

Hearing Officer's Report

Water Supply Watershed Protection Program

15A NCAC 2B .0620 - .0624



November 8, 2018

Prepared By:

North Carolina Division of Energy, Mineral and Land Resources

Stormwater Permitting Program

Table of Contents

	<u>Page</u>
Background	1
Purpose for Rulemaking	1
Description of Proposed Amendments	1
Costs and Benefits of Proposed Rulemaking	2
Permission to Proceed to Public Hearing	2
Public Hearing	2
Summary of Public Comments	3
Hearing Officer's Final Recommendation	4
Appendix A: Text of Proposed Rules	7
Appendix B: Regulatory Impact Analysis	17
Appendix C: Notice of Text for Proposed Rulemaking	24

Background

Purpose for Rulemaking

The purpose of this rulemaking is to readopt the requirements of the Water Supply Watershed Protection Program to meet G.S. 150B-21.3A “Periodic Review and Expiration of Existing Rules.”

Description of Proposed Amendments

The content of proposed rules 15A NCAC 02B .0620 - .0624 were previously codified in 15A NCAC 02B .0104, 02B .0202, and 02B .0212 - .0218. See attached table for cross references.

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:

- Add definitions of commonly-used terms such as “Balance of Watershed,” “Primary SCM,” and “Geotextile fabric.”
- Update references to NCDOT permit and NC Forest Service guidelines;
- Clarify process for local governments to submit revised ordinances for approval;
- Organize local program recordkeeping requirements into one rule;
- Condense density and setback requirements into one rule for all WS classifications; and
- Codify reference to watershed statute G.S. 143-214.5 which allows density averaging of noncontiguous parcels.

The substantive changes are intended to make the rules consistent with the stormwater rules, update the stormwater treatment options to reflect current science and technology, and add flexibility for local programs while providing equivalent environmental protection. These substantive changes are:

- Update definition of “Built-upon Area” to match stormwater statute G.S. 143-214.7 which allows areas of #57 stone to be considered pervious;
- Require that local governments must submit variance information upon request rather than submit it on an arbitrary annual schedule;
- Allow *expansion* of existing (pre-1993) single-family residential development to be exempt as long as it is not part of a larger common plan of development. This change is intended to correct an unintended inconsistency with the 1995 rule revision which exempted single-family residential *redevelopment* but failed to address *expansion*;
- Allow curb outlet swales in lieu of vegetated conveyances;
- Update rule to allow stormwater control measures (SCMs) other than wet ponds;
- Update rule to allow SCMs to achieve runoff volume match as an alternative to basic treatment of one-inch storm; and
- Allow built-upon area to be used instead of dwelling unit per acre to regulate single-family detached residential development.

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 Rules 15A NCAC 2B .0620 - .0624 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.

As directed by the EMC, the Notice of Text for these rules specifically asked for comment on the following:

- 15A NCAC 02B .0622(4), .0624(3)(h), and .0624(12)(a)(iv) regarding the efficacy of the 10-foot vegetated setback requirement for agricultural activities; and
- the cumulative environmental impact of all the proposed changes to these rules.

Public Hearing

Two public hearings for this permanent rulemaking action were conducted. The hearings were held in Kernersville, NC on May 23, 2018 and Raleigh on June 7, 2018. EMC Chairman J.D. Solomon served as the Hearing Officer for the proceedings. There were five attendees at the Kernersville hearing and five attendees at the Raleigh hearing. Both hearings were joint hearings for other water quality rules including riparian buffer and wastewater rules. None of the comments received at the Kernersville hearing were in reference to the Water Supply Watershed rules. At the Raleigh hearing, one comment was received in support of the rules.

Summary of Public Comments

15A NCAC 02B .0620 Purpose

No comments were received on this rule.

15A NCAC 02B .0621 Definitions

- .0621(3) Planned unit developments and mixed use developments are included in the definition of cluster developments. . . . 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.
- We understand the concern. Rule 15A NCAC 02B .0624(9) places additional requirements on all types of cluster development, including planned unit and mixed used developments. For example, 02B .0624(9)(d) requires that areas of concentrated development be located in upland areas, and 02B .0624(9)(e) requires that the remainder of the tract remain in a vegetated or natural state. Further, there are limitations on density/built-upon area for all new development in 02B .0624(4) in addition to vegetated setbacks in 02B .0624(12).*

15A NCAC 02B .0622 Applicability and Effective Dates

- .0622(1) There appears to be an incorrect reference because 15A NCAC 02B .0104(d) does not have any effective dates. Looks like it should be (e) instead.
- This reference has been corrected to (e).*

15A NCAC 02B .0623 Program Administration

- .0623(2) There appears to be an incorrect reference because 15A NCAC 02B .0104(d) does not have any effective dates. Looks like it should be (e) instead.
- This reference has been corrected to (e).*
- .0623 Please clarify whether existing ordinances will need to be re-adopted.
- As none of the proposed rule changes are more stringent, existing local ordinances that are in compliance with current water supply watershed rules will not be required to readopt ordinances. Guidance on this topic will be provided by DEQ to local watershed programs upon final adoption of the rules.*
- .0623(6) Under VARIANCES, references to a Watershed Review Board should also have “or equivalent local quasi-judicial body.” That phrase is used once but is not

consistently used.

Item (6) of this Rule was amended as suggested.

