(1) the discharge is a significant contributor of pollutants;

(2) conditions at the permitted site change, altering the constituents or characteristics of the discharge such that the discharge no longer qualifies for coverage under a general permit;

(3) noncompliance with the general permit;

(4) noncompliance with Division Rules; or

(5) a change has occurred in the availability of demonstrated technology or practices for the control or abatement of pollutants applicable to the point source;

(6) effluent limitations are promulgated for the point sources covered by the general permit;

(7) a water quality management plan containing the requirements applicable to such point sources is approved after the issuance of the general permit;

(8) a determination that the water of the stream receiving the discharge is not meeting applicable water quality standards.

(j) Any interested person may petition the Director to take an action under Paragraph (i) of this Rule to require an individual NPDES permit.

(k) General permits may be modified, terminated, or revoked and reissued in accordance with the authority and requirements of Rules .0112 and .0114 of this Section.

History Note: *Authority G.S. 143-215(1); 143-215.3(a)(1);*
Eff. October 1, 1987;
Amended Eff. March 1, 1993; August 1, 1991; August 1, ~~1988.~~ 1988;
Readopted Eff. <date>.

15A NCAC 02H .0138 AUTHORIZATION TO CONSTRUCT PERMITS

(a) Authorization Required.

(1) After an NPDES permit has been issued by the Division of ~~Environmental Management~~ Water Resources in accordance with this Section, construction of wastewater treatment facilities or additions thereto shall not begin until final plans and specifications have been submitted to and an Authorization to Construct has been issued to the permittee by the Division of ~~Environmental Management.~~ Water Resources, except as provided in Subparagraph (2) of this Paragraph.

(2) No Authorization to Construct shall be required for facilities intended to treat principally waste or sewage from an industrial facility whose discharge is authorized pursuant to an NPDES permit.

(3) If an Authorization to Construct has not been applied for in accordance with the requirements of the NPDES permit during the term of the permit, the permit will be considered void upon expiration and future actions will be considered as a new application.

(b) Application. An application for an Authorization to Construct shall include the following:

(1) Application ~~for Authorizations to Construct must be made in triplicate on official~~ forms ~~completely filled out, where applicable,~~ provided by the Director either in printed form or in an electronic format allowed by law and acceptable to the Director. Application forms shall be complete and fully executed. The signature of the consulting engineer or other agent will be accepted as representing the permittee on the application only if accompanied by a letter of authorization from the permittee.

(2) ~~Required sets of plans~~ Plans and specifications: The applicant shall provide one printed set and one electronic copy, in a format acceptable to the Director,

~~(A) regular projects — five sets~~ of detailed plans and ~~specifications,~~ specifications for the proposed facilities or facility modifications.

~~(B) federal and state grants/loan projects — four sets of detailed plans and specifications plus federal assurances required by appropriate federal agency;~~

(3) ~~Specifications~~ Additional specifications describing all materials to be used, methods of construction and means for ~~assuring~~ ensuring the quality and integrity of the finished project.

(4) When ~~required,~~ required by the Director, a statement ~~submitted~~ that the wastewater treatment facility involved will be properly disconnected and the wastewater discharged into an adequate district or municipal system when it becomes available.

(5) If a Sedimentation and Erosion Control Plan is required by the Division of Energy, ~~Mineral,~~ Mineral and Land Resources or their designee, documentation ~~shall be provided~~ verifying that the applicant has developed and submitted to the governing agency the required Plan.

(6) ~~A~~ Documentation that a 110 volt power source and a potable water supply, equipped with backflow prevention, ~~must be~~ are available at the treatment system to allow for maintenance, clean-up and sampling. In cases where this is not reasonable or economically achievable, an exception may be granted by the Water Quality Permitting Section Chief.

(7) For those wastewater disposal facilities which have the potential to cause a contravention of groundwater standards, hydrogeologic information ~~must be provided~~ as specified in Rule ~~2H .0205 of this Subchapter.~~ 15A NCAC 02T .0504.

(8) A residuals management ~~plan must be submitted for all~~ plan, if the wastewater treatment ~~systems that generate residuals and~~ system generates residuals. The plan must include the following:

(A) A detailed explanation as to how the residuals will be stabilized. In addition if the residuals are generated from a system treating sewage, the explanation must show that the stabilization process meets the Environmental Protection Agency's criteria for a Class B residual as defined in 40 CFR 503 or for a Process to Significantly Reduce Pathogens (PSRP) as defined in 40 CFR Part 257 Appendix II, hereby incorporated by reference including any subsequent amendments and editions. ~~This material is available for inspection at the Department of Environment, Health, and Natural Resources, Division of Environmental Management, 512 N. Salisbury Street, Raleigh, North Carolina. Copies may be obtained from the Superintendent of Documents, U.S. Government Printing Office, Washington D.C. 20402-9325 at a cost of thirty six dollars ($36.00).~~ The current version of these regulations can be accessed free of charge at http://www.gpo.gov/fdsys/.

(B) An evaluation of the residual storage requirements for the treatment facility. A minimum of 30 days storage will be required on all facilities, unless the applicant can demonstrate to the satisfaction of the Director that this requirement is unwarranted for a particular case. Storage shall be calculated based upon average sludge production rate and shall be process units that are separate from the treatment system, i.e., not the clarifiers or aeration basins. Additional storage may be required based upon the method of final disposal/utilization.

(C) A residuals commitment. No authorization to construct will be issued unless the application package includes a commitment from a ~~DEM~~ DWR- approved residual disposal/utilization site for the acceptance of the residual and which demonstrates that the ~~DEM~~ DWR- approved site has adequate capacity to accept the residuals.

(9) A construction sequence plan ~~must be submitted with applications for an Authorization to Construct for modification of~~ for any project that will modify existing wastewater treatment facilities. The plan must outline the construction sequence to ensure continuous operation of the treatment system.

~~(c) Fees for Authorization to Construct Permits~~

~~(1) For every application for a new or modified construction permit, for facilities with a permitted flow of greater than 100,000 gallons per day, a nonrefundable application processing fee of two hundred dollars ($200.00) must be submitted.~~

~~(2) For every application for a new or modified construction permit, for facilities with a permitted flow of equal to or less than 100,000 gallons per day but greater than 1,000 gallons per day, a nonrefundable application processing fee of one hundred and fifty dollars ($150.00) must be submitted.~~

~~(3) For every application for a new or modified construction permit, for facilities with a permitted flow of equal to or less than 1,000 gallons per day, a nonrefundable application processing fee of one hundred dollars ($100.00) must be submitted.~~

History Note: *Authority G.S. 143-215.1(c)(1);*
Eff. October 1, 1987;
Amended Eff. August 1, 2012 (see S.L. ~~2012-14, 3 s.1.(f));~~ 2012-194, s.33; March 1, 1993; August 3, ~~1992.~~ 1992;
Readopted Eff. <date>.

15A NCAC 02H .0139 MINIMUM DESIGN REQUIREMENTS

All facilities requiring a permit pursuant to this Section shall be designed following good engineering practice and comply with the minimum design requirements specified in ~~Rule 2H .0219 of this Subchapter.~~ 15A NCAC 02T .0105 and .0114. The plans and specifications must be stamped and sealed by a Professional Engineer licensed in North Carolina unless all three of the following conditions are met:

(1) the plans and specifications are for domestic waste from a single family dwelling with flows of ~~1000~~ 1,000 gallons per day or less, and

(2) the plans and specifications are prepared by the homeowner, and contain complete information needed to evaluate the proposed facility, and

(3) the effluent limitations are for secondary treatment.

History Note: *Authority G.S. 143-215.1(c)(1);*
Eff. October 1, ~~1987.~~ 1987;
Readopted Eff. <date>.

15A NCAC 02H .0140 CERTIFICATION OF COMPLETION

Prior to operation of any treatment works or disposal system permitted in accordance with this Section, a certification must be received from a professional engineer certifying that the treatment works or disposal system has been installed in accordance with the approved plans and specifications. For facilities with phased construction or where there is a need to operate certain equipment under actual operating conditions prior to certification, additional certification may be needed as follow-ups to the initial, pre-operation, certification. In cases where the treatment works or disposal system was designed by a homeowner rather than a professional engineer, either the permittee or a professional engineer must submit this certification.

History Note: *Authority G.S. 143-215.1(c)(1);*
Eff. October 1, ~~1987.~~1987;
Readopted Eff. <date>.

15A NCAC 02H .0141 OPERATIONAL AGREEMENTS

Prior to issuance or reissuance of a permit pursuant to this Section for a wastewater facility as specified in G.S. 143-215.1(d1), the applicant must either provide evidence to show that the applicant has been designated as a public utility by the State Utilities Commission or enter into a properly executed operational agreement with the Division of ~~Environmental Management.~~Water Resources. The requirement for assurance of financial solvency will be made on a case by case determination.

History Note: *Authority G.S. 143-215.1(d1);*
Eff. October 1, ~~1987.~~1987;
Readopted Eff. <date>.

15A NCAC 02H .0142 USE/WASTEWATER TRTMT WORKS EMGCY MAIN: OPER/REPAIR FUND

~~(a) In cases in which water quality standards are violated or an environmental health threat exists, monies from the Wastewater Treatment Works Emergency Maintenance, Operation and Repair Fund may be used at the discretion of the Director to correct the cause of such conditions.~~

~~(b) In this, the Director shall:~~

~~(1) Ensure the fiscal integrity of the fund;~~

~~(2) Use the fund only as a measure of last resort to protect water quality or public health when all other compliance and enforcement procedures have failed;~~

~~(3) Limit the use of the fund to wastewater treatment works with design flow capacities of less than or equal to one hundred thousand gallons per day (100,000 GPD);~~

~~(4) Notify the permittee by certified mail of the intention to take emergency corrective action and to recoup monies spent;~~

~~(5) Make every effort to recoup fund expenditures, including collection costs, from the parties responsible;~~

~~(6) Coordinate use of the fund with the program of the Public Utilities Commission when a permittee is also a regulated utility; and~~

~~(7) Provide a quarterly accounting of the fund to the Commission.~~

History Note: *Authority G.S. 143-215.3(a); 143-215.3B(c); 143-215.3B(e);*
Eff. August 1, ~~1988.~~ 1988;
Repealed Eff. <date> (S.L. 2005-454, §8, effective January 1, 2006).

15A NCAC 02H .0143 INCORPORATION BY REFERENCE

(a) The following sections of Title 40 of the Code of Federal Regulations (CFR) are incorporated by reference, including subsequent amendments and editions, and shall apply throughout this Section except where procedural details of the federal rules differ from procedures adopted elsewhere in this section, in which case the separately adopted procedure governs. The current version of these regulations can be accessed free of charge at http://www.gpo.gov/fdsys/.

(1) 40 CFR 122.2, 124.2, and 125.2: Definitions;

(2) 40 CFR 122.4: Prohibitions):

(3) 40 CFR 122.5 (a) and (b): Effect of permit;

(4) 40 CFR 122.7 (b) and (c): Confidential information;

(5) 40 CFR 122.21 (a)-(b), (c)(2), (e)-(k), (m)-(p), (q), and (r): Application for a permit;

(6) 40 CFR 122.22: Signatories;

(7) 40 CFR 122.23: Concentrated animal feeding operations;

(8) 40 CFR 122.24: Concentrated aquatic animal production facilities;

(9) 40 CFR 122.25: Aquaculture projects;

(10) 40 CFR 122.26: Storm water discharges;

(11) 40 CFR 122.27: Silviculture;

(12) 40 CFR 122.28: General permits;

(13) 40 CFR 122.29 (a), (b), and (d): New sources and new dischargers;

(14) 40 CFR 122.30: NPDES stormwater regulations for small MS4s: objectives;

(15) 40 CFR 122.31: NPDES stormwater regulations: role of Tribes;

(16) 40 CFR 122.32: NPDES stormwater regulations for small MS4s: applicability;

(17) 40 CFR 122.33: NPDES stormwater regulations for small MS4s: application for permit;

(18) 40 CFR 122.34: NPDES stormwater regulations for small MS4s: permit requirements;

(19) 40 CFR 122.35: NPDES stormwater regulations for small MS4s: shared responsibilities;

(20) 40 CFR 122.36: NPDES stormwater regulations for small MS4s: compliance;

(21) 40 CFR 122.37: NPDES stormwater regulations for small MS4s: evaluation;

(22) 40 CFR 122.41 (a)(1) and (b) through (n): Applicable permit conditions;

(23) 40 CFR 122.42: Conditions applicable to specified categories of permits;

(24) 40 CFR 122.43: Establishing permit conditions;

(25) 40 CFR 122.44: Establishing NPDES permit conditions;

(26) 40 CFR 122.45: Calculating permit conditions;

(27) 40 CFR 122.46: Duration;

(28) 40 CFR 122.47 (a): Schedules of compliance;

(29) 40 CFR 122.48: Monitoring requirements;

(30) 40 CFR 122.50: Disposal into wells;

(31) 40 CFR 122.61: Permit transfer;

(32) 40 CFR 122.62: Permit modification;

(33) 40 CFR 122.64: Permit termination;

(34) 40 CFR 124.3 (a): Application for a permit;

(35) 40 CFR 124.5 (a), (c), (d), and (f): Modification of permits;

(36) 40 CFR 124.6 (a), (c), (d), and (e): Draft permit;

(37) 40 CFR 124.8: Fact sheets;

(38) 40 CFR 124.10 (a)(1)(ii), (a)(1)(iii), (a)(1)(v), (b), (c), (d), and (e): Public notice;

(39) 40 CFR 124.11: Public comments and requests for hearings;

(40) 40 CFR 124.12 (a): Public hearings;

(41) 40 CFR 124.17 (a) and (c): Response to comments;

(42) 40 CFR 124.56: Fact sheets;

(43) 40 CFR 124.57 (a): Public notice;

(44) 40 CFR 124.59: Comments from government agencies;

(45) 40 CFR 124.62: Decision on variances;

(46) 40 CFR Part 125, Subparts A (Technology-Based Treatment Requirements), B (Aquaculture), D (Fundamentally Different Factors), H (Alternative Limitations, CWA Section 316(a)), I (Cooling Water Intake Structures, New Facilities, CWA Section 316(b)), J (Cooling Water Intake Structures, Existing Facilities, CWA Section 316(b)), and N (Cooling Water Intake Structures, Offshore Oil and Gas Facilities, CWA Section 316(b));

(47) 40 CFR Parts 129 (Toxic Pollutant Effluent Standards) and 133 (Secondary Treatment Regulation), and Subchapter N (Effluent Guidelines and Standards);

(48) 40 CFR Part 3: Electronic reporting;

(49) 40 CFR Part 136: Guidelines for establishing test procedures for the analysis of pollutants; and

(50) 40 CFR 401.15: List of toxic pollutants pursuant to CWA Section 307(a)(1).

(b) This Rule is not an exclusive list of federal regulations adopted by reference in this Section. Other rules of the Section incorporate some of these same federal regulations for clarity or emphasis and may incorporate additional regulations not listed in Paragraph (a) of this Rule.

History Note: *Authority G.S. 143-211(c); 143-215.1(b)(4); 143B-282(5);*
Eff. <date>.

SECTION .0400 - COASTAL WASTE TREATMENT DISPOSAL

15A NCAC 02H .0401 STATEMENT OF POLICY

~~It is hereby declared to be the policy of the Environmental Management Commission that all wastewater generated in the State of North Carolina shall be treated to such an extent as to insure the compliance with water quality standards promulgated by the Commission. It is further the policy of the Commission that regional and area-wide wastewater collection and treatment facilities shall be promoted to the fullest practicable extent. The Commission recognizes, however, that development of area-wide and regional sewerage systems is not always in keeping with the demands for growth within the areas and that interim regulations are necessary to insure that water quality standards are not violated. In keeping with this policy, the Commission adopts these Regulations of this Section.~~

History Note: *Authority G.S. 143-215.3(a)(1); 143-211; 143-215.1(a); 143-215.1(b)(1);*
Eff. February 1, ~~1976.~~ 1976:
Repealed Eff. <date>.

15A NCAC 02H .0402 APPLICABILITY

~~These Regulations shall apply to treatment and disposal of waste from all installations located within the coastal areas which are subject to the regulations of the Environmental Management Commission.~~

History Note: *Authority G.S. 143-215.3(a)(1); 143-211; 143-215.1(a); 143-215.1(b)(1);*
Eff. February 1, 1976;
Amended Eff. September 13, ~~1981.~~ 1981:
Repealed Eff. <date>.

15A NCAC 02H .0403 DEFINITION OF COASTAL AREAS

~~The coastal areas for the purposes of these Regulations are defined to include:~~

~~(1) the Outer Banks;~~

~~(2) those land areas bordering the coastal waters, including all waters assigned a salt water "S" classification and all tributaries that have experienced excessive growths of microscopic or macroscopic vegetation or that, because of their relative size and lack of water exchange are found by the Commission to be subject to such excessive growths; and~~

~~(3) land areas bordering all natural impoundments situated east of the line established by the North Carolina Environmental Management Commission to designate coastal waters, said land being described as follows:~~

~~"Extends from a point on the North Carolina/South Carolina state line near Calabash, North Carolina, generally along the lines of the Atlantic Coast Line Railroad and Norfolk Southern Railway, northeasterly and northerly to River Mile 66.0 (Lock No. 1) on the Cape Fear River; thence northerly to River Mile 30.0 on Black River; thence easterly to River Mile 48 on the North East Cape Fear River; thence northerly and easterly to River Mile 22.5 in New River; thence easterly and northerly to River Mile 25.0 on White Oak River (Atlantic Coast Line Railroad Bridge); thence northerly and easterly to River Mile 38.9 on Neuse River (Norfolk Southern Railway Bridge); thence northerly to River Mile 44.6 on Pamlico River (Norfolk Southern Railway Bridge); thence northeasterly and northerly crossing Albemarle Sound along Norfolk Southern Railway Bridge; at Tunis; thence northerly and easterly to River Mile 13.5 on Perquimans River (Norfolk Southern Railway Bridge); thence easterly to River Mile 20.0 on Pasquotank River (Norfolk Southern Railway Bridge); and thence northerly to the North Carolina/Virginia state line near Moyock, North Carolina."~~

History Note: *Authority G.S. 143-215.3(a)(1); 143-211; 143-215.1(a); 143-215.1(b)(1);*
Eff. February 1, 1976;
Amended Eff. September 13, ~~1981.~~ 1981:
Repealed Eff. <date>.

15A NCAC 02H .0404 FACILITY LOCATION AND DESIGN

~~(a) No domestic sewage regardless of the treatment proposed and no other wastes which could adversely affect the taking of shellfish for market purposes shall be discharged into water classified "SA", into unnamed waters tributary to "SA" waters classified "C" or "SC" in accordance with Rule 2B .0301(i)(1)(B) and (C), or into other waters in such close proximity as to adversely affect such "SA" waters. Wastes discharged into other waters tributary to waters classified "SA" shall be treated in such manner as to assure that no impairment of water quality in the "SA" segments shall occur. No permits shall be issued for discharges into waters classified "SA" unless Shellfish Sanitation, Environmental Health Section, Department of Human Resources, provides written concurrence that the discharge would not adversely affect shellfish water quality or the propagation of shellfish.~~

~~(b) No wastes shall be discharged to waters classified "SB" unless these wastes are treated to the extent necessary to assure protection of assigned water quality standards.~~

~~(c) The Director may prohibit or limit any discharge of waste into surface waters if, in the opinion of the Director, the surface waters experience or the discharge would result in:~~

~~(1) growths of microscopic vegetation such that chlorophyll a values are greater than 40 ug/l; or~~

~~(2) growths of microscopic or macroscopic vegetation which substantially impair the intended best usage of the waters.~~

~~(d) The discharge of wastewaters to the Atlantic Ocean shall follow the guidelines and requirements set forth in the United States Environmental Protection Agency regulation Ocean Discharge Criteria, 40 C.F.R. 125.120 through 125.124, which is specifically adopted by reference as promulgated on October 3, 1980.~~

~~(e) In all cases where connection to an area-wide sewerage system is feasible, such connection thereto shall be required.~~

~~(f) Septic tank systems shall not be approved in high density areas. For purposes of this Regulation high density areas are defined as those areas producing more than 1,200 gallons of waste per acre per day or which contain more than three residential units per acre. For purposes of this Regulation a septic tank system is defined as a ground absorption sewage disposal system consisting of a holding or settling tank and a ground absorption field. Septic tank systems shall be designed and constructed in accordance with Environmental Management Commission regulations governing septic tank systems.~~

~~(g) Interim Treatment and Disposal Facilities. In those cases where an approved area-wide collection and treatment system is not available, and where discharge to the surface waters is prohibited in Paragraphs (a), (b), (c), and (d), and where use of a septic tank system is prohibited by paragraph (f), in Subchapters 02T or 02U of this Chapter, interim treatment and disposal facilities may be approved subject to their meeting the following requirements.~~

~~(1) Wastes other than those disposed of by spray irrigation shall receive tertiary treatment followed by adequate bactericidal treatment. For purposes of this Regulation tertiary treatment shall constitute biological treatment followed by acceptable solids removal to the extent accomplished by filtration. Also, flow equalization will be required unless it can be adequately demonstrated that either the wastewater influent flow rate will be of a uniform nature or that the proposed treatment units are~~

~~designed such that they can adequately treat this wastewater without experiencing hydraulic overload.~~

~~(2)~~ ~~Waste treatment facilities (except septic tank-surface sand filter systems) shall be located at least 10 feet from adjacent property under separate ownership, developed or undeveloped and at least 10 feet from on-property residential units if these units are to be sold, e.g., condominiums, residential subdivision houses. Septic tank-surface sand filter systems shall be located at least 200 feet from on-property residential units if these units are to be sold and at least 200 feet from adjacent property under separate ownership.~~

~~(3)~~ ~~Waste treatment facilities shall be equipped with effective noise and odor control devices and are to be enclosed by a solid or semi-solid structure or other approved structure. An automatically activated standby power source shall be provided. All essential treatment and disposal units shall be provided in duplicate.~~

~~(4)~~ ~~Treated wastes may be disposed of in on-site disposal facilities, which shall be located at least 500 feet from any impounded public surface water supply or public shallow (less than 50 feet deep) ground water supply, and at least 100 feet from a private ground water supply except when a study of the soil would indicate a lesser separation acceptable.~~

~~(5)~~ ~~Waste disposal facilities shall be located at least 100 feet from any waters classified SA and at least 50 feet from any other waters. In the case of drainage ditches that are normally dry this distance may be reduced to 25 feet.~~

~~(6)~~ ~~Waste disposal facilities are to be designed on the basis of site conditions and soil percolation rates. In Parts (A), (B), and (C) of this Subparagraph are given the maximum loading rates for three different treatment systems. Higher loading rates or other methods of waste disposal may be approved by the Director based upon data submitted by the applicant.~~

~~(A)~~ ~~Subsurface Disposal Trench. One and one half gallons per day per square foot of trench bottom based on maximum trench width of three feet. Trenches shall be separated at least eight feet center to center.~~

~~(B)~~ ~~Low Pressure Distribution System. One gallon per day per square foot of effective absorption area encompassed by the distribution system. The calculation of the amount of effective absorption area required shall be based on a maximum distribution line separation of five feet center to center.~~

~~(C)~~ ~~Rotary Distributors. Ten gallons per day per square foot of surface area.~~

~~(7)~~ ~~Waste disposal areas are to contain at least 1,000 square feet of open "green area" for each residential unit served, or 2,500 square feet per thousand gallons per day of waste flow, whichever is less. The term "green area" contained herein is defined as an area suitable for waste disposal, either in its natural state or which has been modified by planting vegetative cover of grasses or low growing shrubbery. Green areas shall not include street or roadway right-of-ways or areas not available for waste disposal. Not more than 25 percent of the required area may be covered with non-traffic~~

~~bearing paved surfaces such as walkways or patios. Subsurface disposal areas shall not be used as parking lots, driveways, or for other vehicular traffic uses.~~

~~(8) Wastes that are to be disposed of by spray irrigation shall receive a level of treatment which will not render either the irrigation system or the disposal area unworkable. Spray irrigation systems shall be located at least 200 feet from any adjoining property, buffered by trees to prevent excessive drift. Such areas shall be surrounded by fencing with warning signs to discourage human use or trespass, and designed according to good engineering practices with the application rate not to exceed one and three-fourth inches per week unless the Director determines, based on data submitted by the applicant, that a higher application rate is justified.~~

History Note: *Authority G.S. 143-211; 143-214.2(c); 143-215; 143-215.1(a); 143-215.1(b)(1); 143-215.3(a)(1);*
Eff. February 1, 1976;
Amended Eff. November 1, 1986; April 1, 1983; September 13, 1981; May 11, ~~1980.~~ 1980;
Repealed Eff. <date>.

