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**Request for a Major Variance from the
Neuse River Riparian Area Protection Rules**

**Johnston County
680 County Home Road
Smithfield, NC**

May 10, 2017

Johnston County has requested the Water Quality Committee (WQC) to grant a Major Variance from the Neuse Riparian Area Protection Rules (15A NCAC 02B .0233) for expansion of their landfill within Zone 1 and Zone 2 of the buffer at 680 County Home Road in Smithfield, NC. The proposed landfill expansion will impact 22,046 square feet of Zone 1 and 17,654 square feet of Zone 2.

Accordingly, pursuant to 15A NCAC 02B .0233 (9)(c), the Division of Water Resources makes the preliminary finding that the major variance request demonstrates the following:

- Practical difficulties or unnecessary hardships are present;
- The harmony and spirit of buffer protection requirements are met; and
- The protection of water quality and substantial justice has been achieved as required in 15A NCAC 02B .0233 (9)(a).

15A NCAC 02B .0233 (9)(a)(i) states the following:

“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;”*

The Division finds the following:

There are practical difficulties that prevent compliance with the strict letter of the riparian buffer protection requirements:

- A. Johnston County purchased the property to provide solid waste disposal for the foreseeable future. Compliance with the Rule would result in a 67% reduction in landfill capacity. No other practical alternatives are available within the permitted facility boundary. Expansion of the facility boundary or siting a new landfill location would require a significant effort including public review and compliance with strict regulatory restrictions with no certainty of success.
- B. The hardship results from application of this Rule rather than from other factors. There are no restrictions to the proposed expansion of the landfill beyond compliance with the Rule and Clean Water Act regulations. Application for an Individual Permit and Water Quality Certification will be submitted should the Major Variance be granted. Solid waste buffers do not result in the hardship addressed in this application.
- C. The main constraint to the expansion of the landfill is the physical nature of the applicant's property. Middle Creek and its floodplain are located to the north of the project. Larger drainages that include contiguous and fully functioning stream channels with adjacent wetlands and a NCDOT parcel that is outside of the facility boundary are located west of the project. Landfill infrastructure including a gas to energy plant, office, scale house, maintenance facility and public convenience center constrain the expansion to the south.
- D. The applicant has not violated this Rule. All prior landfill construction, borrow activities and other site infrastructure comply with the Rule.
- E. Johnston County purchased the property in 1991 prior to the effective date of the Rule with the intent to provide long-term solid waste disposal for Johnston County and surrounding areas.

- F. The hardship is unique to the applicant's property in that the property contains an existing MSW landfill with an approved facility boundary. This constraint is different from that of most of the other properties in the area. Only 3 active MSW landfills are currently present with the counties adjacent to the project. Additionally, the three-dimensional aspect of landfills and need for stable side slopes makes avoidance of the buffer impractical.

15A NCAC 02B .0233 (9)(a)(ii)

"The variance is in harmony with the general purpose and intent of the State's riparian buffer protection requirements and preserves its spirit;"

The Divisions finds the following:

The purpose of the riparian buffer rule is to protect existing riparian buffer areas. However, the applicant cannot make reasonable use of the property without impacting the protected riparian buffer. The applicant is proposing to purchase 75,957 buffer mitigation credits from the Old Savannah Nutrient Offset & Buffer Bank located within HUC 03020201 to offset the buffer impacts that are not occupied by wetlands that will be mitigated in accordance with 15A NCAC 02H .0506.

15A NCAC 02B .0233 (9)(a)(iii)

"In granting the variance, the public safety and welfare have been assured, water quality has been protected, and substantial justice has been done."

The Divisions finds the following:

State solid waste regulations for the design and operation of MSW landfills, including a plan to monitor ground and surface water, ensure that public safety and welfare have been assured, water quality has been protected, and substantial justice has been done. Additionally, the applicant is proposing to purchase 75,957 buffer mitigation credits and implement a stormwater management plan for the project designed to meet state solid waste regulations and maintain diffuse flow through the remaining buffer on the site. A detailed stormwater management plan consisting of dry detention basins, grassed swales, and small level spreaders or energy dissipators will be submitted as part of the Section 404/401 permitting and certification required for the impacts to surface waters and wetlands. This Major Variance as proposed is consistent with past Major Variance approvals from the Water Quality Committee.

Division of Water Resources' Recommendation:

Based on the information submitted, the Division of Water Resources supports this request for a Major Variance from the Neuse Riparian Area Protection Rules because the harmony and spirit of buffer protection requirements are met and the protection of water quality and substantial justice has been achieved as required in 15A NCAC 02B .0233 (9)(a) provided the below mentioned conditions or stipulations are required. If the Water Quality Committee approves this request for a Major Variance from the Neuse Riparian Area Protection Rules, the Division

recommends approval with the following conditions or stipulations [pursuant to 15A NCAC 02B .0233 (9)(c)(ii) & (iii)]:

- **Mitigation**

The applicant shall provide mitigation for the proposed impacts by purchasing 75,957 buffer credits within HUC 03020201 from the Old Savannah Nutrient Offset & Buffer Bankas indicated in their application.

- A final Site Plan including the Stormwater Management Plan is approved by the Division of Water Resources prior to disturbance within the buffer.
- This major variance shall only apply if the USACE issues a Section 404 permit and the Division of Water Resources issues a 401 Water Quality Certification for impacts to the stream and wetlands associated with the subject buffers.