15A NCAC 02B .0624 Nonpoint Source and Stormwater Pollution Control

- .0624(3)(c) The wording is internally contradictory – single family redevelopment isn’t redevelopment per the definition if there is a net increase in impervious or stormwater controls are not equal.
We recognize this issue and it is addressed by the qualifying language in .0624(3)(c) which states that single-family residential redevelopment is excluded even if there is a net increase in built-upon area or if stormwater controls are not equal to that of the previous single family residential redevelopment.
- .0624(3)(c) If the new impervious area drains to one of the subdivision’s stormwater control measures, the SCMs may become undersized. This could be prevented if a local government uses the project density option in .0624(8)(e), and the SCMs are designed with the 15% safety factor. . . . We recommend the exclusion for “single family residential redevelopment even if there is a net increase in built-upon area or if the stormwater controls are not equal to that of the previous single-family residential development” only be allowed if the SCMs have been designed with the 15% safety factor.
We recognize that the additional safety factor may be appropriate; however, such a change is beyond the scope of this readoption. Such a change may be considered in a future rulemaking. Until that time, local governments continue to have authority to adopt more stringent requirements.
- .0624(8)(e) This is a good option for dealing with homeowners in watershed protection overlays who want to add smaller impervious items like patios and storage sheds. . . . However, this only serves to protect water supplies if the local government maintains oversight to ensure that the impervious area on each lot is increased by no more than 15% of the originally-allocated impervious area.
Agreed. Local governments who choose to allow this option would be required to develop a mechanism to track this information.
- .0624(12) Change the language of this section to match what is proposed in 15A NCAC 02B .0714(3)(a), which lists the criteria for determining whether or not a surface water in Neuse River Basin requires a buffer or not. That language also cites the “most recent version of the published manuscript of the soil survey map that shows stream layers prepared by the NRCS of the USDA as a source of stream identification.”

We recognize that consistency between environmental regulations can be desirable; however, such a change is beyond the scope of this readoption. Such a change may be considered in a future rulemaking. Until that time, local governments continue to have authority to adopt more stringent requirements.

- .0624(12) Where renamed vegetated setback, keep reference to other required buffers, like trout, watershed, etc.
The water supply watershed rules do not currently reference buffers required by other programs. Adding those references is unnecessary and outside the scope of this readoption.

Comments on 10-foot vegetated setback for agricultural activities

.0622(4); .0624(3)(h); .0624(12)(a)(iv)

The NC Wildlife Resources Commission 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.

We recognize that wide, forested buffers provide important services to our streams and water supplies. The EMC is limited in its discretion to impose additional restrictions on agricultural activities as it is bound by G.S. 143-214.5(a) which states "the reduction of agricultural nonpoint source discharges shall be accomplished primarily through the Agriculture Cost Share Program for Nonpoint Source Pollution Control." The hearing officer does not recommend changes to the 10-foot vegetated setback for agricultural activities in this rules readoption.

The Division of Soil and Water Conservation supports the language in rule 02B .0622(4), 0624(3)(h), and 02B .0624(12)(a)(iv).

Thank you for your feedback.

The NC Farm Bureau supports the language in rule 02B .0622(4), 0624(3)(h), and 02B .0624(12)(a)(iv) and feels that the currently designated areas are sufficient to protect water supplies and would not support expansion of these areas. NC Farm Bureau feels that the 10-foot vegetated setback is effective and opposes a wider setback for agricultural activities in these rules. It should be noted that animal operations already have more stringent vegetated setback requirements

in 15A NCAC 02T .1300 rules.

Thank you for your feedback.

General Comments

I am in support of many of the changes in the rules; particularly, the clarifying statements.

Thank you for the feedback.

Agency should review all its rules and update references to “Forest Practice Guidelines Related to Water Quality” to make sure it references the new subchapter 02 NCAC 60C.

Thank you for the information. We have confirmed that the proposed rules contain the correct references.

Hearing Officer’s Final Recommendation

After careful consideration, the Hearing Officer recommends to the Environmental Management Commission that Rules 15A NCAC 02B .0620 thru .0624 be adopted as published with the following changes:

- corrections to 15A NCAC 02B .0622(1) and .0623(2) to update reference to 15A NCAC 02B .0104(e); and
- the addition of “or equivalent local quasi-judicial body” to .0623(6).

Appendix A: Text of Proposed Rules

15A NCAC 02B .0620 WATER SUPPLY WATERSHED PROTECTION PROGRAM: PURPOSE

The purpose of this Rule and Rules .0621 through .0624 of this Section is to implement G.S. 143-214.5, which requires the Commission to adopt rules that establish minimum statewide water supply watershed protection requirements applicable to each Water Supply classification to protect the water quality of public surface water supplies. Water Supply classifications are set forth in 15A NCAC 02B .0212 through .0218.

History Note: Authority G.S. 143-214.1; 143-214.5; 143-215.3(a)(1);

15A NCAC 02B .0621 WATER SUPPLY WATERSHED PROTECTION PROGRAM: DEFINITIONS

The definition of any word or phrase in Water Supply Watershed Protection Program Rules .0621 through .0624 of this Section shall be the same as given in Rule .0202 of this Subchapter and Article 21, Chapter 143 of the General Statutes of North Carolina, as amended. Other words and phrases used in Rules .0622 through .0624 of this Section are defined as follows:

- (1) "Balance of Watershed" or "-BW" means the area adjoining and upstream of the critical area in a WS-II and WS-III water supply watershed. The "balance of watershed" is comprised of the entire land area contributing surface drainage to the stream, river, or reservoir where a water supply intake is located.
- (2) "Built-upon Area" has the same meaning as in G.S. 143-214.7.
- (3) "Cluster development" means the grouping of buildings in order to conserve land resources and provide for innovation in the design of the project including minimizing stormwater runoff impacts. Planned unit developments and mixed use development shall be considered as cluster development.
- (4) "Commission" means the North Carolina Environmental Management Commission.
- (5) "Common plan of development" has the same meaning as in 15A NCAC 02H .1002, which is herein incorporated by reference, as amended.
- (6) "Curb Outlet System" has the same meaning as in 15A NCAC 02H .1002.
- (7) "Development" means any land disturbing activity that increases the amount of built-upon area or that otherwise decreases the infiltration of precipitation into the subsoil.
- (8) "Dispersed flow" has the same meaning as in 15A NCAC 02H .1002.
- (9) "Division" means the Division of Energy, Mineral, and Land Resources or its successors.
- (10) "Erosion and Sedimentation Control Plan" means any plan, amended plan, or revision to an approved plan submitted to the Division of Energy, Mineral, and Land Resources or a delegated authority in accordance with G.S. 113A-57.
- (11) "Existing development" means those projects that are built or those projects that at a minimum have established a vested right under North Carolina zoning law as of the effective date of the local government water supply ordinance, or such earlier time that an affected local government's ordinance shall specify, based on at least one of the following criteria:
 - (a) substantial expenditure of resources (time, labor, money) based on a good faith reliance upon having received a valid local government approval to proceed with the project;
 - (b) having an outstanding valid building permit in compliance with G.S. 153A-344.1 or G.S. 160A-385.1; or
 - (c) having an approved site specific or phased development plan in compliance with G.S. 153A-344.1 or G.S. 160A-385.1.
- (12) "Family subdivision" means a division of a tract of land:
 - (a) to convey the resulting parcels, with the exception of parcels retained by the grantor, to a relative or relatives as a gift for nominal consideration, but only if no more than one parcel is conveyed by the grantor from the tract to any one relative; or
 - (b) to divide land from a common ancestor among tenants in common, all of whom inherited by intestacy or by will.
- (13) "Geotextile fabric" has the same meaning as in 15A NCAC 02H .1002.
- (14) "Intermittent stream" has the same meaning as in 15A NCAC 02B .0610.
- (15) "Major variance" means a variance that is not a "minor variance" as that term is defined in this Rule.
- (16) "Minimum Design Criteria" or "MDC" has the same meaning as in 15A NCAC 02H .1002.