15A NCAC 02H .0405 PRIVATELY OWNED INSTALLATIONS

~~(a) Privately owned waste collection treatment and disposal systems serving establishments existing on the effective date of these Regulations shall comply with the requirements enumerated in these Regulations unless impossible. If adherence to the guides is not possible, the highest level of control technology consistent with site limitations shall be employed. No expansion of the load tributary to existing non-public facilities will be allowed until compliance with the guides established in these Regulations is obtained.~~

~~(b) Privately owned wastewater collection, treatment and disposal systems serving establishments not in existence on the effective date of these Regulations shall comply with the provisions of these Regulations.~~

History Note: *Authority G.S. 143-215.3(a)(1); 143-211; 143-215.1(a); 143-215.1(b)(1);*
Eff. February 1, 1976;
Amended Eff. September 13, ~~1981.~~ 1981;
Repealed Eff. <date>.

15A NCAC 02H .0406 PUBLICLY OWNED SEWERAGE FACILITIES

~~(a) Existing publicly owned waste collection, treatment, and disposal facilities shall comply with the requirements of these Regulations unless such compliance is determined by the Commission to be "not in the public interest." Such a finding would result when requirements of these Regulations could not be met even after "best available control technology economically achievable" has been provided.~~

~~(b) New publicly owned waste collection, treatment, and disposal facilities shall comply with the provisions of these Regulations, and any other applicable regulations of the Commission.~~

History Note: *Authority G.S. 143-215.3(a)(1); 143-211; 143-215.1(a); 143-215.1(b)(1);*
Eff. February 1, 1976;
Amended Eff. September 13, ~~1981.~~ 1981;
Repealed Eff. <date>.

15A NCAC 02H .0407 EXCEPTIONS FROM REQUIREMENTS

~~No exception from the requirements of these Regulations shall be made until such exception is approved by the Commission.~~

History Note: *Authority G.S. 143-215.3(a)(1); 143-211; 143-215.1(a); 143-215.1(b)(1);*
Eff. February 1, ~~1976.~~ 1976;
Repealed Eff. <date>.

SECTION .0500 - WATER QUALITY CERTIFICATION

15A NCAC 02H .0501 ~~PURPOSE~~ APPLICABILITY

~~(a) The provisions of this Section shall apply to all division regulatory, planning, resource management, liaison and financial aid determinations that affect surface waters and wetlands as defined by 15A NCAC 2B .0202. This Section shall only apply to specific activities which require state review after the effective date of this Rule and which require a Division determination concerning effects on surface waters or wetlands. Activities that are described in Section 404(f)(1)(A) (F) of the Clean Water Act (33 U.S.C. 1344) are exempt from this Rule.~~

~~(b)~~(a) ~~These Rules outline~~ This Section outlines the application and review procedures for activities that require state water quality certifications (certifications) pursuant to Section 401 of the Clean Water Act (33 U.S.C. 1341). Certifications are required ~~whenever~~ for a federally permitted or licensed activity including, but not limited to, the construction or operation of ~~facilities~~facilities, which may ~~will~~ result in a discharge into navigable waters. ~~waters as described in 33 CFR Part 323. The federal definition of navigable waters includes wetlands as defined at 33 CFR 328.3 and 40 CFR 230.3.~~ Failure to obtain a required certification is enforceable by the Department pursuant to Chapter 143, Article 21, Part 1.

~~(c)~~(b) Water quality certifications ~~Certifications~~ may be issued for individual activities (individual certifications) or issued for specific types or groups of activities (general certifications):

(1) Individual certifications are issued on a case-by-case basis and the procedures outlined in ~~the following Rules~~ this Section are required for each individual certification.

(2) General certifications ~~are issued~~ may be developed by the Division and issued by the Director for specific types or groups of activities that are similar in nature and considered to have minimal impact. All activities that receive a "Certificate of Coverage" under a general certification from the Division shall be deemed covered under that general certification. ~~The~~ When written approval is specifically required in the General Certification, the application and review procedures for requesting ~~concurrence~~ a "Certificate of Coverage" under a general certification from the Division ~~that the general certification can be used~~ for the proposed activity are the same as the procedures outlined in ~~the following Rules~~ this Section for individual ~~certifications~~ certifications.~~, unless specifically stated otherwise in the general certification.~~

(c) The terms used in this Section shall be as defined in G.S. 143-212, G.S. 143-213 and as follows:

(1) "Certification" means the state water quality certification pursuant to Section 401 of the Clean Water Act (33 U.S.C. 1341).

(~~1~~2) "Director" means the Director of the Division.

(~~2~~3) "Division" means the Division of Water Resources of the North Carolina Department of Environmental Quality.

(4) "Department" means the Department of Environmental Quality and the Secretary of the Department of Environmental Quality.

(~~3~~5) "Person" means as defined in G.S. 143-212(4).

(~~4~~6) "Wetland" means as defined in 15A NCAC 02B .0202.

(~~5~~7) "Cumulative impact" means environmental impacts resulting from incremental effects of an activity when added to other past, present, and reasonable foreseeable future activities regardless of what entities undertake such other actions.

(~~6~~8) "Class SWL wetland" means as defined at 15A NCAC 02B .0231.

(~~7~~9) "Class UWL wetland" means as defined at 15A NCAC 02B .0231.

(~~8~~10) "Secondary impact" means ~~actions, or actions directly linked to an activity, that may affect classified surface waters or wetlands that would not occur but for the proposed activity~~indirect effects, which are caused by the action and are later in time or farther removed in distance, but are still reasonably foreseeable.

History Note: *Authority G.S. 143-211(c); 143-215.3(a)(1); 143-215.3(c); 143B-282(a)(1)(u); S.L 2017, c. 145*
RRC Objection Eff. July 18, 1996 due to lack of statutory authority and ambiguity;
Eff. October 1, 1996.
Readopted Eff. [New Date].

15A NCAC 02H .0502 ~~APPLICATION~~ FILING APPLICATIONS

(a) ~~Application for Certification.~~ APPLICATION FOR CERTIFICATION. Any ~~person, as defined in Article 21, Chapter 143, North Carolina Generate Statutes,~~ person ~~desiring~~ needing issuance of ~~the~~ an ~~state~~ individual water quality certification or certificate of coverage under a general certification required by this Section and Section 401 of the ~~Federal Water Pollution Control Act as amended~~ Clean Water Act (33 U.S.C. 1341) shall file with the Director of the North Carolina Division of Water ~~Quality (director),~~ Resources (Director), at ~~the office in~~ 1617 Mail Service Center, Raleigh, North Carolina, 27699-1617 or 512 N. Salisbury Street, Raleigh, NC 27604, ~~an original and six three copies of an~~ one complete copy of an application for ~~certification.~~ certification or submit one complete copy of an application electronically via the following website: https://edocs.deq.nc.gov/Forms/DWR_Wetlands_Online_Submittal_Page. ~~Submission of an application to the Division of Coastal Management for permits to develop in North Carolina's coastal area shall suffice as an application for certification.~~ The application must be made on a form provided or approved by the Division or the U.S. Army Corps of Engineers and shall ~~specify:~~include at minimum the following:

(1) the date of application;

(2) the name, address, and phone number of the ~~property owner; owner or owners;~~applicant~~;~~. If the applicant is not the property owner(s), provide the name, address and phone number of the property owner(s);

(3) if the applicant is a corporation, ~~the state in which it is domesticated, the name of its principal officers,~~ the name and address of the North Carolina process agency, and the ~~name~~ name, address and phone number of the individual who ~~shall be primarily responsible for the conduct of the activity for which certification is sought;~~is the authorized agent of the corporation and responsible for the activity for which certification is sought. The corporation must be authorized to do business in NC;

(4) the nature of the activity to be conducted by applicant;

(5) whether the discharge has occurred or is proposed;

(6) the location of the discharge, stating the municipality, if applicable; the county; the drainage basin; the name of the receiving waters; and the location of the point of discharge with regard to the receiving waters;

(7) a description of the receiving waters, including type (creek, river, swamp, canal, lake, pond or estuary) if applicable; nature (fresh, brackish or salt); and wetland classification;

(8) a description of the type of waste treatment facilities if ~~applicable.~~ applicable; ~~and~~

~~(b)~~(9) ~~Maps.~~ ~~MAPS. There shall be attached to the application~~ a map(s) or sketch(es) with a scale(s) and a north arrow(s) and of sufficient detail to accurately delineate the boundaries of the lands owned or proposed to be utilized by the applicant in carrying out ~~its~~ the activity; the location, dimensions and type of any structures erected or to be erected on said lands for use in connection with the activity; and the location and extent of the receiving waters including wetlands within the boundaries of said ~~lands.~~lands;

(10) an application fee as required by G.S. ~~143-215.3D(e).~~143-215.3D(e); and

(11) ~~Applications shall be signed by the owner with title to the property, a person who has been authorized by the owner to apply for certification, or an entity with the power of eminent domain.~~ a signature by the applicant for the federal permit or license or an agent authorized by the applicant. If an agent is signing for the applicant, an agent authorization letter must be provided. In signing the application, the applicant certifies that all information contained therein or in support thereof is true and correct to the best of their knowledge. ~~For corporations, partnerships, proprietors, or municipal, state or other public entity, the application shall be signed as follows:~~

~~(A) in the case of corporations, by a principal executive officer of at least the level of vice-president, or their authorized representative;~~

~~(B) in the case of a partnership or limited partnership, by a general partner;~~

~~(C) in the case of a sole proprietorship, by the proprietor; and~~

~~(D) in the case of a municipal, state or other public entity, by either a principal executive officer, ranking official or other duly authorized employee.~~

(b) Submission of an application to the Division of Coastal Management for a permit to develop in North Carolina's coastal area in accordance with the rules of 15A NCAC 07J .0200 shall suffice as an application for a water quality certification or certificate of coverage under a general certification upon receipt by the Division.

(c) ~~Power to Request Additional Information.~~ POWER TO REQUEST ADDITIONAL INFORMATION. The ~~Director~~ Division may ~~request,~~ request in writing, and the applicant shall furnish, any additional information that may be found necessary for the proper consideration of the application. ~~The 60-day processing period required in Rule .0507 of this Section begins on the date the additional information is received by the Division.~~

(d) ~~Omissions From Applications.~~ OMISSIONS FROM APPLICATIONS. If the applicant ~~considers~~ believes that it is not feasible or is unnecessary to furnish any portion of the information required by Paragraphs ~~(a) and~~ (a), (b) and (c) of this Rule, then the applicant shall submit a detailed statement explaining the reasons for omission of any such information. The final decision regarding the completeness of the application shall be made by the Division based on the information required in Paragraphs (a), (b) and (c), and any explanation provided by the applicant regarding omitted information provided in this Paragraph.

(e) ~~Investigations.~~ INVESTIGATIONS. The staff of the ~~Department of Environment, Health, and Natural Resources (department)~~ Division shall conduct such investigation as the ~~Director~~ Division deems ~~necessary;~~ necessary. ~~and~~ The applicant shall ~~cooperate in the investigation to the extent that it shall furnish necessary information,~~ allow the staff safe access to the lands and facilities of the applicant and lend such assistance as shall be ~~reasonable.~~ reasonable, upon the presentation of credentials.

~~(f) Who Must Sign Applications. The application shall be considered a "valid application" only if the application bears the signature of a responsible officer of the company, municipal official, partner or owner. This signature certifies that the applicant has title to the property, has been authorized by the owner to apply for certification or is a public entity and has the power of eminent domain. Said official in signing the application shall also certify that all information contained therein or in support thereof is true and correct to the best of his knowledge~~.

~~(g) An application form may be obtained from the Division of Water Quality, the Division of Coastal Management, or the U.S. Army Corps of Engineers, Wilmington District, Regulatory Branch~~.

History Note: *Authority G.S. 143-211(c); 143-215.3(a)(1); ~~143-215(c);~~143-215.3(c); 143B-282(a)(1)(u);*
Eff. February 1, 1976;
Amended Eff. December 1, 1984; January 1, 1979;
RRC Objection Eff. July 18, 1996 due to lack of statutory authority and ambiguity;
Recodified from 15A NCAC 2H .0501 Eff. October 1, 1996;
Amended Eff. October 1, 1996;
Readopted Eff. [New Date].

15A NCAC 02H .0503 PUBLIC NOTICE AND PUBLIC HEARING

(a) ~~Notice by Publication.~~ PUBLIC NOTICE FOR GENERAL CERTIFICATIONS. The Division shall provide public notice for proposed General Certifications. This notice shall be sent to all individuals on the Mailing List described in Paragraph (g) of this Rule and posted on the Division's website. Notice shall be made at least 30 calendar days prior to proposed final action by the Division. Public Notice shall not be required for those activities covered by Certificates of Coverage under a General Certification.

(b) PUBLIC NOTICE FOR INDIVIDUAL CERTIFICATIONS. Notice of each pending application for an individual certification shall be ~~published one time in a newspaper having general circulation in the county in which the discharge will occur, or as provided in Paragraph (c) of this Rule.~~ sent to all individuals on the Mailing List described in Paragraph (g) of this Rule and shall be posted on the Division's website. ~~Publication~~ Notice shall be made at least ~~15~~ 30 calendar days prior to proposed final action by the ~~Director~~ Division ~~upon~~ on the ~~application and not more than 20 days after acceptance of a completed~~ application.

~~(b)~~(c) ~~Contents of Notice.~~ CONTENTS OF NOTICE FOR INDIVIDUAL CERTIFICATIONS. The notice shall set forth the name and address of the applicant; the action requested in the application; the nature and location of the discharge; and the proposed date of final action to be taken by the ~~Director~~ Division ~~upon~~ on the application. The notice shall also state ~~that~~ where additional information is on file with the ~~department~~ Division and that the information may be inspected at any time during normal working hours. Copies of such information on file shall be made available upon request and upon payment of the cost thereof to the ~~department.~~ Division pursuant to G.S. 132-6.2.

(d) REQUEST FOR A PUBLIC HEARING. Any person who desires a public hearing on a General Certification or an Individual Certification application shall so request in writing to the Division. The request must be received by the Division within 30 calendar days following the Public Notice.

~~(c)~~(e) JOINT NOTICE. The public notice requirement for an Individual Certification as described in Paragraph (b) of this Rule may ~~also~~ be satisfied by a joint notice with the Division of Coastal Management (15A NCAC ~~7J~~ 07J .0206) or the U.S. Army Corps of Engineers according to their established procedures.

~~(d)~~(f) ~~Notice of Hearing.~~ NOTICE OF HEARING. If the Director determines that there is significant public interest in holding a ~~hearing should be held concerning the granting or denial of the application,~~ hearing, the ~~Director~~ Division shall ~~publish notice of the hearing one time in a newspaper having general circulation in the county in which the discharge will occur.~~ notify the applicant in writing that there will be a hearing.~~by registered or certified mail, return receipt requested.~~ The Division shall also provide notice of the hearing to all individuals on the Mailing List as described in Paragraph (g) of this Rule and shall post the notice on the Division's website. The notice shall be published at least 30 calendar days prior to the date of the hearing. The notice shall state the time, place and nature of the hearing. The notice can be combined with the notice required under Paragraph (c) of this Rule. Such hearing shall be held within 90 calendar days following date of notification to the applicant. The record for each hearing held under this Paragraph shall remain open for a period of 30 calendar days after the public hearing to receive public comments.

~~(e)~~(g) ~~Water Quality Certification Mailing List.~~ MAILING LIST. Any ~~person,~~ person may request that he or she be ~~mailed~~ emailed copies of all public notices required by this Rule. The ~~Director~~ Division shall add the ~~name~~ email

address of any such person to ~~a water quality certification mailing list~~ an Email Listserv and shall ~~mail~~ email copies of notices to all persons on the list.

~~(f) Payment of Costs of Public Notice. The applicant shall pay to the department the costs of advertising public notice required by Paragraphs (a) and (d) of this Rule. Certification shall be withheld until such costs have been paid.~~

(h) OTHER PUBLIC HEARINGS. Any public hearing held pursuant to~~for~~ this Rule may be coordinated with other public hearings held by the Department of Environmental Quality or the U.S. Army Corps of Engineers.

History Note: *Authority G.S. 143-211(c); 143-215.3(a)(1); 143-215.3(c); 143B-282(a)(1)(u);*
Eff. February 1, 1976;
Amended Eff. December 1, 1984; September 1, 1984
RRC Objection Eff. July 18, 1996 due to lack of statutory authority and ambiguity;
Recodified from 15A NCAC 0 2H .0502 Eff. October 1, 1996;
Amended Eff. October 1, 1996;
Readopted Eff. [New Date].

~~15A NCAC 02H .0504 HEARING~~

~~(a) Public Hearing on Certification. If the Director determines that it is in the public interest that a public hearing for the purpose of reviewing public comment and additional information be held prior to granting or denying certification, the Director shall so notify the applicant by registered or certified mail, return receipt requested, and shall publish and give notice as required in Rule .0503(d) and (e) of this Section. Such hearing shall be held within 90 days following date of notification. The record of each hearing held under this Paragraph shall remain open for a period of 30 days.~~

~~(b) Hearing for Applicant Upon Certification Denial. An applicant whose certification is denied or granted subject to unacceptable conditions, shall have the right to a contested case hearing pursuant to the provisions of G.S. 150B-23.~~

History Note: *Authority G.S. 143-215.3(a)(1); 143-215.3(c); 143B-282(1)(u);*
Eff. February 1, 1976;
Amended Eff. July 1, 1988; December 1, 1984;
RRC Objection Eff. July 18, 1996 due to lack of statutory authority and ambiguity;
Recodified from 15A NCAC 2H .0503 Eff. October 1, 1996;
Amended Eff. October 1, 1996.
Repealed Eff. [New Date].

15A NCAC 02H .0506 REVIEW OF APPLICATIONS

(a) NO WRITTEN CONCURRENCE REQUIRED. ~~Those activities covered by General Certifications [Rule .0501(c)(2) of this Section]~~Applicants shall request a Certificate of Coverage under a general certification by submitting an application to the Division unless that general certification states that ~~do not require~~ written concurrence from the Division is not required. When written concurrence is not required, the activities shall be deemed certified if all of the conditions of the ~~G~~general ~~C~~certification are followed~~. Those activities~~ and may proceed without the review procedures outlined in Paragraph (b) of this Rule.