- (17) "Minor variance" means a variance from the minimum statewide watershed protection rules that results in the relaxation of up to 10 percent of any vegetated setback, density, or minimum lot size requirement applicable to low density development, or the relaxation of up to five percent of any vegetated setback, density, or minimum lot size requirement applicable to high density development. For variances to a vegetated setback requirement, the percent variation shall be calculated using the footprint of built-upon area proposed to encroach within the vegetated setback divided by the total area of vegetated setback within the project.
- (18) "Nonconforming lot of record" means a lot described by a plat or a deed that was recorded prior to the effective date of local watershed regulations (or their amendments) that does not meet the minimum lot size or other development requirements of Rule .0624 of this Section.
- (19) "NPDES" means National Pollutant Discharge Elimination System.
- (20) "Perennial stream" has the same meaning as in 15A NCAC 02B .0610.
- (21) "Perennial waterbody" has the same meaning as in 15A NCAC 02B .0610.
- (22) "Primary SCM" has the same meaning as in 15A NCAC 02H .1002.
- (23) "Project" means the proposed development activity for which an applicant is seeking approval in accordance with Rules .0620 through .0624 of this Section. A project shall exclude any land adjacent to the area disturbed by the project that has been counted as pervious by any other development regulated under a federal, State, or local stormwater regulation. Owners and developers of large developments consisting of many linked projects may consider developing a master plan that illustrates how each project fits into the design of the large development.
- (24) "Redevelopment" means any land disturbing activity that does not result in a net increase in built-upon area and that provides greater or equal stormwater control to that of the previous development.
- (25) "Required storm depth" has the same meaning as in 15A NCAC 02H .1002.
- (26) "Runoff treatment" has the same meaning as in 15A NCAC 02H .1002.
- (27) "Runoff volume match" has the same meaning as in 15A NCAC 02H .1002.
- (28) "Secondary SCM" has the same meaning as in 15A NCAC 02H .1002.
- (29) "Stormwater Control Measure" or "SCM" has the same meaning as in 15A NCAC 02H .1002.
- (30) "Vegetated setback" means an area of natural or established vegetation adjacent to surface waters, through which stormwater runoff flows in a diffuse manner to protect surface waters from degradation due to development activities.
- (31) "Vegetated conveyance" means a permanent, designed waterway lined with vegetation that is used to convey stormwater runoff at a non-erosive velocity within or away from a developed area.

History Note: Authority G.S. 143-214.1; 143-214.5; 143-215.3(a)(1);

15A NCAC 02B .0622 WATER SUPPLY WATERSHED PROTECTION PROGRAM: APPLICABILITY AND EFFECTIVE DATES

All local governments that have land use authority within classified water supply watersheds are subject to Rules .0621 through .0624 of this Section. Administration and enforcement of Rules .0621 through .0624 of this Section shall be the responsibility of the adopting local government within its jurisdiction. In addition, State-owned projects, silviculture activities, and agricultural activities are subject to these rules pursuant to G.S. 143-214.5 (i) and Items (2), (3), and (4) of this Rule, as applicable.

- (1) **EFFECTIVE DATES.** For the purposes of implementing the requirements of this Rule, Rules .0621 through .0624 of this Section, and G.S. 143-214.5, the effective dates set forth in 15A NCAC 02B ~~.0104(d)~~ **.0104(e)** shall apply.
- (2) **STATE-OWNED PROJECTS.** State-owned projects, with the exception of North Carolina Department of Transportation (NCDOT) projects, that are located in designated water supply watersheds shall comply with the stormwater management requirements of this Section and G.S. 143-214.5(i). For NCDOT projects, the construction of new roads and bridges shall minimize built-upon area, divert stormwater away from surface water supply waters as much as possible, and employ best management practices to minimize water quality impacts. To the extent practicable, the construction of new roads in a critical area shall be avoided. NCDOT projects shall be in compliance with NPDES Permit No. NCS000250.
- (3) **SILVICULTURE.** The North Carolina Forest Service (NCFS) shall be the designated agency for oversight of compliance with the water supply watershed protection requirements of this Section, insofar as their authority allows, for silviculture activities occurring within designated water supply

watersheds. Silviculture activities that comply with the provisions of the Forest Practices Guidelines Related to Water Quality (02 NCAC 60C, herein incorporated by reference with subsequent amendments and editions and available at no cost at <http://www.ncoah.com/rules/>) and other applicable forestry water quality standards as determined by NCFS shall be deemed compliant with the water supply watershed protection requirements of this Section.

- (4) AGRICULTURE. The North Carolina Soil and Water Conservation Commission shall be the designated agency for administration of the applicable water supply watershed protection requirements of this Section for agricultural activities. Agricultural activities are not subject to the stormwater management requirements of this Section, except that agricultural activities occurring after January 1, 1993 within WS-I watersheds and the critical areas of WS-II, WS-III, and WS-IV watersheds are subject to the vegetated setback requirements as set forth in Rule .0624(12)(a)(iv) of this Section.

History Note: Authority G.S. 143-214.1; 143-214.5; 143-215.3(a)(1);
The provisions of this Rule were previously codified in 15A NCAC 02B .0104.

15A NCAC 02B .0623 WATER SUPPLY WATERSHED PROTECTION PROGRAM: PROGRAM ADMINISTRATION

This Rule contains provisions for the administration of water supply watershed protection programs.

- (1) All local governments that have land use authority within designated water supply watersheds shall adopt and enforce ordinances and watershed maps that meet or exceed the requirements of G.S. 143-214.5 and Rules .0621 through .0624 of this Section. Local governments may adopt and enforce more stringent controls. Local governments shall have the option to use the Commission's model Watershed Protection Ordinance available at no cost at <http://watersupplywatershed.nc.gov> as the basis for their ordinance, or they shall have the option to propose an alternative ordinance that meets or exceeds the requirements of this Section.
- (2) SCHEDULE OF IMPLEMENTATION. Local governments shall adopt, make effective, and begin implementing the required water supply watershed protection ordinance (or equivalent ordinance) and watershed map in accordance with the effective dates set forth in 15A NCAC 02B ~~.0104(d)~~. **.0104(e)**.
- (3) COMMISSION APPROVAL. Local government water supply watershed protection ordinances (or equivalent ordinances) and watershed maps shall be submitted to the Division for approval by the Commission or its designee no later than 270 days after receiving notice of a water supply reclassification from the Commission. The Commission or its designee shall approve the water supply watershed protection ordinance and map if it meets or exceeds the minimum statewide water supply watershed management requirements adopted pursuant to this Section and G.S. 143-214.5. The local government may begin implementing the ordinances prior to receiving approval by the Commission. The following items shall be included in the submission in either paper or electronic format:
- (a) one copy of the adopted and effective relevant ordinance;
 - (b) a cover letter from the local government's legal counsel, municipal or county clerk, or municipal or county manager certifying that the ordinance meets or exceeds the requirements of this Section and G.S. 143-214.5; and
 - (c) one copy of a watershed map showing the local government corporate and extraterritorial jurisdictional boundaries, the Commission's adopted watershed boundaries, the local government's interpreted watershed boundaries, and U.S. Geological Survey 1:24,000 (7.5 minute) scale topographic contour lines and hydrography.
- (4) WATERSHED BOUNDARY INTERPRETATION. Major landmarks such as highways or property lines may be used to delineate the outer boundary of the critical and protected areas if these landmarks are immediately adjacent to the appropriate outer boundary of 1/2 mile for the critical area or five or ten miles for the protected area. Local governments may extend the critical and protected area boundaries beyond the minimum distance required; however, these extended local boundaries shall not affect administration of state permits unless the boundaries are also adopted by the Commission. Local governments shall delineate the approximate normal pool elevation for backwaters of water supply reservoirs for the purposes of determining the critical and protected area boundaries as appropriate. Local governments shall rely primarily on U.S. Geological Survey

topographic maps, land surveys conducted by licensed surveyors, Lidar data, or information from the U.S. Army Corps of Engineers in approximating the location of backwaters.

- (5) **REVISIONS TO ORDINANCES AND MAPS.** Revisions to local watershed supply watershed protection ordinances and watershed maps shall be submitted to the Commission or its designee for approval. The submission requirements set forth in Item (3) of this Rule shall apply to all subject revisions. In addition, revisions to ordinances shall be submitted in a format that identifies the changes adopted or being proposed, as applicable. The local government may adopt and begin implementing the revised ordinance prior to receiving approval by the Commission or its designee; however, revisions (expansions or deletions) to watershed maps shall be approved by the Commission or its designee prior to local government adoption.
- (6) **VARIANCES.** For all proposed major and minor variances, as those terms are defined in Rule .0621 of this Section, from the minimum statewide watershed protection rules, the local Watershed Review Board, or equivalent quasi-judicial body, shall make findings of fact in accordance with the procedures of S.L. 2013-126 and Article 18 of G.S. 153A or Article 19 of G.S. 160A, as appropriate, showing that:
- (a) there are practical difficulties or unnecessary hardships that prevent compliance with the strict letter of the ordinance;
 - (b) the variance is in harmony with the general purpose and intent of the local watershed protection ordinance and preserves its spirit; and
 - (c) in granting the variance, the public safety and welfare have been assured and substantial justice has been done.

For all proposed major and minor variances, the local government considering or requesting the variance shall notify and allow a reasonable comment period for all other local governments having jurisdiction within the watershed area governed by these Rules and the entity using the water supply for consumption. The local Watershed Review ~~Board~~ **Board, or equivalent local quasi-judicial body, hereafter referred to as "the Board,"** may attach conditions to the major or minor variance approval that support the purpose of the local watershed protection ordinance. The ~~local Watershed Review Board, or equivalent local quasi-judicial body,~~ **Board** shall have the power to authorize minor variances for development activities on a case-by-case basis. For major variances, if the ~~local Watershed Review~~ **Board** decides in favor of granting the major variance, ~~the Board then it~~ shall then prepare a preliminary record of the hearing and submit it to the Commission for review. If the Commission approves the major variance or approves the variance with conditions or stipulations added, then the Commission shall prepare a decision that authorizes the ~~local Watershed Review~~ **Board** to issue a final decision that includes any conditions or stipulations added by the Commission. If the Commission denies the major variance, then the Commission shall prepare a decision to be sent to the ~~local Watershed Review~~ **Board**. The ~~local Watershed Review~~ **Board** shall prepare a final decision denying the major variance. Appeals from the local government decision on a major or minor variance request shall be made on certiorari to the local Superior Court. Appeals from the Commission decision on a major variance request are made on judicial review to Superior Court. When local ordinances are more stringent than the state's minimum watershed protection requirements, a variance to the local government's ordinance is not considered a major variance as long as the result of the variance is not less stringent than the state's minimum watershed protection requirements.