~~(a) In evaluating requests for certification based on the procedures outlined in Paragraphs (b) through (e) of this Rule, the Director shall determine if the proposed activity has the potential to remove or degrade those significant existing uses which are present in the wetland or surface water. Activities which would not remove or degrade existing uses shall be reviewed according to the procedures found in Subparagraph (c)(2) (5) of this Rule. Those activities covered by general certifications [15A NCAC 2H .0501(c)(2)] which do not require written concurrence from the Division shall be deemed certified if the conditions of the certification are followed and may proceed without the review procedures outlined in Paragraphs (b) through (e) of this Rule. An applicant may also demonstrate that designated uses are not present at a particular site using a wetland evaluation procedure approved by the Director according to the criteria found in 15A NCAC 2B .0103(c); otherwise the designated uses as outlined at 15A NCAC 2B .0231(a)(1) (6) are assumed to exist in all classes of wetlands, and the appropriate review procedures shall be undertaken. Certification shall be issued where the Director determines water quality standards are met, including protection of existing uses.~~

(b) ~~The Director shall issue a certification upon determining that existing uses are not removed or degraded by a discharge to classified surface waters for an activity which:~~ EVALUATION. The Division shall issue an individual certification or a "Certificate of Coverage" under a general certification upon determining that the proposed activity will comply with state water quality standards, which includes designated uses, numeric criteria, narrative criteria and the state's antidegradation policy, as defined in the rules of 15A NCAC 02B .0200 and the rules of 15A NCAC 02L .0100 and .0200. In assessing whether the proposed activity will comply with water quality standards, the Division shall evaluate if the proposed activity:

(1) has ~~no practical alternative under the criteria outlined in Paragraph (f) of this Rule;~~ avoided and minimized impacts to surface waters and wetlands to ensure any remaining surface waters or wetlands, and any surface waters or wetlands downstream, continue to support existing uses during and after project completion;

~~(2) will minimize adverse impacts to the surface waters based on consideration of existing topography, vegetation, fish and wildlife resources, and hydrological conditions under the criteria outlined in Paragraph (g) of this Rule;~~

~~(3)~~(2) ~~does not result in the degradation of groundwaters or surface waters;~~ would cause or contribute to a violation of water quality standards;

~~(4)~~(3) ~~does not~~ would result in secondary or cumulative ~~impacts, based upon past or reasonably anticipated future impacts,~~ impacts that cause or contribute to, or will cause or contribute to, a violation of ~~downstream~~ water quality standards;

~~(5) provides for protection of downstream water quality standards through the use of on-site stormwater control measures; and~~

~~(6)~~(4) provides for replacement of existing uses through compensatory mitigation as described ~~at Subparagraphs (h)(1)~~ in Paragraph (c) of this ~~Rule.~~ Rule;

(5) for Class SWL wetlands, is water dependent and requires access to water as a central element of its basic function. Projects funded by government agencies may be exempted from this requirement; and

(6) for Class UWL wetlands and wetlands that are habitat for state or federally listed threatened or endangered species, is necessary to meet a demonstrated public need.

~~(c) The Director shall issue a certification upon determining that sufficient existing uses are not removed or degraded by a discharge to Class WL wetlands as defined at 15A NCAC 2B .0101(c)(8), for an activity which:~~

~~(1) has no practical alternative as described in Paragraph (f) of this Rule, or impacts less than three acres of Class WL wetlands;~~

~~(2) will minimize adverse impacts to the wetland based on consideration of existing topography, vegetation, fish and wildlife resources, and hydrological conditions under the criteria outlined in Paragraph (g) of this Rule; or impacts less than one acre of wetland within 150 feet (including less than 1/3 acre of wetland within 50 feet), of the mean high water line or normal water level of any perennial or intermittent water body as shown by the most recently published version of the United State Geological Survey 1:24,000 (7.5 minute) scale topographical map or other site specific data;~~

~~(3) does not result in the degradation of groundwaters or surface waters;~~

~~(4) does not result in cumulative impacts, based upon past or reasonably anticipated future impacts, that cause or will cause a violation of downstream water quality standards;~~

~~(5) provides protection for downstream water quality standards through the use of on-site stormwater control measures; and~~

~~(6) provides for replacement of existing uses through wetland mitigation under U.S. Army Corps of Engineers requirements or as described in Subparagraph (h)(1) (8) of this Rule.~~

~~(d) The Director shall issue a certification upon determining that significant existing uses are not removed or degraded by a discharge to Class SWL wetland as defined at 15A NCAC 2B .0101(d)(4),wetlands that are contiguous to waters designated as ORW, HQW, SA, WS-I, WS-II or Trout, or wetlands that are contiguous to rivers designated as a North Carolina or National Wild and Scenic River for an activity which satisfies Subparagraphs (c)(2) (5) of this Rule, and:~~

~~(1) for wetlands classified as coastal wetlands pursuant to 15A NCAC 7H .0205:~~

~~(A) has no practical alternative as described in Paragraph (f) of this Rule; and~~

~~(B) is water dependent and requires access to water as a central element of its basic function, although, projects funded by government agencies may be exempted from this requirement; and~~

~~(2) provides for replacement of existing uses through wetland mitigation under U.S. Army Corps of Engineers requirements, or as described in Subparagraphs (h)(1) (7) and (9) of this Rule.~~

~~(e) The Director shall issue a certification upon determining that significant existing uses are not removed or degraded by a discharge to wetlands of exceptional state or national ecological significance including but not limited to Class UWL wetlands, and wetlands that have been documented to the satisfaction of the Director as habitat essential for the conservation of state or federally listed threatened or endangered species, provided that the wetlands have been so classified or designated prior to the date of application for certification or a draft environmental impact statement has been submitted to the Director, for an activity which satisfies Subparagraphs (c)(2) (5) and (d)(1) (2) and:~~

~~(1) the wetland impacts are necessary for the proposed project to meet a demonstrated public need; and~~

~~(2) provides for replacement of existing uses through wetland mitigation under U.S. Army Corps of Engineers requirements, or as described in Subparagraphs (h)(1) (7) and (10) of this Rule.~~

~~(f) A lack of practical alternatives may be shown by demonstrating that, considering the potential for a reduction in size, configuration or density of the proposed activity and all alternative designs the basic project purpose cannot be practically accomplished in a manner which would avoid or result in less adverse impact to surface waters or wetlands.~~

~~(g) Minimization of impacts may be demonstrated by showing that the surface waters or wetlands are able to continue to support the existing uses after project completion, or that the impacts are required due to:~~

~~(1) The spatial and dimensional requirements of the project; or~~

~~(2) The location of any existing structural or natural features that may dictate the placement or configuration of the proposed project; or~~

~~(3) The purpose of the project and how the purpose relates to placement, configuration or density.~~

~~(h)~~(c) MITIGATION. Replacement or mitigation of unavoidable losses of existing uses shall be reviewed in accordance with all of the following guidelines:

(1) The ~~Director~~ Division shall coordinate mitigation requirements with other permitting agencies that are requiring mitigation for a specific project; ~~project. Mitigation required by the U.S. Army Corps of Engineers shall be considered to constitute the mitigation required by the certification unless the Director determines that the mitigation proposal does not meet the criteria established in Subparagraph (6) of this Paragraph.~~

(2) ~~Mitigation shall not be required for~~ Total impacts to less than one-tenth of one acre of Class WL and Class SWL wetlands ~~of less than one acre.~~ for the entire project shall not require compensatory mitigation;

(3) All impacts to Class UWL wetlands shall require compensatory mitigation;

(4) Total impacts to less than 300 linear feet of perennial streams for the entire project shall not require compensatory mitigation. For linear publicly owned and maintained transportation projects that the

U.S. Army Corps of Engineers determines are not part of a larger common plan of development, impacts to less than 300 linear feet per perennial stream shall not require compensatory mitigation;

(5) The ratio of mitigation required to classified surface waters or wetlands impacted is 1:1. The required area or length of mitigation required shall be multiplied by 1 for restoration, 1.5 for establishment, 2 for enhancement and 5 for preservation. These multiplier ratios shall not apply to approved mitigation sites where the Interagency Review Team (insert CFR reference) has approved other ratios;

~~(3)~~(6) ~~Participation in wetland restoration programs coordinated by the Department of Environmental, Health, and Natural Resources shall be preferred to individual project mitigation whenever the Director finds that such participation is available and satisfies the other requirements of this Paragraph, unless the applicant can demonstrate that participation in these restoration programs is not practical. Mitigation sites approved by the U.S. Army Corps of Engineers shall be deemed to be consistent with the Department's restoration plan.~~ Mitigation shall comply with the requirements set forth in G.S. 143-214.11;

~~(4)~~(7) Acceptable methods of ~~wetlands mitigation are listed below in the order of preference:~~ mitigation, as defined in 33 CFR Part 332 available free of charge on the internet at: http://water.epa.gov/lawsregs/guidance/wetlands/wetlandsmitigation_index.cfm, include restoration, including both re-establishment and rehabilitation, establishment (creation), enhancement, and preservation. No more than 25 percent of the mitigation required by Subparagraph (c)(2), (3) or (4) of this Rule can be met through preservation, unless the Director determines that the public good would be better served by a higher percentage of preservation.

~~(A) Restoration: the re-establishment of wetland hydrology and vegetation in an area where it previously existed.~~

~~(B) Creation: the construction of a wetland in an area where wetlands did not exist in the recent past.~~

~~(C) Enhancement: increasing one or more of the functions of an existing wetland by manipulation of vegetation or hydrology.~~

~~(D) Preservation: protection of wetlands through purchase, donation or conveyance of a conservation easement to an appropriate government or non-profit agency for management.~~

~~(5) Restoration is the preferred method of wetlands mitigation. The other methods may be utilized if the applicant can demonstrate that restoration is not practical or that the proposed alternative is the most ecologically viable method of replacing the lost functions and values.~~

~~(6) All mitigation proposals shall provide for the replacement of wetland acres lost due to the proposed activity at a minimum of a 1:1 ratio through restoration or creation prior to utilizing enhancement or preservation to satisfy the mitigation requirements, unless the Director determines that the public good would be better served by other types of mitigation.~~

~~(7) Wetlands mitigation shall be conducted based on the following ratios (acres mitigated to acres loss); 4:1, for wetlands located within 150 feet of the mean high water line or normal water level of any perennial or intermittent water body as shown by the most recently published version of the United States Geological Survey 1:24,000 (7.5 minute) scale topographical map; 2:1, for wetlands located between 150 feet and 1,000 feet from the mean high water line or normal water level of any perennial or intermittent water body as shown by the most recently published version of the United States Geological Survey 1:24,000 (7.5 minute) scale topographical map; and 1:1, for all other wetlands. For linear projects which impact less than 3 acres of wetlands the ratio shall be 2:1 regardless of the distance from surface waters. The above ratios apply only to restoration. The acres of required mitigation for the other types of mitigation shall be determined by multiplying the above ratios by 1.5 for creation, 2 for enhancement, and 5 for preservation. The above ratios do not apply to approved mitigation sites where the state and federal review agencies have approved credit/debit ratios. This Subparagraph shall not apply to general certifications until the Department has established a wetlands restoration program or until January 1, 1997, whichever occurs first.~~

(8) Mitigation for impacts to classified surface waters and wetlands ~~designated in Paragraph (c) of this Rule~~ shall be conducted in North Carolina within the same river basin and ~~physiographic province when practical. Unavoidable losses of wetlands adjacent to waters classified as WS-III shall be replaced within the water supply watershed when practical.~~ in accordance with 33 CFR Part 332, available free of charge on the internet at: http://water.epa.gov/lawsregs/guidance/wetlands/wetlandsmitigation_index.cfm, unless otherwise approved by the Director;

(9) Mitigation for impacts to Class SWL wetlands ~~designated in Paragraph (d) of this Rule shall be of the same wetland type and located within the same river sub-basin when practical. Mitigation for impacts to wetlands adjacent to waters classified as WS-I or WS-II shall be replaced within the water supply watershed when practical.~~ shall be of the same wetland type (Class SWL wetlands);

(10) Mitigation for impacts to wetlands designated in ~~Paragraph (e)~~ Subparagraph (b)(~~7~~6) of this Rule shall be of the same wetland type and within the same watershed when ~~practical.~~ practical; and

(11) Mitigation for impacts to surface waters classified as WS-I, WS-II or WS-III and wetlands adjacent to waters classified as WS-I, WS-II or WS-III shall be within the same water supply watershed when practical.

~~(i) The Director shall not duplicate the site-specific application of any guidelines employed by the United State Army Corps of Engineers in evaluating permit applications under 33 U.S.C. 1344 and applicable federal regulations.~~

History Note: *Authority G.S. 143-211(c); 143-214.7C; 143-215.3(a)(1); 143-215.3(c); 143B-282(a)(1)(u); S.L. 2015, c. 286; S.L 2017, c. 10*
RRC Objection Eff. July 18, 1996 due to lack of statutory authority and ambiguity;
Eff. October 1, 1996.

Readopted Eff. [New Date].

15A NCAC 02H .0507 ~~ISSUANCE OF~~ DECISION ON APPLICATION FOR CERTIFICATION

(a) ~~Time Limit for Final Action on Certification Application.~~ ~~FINAL~~ ACTION ON APPLICATION. ~~All applications for certification~~ The Director shall ~~be granted~~ issue the certification, ~~or~~ ~~denied~~ deny the application, provide notice of hearing pursuant to Rule .0503 of this Section, or request additional information within 60 calendar days after receipt of an ~~complete~~ application for certification ~~electronically or at the offices of the Director in 1617 Mail Service Center, Raleigh, North Carolina. Carolina, 27699-1617~~. When the Director requests additional information, the 60-day review period restarts upon receipt of all of the additional information requested by the Director. Failure to ~~take final action~~issue the certification, deny the application, provide notice of hearing, or request additional information within 60 calendar days shall result in a waiver of the certification requirement by the Director, unless:

(1) The applicant agrees, in writing, to a longer period;

(2) Final decision is to be made pursuant to a public hearing;

(3) ~~Applicant~~ The applicant fails to furnish information necessary ~~to~~ for the Director's decision;

(4) ~~Applicant~~ The applicant refuses the staff access to its records or premises for the purpose of gathering information necessary ~~to~~ for the Director's decision or;

(5) Information necessary ~~to~~ for the Director's decision is unavailable.

(b) ~~Time Limit for Final Action on Certification Application After Hearing.~~ ~~FINAL~~ ACTION AFTER HEARING. ~~All applications for certification~~ The Director shall ~~be granted~~ issue the certification, ~~or~~ ~~denied~~ deny the ~~complete~~ application, or request additional information ~~for certification~~ within 60 calendar days ~~after~~ following the close of the record for the public hearing. Failure to take ~~final~~ action within 60 calendar days shall result in a waiver of the certification requirement by the ~~Director~~ Director, unless ~~the applicant otherwise agrees in writing, or unless~~ ~~Subparagraph~~ Subparagraphs ~~(a)(3),~~ (a)(1), (3), (4), or (5) of this Rule ~~shall~~ apply.

(c) ~~Conditions of Certification.~~ CONDITIONS OF CERTIFICATION. Any certification issued pursuant to this ~~Rule~~ Section may contain such conditions as the Director shall deem necessary to ~~insure~~ ensure compliance with Sections 301, 302, 303, 306, and 307 of the Federal Water Pollution Control Act Amendments and with other appropriate requirement of state law. ~~Amendments.~~ ~~Section 401 of the Clean Water Act (33 U.S.C. 1341).~~ The conditions included in the certification shall become enforceable by the Department pursuant to Chapter 143, Article 21, Part 1 when the federal permit or license is issued.

(d) ~~Modification or Revocation of Certification~~ MODIFICATION OR REVOCATION. Modification or Revocation of Certification:

(1) Any certification issued pursuant to this ~~Rule~~ Section ~~shall~~ may be subject to revocation or modification by the Director for violation of conditions of 301, 302, 303, 306, and 307 of the Federal Water Pollution Control Act ~~Amendments.~~Amendments or state law.

(2) Any certification issued pursuant to this ~~Rule~~ Section ~~shall~~ may be subject to revocation or modification by the Director upon a determination that information contained in the application or presented in support thereof is incorrect or if conditions under which the certification was made have changed.

(e) ~~Notification of Unapproved Application.~~ NOTIFICATION OF FINAL ACTION. The Division shall notify the applicant of the final action to issue or deny the application. In the event that the Director denies the application for certification or for any reason is unable to approve the application, the Director shall ~~so notify the applicant by certified or registered mail, return receipt requested, specifying in such notification~~ specify the reasons for the denial or inability to ~~approve; and a~~ approve. A copy of the notification shall be ~~mailed~~ sent to the appropriate federal licensing or permitting agency and EPA.

(f) ~~CONTESTED CASE HEARING~~ADMINISTRATIVE REVIEW. ~~An applicant whose certification is denied or granted subject to unacceptable conditions shall have the right to seek a contested case hearing pursuant to the provisions of G.S. 150B-23.~~The issuance or denial is a final agency decision that is subject to administrative review pursuant to G.S. 150B-23.

History Note: *Authority G.S. 143-211(c); 143-215.3(a)(1); 143-215.3(c); 143B-282(a)(1)(u);*
Eff. February 1, 1976;
Amended Eff. July 1, 1988; December 1, 1984;
RRC Objection Eff. July 18, 1996 due to lack of statutory authority and ambiguity;
Recodifed from 15A NCAC 2H .0504 Eff. October 1, 1996;
Amended Eff. October 1, 1996;
Readopted Eff. [New Date].

15A NCAC 02H .0901 PURPOSE

(a) The rules in this Section are designed to implement North Carolina General Statutes 143-215.3(a)(14) and 143-215.1 and provisions of the Federal Water Pollution Control Act (also known as the "Clean Water Act") regarding the discharge of non-domestic wastewater into publicly owned treatment works (POTWs). They establish responsibilities of state and local government, industry, and the public to implement pretreatment standards to control pollutants which pass through or interfere with treatment processes in POTWs, which may contaminate sewage sludge, or which otherwise have an adverse impact on the POTW, its workers, or the environment.

(b) Copies of rules referenced in this Section may be obtained from the Division of Water ~~Quality,~~ Resources, ~~Surface Water Protection~~ Water Quality Permitting ~~Section~~ Section, free of charge, at the following locations:

(1) ~~http://portal.ncdenr.org/web/wq/swp/ps/pret/;~~ http://deq.nc.gov/about/divisions/water-resources/water-resources-permits/percs/pretreatment-permits; and

(2) the North Carolina Department of ~~Environment and Natural Resources,~~ Environmental Quality, Division of Water ~~Quality~~ Resources Offices of the Pretreatment¸ Emergency Response, and Collection Systems (PERCS) Unit
Physical Address: Archdale Building, 512 N. Salisbury St.
Raleigh, N.C. 27604
Mailing Address: 1617 Mail Service Center
Raleigh, N.C. ~~27699-1617;~~ 27699-1617.

~~(3) Raleigh Regional Office~~
~~3800 Barrett Dr.~~
~~Raleigh, N.C. 27609;~~

~~(4) Asheville Regional Office~~
~~2090 US Highway 70~~
~~Swannanoa, NC 28778;~~

~~(5) Mooresville Regional Office~~
~~610 East Center Avenue, Suite 301~~
~~Mooresville, N.C. 28115;~~

~~(6) Fayetteville Regional Office~~
~~Systel Bldg; Suite 714~~
~~225 Green Street~~
~~Fayetteville, N.C. 28301;~~

~~(7) Washington Regional Office~~
~~1424 Carolina Avenue,~~
~~Washington, N.C. 27889;~~

~~(8) Wilmington Regional Office~~
~~127 Cardinal Drive Extension,~~
~~Wilmington, N.C. 28405-3845; and~~

~~(9)~~ ~~Winston-Salem Regional Office~~
~~585 Waughtown Street 450~~
~~Winston-Salem, N.C. 27107.~~

History Note: *Authority G.S. 143-215.3(a)(14);*
Eff. March 28, 1980;
Amended Eff. April 1, 2011; November 1, 1994; October 1, 1987; December 1, 1984.
Readopted Eff. <date>.

15A NCAC 02H .0902 SCOPE

These Rules apply to:

(1) Pollutants from non-domestic sources covered by pretreatment standards which are indirectly discharged into or transported by truck or rail or otherwise introduced into POTWs as defined in 40 CFR 403.3 and Rule .0903 of this Section;

(2) POTWs and control authorities which receive wastewater from sources subject to pretreatment standards; and

(3) Any new or existing source subject to pretreatment standards. ~~Pretreatment standards do~~ This Section does not apply to sources which discharge to a sewer which is not connected to a POTW treatment plant.