- (7) **RECORDKEEPING REQUIREMENTS.** Local governments shall maintain the following records and furnish a copy of these records to the Division upon request:
- (a) a copy of all variance requests and associated documents;
 - (b) findings of fact on all variance requests;
 - (c) a description of all projects for which the local government has granted a variance to the requirements of this Section;
 - (d) an accounting of projects approved under the local government's 10/70 Option (as described in Rule .0624 of this Section), as applicable; and
 - (e) records of inspections of SCMs pursuant to Item (8) of this Rule.
- (8) **OPERATION AND MAINTENANCE OF SCMS.** Wherever in this Section it is provided that local governments assume responsibility for operation and maintenance of engineered SCMs, this shall be construed to require responsible local governments to either inspect such SCMs or require the owners of such SCMs to inspect such SCMs at least once per year to determine whether the SCMs

are performing as designed and intended. Records of inspections shall be maintained on forms made available by the Division at <http://watersupplywatershed.nc.gov/> or the local government. The inspection form shall include the following:

- (a) project name;
- (b) owner name and address;
- (c) name and classification of the water supply watershed where the project is located;
- (d) type(s) of SCMs at the project site;
- (e) summary of repairs or maintenance needed; and
- (f) estimated timeframe for completion of the repairs or maintenance.

In the event an inspection shows that an SCM is not performing as designed and intended, the local government shall order the owning entity to take corrective actions. If the entity fails to take corrective actions, the local government may impose civil penalties and pursue other available remedies in accordance with State and local law, including without limitation: G.S. 14-4; G.S. 77-13; G.S. 77-14; G.S. 143-214.7; G.S. 143-215.6A; G.S. 153A-123; G.S. 160A-459; and G.S. 160A-175.

- (9) Local governments shall, as the existing laws allow, develop, implement, and enforce comprehensive nonpoint source and stormwater discharge control programs to reduce water pollution from activities within water supply watersheds such as development, landfills, mining, on-site sanitary sewage systems which utilize ground adsorption, toxic and hazardous materials, transportation, and water-based recreation.
- (10) In the event that the Commission determines that a local government program has failed to adopt or implement its program in compliance with the water supply watershed protection requirements of this Section and G.S. 143-214.5, the Commission shall take appropriate enforcement action in accordance with G.S. 143-214.5 and G.S. 143-215.6A(e). When the Commission assumes a local water supply watershed protection program as specified under G.S. 143-214.5(e), all local permits authorizing construction and development activities as regulated by the statewide minimum water supply watershed protection requirements of this Section shall be approved by the Commission or its designee prior to local government issuance.
- (11) The Commission may delegate such matters as variance approval, extension of deadlines for submission of ordinances, and assessment of civil penalties pursuant to G.S. 143-214.5(e) to the Director.

*History Note: Authority G.S. 143-214.1; 143-214.5; 143-215.3(a)(1);
The provisions of this Rule were previously codified in 15A NCAC 2B .0104.*

15A NCAC 02B .0624 WATER SUPPLY WATERSHED PROTECTION PROGRAM: NONPOINT SOURCE AND STORMWATER POLLUTION CONTROL

The purpose of this Rule is to minimize the impact of stormwater runoff from development on the water quality of public surface water supplies and to protect their designated uses as public water supplies.

- (1) **IMPLEMENTING AUTHORITY.** The requirements of this Rule shall be implemented by local governments with land use authority in one or more designated water supply watersheds. 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 Section.
- (2) **APPLICABILITY.** This Rule shall apply to all new development projects that lie within a designated water supply watershed, except in a Class WS-IV watershed where this Rule applies only to new development projects that require an Erosion and Sedimentation Control Plan.
- (3) **EXCLUSIONS.** The following shall not be subject to this Rule:
 - (a) existing development;
 - (b) redevelopment, as that term is defined in Rule. 0621 of this Section;
 - (c) single-family residential redevelopment even if there is a net increase in built-upon area or if stormwater controls are not equal to that of the previous single-family residential development;
 - (d) expansions to single-family residential existing development unless the expansion is part of a larger common plan of development that is subject to this Rule;

- (e) nonconforming lot of record that is not contiguous to any other lot owned by the same party and if it is to be developed for single-family residential purposes. Local governments may require the combination of contiguous nonconforming lots of record owned by the same party in order to establish a lot or lots that meet or nearly meet the development restrictions of this Section;
 - (f) any lot or parcel created as part of a family subdivision after the effective date of the local watershed ordinance if it is to be developed for one single-family detached residence and if it is exempt from a local subdivision ordinance. Any lot or parcel created as part of any other type of subdivision that is exempt from a local subdivision ordinance shall be subject to this Rule, except that such a lot or parcel shall meet the vegetated setback requirements set forth in Item (12) of this Rule to the maximum extent practicable. In determining whether this criteria has been met, the local government shall take into account site-specific factors including technical and cost considerations as well as protection of water quality;
 - (g) silviculture activities except as required by Rule .0622(3) of this Section;
 - (h) agricultural activities except as required by Item (12) of this Rule and Rule .0622(4) of this Section; and
 - (i) North Carolina Department of Transportation (NCDOT) activities that are regulated in accordance with the provisions of NPDES Permit No. NCS000250.
- (4) **PROJECT DENSITY.** The following maximum allowable project densities and minimum lot sizes shall apply to a project according to the classification of the water supply watershed where it is located (WS-I, WS-II, WS-III, WS-IV, WS-V), its relative location in the watershed (Critical Area versus Balance of Watershed or Protected Area), its project density (low density versus high density), and the type of development (single-family detached residential versus all other types):

Water Supply Classification	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
WS-I	Not Applicable: Watershed shall remain undeveloped except for the following uses when they cannot be avoided: power transmission lines, restricted access roads, and structures associated with water withdrawal, treatment, and distribution of the WS-I water. Built-upon area shall be designed and located to minimize stormwater runoff impact to receiving waters.			
WS-II	Critical Area	1 dwelling unit per 2 acres or 80,000 square foot lot excluding roadway right-of-way or 6% built-upon area	6% built-upon area	6 to 24% built-upon area
	Balance of Watershed	1 dwelling unit per 1 acre or 40,000 square foot lot excluding roadway right-of-way or 12% built-upon area	12% built-upon area	12 to 30% built-upon area
WS-III	Critical Area	1 dwelling unit per 1 acre or 40,000 square foot lot excluding roadway right-of-way or 12% built-upon area	12% built-upon area	12 to 30% built-upon area

	Balance of Watershed	1 dwelling unit per one-half acre or 20,000 square foot lot excluding roadway right-of-way or 24% built-upon area	24% built-upon area	24 to 50% built-upon area
WS-IV	Critical Area	2 dwelling units per acre or 20,000 square foot lot excluding roadway right-of-way or 24% built-upon area	24% built-upon area	24 to 50% built-upon area
	Protected Area	2 dwelling units per acre or 20,000 square foot lot excluding roadway right-of-way or 24% built-upon; or 3 dwelling units per acre or 36% built-upon area without curb and gutter street system	24% built-upon area; or 36% built-upon area without curb and gutter street system	24 to 70% built-upon area
WS-V	Not Applicable			

- (5) **CALCULATION OF PROJECT DENSITY.** The following requirements shall apply to the calculation of project density:
- (a) Project density shall be calculated as the total built-upon area divided by the total project area;
 - (b) A project with "existing development," as that term is defined in Rule .0621 of this Section, may use the calculation method in Sub-Item (a) of this Item or shall have the option of calculating project density as the difference of total built-upon area minus existing built-upon area divided by the difference of total project area minus existing built-upon area. Expansions to existing development shall be subject to this Rule except as excluded in Sub-Item (3)(d) of this Rule. Where there is a net increase of built-upon area, only the area of net increase shall be subject to this Rule. Where existing development is being replaced with new built-upon area, and there is a net increase of built-upon area, only the area of net increase shall be subject to this Rule;
 - (c) Total project area shall exclude the following:
 - (i) areas below the Normal High Water Line (NHWL); and
 - (ii) areas defined as "coastal wetlands" pursuant to 15A NCAC 07H .0205, herein incorporated by reference, including subsequent amendments and editions, and available at no cost at <http://reports.oah.state.nc.us/ncac.asp>, as measured landward from the NHWL; and
 - (d) Projects under a common plan of development shall be considered as a single project for purposes of density calculation except that on a case-by-case basis, local governments shall have the option to allow projects to be considered to have both high and low density areas based on one or more of the following criteria:
 - (i) natural drainage area boundaries;
 - (ii) variations in land use throughout the project; or
 - (iii) construction phasing.
- (6) **LOW DENSITY PROJECTS.** In addition to complying with the project density requirements of Item (4) of this Rule, low density projects shall comply with the following:
- (a) **VEGETATED CONVEYANCES.** Stormwater runoff from the project shall be released to vegetated areas as dispersed flow or transported by vegetated conveyances to the maximum

extent practicable. In determining whether this criteria has been met, the local government shall take into account site-specific factors such as topography and site layout as well as protection of water quality. Vegetated conveyances shall be maintained in perpetuity to ensure that they function as designed. Vegetated conveyances that meet the following criteria shall be deemed to satisfy the requirements of this Sub-Item:

- (i) Side slopes shall be no steeper than 3:1 (horizontal to vertical) unless it is demonstrated to the local government that the soils and vegetation will remain stable in perpetuity based on engineering calculations and on-site soil investigation; and
 - (ii) The conveyance shall be designed so that it does not erode during the peak flow from the 10-year storm event as demonstrated by engineering calculations.
- (b) **CURB OUTLET SYSTEMS.** In lieu of vegetated conveyances, low density projects shall have the option to use curb and gutter with outlets to convey stormwater to grassed swales or vegetated areas. Requirements for these curb outlet systems shall be as follows:
- (i) The curb outlets shall be located such that the swale or vegetated area can carry the peak flow from the 10-year storm and at a non-erosive velocity;
 - (ii) The longitudinal slope of the swale or vegetated area shall not exceed five percent except where not practical due to physical constraints. In these cases, devices to slow the rate of runoff and encourage infiltration to reduce pollutant delivery shall be provided;
 - (iii) The swale's cross section shall be trapezoidal with a minimum bottom width of two feet;
 - (iv) The side slopes of the swale or vegetated area shall be no steeper than 3:1 (horizontal to vertical);
 - (v) The minimum length of the swale or vegetated area shall be 100 feet; and
 - (vi) Low density projects may use treatment swales designed in accordance with 15A NCAC 02H .1061 in lieu of the requirements specified in Sub-Items (i) through (v) of this Sub-Item.
- (7) **HIGH DENSITY PROJECTS.** In addition to complying with the project density requirements of Item (4) of this Rule, high density projects shall comply with the following:
- (a) SCMs shall be designed, constructed, and maintained so that the project achieves either "runoff treatment" or "runoff volume match" as those terms are defined in Rule .0621 of this Section;
 - (b) **REQUIRED STORM DEPTH.** For high density projects designed to achieve runoff treatment, the required storm depth shall be one inch. Applicants shall have the option to design projects to achieve runoff volume match in lieu of runoff treatment.
 - (c) **OFF-SITE STORMWATER.** Stormwater runoff from off-site areas and "existing development," as that term is defined in Rule .0621 of this Section, shall not be required to be treated in the SCM. Runoff from off-site areas or existing development that is not bypassed shall be included in sizing of on-site SCMs;
 - (d) **MDC FOR SCMS.** SCMs shall meet the relevant MDC set forth in 15A NCAC 02H .1050 through .1062.
 - (e) **STORMWATER OUTLETS.** Stormwater outlets shall be designed so that they do not cause erosion downslope of the discharge point during the peak flow from the 10-year storm event as shown by engineering calculations.
- (8) **OPTIONS FOR IMPLEMENTING PROJECT DENSITY.** Local governments shall have the following options when developing or revising their ordinances in place of or in addition to the requirements of Item (4) of this Rule, as appropriate:
- (a) Local governments shall have the option to allow only low density development in their water supply watershed areas in accordance with this Section.
 - (b) Local governments shall have the option to regulate low density single-family detached residential development using the minimum lot size requirements, dwelling unit per acre requirements, built-upon area percentages, or some combination of these.
 - (c) **10/70 OPTION.** Outside of WS-I watersheds and the critical areas of WS-II, WS-III, and WS-IV watersheds, local governments shall have the option to regulate new development under the "10/70 option" in accordance with the following requirements:

- (i) A maximum of 10 percent of the land area of a water supply watershed outside of the critical area and within a local government's planning jurisdiction may be developed with new development projects and expansions of existing development of up to 70 percent built-upon area.
 - (ii) In water supply watersheds classified on or before August 3, 1992, the beginning amount of acreage available under this option shall be based on a local government's jurisdiction as delineated on July 1, 1993. In water supply watersheds classified after August 3, 1992, the beginning amount of acreage available under this option shall be based on a local government's jurisdiction as delineated on the date the water supply watershed classification became effective. The acreage within the critical area shall not be counted towards the allowable 10/70 option acreage;
 - (iii) Projects that are covered under the 10/70 option shall comply with the low density requirements set forth in Item (6) of this Rule unless the local government allows high density development, in which case the local government shall have the option to require these projects to comply with the high density requirements set forth in Item (7) of this Rule;
 - (iv) The maximum built-upon area allowed on any given new development project shall be 70 percent;
 - (v) A local government having jurisdiction within a designated water supply watershed may transfer, in whole or in part, its right to the 10/70 land area to another local government within the same water supply watershed upon submittal of a joint resolution and approval by the Commission; and
 - (vi) When the water supply watershed is composed of public lands, such as National Forest land, local governments may count the public land acreage within the watershed outside of the critical area in calculating the acreage allowed under this provision.
- (d) New development shall meet the development requirements on a project-by-project basis except local governments may submit ordinances that use density or built-upon area criteria averaged throughout the local government's watershed jurisdiction instead of on a project-by-project basis within the watershed. Prior to approval of the ordinance, the local government shall demonstrate to the Commission that the provisions as averaged meet or exceed the statewide minimum requirements and that a mechanism exists to ensure the orderly and planned distribution of development potential throughout the local government's jurisdiction within the watershed.
- (e) Local governments may administer oversight of future development activities in single-family detached residential developments that exceed the applicable low density requirements by tracking dwelling units rather than percentage built-upon area, as long as the SCM is sized to capture and treat runoff from all pervious and built-upon surfaces shown on the development plan and any off-site drainage from pervious and built-upon surfaces, and when an additional safety factor of 15 percent of built-upon area of the project site is figured in.
- (9) **CLUSTER DEVELOPMENT.** Cluster development shall be allowed on a project-by-project basis as follows:
- (a) Overall density of the project shall meet the requirements of Item (4) of this Rule;
 - (b) Vegetated setbacks shall meet the requirements of Item (12) of this Rule;
 - (c) Built-upon areas are designed and located to minimize stormwater runoff impact to receiving waters, minimize concentrated stormwater flow, maximize the use of sheet flow through vegetated areas, and maximize the flow length through vegetated areas;
 - (d) Areas of concentrated development shall be located in upland areas and away, to the maximum extent practicable, from surface waters and drainageways. In determining whether these criteria have been met, the local government shall take into account site-specific factors such as topography and site layout as well as protection of water quality;
 - (e) The remainder of tract shall remain in a vegetated or natural state;

- (f) The 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;
 - (g) A maintenance agreement for the vegetated or natural area shall be filed with the Register of Deeds; and
 - (h) Cluster development that meets the applicable low density requirements shall comply with Item (6) of this Rule.
- (10) DENSITY AVERAGING OF NONCONTIGUOUS PARCELS. Density averaging of two noncontiguous parcels for purposes of complying with this Rule shall be allowed in accordance with G.S. 143-214.5 (d2).
- (11) RESPONSIBILITY FOR SCM OPERATION & MAINTENANCE. Operation and maintenance agreements and plans are required for SCMs in accordance with 15A NCAC 02H .1050. Local governments that allow high density development shall assume ultimate responsibility for operation and maintenance of the SCMs that they approve.
- (12) VEGETATED SETBACKS. Vegetated setbacks shall be required along perennial waterbodies and perennial streams that are 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 other maps developed by the Department or a local government and approved by the Commission. Where USGS topographic maps do not distinguish between perennial and intermittent streams, an on-site stream determination may be performed by an individual qualified to perform such stream determinations. A qualified individual is one who has been certified to perform stream determinations by completing and passing the Surface Water Identification Training and Certification (SWITC) Course offered by the North Carolina Division of Water Resources and North Carolina State University. Vegetated setbacks shall also be in accordance with the following:
- (a) MINIMUM WIDTHS. The following minimum widths shall apply:
 - (i) low density projects – 30 feet;
 - (ii) high density projects – 100 feet;
 - (iii) projects covered under the 10/70 option – 100 feet;
 - (iv) agricultural activities – 10 feet, or equivalent control as determined by the designated agency as set forth in Rule .0622 of this Section; and
 - (b) 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;
 - (c) Vegetated setbacks may be cleared or graded, but shall be replanted and maintained in grass or other vegetation;
 - (d) No new built-upon area shall be allowed in the vegetated setback except for the following uses where it is not practical to locate the built-upon area elsewhere:
 - (i) publicly-funded linear projects such as roads, greenways, and sidewalks;
 - (ii) water dependent structures such as docks; and
 - (iii) minimal footprint uses such as poles, signs, utility appurtenances, and security lights.
Built-upon area associated with these uses shall be minimized and the channelization of stormwater runoff shall be avoided; and
 - (e) Artificial streambank and shoreline stabilization shall not be subject to the requirements of this Item.
- (13) VARIANCES. Variances to this Rule may be considered in accordance with Rule .0623 of this Section.

History Note: Authority G.S. 143-214.1; 143-214.5; 143-215.3(a)(1); The provisions of this Rule were previously codified in 15A NCAC 02B .0104 and 02B .0212 through .0218.