History Note: *Authority G.S. 143-215.3(a)(14);*
Eff. March 28, 1980;
Amended Eff. April 1, 2011; November 1, 1994; October 1, 1987.
Readopted Eff. <date>

15A NCAC 02H .0903 DEFINITION OF TERMS

(a) Unless otherwise defined in Paragraph (b) of this Rule, the definitions promulgated by the Environmental Protection Agency and codified as 40 CFR ~~Part~~ 403.3 are hereby incorporated by reference, including any subsequent amendments and editions. ~~This material is available for inspection at the locations listed in Rule .0901 of this Section and at http://cfpub1.epa.gov/npdes/home.cfm?program_id=3.~~ A copy of the reference material can be found at http://www.ecfr.gov/cgi-bin/text-idx?SID=002b8fe78be0d299d7289c36ef66652d&mc=true&tpl=/ecfrbrowse/Title40/40CIsubchapN.tpl, free of charge

(b) For this Rule the following definitions in addition to those incorporated by reference in Paragraph (a) of this Rule shall apply:

(1) "Approval Authority" means the Director of the Division of Water ~~Quality~~ Resources of the North Carolina Department of ~~Environment and Natural Resources~~ Environmental Quality, or his/her designee;

(2) "Average" means the value calculated by dividing the sum of the data values collected over a time period by the number of data points which comprise the sum;

(3) "Bypass" is the intentional diversion of waste streams from any portion of a pretreatment facility. Also see Rule .0919 of this Section and 40 CFR ~~Part~~ 403.17 for additional requirements;

(4) "Commission" means the Environmental Management Commission of the North Carolina Department of ~~Environment and Natural Resources~~ Environmental Quality or its successor;

(5) "Control Authority" refers to the POTW ~~organization~~ if the POTW'S ~~POTW organization's~~ pretreatment program has been approved in accordance with Rules .0905, .0906, and .0907 of this Section, and that approval has not been subsequently withdrawn. Otherwise, the approval authority is the control authority;

(6) "Division" refers to the North Carolina Department of ~~Environment and Natural Resources~~ Environmental Quality, Division of Water ~~Quality;~~ Resources;

(7) "Enforcement Response Plan" or "ERP" means the control authority pretreatment program document describing the guidelines for identifying violations of and enforcing specific local limits and other pretreatment standards and requirements;

(8) "EPA" means the United States Environmental Protection Agency;

(9) "Fundamentally Different Factors" are factors upon which a variance from a categorical standard may be granted under Rule .0912 of this Section and 40 CFR ~~Part~~ 403.13;

(10) "Headworks Analysis" or "HWA" is the analysis used to calculate the maximum allowable POTW influent loadings for flow and pollutants of concern based on design capacity, NPDES or non-discharge permit limits, pass through, interference, sludge, or worker safety and health considerations, as applicable. The headworks analysis is the technical basis for deriving local limits applied to industrial users;

(11) "Indirect Discharge" or "Discharge" refers to the introduction of pollutants into a POTW from any non-domestic source regulated under Sections 307(b), (c), or (d) of the Clean Water Act;

(12) "Industrial User" or "User" means a source of indirect discharge;

(13) "Industrial Waste Survey" refers to the survey of the users of the POTW collection system or treatment plant performed by the control authority as required by 40 CFR ~~Part~~ 403.8 (f)(2)(i-iii) and Rule .0905 of this Section, including identification of all industrial users and the character and amount of pollutants contributed to the POTW by these industrial users and identification of those industrial users meeting the definition of significant industrial user. Where the control authority accepts wastewater from one or more satellite POTWs, the IWS for that control authority shall address all satellite POTW services areas, unless the pretreatment program in those satellite service areas is administered by a separate control authority;

(14) "Interference" refers to inhibition or disruption of the POTW collection system; treatment processes; operations; or its sludge process, use, or disposal which causes or contributes to a violation of any requirement of the control authority's (or the POTW's if different from the control authority) NPDES, collection system, or non-discharge permit (including an increase in the magnitude or duration of a violation) or prevents sewage sludge use or disposal in compliance with specified applicable State and Federal statutes, regulations, or permits;

(15) "Medical Waste" refers to isolation wastes, infectious agents, human blood and blood products, pathological wastes, sharps, body parts, contaminated bedding, surgical wastes, potentially contaminated laboratory wastes, and dialysis wastes;

(16) "Monitoring Plan" refers to the monitoring plan designed to collect POTW site-specific data for use in the Headworks Analysis. Monitoring Plans may be designated as "Long Term" or "Short Term," LTMP and STMP, respectively, as the Division Director determines to be necessary;

(17) "National ~~Categorical~~ Pretreatment ~~Standard"~~ Standard", ~~or "Categorical~~ "Pretreatment Standard" or "Standard" ~~refers to~~ means any regulation containing pollutant discharge limits promulgated by the EPA in accordance with Sections 307(b) and (c) of the Clean Water Act which applies to industrial users. ~~a specific category of industrial users, and which appears in 40 CFR Parts 405-471;~~ This term also includes any prohibitive discharge limits established pursuant to 40 CFR 403.5, categorical standards established under the appropriate subpart of 40 CFR chapter I, subpart N or local limit which applies to an industrial user. 40 CFR 403.5, Chapters I and N of Part 405 of Title 40 of the Code of Federal Regulations are hereby incorporated by reference, including any subsequent amendments and editions.

~~(18) "National Prohibited Discharge Standard" is an absolute prohibition against the discharge of certain substances to the POTW, including both general and specific prohibitions;~~

~~(19)~~(18) "Net/Gross Calculation" is an adjustment of a categorical standard to reflect the presence of pollutants in the industrial user's intake water that may be granted under Rule .0915 of this Section and 40 CFR ~~Part~~ 403.15;

(~~20~~)(19) "Noncontact Cooling Water" is water used for cooling which does not come into direct contact with any raw material, intermediate product, waste product, or finished product;

(~~21~~)(20) "Non-discharge Permit" is a permit issued by the State pursuant to G.S. 143-215.1(d) for a waste which is not discharged directly to surface waters of the State or for a wastewater treatment works which does not discharge directly to surface waters of the State;

~~(22) "Operator in Responsible Charge" is the operator designated to fulfill the requirements of G.S. 90A-44;~~

(~~23~~)(21) "Pass Through" means a discharge which exits the POTW into waters of the State in quantities or concentrations which, alone or with discharges from other sources, causes a violation, including an increase in the magnitude or duration of a violation, of the control authority's (or the POTW's, if different from the control authority) NPDES, collection system, or non-discharge permit;

(~~24~~)(22) "Pollutant" includes any waste defined in G.S. 143-213(18); dredged spoil; solid waste; incinerator residue; garbage; sewage sludge; munitions; medical wastes; chemical waste; biological materials; radioactive materials; heat; wrecked or discarded equipment; rock; sand; cellar dirt; municipal and agricultural waste; and certain characteristics of wastewater, such as pH, temperature, TSS, turbidity, color, metals, BOD, COD, toxicity, and odor;

(~~25~~)(23) "Pollutant of Concern" or "POC" is a pollutant identified as being of concern to the control authority for purposes of the pretreatment program; a pollutant of concern may include but not be limited to conventional wastewater pollutant, such as BOD, TSS, or ammonia; any of the priority pollutants; pH; and any pollutant that may be identified as a source of interference, pass through, whole effluent toxicity, or sludge contamination;

(~~26~~)(24) "POTW", or "Publicly Owned Treatment Works," means a treatment works as defined by Section 212 of the Clean Water Act (CWA), which is owned by a state or municipality. ~~local government organization.~~ This definition includes any devices and systems used in the storage, treatment, recycling and reclamation of municipal sewage or industrial wastes of a liquid nature. It also includes the collection system, only if it conveys wastewater to a POTW treatment plant. Also see 15A NCAC 02T .0402. The term also means the ~~local government organization, or~~ municipality, as defined in Section 502(4) of the CWA, which has jurisdiction over indirect discharges to and the discharges from such a treatment works. ~~In this context, the organization~~ The municipality may be the owner of the POTW treatment plant or the owner of the collection system into which an indirect discharger discharges. This second type of ~~POTW~~ municipality may be referred to as a "satellite municipality", a "satellite POTW" or a "satellite POTW organization"; ~~organization." For clarity, the local government may be referred to as the "POTW organization" or "Control Authority" as applicable in this Rule and all other rules in this Section. See also Subparagraph (b)(5) of this Rule and Rule .0908(h) of this Section;~~

(~~27~~)(25) "POTW Director" means the chief administrative officer of the control authority or his/her delegate;

(~~28)~~(26) "Pretreatment" refers to the reduction of the amount of pollutants, the elimination of pollutants, or the alteration of the nature of pollutant properties in wastewater prior to or in lieu of discharging or otherwise introducing such pollutants into a POTW collection system or treatment plant. The reduction or alteration may be obtained by physical, chemical, or biological processes, or process changes or other means, except as prohibited by 40 CFR ~~Part 403.6(d);~~ 403.6(d). Where wastewater from a regulated process is mixed with unregulated wastewater or with wastewater from another regulated process, the pretreatment limit must be calculated in accordance with 40 CFR 403.6(e);

~~(29) "Pretreatment Standard" is any prohibited discharge standard, categorical standard, or local limit which applies to an industrial user;~~

(~~30)~~(27) "Process Wastewater" means any water which, during manufacturing or processing, comes into direct contact with or results from the production or use of any raw material, intermediate product, finished product, by-product, or waste product;

(~~31)~~(28) "Removal Credits" are credits that may be granted under Rule .0921 of this Section and 40 CFR Parts 403.7 and 403.11 to adjust categorical standards in such a way as to reflect POTW consistent removal of a particular pollutant;

(~~32)~~(29) "Sewer Use Ordinance" or "SUO" means the POTW or control authority organization ordinance providing the legal authority for administering the pretreatment program;

(~~33)~~(30) "Significant Industrial User" or "SIU" means an industrial user that discharges wastewater into a publicly owned treatment works and that:

(A) Discharges an average of 25,000 gallons per day or more of process wastewater to the POTW (excluding sanitary, noncontact cooling and boiler blowdown wastewaters);

(B) Contributes process wastewater which makes up five percent or more of the NPDES or non-discharge permitted flow limit or organic capacity of the POTW treatment plant. In this context, organic capacity refers to BOD, TSS and ammonia;

(C) Is subject to categorical standards under 40 CFR ~~Part~~ 403.6 and 40 CFR Chapter I, Subpart N; ~~Parts 405-471;~~

(D) is designated as such by the control authority on the basis that the industrial user has a reasonable potential for adversely affecting the POTW's operation (including contributing to violations of the limitation and requirements of the NPDES or non-discharge permit or limiting the POTW"s sludge disposal options) or for violating any pretreatment standard or requirement (in accordance with 40 CFR 403.8(f)(6)); ~~requirement, or the POTW's effluent limitations and conditions in its NPDES or non-discharge permit, or to limit the POTW's sludge disposal options;~~

(E) Subject to approval under Rule .0907(b) of this Section, the control authority may determine that an industrial user meeting the criteria in Parts (A) or (B) of this Subparagraph has no reasonable potential for adversely affecting the POTW's operation or for violating any pretreatment standard or requirement, the POTW's effluent limitations

and conditions in its NPDES or non-discharge permit, or to limit the POTW's sludge disposal options, and thus is not a significant industrial user; or

(F) Subject to approval under Rule .0907(b) of this Section, the control authority may determine that an industrial user meeting the criteria in Part (C) of this Subparagraph meets the requirements of 40 CFR ~~Part~~ 403.3(v)(2) and thus is a non-significant categorical industrial user;

(~~34~~)(31) "Significant Noncompliance" or "SNC" is the status of noncompliance of a significant industrial user when one or more of the following criteria are met:

(A) Chronic violations of wastewater discharge limits, defined here as those in which 66 percent or more of all the measurements taken for the same pollutant parameter (not including flow) during a six-month period exceed (by any magnitude) a numeric pretreatment standard or requirement including instantaneous limits, as defined by 40 CFR ~~Part~~ 403.3(l);

(B) "Technical Review Criteria" (TRC) violations, defined here as those in which 33 percent or more of all the measurements taken for the same pollutant parameter during a six-month period equal or exceed the product of the numeric pretreatment standard or requirement including instantaneous limits, as defined by 40 CFR ~~Part~~ 403.3(l) multiplied by the applicable TRC; (TRC = 1.4 for BOD, TSS, fats, oil and grease, 1.2 for all other pollutants (except flow and pH));

(C) Any other violation of a pretreatment standard or requirement as defined by 40 CFR ~~Part~~ 403.3(l)(daily maximum, long-term average, instantaneous limit, or narrative standard) that the control authority (or POTW, if different from the control authority), determines has caused, alone or in combination with other discharges, interference or pass through (including endangering the health of POTW personnel or the general public);

(D) Any discharge of a pollutant or wastewater that has caused imminent endangerment to human health, welfare or to the environment or has resulted in either the control authority's or the POTW's, if different from the control authority, exercise of its emergency authority under 40 CFR ~~Part~~ 403.8(f)(1)(vi)(B) to halt or prevent such a discharge;

(E) Failure to meet, within 90 days after the schedule date, a compliance schedule milestone contained in a pretreatment permit or enforcement order for starting construction, completing construction, or attaining final compliance;

(F) Failure to provide, within 45 days after the due date, required reports such as baseline monitoring reports, 90-day compliance reports, self-monitoring reports, and reports on compliance with compliance schedules;

(G) Failure to accurately report noncompliance; or

(H) Any other violation or group of violations that the control authority or POTW determines will adversely affect the operation or implementation of the local pretreatment program;

Additionally, effective January 1, 2012, any industrial user which meets the criteria in Parts (C), (D), or (H) of this Subparagraph shall also be in SNC;

(~~35)~~(32) "Staff" means the staff of the Division of Water ~~Quality~~ Resources, Department of ~~Environment and Natural Resources~~ Environmental Quality;

(~~36)~~(33) "Upset" means the same as set out in Rule .0914 of this Section and 40 CFR ~~Part~~ 403.16;

~~(37) "Waste reduction" means source reduction and recycling;~~

(~~38)~~(34) "Wastewater" means the liquid and water-carried industrial or domestic wastes from dwellings, commercial buildings, industrial facilities, mobile sources, treatment facilities and institutions, together with any groundwater, surface water, and storm water that may be present, whether treated or untreated, which are contributed into or permitted to enter the POTW; and

(~~39)~~(35) "Waters of the State" as defined in G.S. 143-212. ~~are all streams, rivers, brooks, swamps, sounds, tidal estuaries, bays, creeks, lakes, waterways, reservoirs, and all other bodies or accumulations of water, surface or underground, natural or artificial, public or private, which are contained in, flow through, or border upon the State or any portion thereof.~~

History Note: *Authority G.S. 130A-334(13); 143-215.3(a)(1); 143-215.3(a)(14); 150B-21.6;*
Eff. March 28, 1980;
Amended Eff. April 1, 2011; November 1, 1994; October 1, 1987; December 1, 1984.
Readopted Eff. <date>.

15A NCAC 02H .0904 REQUIRED PRETREATMENT PROGRAMS

(a) The regulations regarding pretreatment program development by the control authority promulgated by the Environmental Protection Agency and codified as 40 CFR ~~Parts~~ 403.8(a) through 403.8(e) are hereby incorporated by reference, including any subsequent amendments and editions. ~~This material is available for inspection at the locations listed in Rule .0901 of this Section and at http://cfpub1.epa.gov/npdes/home.cfm?program_id=3. http://water.epa.gov/polwaste/npdes/pretreatment/index.cfm.~~ A copy of the reference material can be found at http://www.ecfr.gov/cgi-bin/text-idx?SID=002b8fe78be0d299d7289c36ef66652d&mc=true&tpl=/ecfrbrowse/Title40/40CIsubchapN.tpl, free of charge

(b) The Division may allow a control authority having a combined permitted flow less than or equal to two million gallons per day and less than four significant industrial users to develop and implement a modified pretreatment program that encompasses a portion of the requirements in Rules .0905 and .0906 of this Section, as designated by the Division Director. In making the decision to allow modified pretreatment program development and implementation, the Division Director may consider factors including percent industrial flow, industrial waste characteristics, compliance status of the facility, and the potential for industrial growth.

History Note: *Authority G.S. 143-215.1(a); 143-215.1(b); 143-215.3(a)(14); 150B-21.6;*
Eff. March 28, 1980;
Amended Eff. April 1, 2011; November 1, 1994; October 1, 1987; December 1, 1984.
Readopted Eff. <date>.

15A NCAC 02H .0905 POTW PRETREATMENT PROGRAM IMPLEMENTATION REQUIREMENTS

Except where specified differently in this Section, the POTW pretreatment program requirements promulgated by the Environmental Protection Agency and codified as 40 CFR ~~Part~~ 403.8(f) and (g) are hereby incorporated by reference, including any subsequent amendments and editions. A copy of the reference material can be found at ~~http://water.epa.gov/polwaste/npdes/pretreatment/index.cfm~~ http://www.ecfr.gov/cgi-bin/text-idx?SID=002b8fe78be0d299d7289c36ef66652d&mc=true&tpl=/ecfrbrowse/Title40/40CIsubchapN.tpl, free of charge

This material is available for inspection at the locations listed in Rule .0901 of this Section and at ~~http://cfpub1.epa.gov/npdes/home.cfm?program_id=3.~~ http://water.epa.gov/polwaste/npdes/pretreatment/index.cfm.

In general, the implementation of a pretreatment program involves the updating of the sewer use ordinance (SUO); implementation of industrial waste survey (IWS) activities; updating of the headworks analysis (HWA), or technical basis for local limits; implementation of the long or short term monitoring plan (LTMP/STMP); implementation of compliance activities, including sampling and inspection of significant industrial users; maintenance of control authority organization description; maintenance of staffing and funding information; implementation of the enforcement response plan (ERP), and reporting to the Division on pretreatment program activities.

History Note: *Authority G.S. 143-215.1(a); 143-215.1(b); 143-215.3(a)(1); 143-215.3(a)(14); 150B-21.6; 153A-274; 153A-275; 160A-311; 160A-312;*
Eff. March 28, 1980;
Amended Eff. April 1, 2011; November 1, 1994; October 1, 1987; December 1, 1984.
Readopted Eff. <date>.

15A NCAC 02H .0906 SUBMISSION FOR PRETREATMENT PROGRAM APPROVAL

(a) Except where in conflict with any part of this Section, the regulations regarding the contents of pretreatment programs submitted for approval and the contents of a request to revise national categorical pretreatment standards, promulgated by the Environmental Protection Agency and codified as 40 CFR ~~Part~~ 403.9 are hereby incorporated by reference, including any subsequent amendments and editions. A copy of the reference material can be found at http://www.ecfr.gov/cgi-bin/text-idx?SID=002b8fe78be0d299d7289c36ef66652d&mc=true&tpl=/ecfrbrowse/Title40/40CIsubchapN.tpl, free of charge

~~This material is available for inspection at the locations listed in Rule .0901 of this Section and at http://cfpub1.epa.gov/npdes/home.cfm?program_id=3. http://water.epa.gov/polwaste/npdes/pretreatment/index.cfm.~~

(b) In addition to the contents of a control authority pretreatment program submission described in Paragraph (a) of this Rule, the program submission shall contain:

(1) a sewer use ordinance (SUO) providing the legal authority for implementing the pretreatment program, along with an attorney's statement, as required by 40 CFR ~~Part~~ 403.8 (f)(1) and Rule .0905 of this Section. Where the control authority accepts wastewater from one or more satellite POTWs and is the control authority within the satellite POTW's service area, the attorney's statement for that control authority shall document the interlocal agreements (ILAs) authorized by G.S. 153A-278 and 160A-460 et seq and SUO sections that establish the control authority's authority for regulation within all satellite POTW services areas which are tributary to the control authority's POTW. Where a satellite POTW serves as the control authority within its service area, the attorney's statement for that control authority shall document the ILAs and SUO sections that establish the satellite POTW's authority for regulation within its service area and the requirements for the satellite POTW to implement its pretreatment program in accordance with the downstream POTW's SUO and the ILA. In either case, where the POTW organizations have other written procedures to outline responsibilities not covered by the ILA or SUO, the applicable attorney's statements shall also include documentation of these procedures and the source of their enforceability;

(2) an industrial waste survey (IWS), or industrial user survey, as defined in Subparagraph (13) of Rule .0903(b) ~~.0905(b)~~ of this Section;

(3) a monitoring plan to provide POTW site-specific data for the HWA and subsequent technical evaluations of local limits to satisfy the requirements of 40 CFR ~~Part~~ 122.21(j). Modified pretreatment programs developed under Rule .0904(b) of this Section shall be allowed to implement a short term monitoring plan (STMP);

(4) a headworks analysis (HWA) and supporting documentation, including POTW site-specific and relevant literature data, upon which to base industrial user-specific effluent limits and other local limits for prohibited pollutants (as defined in 40 CFR ~~Parts~~ 403.5(a) and (b) and Rule .0909 of this Section);

(5) a compliance monitoring program, including inspection, sampling, equipment, and other compliance procedures, which will implement the requirements of 40 CFR ~~Parts~~ 403.8(f) and 403.12, and Rules .0905 and .0908 of this Section;

(6) draft industrial user pretreatment permits for significant industrial users as required by 40 CFR ~~Parts~~ 403.8(f)(1)(iii) and 403.9(b)(1)(ii) and Rule .0916 of this Section, and supporting documentation outlined in Rules .0916 and.0917 of this Section;

(7) procedures for approving the construction of pretreatment facilities by industrial users and for permitting industrial users for construction, operation and discharge as required by G.S. 143-215.1; procedures for approving construction shall include issuance of authorization to construct, as appropriate;

(8) an enforcement response plan (ERP) as required by 40 CFR ~~Parts~~ 403.8(f)(5) and 403.9(b)(1)(ii) for identifying violations of and enforcing specific local limits and other pretreatment requirements as required by and specified in 40 CFR ~~Parts~~ 403.5 and 403.6 and Rules .0909 and .0910 of this Section;

(9) a brief description (including organization charts) of the control authority which will administer the pretreatment program. Where more than one POTW organization is involved in the POTW wastewater collections or treatment system, the description shall address all the agencies, including identification of which party will receive Industrial User applications for new and changed discharges and how the parties will communicate on significant industrial user determinations;

(10) a description of funding levels and full- and part-time manpower available to implement the program;

(11) a description of data management procedures for compiling and managing compliance, LTMP/STMP, and any other pretreatment-related monitoring data, including documentation of approval of electronic reporting procedures as required under 40 CFR Part 3 if applicable; and

(12) a request for pretreatment program approval as required by 40 CFR ~~Part~~ 403.9 and this Section.

History Note: *Authority G.S. 143-215.1(a); 143-215.1(b); 143-215.3(a)(1); 143-215.3(a)(14); 150B-21.6;*
Eff. March 28, 1980;
Amended Eff. April 1, 2011; November 1, 1994; October 1, 1987; December 1, 1984.
Readopted Eff. <date>.