Appendix B: 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: Karen Higgins, 401 & Buffer Permitting Branch Supervisor, DWR
karen.higgins@ncdenr.gov
 919 807-6360 office

Julie Ventaloro, Stormwater Permitting Program, DEMLR
julie.ventaloro@ncdenr.gov
 (919) 807-6370

Jucilene Hoffmann: Economist II, Classification & Standards, DWR
jucilene.hoffmann@ncdenr.gov
 (919) 707-9016

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	Clarification; grammar revision; reorganization; updated terminology and reference; added	Staff Review	None	None

Creek Watershed (Yadkin Pee-Dee River Basin): Buffer Types and Managing Activities Within Riparian Buffers	new uses; codifying policy; and added new language to be consistent with other rules;	and public comments		
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	Staff Review	None	None

	statute G.S. 143-214.7 which allows areas of #57 stone to be considered pervious (less stringent).			
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	<p>Provide detail about sources of information that can be used to approximate normal pool elevation</p> <p>Clarify process for local government ordinance and map approval and recordkeeping requirements</p> <p>Clarify that local governments may require owners of stormwater control measures (SCMs) to inspect SCMs rather than the local governments themselves</p> <p>Eliminate requirement that variance information be submitted to Division on an annual basis; instead, local governments must provide upon request (less stringent).</p> <p>Specify which laws give local government authority to impose civil penalties</p>	Staff review	None	None
15A NCAC 02B .0624 Water Supply Watershed Protection Program: Nonpoint Source and Stormwater Pollution Control	<p>Condense density and setbacks into one rule for all WS classifications).</p> <p>Update terminology to match 15A NCAC 02H stormwater rules</p> <p>Clarify how to calculate project density).</p> <p>Clarify meaning of term “maximum extent practicable”</p>	Staff review	None	None

	<p>New option to allow low density projects to use dispersed flow or curb outlet swales instead of traditional vegetated conveyances (less stringent).</p> <p>Allow SCMs other than wet ponds (less stringent).</p> <p>Allow SCMs to achieve runoff volume match as an alternative to basic treatment (one-inch storm) (less stringent).</p> <p>Update reference to 15A NCAC 02H design requirements for all SCMs (</p> <p>Allow built-upon area to be used instead of dwelling unit per acre or minimum lot size for single-family residential development (less stringent).</p> <p>Allow local governments to offer both the 10/70 option and the high density option in a WS-IV (less stringent).</p> <p>Codify NCGS reference to density averaging of noncontiguous parcels).</p> <p>Clarify process for stream determinations where USGS topographic maps do not distinguish between perennial and intermittent streams</p> <p>Clarify that the vegetated setback under the 10/70 option is 100 feet).</p>			
--	--	--	--	--

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 C: Notice of Text of Proposed Rulemaking



NOTICE OF TEXT [Authority G.S. 150B-21.2(c)]

OAH USE ONLY
VOLUME:
ISSUE:

CHECK APPROPRIATE BOX:

- Notice with a scheduled hearing
- Notice without a scheduled hearing
- Republication of text. Complete the following cite for the volume and issue of previous publication, as well as blocks 1 - 4 and 7 - 13. If a hearing is scheduled, complete block 5.**
 Previous publication of text was published in Volume: Issue:

1. Rule-Making Agency: Environmental Management Commission
2. Link to agency website pursuant to G.S. 150B-19.1(c): https://deq.nc.gov/news/events/public-notices-hearings
3. Proposed Action -- Check the appropriate box(es) and list <u>rule citation(s)</u> beside proposed action: <input checked="" type="checkbox"/> ADOPTION: 15A NCAC 02B .0408, 15A NCAC 02B .0511, 15A NCAC 02B .0610-.0612, 15A NCAC 02B .0620 - .0624, 15A NCAC 02H .0143, 15A NCAC 02H .1306 <input checked="" type="checkbox"/> READOPTION <u>with</u> substantive changes: 15A NCAC 02B .0233, 15A NCAC 02B .0241, 15A NCAC 02B .0243, 15A NCAC 02B .0248-.0251, 15A NCAC 02B .0259, 15A NCAC 02B .0261, 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 .0142, 15A NCAC 02H .0401-.0407, 15A NCAC 02H .0501-.0504, 15A NCAC 02H .0506-.0507, 15A NCAC 02H .0901-.0903, 15A NCAC 02H .0908, 15A NCAC 02H .0916-.0917, 15A NCAC 02H .0920, 15A NCAC 02H .1206, 15A NCAC 02H .1301-.1305 <input checked="" type="checkbox"/> READOPTION <u>without</u> 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 <input type="checkbox"/> AMENDMENT: <input type="checkbox"/> REPEAL:
4. Proposed effective date: January 1, 2019
5. Is a public hearing planned? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No If yes: Public Hearing date: May 23, 2018 Public Hearing time: 6:00 p.m. Public Hearing Location: Ground Flr Hearing Room, Archdale Building, 512 N. Salisbury St, Raleigh, NC 27604 Public Hearing date: June 7, 2018 Public Hearing time: 6:00 p.m. Public Hearing Location: Piedmont Triad Regional Council, 1398 Carrollton Crossing Dr, Kernersville, NC 27284

6. If no public hearing is scheduled, provide instructions on how to demand a public hearing:

7. Explain Reason For Proposed Rule(s): 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, 02B .0202 and 02B .0212-.0218. See attached table for cross references. 15A NCAC 02B .0104, 02B .0202, and 02B .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.

8. 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. If the Rules Review Commission receives written and signed objections 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.

Rule(s) is automatically subject to legislative review. Cite statutory reference: See attached table

9. The person to whom written comments may be submitted on the proposed rule(s):

Name: Julie Ventaloro

Address: NCDEQ-DEMLR-Stormwater Permitting Program

1612 Mail Service Center

Raleigh, NC 27699-1612

Phone (optional):

Fax (optional):

E-Mail (optional): publiccomments@ncdenr.gov (please include rule number in email's subject line)

10. Comment Period Ends: July 2, 2018**11. Fiscal impact (check all that apply).**

If this form contains rules that have different fiscal impacts, list the rule citations beside the appropriate impact.

- State funds affected
- Environmental permitting of DOT affected
Analysis submitted to Board of Transportation
- Local funds affected
- Substantial economic impact (\geq \$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)

12. Rule-making Coordinator: Jennifer Everett

Address: 1601 Mail Service Center
Raleigh, NC 27699-1601

Phone: 919-707-8614

E-Mail: jennifer.everett@ncdenr.gov

Agency contact, if any:

Phone:

E-mail:

13. The Agency formally proposed the text of this rule(s) on
Date: March 8, 2018

14. Signature of Agency Head* or Rule-making Coordinator:

***If this function has been delegated (reassigned) pursuant to**
G.S. 143B-10(a), submit a copy of the delegation with this form.

Typed Name: Jennifer Everett

Title: Rulemaking Coordinator