15A NCAC 02H .0907 PROCEDURES FOR PRETREATMENT PROGRAM APPROVAL, REVISION AND WITHDRAWAL

(a) Procedures for approval of a control authority pretreatment program and for removal credit authorization are as follows:

(1) Except where in conflict with any part of this Section, the approval procedures for control authority pretreatment programs and applications for removal credit authorization promulgated by the Environmental Protection Agency and codified as 40 CFR ~~Part~~ 403.11 are hereby incorporated by reference, including any subsequent amendments and editions. ~~This material is available for inspection at the locations listed in Rule .0901 of this Section and at http://cfpub1.epa.gov/npdes/home.cfm?program_id=3; http://water.epa.gov/polwaste/npdes/pretreatment/index.cfm; and~~ A copy of the reference material can be found at http://www.ecfr.gov/cgi-bin/text-idx?SID=002b8fe78be0d299d7289c36ef66652d&mc=true&tpl=/ecfrbrowse/Title40/40CIsubchapN.tpl, free of charge; and

(2) Upon program approval, a control authority is delegated, subject to the provisions of Rules .0916 and .0917 of this Section, the authority to issue the construction, operation and discharge permits required by G.S. 143-215.1(a) for those significant industrial users discharging or proposing to discharge to the POTW;

(b) Either the Division or the control authority may initiate program revisions. The control authority shall submit a request to the Division for approval of modifications to its approved pretreatment program, including, but not limited to its legal authority, or sewer use ordinance (SUO), headworks analysis (HWA), long or short term monitoring plan (LTMP/STMP), enforcement response plan (ERP), summary of industrial waste survey (IWS) activities, and revisions to the list of significant industrial users (SIUs). Revisions to an approved pretreatment program shall be accomplished as follows:

(1) the control authority shall submit a modified program description, an attorney's statement if the legal authority of the program is being modified, and other documents as the Division Director determines to be necessary under the circumstances. The attorney's statement may consist merely of ~~a~~ verification that the North Carolina model pretreatment sewer use ordinance is proposed for adoption by the control authority, if that is the case;

(2) whenever the Division Director determines that the proposed program modifications are substantial as defined in 40 CFR ~~Part~~ 403.18(b), the Division shall issue public notice and provide an opportunity for public comment as described in Rules .0109 and .0110 of this Subchapter. Public notices issued by the control authority are deemed sufficient notice;

(3) the Division Director or his/her delegate shall approve or disapprove program revisions based on the requirements of this Section, G.S. 143-215.1, G.S. 143-215.3 and the Water Quality Memorandum of Agreement between the Division and the EPA; and

(4) Except as specified below, a pretreatment program revision shall become effective upon written approval of the Division Director:

(A) Pretreatment permits: See Rule ~~.0917(d);~~ .0917(d) of this Section; and

(B) The Division shall have 30 days from the receipt of a request for deletion of SIUs from the SIU list in which to make general comments upon, objections to or recommendations with respect to the request. Unless such an objection or request for more information is made, the request shall be final and binding;

(c) The Division Director may withdraw pretreatment program approval when a control authority no longer complies with requirements of this Section and the control authority fails to take corrective action. The following procedures apply when the Division Director determines that program withdrawal may be needed:

(1) The Division Director shall give the control authority 180 days notice of the program withdrawal;

(2) the control authority shall submit within 60 days of such notice a plan for the orderly transfer of all relevant program information not in the possession of the Division (such as permit files, compliance files, reports and permit applications) which is necessary for the Division to administer the pretreatment program;

(3) within 60 days of the receipt of the control authority transfer plan, the Division Director shall evaluate the control authority plan and shall identify any additional information needed by the Division for program administration or identify any other deficiencies in the plan; and

(4) at least 30 days before the program withdrawal, the Division Director shall publish public notice of the program transfer and shall mail notice to all pretreatment permit holders of the control authority;

(d) Applications for removal credit authorization shall be made in accordance with procedures established by this Rule. Approval shall become effective upon written approval of the Division Director.

(e) A pretreatment program is considered inactive when industrial users defined as significant industrial users no longer discharge to the POTW, based on modifications of the control authority pretreatment program approved by the Division. Inactive approved pretreatment programs shall notify the Division when a significant industrial user proposes to discharge to the POTW. When required by the Division to return to active status, a control authority may be required to update any or all of the requirements listed in Rule .0906 of this Section that no longer meet the standards of these Rules. The control authority shall obtain Division approval of the reactivation under this Rule prior to commencement of discharge of the significant industrial user.

(f) The Division may require that representatives of modified pretreatment programs developed under Rule .0904(b) of this Section meet with Division personnel periodically to discuss implementation of and revisions to their modified pretreatment program.

History Note: *Authority G.S. 143-215(a); 143-215.1(a); 143-215.1(c); 143-215.3(a)(3) ; 143-215.3(a)(14); 143-215.3(e); 150B-21.6;*
Eff. March 28, 1980;
Amended Eff. April 1, 2011; November 1, 1994; October 1, 1987; December 1, 1984.

Readopted Eff. <date>.

15A NCAC 02H .0908 REPORTING/RECORD KEEPING REQUIREMENTS FOR POTWS/INDUSTRIAL USERS

(a) Except where in conflict with any part of this Section, the regulations regarding the reporting requirements for control authorities and industrial users promulgated by the Environmental Protection Agency and codified as 40 CFR ~~Parts~~ 403.8(g) and 403.12 are hereby incorporated by reference, including any subsequent amendments and editions. ~~This material is available for inspection at the locations listed in Rule .0901 of this Section and at http://cfpub1.epa.gov/npdes/home.cfm?program_id=3.~~ A copy of the reference material can be found at http://www.ecfr.gov/cgi-bin/text-idx?SID=002b8fe78be0d299d7289c36ef66652d&mc=true&tpl=/ecfrbrowse/Title40/40CIsubchapN.tpl, free of charge.

(b) Control authorities with active approved pretreatment programs shall submit once per year a pretreatment report describing its pretreatment activities over the previous 12 months. Two copies of each pretreatment report shall be submitted to the Division by March 1 of each year for activities conducted for two six-month periods, January 1 through June 30 and July 1 through December 31 of the previous year. This annual report shall contain the following information in accordance with forms provided by the Division:

(1) a narrative summary of actions taken by the control authority to ensure compliance with pretreatment requirements;

(2) a pretreatment program summary on forms or in a format provided by the Division;

(3) a list of industrial users in significant noncompliance with pretreatment requirements, the nature of the violations, and actions taken or proposed to correct the violations; on forms or in a format provided by the Division;

(4) an allocation table as described in Rule .0916(c)(4) of this Section; and

(5) other information which in the opinion of the Division Director is needed to determine compliance with the implementation of the pretreatment program, ~~including, but not limited to,~~ examples include significant industrial user compliance schedules, public notice of industrial users in significant noncompliance, a summary of significant industrial user effluent monitoring data as described in Paragraphs (a) and (e) of this Rule, a summary of information related to significant non-compliance determination for industrial users that are not considered significant industrial users, and Long or Short Term Monitoring Plan data on forms or in a format provided by the Division;

(c) In lieu of submitting annual reports as described in Paragraph (b) of this Rule, the Division Director may allow modified pretreatment programs developed under Rule .0904(b) of this Section to submit only a partial annual report, or to meet with Division personnel as required to discuss enforcement of pretreatment requirements and other pretreatment implementation issues.

(d) Inactive pretreatment programs are not required to submit the report described in Paragraphs (b) and (c) of this Rule. Inactive approved pretreatment programs shall notify the Division when a significant industrial user proposes to discharge to the POTW and shall comply with Rule .0907 of this Section.

(e) Samples shall be collected and analyzed by the control authority independent of the industrial users for each significant industrial user as follows:

(1) Except as specified below, a minimum of once each year for all permit-limited parameters including flow:

(A) Independent monitoring of the industrial user by the control authority is not required for pollutants which are limited by a categorical standard for which specific certification or other alternative procedures apply where the industrial user submits the required documentation for that certification or procedure, even if the industrial user chooses to monitor in addition to using certification or other alternative procedures;

(B) The minimum frequencies in this Subparagraph shall be reduced by half for all permit-limited parameters at a significant industrial user determined by the control authority, subject to approval under Rule .0907 of this Section, to fit the criteria under 40 CFR ~~Part~~ 403.12(e)(3)(Middle Tier CIU), [after 403.8(f)(2)(v)(C)]; and

(C) For categorical parameters with monitoring waived under 40 CFR ~~Part~~ 403.12(e)(2), a minimum of once during the term of the applicable significant industrial user pretreatment permit (40 CFR ~~Part~~ 403.8(f)(2)(v)(A)); and

(2) If the control authority elects to sample and analyze in lieu of the industrial user, the control authority shall collect and analyze for the required parameters and, if applicable, in accordance with categorical standards;

(f) Records Retention:

(1) Control authorities and industrial users shall retain for three years records of monitoring activities and results along with supporting information including annual pretreatment reports, general records, water quality records, and records of industrial user impact on the POTW;

(2) Other documents required by any portion of this Section (including supporting information) for other pretreatment program elements, such as pretreatment permits (IUPs), HWAs, SUOs, ERPs, etc., shall be retained for three years after the document has expired or been updated or replaced;

(3) A summary of all significant industrial user effluent monitoring data reported to the control authority by the industrial user or obtained by the control authority shall be maintained on forms or in a format provided by the Division for review by the Division; and

(4) Also see Rule .0805 of this Subchapter for laboratory records retention requirements.

(g) Forms or format deviating from Division provided forms or format for all documents and supporting information required by any portion of this Section shall contain all required information in a logical order or, if appropriate, in a computer-compatible format.

(h) In the case where the receiving POTW treatment plant is not owned by the same local governmental organization as the control authority, all information required to be reported to the industrial user's control authority by this Section shall also be submitted to the POTW treatment plant governmental organization.

(i) In the case where the control authority accepts electronic reporting, the reporting shall comply with 40 CFR Part 3, and the control authority shall maintain documentation of approval as required under 40 CFR Part 3.

History Note: *Authority G.S. 143-215.1(a); 143-215.1(b); 143-215.2; 143-215.3(a)(2); 143-215.3(a)(14); 143-215.6(a)(1); 143-215.63 through 143-215.69; 150B-21.6;*
Eff. March 28, 1980;
Amended Eff. April 1, 2011; November 1, 1994; October 1, 1987; December 1, 1984.
Readopted Eff. <date>.

15A NCAC 02H .0909 NATIONAL PRETREATMENT STANDARDS: PROHIBITED DISCHARGES

The regulations regarding national prohibited pretreatment standards and local limits development and enforcement promulgated by the Environmental Protection Agency and codified as 40 CFR ~~Part~~ 403.5 are hereby incorporated by reference, including any subsequent amendments and editions. ~~This material is available for inspection at the locations listed in Rule .0901 of this Section and at http://cfpub1.epa.gov/npdes/home.cfm?program_id=3. http://water.epa.gov/polwaste/npdes/pretreatment/index.cfm.~~ A copy of the reference material can be found at http://www.ecfr.gov/cgi-bin/text-idx?SID=002b8fe78be0d299d7289c36ef66652d&mc=true&tpl=/ecfrbrowse/Title40/40CIsubchapN.tpl, free of charge.

History Note: *Authority G.S. 143-215.1(a)(7); 143-215.1(b); 143-215.3(a)(1); 143-215.3(a)(14); 150B-21.6;*
Eff. March 28, 1980;
Amended Eff. March 1, 2011; November 1, 1994; October 1, 1987; December 1, 1984.
Readopted Eff. <date>.

15A NCAC 02H .0910 NATIONAL PRETREATMENT STANDARDS: CATEGORICAL STANDARDS

The regulations regarding national categorical pretreatment standards promulgated by the Environmental Protection Agency and codified ~~as~~ pursuant to 40 CFR ~~Part~~ 403.6 are hereby incorporated by reference, including any subsequent amendments and editions. ~~This material is available for inspection at the locations listed in Rule .0901 of this Section and at http://cfpub1.epa.gov/npdes/home.cfm?program_id=3. http://water.epa.gov/polwaste/npdes/pretreatment/index.cfm.~~ A copy of the reference material can be found at http://www.ecfr.gov/cgi-bin/text-idx?SID=002b8fe78be0d299d7289c36ef66652d&mc=true&tpl=/ecfrbrowse/Title40/40CIsubchapN.tpl, free of charge.

History Note: *Authority G.S. 143-215.1(a)(7); 143-215.1(b); 143-215.3(a)(14); 150B-21.6;*
Eff. March 28, 1980;
Amended Eff. March 1, 2011; November 1, 1994; October 1, 1987; December 1, 1984.
Readopted Eff. <date>.

15A NCAC 02H .0912 ADJUSTMENTS FOR FUNDAMENTALLY DIFFERENT FACTORS

The regulations regarding variances from national categorical pretreatment standards for fundamentally different factors promulgated by the Environmental Protection Agency and codified as 40 CFR ~~Part~~ 403.13 are hereby incorporated by reference, including any subsequent amendments and editions.~~ This material is available for inspection at the locations listed in Rule .0901 of this Section and at http://cfpub1.epa.gov/npdes/home.cfm?program_id=3. http://water.epa.gov/polwaste/npdes/pretreatment/index.cfm.~~ A copy of the reference material can be found at http://www.ecfr.gov/cgi-bin/text-idx?SID=002b8fe78be0d299d7289c36ef66652d&mc=true&tpl=/ecfrbrowse/Title40/40CIsubchapN.tpl, free of charge.

History Note: *Authority G.S. 143-215(a); 143-215.1(a); 143-215.1(b); 143-215.3(a)(14); 143-215.3(e); 150B-21.6;*
Eff. March 28, 1980;
Amended Eff. March 1, 2011; November 1, 1994; October 1, 1987; December 1, 1984.
Readopted Eff. <date>.

15A NCAC 02H .0913 PUBLIC ACCESS TO INFORMATION

(a) Information and data provided by an industrial user to the POTW Director pursuant to this Section, identifying the nature and frequency of a discharge, shall be available to the public without restriction. All other information which may be so submitted by an industrial user to the POTW Director in connection with any required reports shall also be available to the public unless the industrial user or other interested person specifically identifies the information as confidential upon submission and is able to demonstrate to the satisfaction of the POTW Director that the disclosure of such information or a particular part thereof to the general public would divulge methods or processes entitled to protection as trade secrets.

(b) Information and data provided by an industrial user to the Division Director shall be subject to the processes set forth in G.S. 143-215.3C.

(c) Information provided by an industrial user to a control authority that is determined to be entitled to confidential treatment shall be made available upon written request to the Division or any state agency for uses related to the pretreatment program, the National Pollutant Discharge Elimination System (NPDES) permit, collection system permit, stormwater permit, or non-discharge permit, and for uses related to judicial review or enforcement proceedings involving the person furnishing the report.

(d) Information and data received by the Division or other state agency under Paragraph (c) of this Rule shall be subject to the processes set forth in G.S. 143-215.3C.

History Note: *Authority G.S. 132-1.2; 132-6; 132-9; 143-215.1; 143-215.3; 143-215.3C;*
Eff. March 28, 1980;
Amended Eff. April 1, 2011; October 1, 1987.
Readopted Eff. <date>.

15A NCAC 02H .0914 UPSET PROVISION

The upset provision promulgated by the Environmental Protection Agency and codified as 40 CFR ~~Part~~ 403.16 is hereby incorporated by reference, including any subsequent amendments and editions.~~ This material is available for inspection at the locations listed in Rule .0901 of this Section and at http://cfpub1.epa.gov/npdes/home.cfm?program_id=3. http://water.epa.gov/polwaste/npdes/pretreatment/index.cfm.~~ A copy of the reference material can be found at http://www.ecfr.gov/cgi-bin/text-idx?SID=002b8fe78be0d299d7289c36ef66652d&mc=true&tpl=/ecfrbrowse/Title40/40CIsubchapN.tpl, free of charge.

History Note: *Authority G.S. 143-215.3(a)(1); 143-215.3(a)(14); 150B-21.6;*
Eff. December 1, 1984;
Amended Eff. March 1, 2011; November 1, 1994; October 1, 1987.
Readopted Eff. <date>.

15A NCAC 02H .0915 NET/GROSS CALCULATION

The net/gross calculation provisions promulgated by the Environmental Protection Agency and codified as 40 CFR ~~Part~~ 403.15 are hereby incorporated by reference, including any subsequent amendments and editions. ~~This material is available for inspection at the locations listed in Rule .0901 of this Section and at http://cfpub1.epa.gov/npdes/home.cfm?program_id=3. http://water.epa.gov/polwaste/npdes/pretreatment/index.cfm.~~ A copy of the reference material can be found at http://www.ecfr.gov/cgi-bin/text-idx?SID=002b8fe78be0d299d7289c36ef66652d&mc=true&tpl=/ecfrbrowse/Title40/40CIsubchapN.tpl, free of charge.

History Note: *Authority G.S. 143-215.3(a)(1); 143-215.3(a)(14); 150B-21.6;*
Eff. December 1, 1984;
Amended Eff. March 1, 2011; November 1, 1994; October 1, 1987.
Readopted Eff. <date>.

15A NCAC 02H .0916 PRETREATMENT PERMITS

(a) All significant industrial users who discharge waste into a POTW or who construct or operate a pretreatment facility shall obtain a permit from the control authority.

(b) Where the Division is the control authority, permits shall be issued in accordance with Section .0100 of this Subchapter.

(c) Where the control authority is a POTW organization, significant industrial user permits shall be issued as follows:

(1) Application: any significant industrial user required to obtain a permit in Paragraph (a) of this Rule shall be required to complete, sign and submit to the control authority a permit application. Application fees and procedures may be prescribed by the control authority. All pretreatment permit applications shall include as a minimum:

(A) name of industrial user;

(B) address of industrial user;

(C) standard industrial classification (SIC) code(s) or expected classification and industrial user category;

(D) wastewater flow;

(E) types and concentrations (or mass) of pollutants contained in the discharge;

(F) major products manufactured or services supplied;

(G) description of existing on-site pretreatment facilities and practices;

(H) locations of discharge points;

(I) raw materials used or stored at the site;

(J) flow diagram or sewer map for the industrial user;

(K) number of employees;

(L) operation and production schedules; and

~~(M) description of current and projected waste reduction activities in accordance with G.S. 143-215.1(g);~~

(M) a written description of current and projected waste reduction activities in accordance with G.S. 143-215.1 (g). The written description shall not be considered part of the permit application and shall not serve as a basis for denial of a permit.

(2) Renewals: Applications for pretreatment permit renewals shall be accomplished by filing an application form as listed in Subparagraph (c)(1) of this Rule prior to permit expiration. The number of days prior to expiration by which the application shall be filed shall be established by the control authority;

(3) Review and Evaluation:

(A) The POTW Director is authorized to accept applications for the Commission and shall refer all applications to the control authority staff for review and evaluation;

(B) The POTW Director shall acknowledge receipt of a complete application, or if not complete, shall return the application to the applicant with a statement of what additional information is required;

(C) The control authority staff shall include documentation of the most recent ~~on-site~~ on-site inspection of the industrial user and any existing wastewater pretreatment system as part of the permit record for new and renewed permits; and

(D) The control authority staff shall conduct an evaluation and make a tentative determination to issue or deny the permit. If the control authority staff's tentative determination is to issue the permit, it shall make the following additional determinations in writing and transmit them to the industrial user:

(i) proposed effluent limitations for those pollutants proposed to be limited;

(ii) a proposed schedule of compliance, including interim dates and requirements, for meeting the proposed effluent limitations; and

(iii) a description of any other proposed special conditions which will have significant impact upon the discharge described in the application;

The control authority staff shall organize the determinations made into a pretreatment permit;

(4) Permit supporting documentation. The control authority staff shall prepare the following documents for all significant industrial user permits:

(A) An allocation table (AT) listing permit information for all significant industrial users, including but not limited to permit limits, permit effective and expiration dates, and a comparison of total permitted flows and loads with Division approved maximum allowable loadings of the POTW, including flow, on forms or in a format provided by the Division. The AT shall be updated as permits are issued or renewed, and as permits are modified where the permitted limits or other AT information is revised;

(B) The basis, or rationale, for the pretreatment limitations, including documentation of categorical determination, including documentation of any calculations used in applying categorical standards; and

(C) Documentation of the rationale of any parameters for which monitoring has been waived under 40 CFR ~~Part~~ 403.12(e)(2);

(5) Final Action on Permit Applications:

(A) The POTW Director shall take final action on all applications by either issuing a pretreatment permit or by denying the discharge not later than 90 days following the receipt of a complete application. If, following the 30 day period required by Rules .0917(d) and .0922 of this Section, no written demand for hearing, objection, or request for more information under Rule .0917(f)(2) of this Section has been made, the permit shall become final and binding;

(B) The POTW Director is authorized to:

(i) issue a permit containing such conditions as are necessary to effectuate the purposes of G.S. 143-215.1;

(ii) issue a permit containing time schedules for achieving compliance with applicable pretreatment standards and limitations and other legally applicable requirements;

(iii) modify or revoke any permit pursuant to Subparagraph (c)(6) of this Rule;

(iv) deny a permit application;

(v) issue permits to industrial users not identified as significant industrial users using procedures prescribed by the control ~~authority; and~~ authority.

~~(vi) require industrial users to develop a waste reduction plan and implement waste reduction techniques and technologies;~~

(C) Permits shall be issued or renewed for a period of time deemed reasonable by the POTW Director but in no case shall the period exceed five years; and

(D) The POTW Director shall notify an applicant by certified or registered mail of the denial of his/her permit application. Notifications of denial shall specify the reasons for the denial and the proposed changes which in the opinion of the POTW Director will be required to obtain the permit;

(6) Modification and Revocation of Permits:

(A) Any permit issued pursuant to this Rule is subject to revocation or modification in whole or part as outlined in the control authority's sewer use ordinance; and

(B) Modifications of permits may be initiated by the control authority or the significant industrial user and shall be subject to the same procedural requirements as the issuance of permits. ~~except as follows:~~ Permit modification requests made by the significant industrial user must be made in writing and can be by letter or by application form as determined by the control authority.

~~(i) permit modification requests made by the significant industrial user must be made in writing and can be in the form of a letter or by application form as determined by the control authority; and changes in the ownership of the discharge when no other change in the permit is indicated;~~

~~(ii) a single modification of any compliance schedule not in excess of four months;~~

~~(iii) modification of compliance schedules (construction schedules) in permits for new sources where the new source will not begin to discharge until control facilities are operational; or~~

~~(iv) modifications of the monitoring requirements in the permit; and~~

(7) Permit effective dates and modification effective dates shall not be retroactive.

History Note: *Authority G.S. 143-215(a); 143-215.1(a); 143-215.1(c); 143-215.1(g); 143-215.3(a)(3); 143-215.3(a)(14); 143-215.3(e);*
Eff. October 1, 1987;
Amended Eff. April 1, 2011; November 1, 1994.
Readopted Eff. <date>.

15A NCAC 02H .0917 PRETREATMENT PERMIT SUBMISSION AND REVIEW

(a) Thirty days prior to the effective date ~~Upon issuance,~~ each control authority shall transmit to the Division copies of all ~~issued~~ significant industrial user pretreatment permits.

(b) Permits and permit renewal submissions to the Division for significant industrial users shall include the supporting information listed below. Permit modification submissions for significant industrial users shall include updated versions of this supporting information listed below as applicable to that modification:

(1) the rationale for limits and allocation table required by Rule .0916(c)(4) of this Section;

(2) a copy of the completed application required in Rule .0916(c)(1) of this Section; and

(3) a copy of the record of the inspection required in Rule .0916(c)(3)(C) of this Section;

(c) The Division Director may waive some or all of the requirements in Paragraphs (a) and (b) of this Rule. In making the decision to waive these requirements, the Division Director may consider certain factors. ~~including but not limited to~~ Examples include training levels of control authority staff, quality of previous pretreatment permit submissions, percent maximum allowable headworks loading capacity remaining, percent industrial user flow, industrial user waste characteristics, and compliance status of the POTW and its respective environmental permits.

(d) The Division shall have 30 days from the receipt of pretreatment permits in which to make general comments upon, objections to or recommendations with respect to the permit. Unless such an objection or request for more information in accordance with Paragraph (g) of this Rule is made, the permit shall be final and binding.

(e) Within 30 days of the receipt of a pretreatment permit to which the Division Director has objected the Division staff shall set forth in writing and transmit to the control authority:

(1) A statement of the reasons for the objection, including the rules or regulations that support the objection; and

(2) The actions which shall be taken by the control authority to eliminate the objection including the effluent limitations and conditions which the permit would include if it were issued by the Division;

(f) The Division Director's objection to the issuance of a pretreatment permit shall be based upon one or more of the following grounds:

(1) the permit fails to apply or to ensure compliance with any applicable requirement of this Section;

(2) the procedures followed in connection with formulation of the pretreatment permit failed to comply with the procedures required by state statute or by the control authority's approved pretreatment program;

(3) a finding made by the control authority in connection with the pretreatment permit which misinterprets any categorical standard or pretreatment regulation or misapplies them to the facts; and

(4) the provisions of the pretreatment permit relating to the maintenance of records, monitoring or sampling by the control authority and the industrial user are, in the judgment of the Division Director, inadequate to assure compliance with permit conditions or applicable pretreatment standards;

(g) Prior to notifying the control authority of an objection, the Division Director:

(1) shall consider all data transmitted pursuant to Rules.0916 and .0917 of this Section;

(2) may, if more information is needed to determine whether the permit is adequate, request the control authority to make available to the Division staff the complete record of permit proceedings, or any portions of the record that the Division Director determines are necessary for review. Requests shall be made within 30 days of the Division's receipt of the permit under Rule .0916 of this Section, and shall suspend the 30 day review period in Paragraph (d) of this Rule. When the Division staff has obtained the requested records or portions of the record, the Division staff shall have an additional 30 days for review; and

(3) may, to the extent feasible within the period of time available, afford interested persons the opportunity to comment on the basis for the objection; and

(h) If within 60 days of the receipt of the Division Director's objection the control authority does not resubmit a permit revised to meet the Division Director's objection, the Division Director may issue the permit in accordance with Section .0100 of this Subchapter. Exclusive authority to issue the permit required by G.S. 143-215.1(a) passes to the Division when this time expires.

History Note: *Authority G.S. 143-215(a); 143-215.1(a); 143-215.1(c); 143-215.3(a)(3) ; 143-215.3(a)(14); 143-215.3(e);*
Eff. October 1, 1987;
Amended Eff. April 1, 2011; November 1, 1994.
Readopted Eff. <date>.

15A NCAC 02H .0918 LOCAL LAW

Nothing in the rules of this Section is intended to affect any pretreatment requirements, including any standards or prohibitions, established by local law as long as the local requirements are not less stringent than any set forth in National Pretreatment Standards, or any other requirements or prohibitions established under the Clean Water Act, the North Carolina General Statutes, or the rules of this Section.

History Note: *Authority G.S. 143-215.1(a), (b); 143-215.3(a)(1), (14); 153A-274; 153A-275; 160A-311; 160A-312;*
Eff. November 1, 1994.
Readopted Eff. <date>.

15A NCAC 02H .0919 BYPASS

The regulations regarding the bypass provisions promulgated by the Environmental Protection Agency and codified as 40 CFR ~~Part~~ 403.17 are hereby incorporated by reference. ~~including any subsequent amendments and editions. This material is available for inspection at the locations listed in Rule .0901 of this Section and at http://cfpub1.epa.gov/npdes/home.cfm?program_id=3. http://water.epa.gov/polwaste/npdes/pretreatment/index.cfm.~~ A copy of the reference material can be found at http://www.ecfr.gov/cgi-bin/text-idx?SID=002b8fe78be0d299d7289c36ef66652d&mc=true&tpl=/ecfrbrowse/Title40/40CIsubchapN.tpl, free of charge.

History Note: *Authority G.S. 143-215.1(a)(1); 143-215.3(a)(14); 150B-21.6;*
Eff. November 1, 1994;
Amended Eff. March 1, 2011.
Readopted Eff. <date>.

~~15A NCAC 02H .0920 PRETREATMENT FACILITY OPERATION AND MAINTENANCE~~

~~(a) Upon classification of pretreatment facilities permitted under this Section and upon development of specific certification and training programs for operators of classified facilities, the industrial user shall designate an operator in responsible charge and a back-up operator as required by the Water Pollution Control System Operators Certification Commission as established in Subchapter 08G of these Rules.~~

~~(b) In order to insure the proper operation and maintenance of facilities permitted under this Section and classified under the rules of the Water Pollution Control System Operators Certification Commission (Subchapter 08G of these Rules), the operator in responsible charge, or a back-up operator when appropriate, shall operate and visit the facility as required by the Water Pollution Control System Operators Certification Commission as established in Subchapter 08G of these Rules.~~

~~(c) Copies of rules referenced in this Rule may be obtained at the following locations:~~

~~(1) http://portal.ncdenr.org/web/wq/admin/tacu; and~~

~~(2) the North Carolina Department of Environment and Natural Resources, Division of Water Quality Offices of the Technical Assistance and Certification Unit (TACU)~~
~~Physical Address: 219 North East Street~~
~~Raleigh, N.C. 27601~~
~~Mailing Address: 1618 Mail Service Center~~
~~Raleigh, N.C. 27699-1618.~~

History Note: *Authority G.S. 143-215.3;*
Eff. November 1, 1994;
Amended Eff. April 1, 2011.
Repealed Eff. <date>.

15A NCAC 02H .0921 REVISION TO REFLECT POTW REMOVAL OF POLLUTANT

The regulations regarding removal credits promulgated by the Environmental Protection Agency and codified as 40 CFR ~~Part~~ 403.7 are hereby incorporated by reference, including any subsequent amendments and editions.~~ This material is available for inspection at the locations listed in Rule .0901 of this Section and at http://cfpub1.epa.gov/npdes/home.cfm?program_id=3. http://water.epa.gov/polwaste/npdes/pretreatment/index.cfm.~~ A copy of the reference material can be found at http://www.ecfr.gov/cgi-bin/text-idx?SID=002b8fe78be0d299d7289c36ef66652d&mc=true&tpl=/ecfrbrowse/Title40/40CIsubchapN.tpl, free of charge.

History Note: *Authority G.S. 143-215.1(a); 143-215.1(b); 143-215.3(a)(14); 150B-21.6;*
Eff. November 1, 1994;
Amended Eff. March 1, 2011.
Readopted Eff. <date>.

15A NCAC 02H .0922 HEARINGS

(a) The control authority sewer use ordinance (SUO) and attorney's statement required under Rule .0906(b)(1) shall provide for the effective enforcement and compliance with its pretreatment program in accordance with the provisions of G.S. 160A-175 for municipalities, G.S. 153A-123 for counties, G.S. 162A-9.1 for water and sewer authorities and G.S. 162A-81 for metropolitan sewerage districts. This shall include:

(1) providing industrial users assessed civil penalties by the control authority for violations of its pretreatment program with the opportunity to request review of the penalty in accordance with the provisions of G.S. 143-215.6A(k); and

(2) providing industrial users the opportunity to request review of other actions taken by the control authority to administer and enforce its pretreatment program. Such control authority actions may include denial or termination of a pretreatment permit or other permission to discharge, issuance of a permit or other permission to discharge subject to conditions the industrial users deems unacceptable, and the issuance of an administrative order subject to conditions the industrial users deems unacceptable. The opportunity to request review may include the right to request a review of a control authority action with the local government as established in that local government's SUO, or to request a review by the superior court having local jurisdiction.

(b) If the control authority elects to provide industrial users with the opportunity for local government reviews under Subparagraphs (a)(1) and (a)(2) of this Rule, the control authority may establish procedures and requirements for the review process. These procedures may include the number of days after receipt of an action by which the industrial user must request the review, the contents or form of the request, and which party or parties will conduct local government hearings.

History Note: *Authority G.S. 143-215(a); 143-215.1(a); 143-215.1(c); 143-215.1(g); 143-215.2(b); 143-215.3(a)(3); 143-215.3(a)(14); 143-214.3(e); 143-215.6A(j); 143-215.6A(k); 153A-123; 160A-175; 162A-9.1; 162A-81;*
Eff. April 1, 2011.
Readopted Eff. <date>.

15A NCAC 02H .1201 PURPOSE

The purpose of this Section is to implement the provisions of G.S. 143-215.2 and G.S. 143-215.110 pertaining to the issuance of surface water, ground water and air quality Special Orders by the Environmental Management Commission.

History Note: *Authority G.S. 143-215.2; 143-215.3(a)(1); 143-215.110;*
Eff. October 1, ~~1990.~~1990;
Readopted Eff. <date>.

15A NCAC 02H .1202 DEFINITIONS

The terms used herein shall be as defined in G.S. 143-212 and G.S. 143-213. Other terms used in this Section are defined as follows:

(1)~~(2)~~ "Consent Order" or "Special Order by Consent" means a type of Special Order where the Commission enters into an agreement with the person responsible for water or air pollution to achieve some stipulated actions designed to reduce, eliminate, or prevent air or water quality degradation.

~~(3)~~(2) "Director" means the Director of the Division of ~~Environmental Management.~~Water Resources.

~~(1)~~(3) "Special Order" means a directive of the Commission to any person whom it finds responsible for causing or contributing to any pollution of the air or waters of the State. The term includes all orders or instruments issued by the Commission pursuant to G.S. 143-215.2 or G.S. 143-215.110.

History Note: *Authority G.S. 143-212; 143-213; 143-215.2; 143-215.3(a)(1); 143-215.110;*
Eff. October 1, ~~1990.~~1990;
Readopted Eff. <date>.

15A NCAC 02H .1203 PUBLIC NOTICE

(a) Notice of proposed Consent Order:

(1) The Director is delegated the authority to prepare the notice of the proposed Consent Order and shall advertise it as specified in G.S. 143-215.2(a1)(1) at least 45 days prior to any final action by the Commission or the Director.

(2) The Notice shall include at least the following:

(A) name, address, and phone number of the agency issuing the public notice;

(B) name and address of the person to whom the order is directed;

(C) a brief summary of the proposed conditions of the agreement including a disclosure of the final compliance date and the major permit conditions which the permittee will be allowed to exceed;

(D) a brief description of the procedures to be followed by the Commission or Director in reaching a final determination on the proposed agreement. This shall include explanations of the comment period and how interested persons may influence or comment on the proposal along with procedures to request a public meeting. The description shall specify that requests for a public meeting and comments are to be received by the Division within 30 days following the newspaper publication of the public notice;

(E) a description of the information available for public review, where it can be found, and procedures for obtaining copies of pertinent documents.

(b) Notice of public meetings for proposed Consent Order:

(1) The Director shall consider all requests for a public meeting and if he determines that there is significant public interest, then he will cause such a meeting to be held.

(2) Public meetings shall be noticed by the Director at least 30 days prior to the meeting.

(3) The Notice shall be advertised in a local newspaper and provided to those persons specified in G.S. 143-215.2(a1)(2) for water quality special orders and G.S. 143-215.110(a1)(2) for air quality special orders.

(4) The Notice shall include the information specified in (a)(2)(A), (B), (C) and (E) of this Rule relative to the identification of the parties involved, the conditions of the proposal, how to obtain additional information and the procedures to be followed by the Commission in reaching a final determination. It should also provide full information regarding the time and location for the meeting along with procedures for the various methods of providing comment.

(c) Any person may request to receive copies of all notices required by this Rule, and the Director shall mail copies of notices to those who have submitted a request.

(d) The Director may combine the requirements in Paragraphs (a) and (b) of this Rule with a combination comment period and public meeting notice.

(e) Any Special Order by Consent may be amended by the Director to incorporate minor modifications, such as reallocations of allowable flows, modification of standard conditions to reflect updated versions, correct typographical

errors and interim date extensions, in a consent order without public notice provided that the said modifications may not extend final compliance date by more than four months.

(f) The requirements of this Rule for public notice and public meeting were developed to apply to Special Orders by Consent. The Commission may specify other conditions for Special Orders issued without consent.

History Note: *Authority G.S. 143-215.2; 143-215.3(a)(1); 143-215.3(a)(3); 143-215.3(a)(4); 143-215.110;*
Eff. November 1, 1990;
Amended Eff. August 3, ~~1992.~~1992;
Readopted Eff. <date>.

15A NCAC 02H .1204 FINAL ACTION ON SPECIAL ORDERS BY CONSENT

The Director is authorized to take final action for the Commission on Special Orders by Consent except in those cases where a public meeting is held as provided in 15A NCAC 2H .1203. The final action on the proposed order shall be taken no later than 60 days following publication of the notice or, if a public meeting is held, within 90 days following the meeting.

History Note: *Authority G.S. 143-215.2; 143-215.3(a)(1); 143-215.3(a)(4); 143-215.110;*
Eff. October 1, ~~1990.~~1990;
Readopted Eff. <date>.

15A NCAC 02H .1205 ACTION ON SPECIAL ORDERS ISSUED WITHOUT CONSENT

The Commission may issue a proposed Special Order without the consent of the person affected. The Commission shall notify the affected person of the procedure set out in G.S. 150B-23 to contest the proposed Special Order.

History Note: *Authority G.S. 143-215.2(b); 143-215.3(a)(1); 143-215.110(b);*
Eff. October 1, 1990;
Amended Eff. August 3, ~~1992.~~1992;
Readopted Eff. <date>.

5A NCAC 02H .1206 WATER QUALITY SPECIAL ORDERS BY CONSENT

(a) Requests for Water Quality Special Orders by Consent:

(1) Requests by permittees must be made in triplicate on forms supplied by the Division of ~~Environmental Management~~ Water Resources along with a nonrefundable four hundred dollars ($400.00) fee and all other required information.

(2) Requests found to be incomplete will be returned to the permittee with an explanation of deficiencies.

(3) Requests must be signed as follows:

(A) in the case of corporations, by a principal executive officer of at least the level of vice-president, or his duly authorized representative, if such representative is responsible for the overall operation of the facility for which the Order is being requested;

(B) in the case of a partnership, by a general partner and in the case of a limited partnership, by a general partner;

(C) in the case of a sole proprietorship, by the proprietor;

(D) in the case of a municipal, state, or other public entity by either a principal executive officer, ranking elected official or other duly authorized employee.

(b) Evaluation of the requests:

(1) Requests will not be evaluated unless it is demonstrated by the permittee to the satisfaction of the Director that noncompliance is not due to failure by the permittee to properly operate, manage and maintain the wastewater treatment system and that the existing wastewater treatment system is being operated in such a way as to attain the highest degree of treatment possible under the existing conditions. The demonstration must also evaluate all reasonably available low-capital-cost interim improvements, even though they may not be directly related to the final treatment option. ~~This demonstration must~~ If the applicant does not make this demonstration to the satisfaction of the Director, the Director may require that the demonstration be made ~~in the form of a report prepared~~ by an independent consultant (a professional with expertise in wastewater treatment).

(2) Requests will not be evaluated unless the permittee can demonstrate to the satisfaction of the Director that:

(A) funds needed to meet the requirements of the proposed order are available or will be available to meet the compliance schedule and any interim effluent limitations; or

(B) that the permittee can adopt specific alternative steps to achieve compliance where the permittee cannot assure total financing of needed facilities.

(c) Development of the Special Order:

(1) The compliance schedule in the order must be sufficiently detailed to ~~insure~~ ensure that the permittee is constantly progressing toward final compliance. This schedule will normally include, but not be limited to, activities such as submission of plans and specifications, starting of construction, completion of construction and achievement of final compliance.

(2) The interim effluent limitations must be based on the optimum expected efficiency of the existing treatment system. In cases of phased construction or expected interim treatment facility improvements, the interim limitations shall reflect these expected improvements. Likewise, if treatment units must be taken off line due to construction, the interim limitations may be modified during the period of actual outage.

(3) To ~~insure~~ ensure compliance with all schedules dates and interim effluent limitations, all orders must contain stipulated penalties for violations of specified requirements. Also a monetary settlement will normally be included in the order to settle previous violations.

(4) The order must contain a condition that advises the permittee that it is responsible for funding the treatment system improvements and that lack of funds will not be a defense in contesting stipulated penalties.

(d) Acceptance of additional wastewater into a wastewater treatment system owned or operated by a unit of government, in accordance with G.S. 143-215.67(b).

(1) Additional flows will only be allowed as part of a consent Order when the following demonstrations can be made:

(A) New or improved wastewater treatment facilities will be constructed in the near future that will adequately treat the existing and additional waste or the permittee can adopt specific alternative steps to offset the adverse effects of the additional waste.

(B) The flows are needed to provide minimum reasonable service to identified new residential, commercial and industrial sources or equivalent substitutions for those sources as approved by the Director.

(C) The nature of the additional flows is such that the waste characteristics do not exceed those generally associated with domestic waste or are pretreated to domestic strengths. Waste of greater than normal domestic strength may be accepted if the parameter(s) are not those for which interim limitations have been developed and it can be demonstrated to the satisfaction of the Director that the additional waste will not adversely affect the treatment efficiency of the treatment system for any modified parameter or result in the violation of any other permit limitation.

(D) All new and proposed industrial waste tributary to the system must be controlled using all needed mechanisms including but not limited to adoption and implementation of industrial waste control and pretreatment ordinances.

(E) The cumulative impacts of wastewater allowed under the order will not result in any significant degradation in the quality of the waters ultimately receiving the wastewater during flow conditions between and including the 7-day, 10-year minimum flow (7Q10) and the average flow. The division must consider any special or protected waters such as but not limited to, High Quality Waters, Water Supply Waters, Trout Waters and Shellfish

Waters in conducting this evaluation. Significant degradation shall be defined to include but not be limited to the following:

(i) A predictive decrease in dissolved oxygen of 0.5 mg/l or greater at the point of maximum dissolved oxygen sag. In cases where existing (prior to adding the requested wastewater) dissolved oxygen conditions are above 3.0 mg/l at or above 7Q10 conditions, the amount of wastewater added will not be allowed to depress oxygen levels below 3.0 mg/l at the corresponding stream flow levels. No additional wastewater will be allowed if measured or predicted dissolved oxygen levels at any stream flow at or above 7Q10 are less than 3.0 mg/l unless specific approval is granted by the Environmental Management Commission. In making this decision, the Commission will consider criteria such as but not limited to naturally occurring background dissolved oxygen levels, projected duration of impacts and stream miles impacted. In cases when adequate models do not exist to allow the prediction of instream dissolved oxygen impacts, no additional wastewater will be allowed into the system; or

(ii) A predictive increase in the length of the affected segment (that segment in which the predicted dissolved oxygen is less than dissolved oxygen standards) of 0.5 miles or greater; or

(iii) An increase in coliform bacteria density predicted to exceed applicable water quality standards; or

(iv) Increases in the coliform density, decreases in dissolved oxygen, or changes in any other water quality parameters which are predicted to result in mortality of fish or other aquatic life, closing of swimming areas or significant impact on other water uses, regardless of compliance with conditions Subparts (d)(1)(E)(i)-(iii) of this Rule;

(v) The proposed addition of toxic pollutants in quantities not generally associated with domestic wastewater characteristics, unless the acceptance of the additional wastewater can be supported through appropriate analyses acceptable to the Director.

(2) Approvals of additional wastewater flows may be immediately rescinded by the Director for any schedule or condition violation, or limit violations in two consecutive months, or any other violation he considers sufficiently severe to warrant such action. In determining violations to be sufficiently severe, the Director will consider factors such as but not limited to the parameter(s) being violated, the magnitude of the violation(s), the projected duration of the violation(s), the waters being impacted or projected to be impacted and the reasons for the violation(s). In the notification to the permittee that the flow has been rescinded, the Director will identify the factor(s) that made the decision necessary.

History Note: *Authority G.S. 143-215.2; 143-215.3(a)(1);*
Eff. August 3, ~~1992.~~ 1992;
Readopted Eff. <date>.

SECTION .1300 – DISCHARGES TO ISOLATED WETLANDS AND ISOLATED WATERS

15A NCAC 02H .1301 SCOPE AND PURPOSE

(a) The provisions of this Section shall apply to Division of Water ~~Quality~~ Resources (Division) regulatory and resource management determinations regarding isolated wetlands and isolated classified surface waters. This Section shall only apply to discharges resulting from activities that require state review after ~~the effective date of this Rule~~ October 22, 2001 and which require a Division determination concerning effects on isolated wetlands and isolated classified surface waters. For the purpose of this Section, discharge shall be the deposition of dredged or fill material including but not limited to fill, earth, construction debris and soil.

(b) This Section outlines the application and review procedures for permitting of discharges into isolated wetlands and isolated classified surface waters ~~which~~ that have been listed in 15A NCAC 02B .0300. If the ~~US~~ U.S. Army Corps of Engineers or its designee determines that a particular water ~~or wetland~~ is ~~isolated and~~ not regulated under Section 404 of the Clean Water Act, then discharges to that water or wetland shall be covered by this ~~Section (15A NCAC 02H .1301 – .1305).~~ Section. If the U.S. Army Corps of Engineers or its designee determines that a particular wetland is not regulated under Section 404 of the Clean Water Act and that wetland is a Basin Wetland or Bog as described in the North Carolina Wetland Assessment User Manual prepared by the North Carolina Wetland Functional Assessment Team, version 4.1 October 2010 (available online at: https://deq.nc.gov/about/divisions/water-resources/water-resources-data/water-quality-program-development/ncwam-manual), then discharges to that wetland shall be covered by this Section. The Division shall verify the determination, extent and location of isolated wetlands and isolated classified surface waters using the U.S. Army Corps of Engineers Wetland Delineation Manual (Technical Report Y-87-1) and subsequent regional supplements and the Division publication, Methodology for Identification of Intermittent and Perennial Streams and Their Origins (v.4.11, 2010).

(c) Activities which result in a discharge may be deemed permitted as described in Rule .1305(b) of this Section or authorized by the issuance of either an Individual Permit or a Certificate of Coverage to operate under a General ~~Permit.~~ Permit:

(1) Individual Permits shall be issued on a case-by-case basis using the procedures outlined in this Section. These Individual Permits do not require approval by the U.S. Environmental Protection Agency.

(2) ~~Certificates of Coverage for~~ General Permits may be ~~issued~~ developed by the Division and issued by the Director for types or groups of discharges resulting from activities that are similar in nature and considered to have minimal impact. ~~General Permits include but are not limited to activities such as maintenance, utility lines, and road crossings. General Permits shall be given public notice at least 45 days before the proposed effective date of the General Permit. These~~ General Permits do not require approval by the U.S. Environmental Protection Agency. All activities that receive a "Certificate of Coverage" under a General Permit from the Division shall be deemed covered under that general permit. The application and review procedures for requesting a "Certificate of Coverage" under a general permit from the Division for the proposed activity are the same as the

procedures outlined in this Section for individual certifications, unless specifically stated otherwise in the general permit. ~~Individual Permits and Certificates of Coverage for General Permits shall be issued for a period of five years after which time the Permit shall be void unless the discharge is complete or an extension is granted as described in 15A NCAC 02H .1304(e).~~

(d) Discharges resulting from activities which receive an Individual Permit or Certificate of Coverage under a General Permit pursuant to this Section shall not be considered to remove existing uses of the isolated wetland or isolated surface waters.

(e) The following are exempt from this Section:

(1) Activities ~~that are~~ described in 15A NCAC 02B .0230;

(2) Discharges to isolated, man-made ponds or isolated man-made ditches ~~except for those wetlands or waters~~ constructed for ~~compensatory mitigation or for on-site~~ stormwater ~~management;~~ management purposes;

(3) Discharges to any man-made isolated pond;

(4) Discharges to any wetland not regulated under Section 404 of the Clean Water Act that is not a Basin Wetland or Bog as described in the North Carolina Wetland Assessment User Manual prepared by the North Carolina Wetland Functional Assessment Team, version 4.1 October 2010 (available online at: https://deq.nc.gov/about/divisions/water-resources/water-resources-data/water-quality-program-development/ncwam-manual);

~~(3)~~(~~4~~5) Discharges of treated effluent into isolated wetlands and isolated classified surface waters resulting from activities which receive NPDES Permits or State Non-Discharge Permits;

~~(4)~~(~~5~~6) Discharges for water dependent structures as defined in 15A NCAC 02B ~~.0202(67);~~ .0202;

~~(5)~~(~~6~~7) A discharge resulting from an activity if:

(A) The discharge resulting from the activity requires a 401 Certification and 404 Permit and these were issued prior to ~~the effective date of this Rule;~~ October 22, 2001;

(B) The project requires a state permit, such as landfills, NPDES discharges of treated effluent, Non-Discharge Permits, land application of residuals and road construction activities, that has begun construction or are under contract to begin construction and have received all required state permits prior to ~~the effective date of this Rule;~~ October 22, 2001;

(C) The project is being conducted by the N.C. Department of Transportation and they have completed 30% of the hydraulic design for the project prior to ~~the effective date of this Rule;~~ October 22, 2001; or

(D) The applicant has been authorized for a discharge into isolated wetlands or isolated waters for a project which has established a Vested Right under North Carolina law prior to ~~the effective date of this Rule.~~ October 22, 2001.

(f) The terms used in this Section shall be as defined in G.S. 143-212, G.S. 143-213 and as follows:

(1) "Director" means the Director of the Division.

(2) "Division" means the Division of Water Resources of the North Carolina Department of Environmental Quality.

(3) "Person" means as defined in G.S. 143-212(4).

(4) "Wetland" means as defined in 15A NCAC 02B .0202.

(5) "Cumulative impact" means environmental impacts resulting from incremental effects of an activity when added to other past, present, and reasonable foreseeable future activities regardless of what entities undertake such other actions.

(6) "Class SWL wetland" means as defined at 15A NCAC 02B .0231.

(7) "Class UWL wetland" means as defined at 15A NCAC 02B .0231.

(8) "Secondary impact" means actions, or actions directly linked to an activity, that may affect classified surface waters or wetlands that would not occur but for the proposed activity.

History Note: *Authority G.S. 143-215.1(a)(6); 143-215.3(a)(1); 143-215.3(c); S.L. 2014, c. 120; S.L. 2015, c. 286*
Codifier determined that findings did not meet criteria for temporary rule on September 26, 2001 and October 12, 2001;
Temporary Adoption Eff. October 22, 2001;
Eff. April 1, 2003.
Readopted Eff. [New Date].

15A NCAC 02H .1302 ~~APPLICATION PROCESS~~ FILING APPLICATIONS

(a) ~~Application for a Permit.~~ APPLICATION FOR A PERMIT. Any ~~person, as defined in G.S. 143, Article 21,~~ person desiring issuance of a State Individual Permit or Certificate of Coverage under a General Permit for discharges resulting from activities which affect isolated classified surface waters or isolated wetlands shall file with the Director of the North Carolina Division of Water ~~Quality~~ Resources (Director), at 1617 Mail Service Center, Raleigh, North Carolina, 27699-1617, an original and ~~six~~ three copies of an application for a ~~Permit.~~ Permit or submit one complete copy of an application electronically. The application must be made on a form provided or approved by the Division and shall specify:

(1) the date of application;

(2) the name, address, and phone number of the property ~~owner;~~ owner or owners;

(3) if the applicant is a corporation, the state in which it is domesticated, the name and address of the North Carolina process agency, and the ~~name~~ name, address and phone number of the individual who shall be primarily responsible for the conduct of the discharge resulting from an activity for which a Permit is sought;

(4) the nature of the discharge , including cumulative impacts to isolated and non-isolated wetlands and isolated and non-isolated waters that cause or will cause a violation of downstream water quality standards resulting from an activity to be conducted by the applicant;

(5) whether the discharge has occurred or is proposed;

(6) the location and extent of the discharge, stating the applicable municipality, the county; the drainage basin; the name of the nearest named surface waters; and the location of the point of discharge with regard to the nearest named surface waters;

(7) an application fee as required by G.S. ~~143-215.3D(e) with a check or money order to be made payable to the North Carolina Division of Water Quality.~~ 143-215.3D(e). If payment of a fee is required for a 401 Water Quality Certification, then that fee shall suffice for this Rule; ~~and~~

~~(8) the information requested in Subparagraphs (1) through (7) of this Rule must be provided on or attached to the most current version of the North Carolina Division of Water Quality Isolated Wetlands Notification application form.~~

~~(b)~~(8) ~~Maps.~~ MAPS. There shall be attached to the application form a map(s) with scales and north arrows and of sufficient detail to accurately delineate the boundaries of the lands owned or proposed to be utilized by the applicant in carrying out the discharge; the location, dimensions and type of any structures that affect isolated wetlands or waters for use in connection with the discharge; and the location and extent of the isolated waters (preferably surveyed or located with Global Positioning System equipment) including wetlands within the boundaries of said ~~lands.~~ lands; and

(9) Applications shall be signed by the owner with title to the property, a person who has been authorized by the owner to apply for certification, or an entity with the power of eminent domain. In signing the application, the applicant certifies that all information contained therein or in support

thereof is true and correct to the best of their knowledge. For corporations, partnerships, proprietors, or municipal, state or other public entity, the application shall be signed as follows:

(A) in the case of corporations, by a principal executive officer of at least the level of vice-president, or their authorized representative;

(B) in the case of a partnership or limited partnership, by a general partner;

(C) in the case of a sole proprietorship, by the proprietor; and

(D) in the case of a municipal, state or other public entity, by either a principal executive officer, ranking official or other duly authorized employee.

(c) ~~Request For Additional Information.~~ POWER TO REQUEST ADDITIONAL INFORMATION. The ~~Director~~ Division may ~~request,~~ request in writing, ~~writing within 60 days of receipt of an application~~ and the applicant shall furnish, any additional information that may be found necessary for the proper consideration of the application. Incomplete applications shall be returned to the applicant. The 60-day processing period required in Rule .1304 of this Section begins on the date the additional information is received by the Division.

(d) ~~Omissions From Applications.~~ OMISSIONS FROM APPLICATIONS. If the applicant believes that it is not feasible or is unnecessary to furnish any portion of the information required by Paragraphs (a), (b) and (c) of this Rule, then the applicant shall submit a detailed statement explaining the reasons for omission of any such information. The final decision regarding the completeness of the application shall be made by the Division ~~of Water Quality~~ based on the information required in Paragraphs (a), (b) and ~~(c),~~ (c) of this Rule, and any explanation provided by the applicant regarding omitted information provided in this Paragraph. ~~Paragraph (e).~~

(e) ~~Investigations.~~ INVESTIGATIONS. The staff of the ~~Department of Environment and Natural Resources (Department)~~ Division shall conduct such investigation as the ~~Director~~ Division deems ~~necessary and~~ necessary. The applicant shall ~~cooperate in the investigation to the extent that it shall furnish necessary information,~~ allow the staff safe access to the lands and facilities of the applicant and lend such assistance as shall be ~~reasonable.~~ reasonable, upon the presentation of credentials.

~~(f) Who Must Sign Applications. The application shall be considered a "valid application" only if the application bears the signature of a responsible officer of the company, municipal official, partner or owner. This signature certifies that the applicant has title to the property, has been authorized by the owner to apply for a Permit or is a public entity and has the power of eminent domain. Said official in signing the application shall also certify that all information contained therein or in support thereof is true and correct to the best of his knowledge.~~

~~(g) Applications for discharges to Isolated Wetlands and Waters must be made on forms provided or approved by the Division of Water Quality.~~

~~(h)~~(f) OTHER APPLICATIONS. Other applications for permitting or certification by a Division of the Department of Environment and Natural Resources shall suffice for application for this Permit as long as the application contains all of the information specified in ~~Paragraphs (a) and (b) of~~ this Rule and it is clearly specified to the Division by the applicant that authorization is sought under this Rule. This application must be submitted to the Division ~~of Water Quality~~ for review under this Permit.

History Note: *Authority G.S. 143-214.1; 143-215.1(a)(6); 143-215.3(a)(1);*
Codifier determined that findings did not meet criteria for temporary rule on September 26, 2001 and October 12, 2001;
Temporary Adoption Eff. October 22, 2001;
Eff. April 1, 2003.
Readopted Eff. [New Date].

15A NCAC 02H .1303 PUBLIC NOTICE AND PUBLIC HEARING

(a) ~~Notice of Publication.~~ PUBLIC NOTICE FOR GENERAL PERMITS. The Division shall provide public notice for proposed General Permits. This notice shall be sent to all individuals on the Mailing List described in Paragraph (g) of this Rule and on the Division's website. Notice shall be made at least 30 calendar days prior to proposed final action by the Division. Public notice shall not be required for those activities covered by Certificates of Coverage under a General Permit.

(b) PUBLIC NOTICE FOR INDIVIDUAL PERMITS. ~~Within 30 days of receipt of a complete application, the Director shall decide whether to issue a public notice for an Individual Permit for a project or whether the project is eligible for a General Permit:~~

~~(1)~~ ~~Individual Permit.~~ Notice of ~~the Director's intent to issue or deny a~~ each pending complete application for an Individual Permit shall be ~~published one time in a newspaper having general circulation in the county in which the discharge will occur.~~ sent be to all individuals on the Mailing List described in Paragraph (g) of this Rule and shall be posted on the Division's website. ~~Publication~~ Notice shall be made at least 30 calendar days prior to proposed final action by the ~~Director~~ Division on the application. ~~The applicant shall pay to the Department the costs of advertising the public notice for an Individual Permit. The Permit shall not be issued until such costs have been paid as allowed under G.S. 143-215.3(a)(1e). A copy of this notice shall be sent to a subset of individuals on the Wetland Permit Mailing List described in Paragraph (d) of this Rule who request to be notified of these Permits.~~

~~(2)~~ ~~General Permit. The Division shall provide public notice for proposed General Permits. This notice shall be sent to all individuals on the Wetland Permit Mailing List described in Paragraph (d) of this Rule and in selected newspapers with general circulation in the geographic areas affected by the proposed General Permit. Publication shall be made at least 30 days prior to proposed final action by the Director.~~

~~(b)~~(c) ~~Contents of Notice.~~ CONTENTS OF NOTICE FOR INDIVIDUAL PERMITS. The notice shall set forth the name and address of the applicant; the action requested in the application; the nature and location of the discharge; and the proposed date of final action to be taken by the ~~Director~~ Division on the application. The notice shall also state where additional information is on file with the ~~Department~~ Division and may be inspected at any time during normal working hours. Copies of such information on file shall be made available upon request and upon payment of the cost thereof to the ~~Department.~~ Division.

(d) JOINT NOTICE. This public notice requirement for an Individual Permit as described in Paragraph (b) of this Rule may be satisfied by a joint notice with the Division of Coastal Management (15A NCAC 07J .0206) or the U.S. Army Corps of Engineers according to their established procedures or by a joint notice by the Division for an Individual Certification in accordance with Rule .0503 of this Subchapter.

(e) REQUEST FOR A PUBLIC HEARING. Any person who desires a public hearing on ~~an Individual or~~ a General Permit or an Individual Permit application shall so request in writing to the ~~Director~~ Division. The request must be received by the Division within 30 calendar days following the ~~publication of the notice of intent.~~ Public Notice.

~~(c)~~(f) ~~Notice of Hearing.~~ NOTICE OF HEARING. ~~Within 30 days of receipt of a request for a public hearing, the Director shall decide whether a public hearing is necessary unless the applicant agrees in writing to an extension.~~ If the Director determines that there is significant public interest in holding a hearing, the ~~Director~~ Division shall ~~publish notice of the hearing~~ notify the applicant by registered or certified mail, return receipt requested. The Division shall also shall ~~one time in a newspaper having general circulation in the county in which the discharge will~~ provide notice of the hearing to all individuals on the Mailing List as described in Paragraph (g) of this Rule and shall post the notice on the Division's website. ~~occur. In any county in which there is more than one newspaper having general circulation in that county, the Director shall cause a copy of such notice to be published in as many newspapers having general circulation in the county as the Director in his discretion determines may be necessary to assure that such notice is generally available in the county.~~ The notice shall be published at least 30 calendar days prior to the date of the hearing. The notice shall state the time, place and nature of the hearing. Such hearing shall be held within 90 calendar days following date of notification to the applicant. The record for each hearing held under this Paragraph shall remain open for a period of 30 calendar days.

~~(d)~~(g) ~~Wetland Permit Mailing List.~~ MAILING LIST. Any person may request that he or she be ~~mailed~~ emailed copies of all public notices required by this Rule. The ~~Director~~ Division shall add the name of any such person to ~~a Wetland Permit Mailing List~~ an Email Listserv ~~and shall mail copies of notices to all persons on the list.~~ and follow procedures set forth in Rule .0503(g) of this Subchapter.

~~(e)~~(h) OTHER PUBLIC HEARINGS. ~~If other public hearings are being held by Divisions of the Department of Environment and Natural Resources, then any~~ Any public hearing held for this Rule may be coordinated with ~~those hearings.~~ other public hearings held by the Department of Environmental Quality or the U.S. Army Corps of Engineers.

History Note: *Authority G.S. 143-215.1(a)(6); 143-215.3(a)(1); 143-215.3(a)(1e); 143-215.3(c);*
Codifier determined that findings did not meet criteria for temporary rule on September 26, 2001 and October 12, 2001;
Temporary Adoption Eff. October 22, 2001;
Eff. April 1, 2003.
Readopted Eff. [New Date].

15A NCAC 02H .1304 DECISION ON APPLICATION FOR PERMITS OR CERTIFICATES OF COVERAGE

(a) FINAL ACTION ON APPLICATION. ~~Not later than 60 days following the publication of the notice of intent or decision to process the project under a General Permit, or within 90 days following a public hearing, the~~ The Director shall ~~issue, issue with modifications,~~ issue or deny within 60 calendar days after receipt of the complete Permit application or complete application for Certificate of ~~Coverage.~~ Coverage electronically or at 1617 Mail Service Center, Raleigh, North Carolina, 27699-1617. Failure to take action within 60 ~~or 90 days, respectively,~~ calendar days shall result in the waiver of the permit requirement by the ~~Director.~~ Director, unless:

(1) The applicant agrees, in writing, to a longer period;

(2) Final decision is to be made pursuant to a public hearing;

(3) The applicant fails to furnish information necessary to the Director's decision;

(4) The applicant refuses the staff access to its records or premises for the purpose of gathering information necessary to the Director's decision; or

(5) Information necessary to the Director's decision in unavailable.

(b) FINAL ACTION AFTER HEARING. The Director shall issue or deny the complete Permit application or complete application for Certificate of Coverage within 60 calendar days following the close of the record for the public hearing. Failure to take action within 60 calendar days shall result in the waiver of the permit requirement by the Director, unless Subparagraphs (a)(1), (3), (4) or (5) of this Rule apply.

~~(b)~~(c) ~~Conditions of Permit.~~ CONDITIONS OF PERMIT. Any Permit or Certificate of Coverage issued pursuant to this Section may contain such conditions as the Director shall deem necessary to ~~insure~~ ensure compliance with this Section including written post-discharge notification to the Division.

~~(c)~~(d) MODIFICATION OR REVOCATION. Modification or Revocation of Permit or Certificate of Coverage:

(1) Any Permit or Certificate of Coverage issued pursuant to this Section may be subject to revocation or modification for violation of conditions of the Permit or Certificate of Coverage; and

(2) Any Permit or Certificate of Coverage issued pursuant to this Section may be subject to revocation or modification upon a determination that information contained in the application or presented in support thereof is incorrect or if the Director finds that the discharge has violated or may violate a downstream water quality standard.

~~(d)~~(e) ~~Notification of Unapproved Application.~~ NOTIFICATION OF FINAL ACTION. The Division shall notify the applicant of the final action to issue or deny the application. In the event that the Director denies the application for a Permit or Certificate of Coverage or for any reason is unable to approve the application, the Director shall ~~so notify the applicant by certified or registered mail, return receipt requested, specifying in such notification~~ specify the reasons for the denial or inability to ~~be approved.~~ approve.

(f) TERM OF PERMIT. Individual Permits and Certificates of Coverage for General Permits shall be issued for a period of five years, after which time the Permit shall be void, unless the discharge is complete or an extension is granted pursuant to Paragraph (g) of this Rule. The permit shall become enforceable when issued.

~~(e)~~(g) RENEWALS AND EXTENSIONS. Permit or Certificate of Coverage renewals shall require a new complete application and payment of a fee to the Division of Water ~~Quality~~ Resources. ~~unless the~~ The applicant may request ~~requests and is granted an extension~~ in writing ~~which shall be granted~~ that the Division grant an extension before the permit expires. An extension may be granted by the Division for a time period not to exceed one additional ~~year~~ year, provided that the construction has commenced or is under contract to ~~commence.~~ commence before the permit expires.

~~(f)~~(h) ~~Contested Case Hearing for Applicant.~~ CONTESTED CASE HEARING. An applicant whose Permit or Certificate of Coverage is denied or granted subject to unacceptable ~~conditions,~~ conditions shall have the right to seek a contested case hearing pursuant to the provisions of G.S. ~~143-215.1(e)~~ 143-215.1(e), by filing a petition under G.S. ~~150B-23 within 30 calendar days after the Director notifies the applicant or permittee of its decision in writing.~~ 150B-23.

History Note: *Authority G.S. 143-215.1(a)(6); 143-215.1(b); 143-215.3(a)(1); 143-215.3(c);*
Codifier determined that findings did not meet criteria for temporary rule on September 26, 2001 and October 12, 2001;
Temporary Adoption Eff. October 22, 2001;
Eff. April 1, 2003.
Readopted Eff. [New Date].

15A NCAC 02H .1305 REVIEW OF APPLICATIONS

~~(a) In evaluating requests for an Individual Permit or Certificate of Coverage under a General Permit based on the procedures outlined in Paragraphs (c) through (d) of this Rule, the Director shall determine if the proposed discharge resulting from an activity has the potential to remove or degrade those existing uses in 15A NCAC 02B .0231(a) and (b) which are present in the isolated wetland or listed in the classification for classified isolated surface water. Discharges resulting from activities which would not remove or degrade existing uses shall be reviewed according to the procedures found in Subparagraphs (c)(2) through (c)(6) or (d)(2) through (d)(6) of this Rule. An applicant may also demonstrate that designated uses are not present at a particular site using a wetland evaluation procedure approved by the Director according to the criteria found in 15A NCAC 02B .0103(c); otherwise the designated uses as outlined at 15A NCAC 02B .0231(a) and (b) are assumed to exist, and the appropriate review procedures shall be undertaken. An Individual Permit or Certificate of Coverage under a General Permit shall be issued where the Director determines water quality standards will be met, including protection of existing uses.~~

~~(b)~~(a) ~~Discharges from Activities Deemed to be Permitted:~~ DISCHARGES FROM ACTIVITIES DEEMED TO BE PERMITTED. The following activities shall be deemed to be permitted:

(1) Discharges resulting from activities ~~in isolated wetlands or waters~~ that impact less than 1/2 acre of isolated classified surface waters for the entire project ~~are below the thresholds described in Subparagraphs (c)(2) and (d)(2) of this Rule,~~ are deemed to be permitted ~~as long as~~ provided they fully comply with the conditions listed ~~below~~ in Subparagraph (b)(4) of this Rule, and it shall not be necessary for the Division to issue permits for these activities. ~~may proceed without review procedures outlined in Subparagraphs (c)(1) through (c)(6) and (d)(1) through (d)(6) of this Rule. However, the Director may require that any discharge resulting from an activity obtain an Individual Permit or Certificate of Coverage under a General Permit if the Director determines that the discharge would result in a violation of water quality or wetland standards listed in 15A NCAC 02B .0200. This determination shall be made based on existing or projected environmental impacts.~~

(2) Discharges resulting from activities that impact less than 150 linear feet of isolated classified streams for the entire project are deemed to be permitted provided they fully comply with the conditions listed in Subparagraph (b)(4) of this Rule, and it shall not be necessary for the Division to issue permits for these activities.

(3) Discharges resulting from activities that impact less than or equal to one acre of isolated wetlands for the entire project in the coastal region, less than or equal to one-half acre of isolated wetlands for the entire project in the piedmont region, and less than or equal to one-third acre of isolated wetlands for the entire project in the mountain region are deemed to be permitted provided they fully comply with the conditions listed in Subparagraph (b)(4) of this Rule, and it shall not be necessary for the Division to issue permits for these activities. For purposes of implementing this Subparagraph, the coastal, piedmont and mountain regions shall be as follows:

(A) "Coastal Region" includes Beaufort, Bertie, Bladen, Brunswick, Camden, Carteret, Chowan, Columbus, Craven, Cumberland, Currituck, Dare, Duplin, Edgecombe, Gates,

Greene, Halifax, Harnett, Hertford, Hoke, Hyde, Johnston, Jones, Lee, Lenoir, Martin, Moore, Nash, New Hanover, Northampton, Onslow, Pamlico, Pasquotank, Pender, Perquimans, Pitt, Richmond, Robeson, Sampson, Scotland, Tyrrell, Washington, Wayne, and Wilson Counties;

(B) "Piedmont Region" includes Alamance, Alexander, Anson, Burke, Cabarrus, Caldwell, Caswell, Catawba, Chatham, Cleveland, Davidson, Davie, Durham, Forsyth, Franklin, Gaston, Granville, Guilford, Iredell, Lincoln, Mecklenburg, Montgomery, Orange, Person, Polk, Randolph, Rockingham, Rowan, Rutherford, Stanly, Stokes, Surry, Union, Vance, Wake, Warren, Wilkes, and Yadkin Counties;

(C) "Mountain Region" includes Alleghany, Ashe, Avery, Buncombe, Cherokee, Clay, Graham, Haywood, Henderson, Jackson, Macon, Madison, McDowell, Mitchell, Swain, Transylvania, Watauga and Yancey Counties.

(D) When a landowner believes their property is not in the correct region for purposes of this Rule, they may have a soil scientist conduct a site-specific evaluation to determine the soil series. The soil scientist shall be an individual who is currently licensed or authorized to practice soil science under G.S. 89F by the North Carolina Board for Licensing of Soil Scientists. The landowner shall submit the soil report to the Division of Water Resources for review. Soil series that occur in North Carolina have been categorized by the Natural Resources Conservation Service of the US Department of Agriculture as defined in Rule .1306 of this Section.

(4) Conditions which must be met for projects deemed to be permitted:

~~(1)~~(A) Erosion and sediment control practices shall equal ~~or exceed~~ at a minimum those required by the N.C. Division of Energy, Mineral, and Land Resources or its local delegated program for the Sedimentation Pollution Control Act and shall be in full compliance with all specifications governing the proper design, installation, operation and maintenance of such Best Management Practices in order to help assure compliance with the appropriate turbidity and other water quality standards;

~~(2)~~(B) All erosion and sediment control practices placed in isolated wetlands or isolated classified surface waters must be removed and the original grade restored within two months after the Division of Energy, Mineral, and Land Resources or local delegated program ~~determines that the land disturbance project is completed and the file is closed out;~~ has released the specific area within the project;

~~(3)~~(C) ~~Live or fresh~~ Uncured or curing concrete shall not come into direct contact with ~~surface water until the concrete has hardened;~~ waters of the state; and

(D) All work in or adjacent to isolated stream waters shall be conducted so that the flowing stream does not come in contact with the disturbed area. Approved best management

practices from the NC Sediment and Erosion Control Manual, or the NC DOT Construction and Maintenance Activities Manual shall be used to minimize excavation in flowing water.

~~(4)~~(E) Measures shall be taken to ensure that the hydrology of any remaining isolated wetland or isolated classified surface waters is not affected by the discharge.

~~(c)~~(b) EVALUATION. The ~~Director~~ Division shall issue an Individual Permit or a Certificate of Coverage under a General Permit upon determining that the proposed activity will comply with state water quality standards, which includes designated uses, numeric criteria, narrative criteria and the state's antidegradation policy, as defined in the rules of 15A NCAC 02B .0200 and the rules of 15A NCAC 02L .0100 and .0200. ~~existing uses are not removed or degraded by a discharge to isolated classified surface waters for a discharge resulting from an activity which:~~ In assessing whether the proposed activity will comply with water quality standards, the Division shall evaluate if the proposed activity:

(1) has no practical ~~alternative under the criteria outlined in Paragraph (e) of this Rule;~~ alternative. A lack of practical alternatives may be shown by demonstrating that, considering the potential for a reduction in size, configuration or density of the proposed project and all alternative designs, that the basic project purpose cannot be practically accomplished in an economically viable manner, which would avoid or result in less adverse impact to isolated classified surface waters or isolated wetlands;

(2) ~~will minimize adverse impacts to the isolated classified surface waters under criteria outlined in Paragraph (f) of this Rule, or impacts less than or equal to 1/3 acre of isolated classified surface waters or less than or equal to 150 linear feet of isolated streams for the entire project;~~ has avoided and minimized impacts to isolated classified surface waters and isolated wetlands to ensure any remaining surface waters or wetlands, and any surface waters or wetlands downstream, continue to support existing uses during and after project completion;

(3) ~~does~~ would not ~~result in the~~ cause or contribute to a violation of ~~groundwater standards, or~~ water quality ~~standards in the remaining surface waters;~~ standards;

(4) ~~does~~ would not result in secondary or cumulative impacts ~~which are environmental impacts resulting from incremental effects of an activity when added to other past, present, and reasonably foreseeable future activities regardless of what entities undertake such other actions, and~~ that cause or contribute to, or will cause or contribute to, a violation of downstream water quality standards; and

~~(5) provides for protection of downstream water quality standards through the use of on-site stormwater control measures; and~~

~~(6)~~(5) provides for replacement of existing uses through compensatory mitigation ~~with the following provisions:~~ as described in Paragraph (c) of this Rule.

~~(A) Impacts to all surface waters on the site which total less than one acre of surface waters or less than 150 linear feet of streams do not require compensatory mitigation;~~

~~(B) Mitigation shall be at a 2:11:1 ratio of acreage of waters or length of isolated stream of mitigation to the acreage of waters or length of isolated stream;~~

~~(C) Mitigation for impacts to waters shall be conducted within the same river basin and physiographic province when practical; and~~

~~(D) In-kind mitigation will be required unless other forms of mitigation provide greater water quality or aquatic life benefit.~~

~~(d) The Director shall issue an Individual Permit or Certificate of Coverage under a General Permit upon determining that existing uses are not removed or degraded by a discharge to isolated wetlands for a discharge resulting from an activity which:~~

~~(1) has no practical alternative as described in Paragraph (e) of this Rule;~~

~~(2) will minimize adverse impacts to the isolated wetlands under Paragraph (f) of this Rule on consideration of existing topography, vegetation, fish and wildlife resources, and hydrological conditions or impacts less than or equal to 1/3 acre of isolated wetlands east of I-95 and less than or equal to 0.1 acre of isolated wetlands west of I-95 for the entire project;~~

~~(3) does not result in the violation of groundwater standards, or wetland standards in the remaining wetlands;~~

~~(4) does not result in cumulative impacts which are described in Subparagraph (c)(4) of this Rule and that cause or will cause a violation of downstream water quality standards;~~

~~(5) provides protection for downstream water quality standards through the use of on-site stormwater control measures; and~~

~~(6) provides for replacement of existing uses through wetland mitigation as described in Subparagraphs (g)(1) through (g)(9) of this Rule.~~

~~(e) A lack of practical alternatives may be shown by demonstrating that, considering the potential for a reduction in size, configuration or density of the proposed project and all alternative designs that the basic project purpose cannot be practically accomplished in an economically viable manner which would avoid or result in less adverse impact to isolated classified surface waters or isolated wetlands.~~

~~(f) Minimization of discharges may be demonstrated by showing that any remaining isolated classified surface waters or wetlands are able to continue to support the existing uses after project completion, or that the discharges are required due to:~~

~~(1) The spatial and dimensional requirements of the project; or~~

~~(2) The location of any existing structural or natural features that may dictate the placement or configuration of the proposed project; or~~

~~(3) The purpose of the project and how the purpose relates to placement, configuration or density.~~

~~(g)~~(c) MITIGATION. Replacement or mitigation of unavoidable losses of existing uses in isolated classified surface waters or isolated wetlands shall be reviewed in accordance with all of the following guidelines:

(1) The ~~Director~~ Division shall coordinate mitigation requirements with other permitting agencies that are requiring mitigation for a specific ~~project.~~ project;

(2) ~~Mitigation shall not be required for discharges resulting from activities that impact a total of less than one acre of isolated and other wetlands.~~ Mitigation requirements for impacts to isolated

wetlands shall only apply to the amount of impact that exceeds the threshold set out in Subparagraph (b)(3) of this Rule. The mitigation ratio for impacts exceeding the threshold for the entire project shall be 1:1. Impacts to isolated wetlands shall not be combined with the project impacts to 404 jurisdictional wetlands or streams for the purpose of determining when impact thresholds that trigger a mitigation requirement are met;

(3) Total impacts to less than 300 linear feet of isolated perennial streams for the entire project shall not require compensatory mitigation. For linear publicly owned and maintained transportation projects that the U.S. Army Corps of Engineers determines are not part of a larger common plan of development, impacts to less than 300 linear feet per stream shall not require compensatory mitigation. The mitigation ratio for isolated stream impacts shall be 1:1;

(4) The required area or length of mitigation required shall be multiplied by 1 for restoration, 1.5 for establishment, 2 for enhancement and 5 for preservation. These multipliers do not apply to approved mitigation sites where the Interagency Review Team has approved other ratios;

~~(3)~~(5) ~~Participation in wetland restoration programs coordinated by the Department of Environment and Natural Resources or approved mitigation banks (those mitigation banks which have been approved by the United States Army Corp of Engineers through the Mitigation Banking Review Team process) shall be required whenever the Director finds that such participation is available and satisfies the other requirements of this Paragraph, unless the applicant can demonstrate that participation in these restoration programs is not practical.~~ Mitigation shall comply with the requirements set forth in G.S. 143-214.11. Mitigation projects implemented within waters or wetlands that are regulated under Section 404 of the Clean Water Act may be used to satisfy the requirements of this Paragraph;

~~(4)~~(6) Acceptable methods of ~~wetlands~~ mitigation as defined in 33 CFR Part 332 available free of charge on the internet at: http://water.epa.gov/lawsregs/guidance/wetlands/wetlandsmitigation_index.cfm, include restoration, including both re-establishment and rehabilitation, establishment (creation), enhancement and preservation. No more than 25 percent of the mitigation required by Subparagraph (c)(2) or (3) of this Rule can be met through preservation, unless the Director determines that the public good would be better served by a higher percentage of preservation; ~~are listed below:~~

~~(A) Restoration: Re-establishment of hydrology to the natural or reference condition which are sites within a specific geographic region that are chosen, for the purposes of functional assessment or mitigation, to encompass the known variation of a group or class of wetlands, including both natural and disturbance variations and is in an area that contains hydric soils. Vegetation must also be re-established if it differs from the natural or reference condition;~~

~~(B) Creation: Construction of wetlands in an area where wetlands did not exist in the past;~~

~~(C) Enhancement: Increasing one or more of the functions of an existing wetland by manipulation of vegetation or hydrology; and~~

~~(D) Preservation: Protection of wetlands through purchase, donation or conveyance of a conservation easement to a government or non-profit agency for management.~~

~~(5) Restoration or creation shall be the required method of wetland mitigation. The other methods may be utilized if the applicant can demonstrate that restoration or creation is not practical or that the proposed alternative is the most ecologically viable method of replacing the lost functions and values.~~

~~(6) For all discharges resulting from activities which impact, in total, more than one acre of isolated and other wetlands, the mitigation ratio shall be 2:1 acres of mitigation to the acreage impacted. This mitigation must include at least a 1:1 ratio of restoration or creation except as outlined in Subparagraph (g)(7) of this Rule. The acres of required mitigation for other types of mitigation shall be determined by multiplying the 2:1 ratio by 1.5 for creation, 2 for enhancement, and 5 for preservation. The multiplier ratios listed in this Paragraph do not apply to mitigation sites where the state and federal review agencies have approved credit/debit ratios.~~

~~(7) All mitigation proposals shall provide for the replacement of wetland acres lost due to the proposed discharge resulting from an activity at a minimum of a 1:1 ratio through restoration or creation prior to utilizing enhancement or preservation to satisfy the mitigation requirements, unless the Director determines that other forms of mitigation would provide greater water quality or aquatic life benefit.~~

~~(8)~~(7) Mitigation for impacts to isolated classified surface waters, isolated streams and isolated wetlands ~~designated in Paragraph (b) of this Rule~~ shall be conducted in North Carolina within the same river basin and ~~physiographic province when practical.~~ in accordance with 33 CFR Part 332, available free of charge on the internet at: http://water.epa.gov/lawsregs/guidance/wetlands/wetlandsmitigation_index.cfm, unless otherwise approved by the Director; and

~~(9)~~(8) In-kind mitigation is required unless the Director determines that other forms of mitigation would provide greater water quality or aquatic life benefit.

History Note: *Authority G.S. 143-211(c); 143-214.7C; 143-215.1(a)(6); 143-215.3(a)(1); 143-215.3(c); S.L. 2014, c. 120; S.L. 2015, c. 286; S.L. 2017, c. 10*
Codifier determined that findings did not meet criteria for temporary rule on September 26, 2001 and October 12, 2001;
Temporary Adoption Eff. October 22, 2001;
Eff. April 1, 2003;
Amended Eff. August 1, 2012 (see S.L. 2012-143, s.1.(f));
Readopted Eff. [New Date].

15A NCAC 02H .1306 SOIL SERIES

For purposes of implementing the Rules in this Section, the Natural Resources Conservation Service of the U.S. Department of Agriculture have categorized soil series that occur in North Carolina as follows:

(1) Soil series in the Mountain Region shall include the following: Alarka, Anakeesta, Arkaqua, Ashe, Balsam, Bandana, Biltmore, Braddock, Bradson, Brasstown, Breakneck, Brevard, Brownwood, Buladean, Burton, Cades, Calvin, Cashiers, Cataloochee, Cataska, Chandler, Cheoah, Chester, Chestnut, Chestoa, Chiltoskie, Cleveland, Cliffield, Clifford, Clifton, Clingman, Codorus, Colvard, Comus, Cowee, Craggey, Crossnore, Cruso, Cullasaja, Cullowhee, Dellwood, Dillard, Dillsboro, Ditney, Edneytown, Edneyville, Ela, Ellijay, Elsinboro, Evard, Fannin, Farner, Fontaflora, French, Greenlee, Guyot, Harmiller, Hatboro, Hayesville, Heintooga, Hemphill, Hiwassee, Horsetrough, Huntdale, Iotla, Jeffrey, Junaluska, Kanuga, Keener, Kinkora, Lauada, Leatherwood, Longhope, Lonon, Lostcove, Luftee, Mars Hill, Maymead, Micaville, Nantahala, Nikwasi, Northcove, Nowhere, Oconaluftee, Ostin, Oteen, Peaks, Pigeonroost, Pineola, Pinnacle, Plott, Porters, Pullback, Rabun, Reddies, Rosman, Saluda, Santeetlah, Saunook, Sauratown, Shinbone, Skyuka, Smokemont, Snowbird, Soco, Spivey, Statler, Stecoah, Suches, Swannanoa, Sylco, Sylva, Tanasee, Tate, Thunder, Thurmont, Toccoa, Toecane, Toxaway, Transylvania, Trimont, Tsali, Tuckasegee, Tusquitee, Unaka, Unicoi, Unison, Walnut, Watauga, Wayah, Wesser, Whiteoak, Whiteside, and Zillicoa.

(2) Soil series in the Piedmont Region shall include the following: Alamance, Altavista, Appling, Appomattox, Armenia, Ashlar, Augusta, Ayersville, Badin, Banister, Bannertown, Belews Lake, Bentley, Bethera, Bethlehem, Biscoe, Brickhaven, Buncombe, Callison, Carbonton, Cartecay, Casville, Cecil, Chewacla, Cid, Claycreek, Cliffside, Clover, Colfax, Congaree, Coronaca, Creedmoor, Cullen, Dan River, Danripple, Davidson, Davie, Delila, Devotion, Dorian, Durham, Elbert, Enon, Enott, Exway, Fairview, Georgeville, Goldston, Granville, Green Level, Grover, Gwinnett, Halifax, Hallison, Haw River, Helena, Herndon, Hibriten, Hiwassee, Hornsboro, Hulett, Iredell, Jackland, Kinkora, Kirksey, Lackstown, Leaksville, Lignum, Lloyd, Louisa, Louisburg, Madison, Mandale, Masada, Mattaponi, Mayodan, McQueen, Meadowfield, Mecklenburg, Merry Oaks, Misenheimer, Mocksville, Monacan, Moncure, Montonia, Mooshaunee, Nanford, Nason, Nathalie, Oak Level, Oakboro, Orange, Ostin, Pacolet, Pactolus, Peakin, Peawick, Penhook, Pfafftown, Picture, Pilot Mountain, Pinkston, Pinoka, Pittsboro, Poindexter, Polkton, Poplar Forest, Rasalo, Rhodhiss, Rion, Riverview, Ronda, Rowan, Saw, Secrest, Sedgefield, Siloam, Skyuka, Spartanburg, Spray, Spriggs, Starr, Stoneville, Stott Knob, Tarrus, Tatum, Tillery, Toast, Toccoa, Tomlin, Totier, Turbeville, Tussahaw, Uwharrie, Vance, Wadesboro, Wake, Warne, Wate, Wateree, Wedowee, Wehadkee, Westfield, White Store, Wickham, Wilkes, Winnsboro, Woolwine, Worsham, Wynott, Yadkin, and Zion.

(3) Soil series in the Coastal Region shall include the following: Acredale, Ailey, Alaga, Alpin, Arapahoe, Argent, Augusta, Autryville, Aycock, Backbay, Ballahack, Barclay, Bayboro,

Baymeade, Belhaven, Bertie, Bethera, Bibb, Bladen, Blaney, Blanton, Bohicket, Bojac, Bolling, Bonneau, Bragg, Brookman, Butters, Byars, Cainhoy, Candor, Cape Fear, Cape Lookout, Caroline, Carteret, Centenary, Chapanoke, Charleston, Chastain, Chenneby, Chesapeake, Chipley, Chowan, Conaby, Conetoe, Corolla, Cowarts, Coxville, Craven, Croatan, Currituck, Dare, Deloss, Delway, Dogue, Dorovan, Dothan, Dragston, Duckston, Dunbar, Duplin, Echaw, Emporia, Engelhard, Exum, Faceville, Foreston, Fork, Fortescue, Fripp, Fuquay, Gertie, Gilead, Goldsboro, Grantham, Grifton, Gritney, Gullrock, Hobonny, Hobucken, Hyde, Hydeland, Icaria, Invershiel, Johns, Johnston, Kalmia, Kenansville, Kinston, Kureb, Lakeland, Leaf, Lenoir, Leon, Liddell, Lillington, Longshoal, Lucy, Lumbee, Lynchburg, Lynn Haven, Mandarin, Mantachie, Marlboro, Marvyn, Masontown, Maxton, Mayodan, McColl, Meggett, Mooshaunee, Muckalee, Munden, Murville, Myatt, Nahunta, Nakina, Nankin, Nawney, Neeses, Newhan, Newholland, Nimmo, Nixonton, Noboco, Norfolk, Ocilla, Onslow, Orangeburg, Osier, Ousley, Pactolus, Pamlico, Pantego, Pasquotank, Paxville, Peakin, Pelion, Pender, Perquimans, Pettigrew, Plummer, Pocalla, Polawana, Ponzer, Portsmouth, Pungo, Rains, Rimini, Roanoke, Roper, Rumford, Rutlege, Scuppernong, Seabrook, Seagate, Shellbluff, Stallings, State, Stockade, Suffolk, Tarboro, Tetotum, Thursa, Toisnot, Tomahawk, Tomotley, Torhunta, Troup, Uchee, Valhalla, Varina, Vaucluse, Wagram, Wahee, Wakulla, Wando, Wasda, Weeksville, Wilbanks,Winton, Woodington, Wrightsboro, Wysocking, Yaupon, Yeopim, and Yonges.

History Note: *Authority G.S. 143-215.1(a)(6); 143-215.3(a)(1); 143-215.3(c); S.L. 2014, c. 120; S.L. 2015, c. 286 Eff. [New Date].*