

TITLE 15A – DEPARTMENT OF ENVIRONMENTAL QUALITY

Notice is hereby given in accordance with G.S. 150B-21.2 that the Environmental Management Commission intends to amend the rules cited as 15A NCAC 02B .0227 and .0311.

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

Proposed Effective Date: July 1, 2021

Public Hearing:

Date: October 20, 2020

Time: 6:00 p.m.

Location: *In the abundance of caution, and to address protective measures to help prevent the spread of COVID-19, the NC Division of Water Resources is holding an online public hearing that can be joined starting at 5:45 pm via WebEx link <https://tinyurl.com/yxo91csz>, password bpKhm8bjP32, phone number 1-415-655-0003 and access code 161 082 1972.*

To register for the hearing and provide your preference regarding speaking at the hearing, please visit <https://tinyurl.com/y6g9hf7a>; registration must be completed by 12:00 pm on October 20, 2020. If you have any problems registering online, please call 919-707-9011 by the registration deadline of 12:00 pm on October 20, 2020.

The Division of Water Resources highly recommends testing your computer's WebEx capabilities prior to the hearing at <https://www.webex.com/test-meeting.html>. For instructions about digital ways to join the public hearing, please refer to the WebEx Help Center online at <https://help.webex.com/en-us/>.

To comment during the hearing after your name is called as a registered speaker and/or after the hearing officer asks if any people wish to comment following the registered speakers:

*- If you join the hearing by phone, press *3 to “raise your hand,” speak once called upon to do so, and press *3 again to “lower your hand.”*

- If you join the hearing online, press the hand icon to “raise your hand,” speak once called upon to do so, and press the hand icon again to “lower your hand.”

- The Hearing Officer may limit the length of time that you may speak, so that all those who wish to speak may do so.

Reason for Proposed Action: *In 2014, the Lower Cape Fear River Program had requested that a segment of the lower Cape Fear River in New Hanover and Brunswick Counties be reclassified from Class SC to Class SC Swamp. The DO standard and pH standard for the Class SC classification is 5 mg/l, and a range between 6.8 – 8.5, respectively. The Sw classification allows, if caused by natural conditions, the pH of the subject waters to reach as low as 4.3 and the DO to be lower than 5 mg/l. A water quality management plan was proposed along with the Swamp classification to help implement the current permitting policy for new wastewater discharges and expansions of existing wastewater discharges to the subject waters, with effluent limits for oxygen consuming wastes that are similar to the same limits for High Quality Waters (HQWs). The Swamp classification and management plan became effective in 2017 in the North Carolina Administrative Code, providing a path forward for discharges and local communities.*

In 2018, the U.S. Environmental Protection Agency (EPA) disapproved the Swamp classification and a part of the associated management plan for the above-mentioned portion of the lower Cape Fear River. In 2019, the Environmental Management Commission (EMC) received a petition for rulemaking from the Cape Fear River Watch and Waterkeeper Alliance in care of the Southern Environmental Law Center. The petition requested that the EMC “...remove the supplemental swamp waters classification from the lower Cape Fear River.” At its July 2019 meeting, the EMC granted the petition and approved the initiation of rulemaking to remove the EPA-disapproved Swamp classification and to remove the EPA-disapproved portion of the management plan from the lower Cape Fear River.

The subject waters are comprised of a portion of the Cape Fear River from the upstream mouth of Toomers Creek to a line across the river between Lilliput Creek and Snows Cut, where the Intracoastal Waterway (ICW) meets the river. Wetlands, mixed with developed lands, other open waters, forest lands, shrub/scrub lands, and primarily Swamp classified tributaries exist directly adjacent to the proposed waters. In these waters, there are several tidal saltwater species, including the federally endangered shortnose sturgeon and Atlantic sturgeon, and the Marine Fisheries Commission designation of Primary Nursery Area, or PNA, which received the HQW classification. In addition, during the rulemaking for the reclassification and management plan, there were eight NPDES permitted wastewater discharges, no known planned new NPDES wastewater discharges, and one planned expansion of an existing NPDES wastewater discharge that met the requirements of the classification and management plan but had not been permitted; since then, the one planned expansion got permitted, and currently there are eight NPDES permitted wastewater discharges and no known planned new NPDES wastewater discharges to these waters. Lastly, there are no plans for expansions of existing NPDES wastewater discharges that require permitting.

Comments may be submitted to: *Elizabeth Kountis, DEQ-DWR Planning Section, 1611 Mail Service Center, Raleigh, NC 27699-1611; phone (919) 707-3685; email elizabeth.kountis@ncdenr.gov*

Comment period ends: November 2, 2020

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.

Fiscal impact. Does any rule or combination of rules in this notice create an economic impact? Check all that apply.

- State funds affected
- Local funds affected
- Substantial economic impact (\geq \$1,000,000)
- Approved by OSBM
- No fiscal note required

CHAPTER 02 - ENVIRONMENTAL MANAGEMENT

SUBCHAPTER 02B - SURFACE WATER AND WETLAND STANDARDS

SECTION .0200 - CLASSIFICATIONS AND WATER QUALITY STANDARDS APPLICABLE TO SURFACE WATERS AND WETLANDS OF NORTH CAROLINA

15A NCAC 02B .0227 WATER QUALITY MANAGEMENT PLANS

(a) In implementing the water quality standards to protect the "existing uses" [as defined by Rule .0202 of this Section] of the waters of the State or the water quality that supports those uses, the Commission shall develop water quality management plans on a priority basis to attain, maintain or enhance water quality throughout the State. Additional specific actions deemed necessary by the Commission to protect the water quality or the existing uses of the waters of the State shall be specified in Paragraph (b) of this Rule. These actions may include anything within the powers of the Commission, as set forth in G.S. 143-21 and G.S. 143B-282. The Commission may also consider local actions that have been taken to protect a waterbody in determining the appropriate protection options to be incorporated into the water quality management plan.

(b) All waters determined by the Commission to be protected by a water quality management plan are listed with specific actions either in Rules .0601 - .0608 of this Subchapter that address the Goose Creek watershed (Yadkin Pee-Dee River Basin) or as follows:

- (1) The Lockwoods Folly River Area (Lumber River Basin), which includes all waters of the lower Lockwoods Folly River in an area extending north from the Intracoastal Waterway to a line extending from Genoes Point to Mullet Creek, shall be protected by the specific actions described in Parts (A) through (D) of this Subparagraph.
 - (A) New development activities within 575' of the mean high water line that require a Sedimentation Erosion Control Plan or a CAMA major development permit shall comply with the low density option of the coastal stormwater requirements as specified in 15A NCAC 02H .1005(3)(a).
 - (B) New or expanded NPDES permits shall be issued only for non-domestic, non-industrial process type discharges, such as non-industrial process cooling or seafood processing discharges. Pursuant to 15A NCAC 02H .0111, a public hearing shall be mandatory for any proposed (new or expanded) NPDES permit to this protected area.
 - (C) New or expanded marinas shall be located in upland basin areas.
 - (D) No dredge or fill activities shall be allowed if those activities would result in a reduction of the beds of "submerged aquatic vegetation habitat" or "shellfish producing habitat" that are defined in 15A NCAC 03I .0101, except for maintenance dredging, such as that required to maintain access to existing channels and facilities located within the protected area or maintenance dredging for activities such as agriculture.
- (2) A part of the Cape Fear River (Cape Fear River Basin) comprised of a section of Index No.18-(71) from upstream mouth of Toomers Creek to a line across the river between Lilliput Creek and Snows Cut shall be protected by the Class SC Sw standards as well as the following site-specific action: All new individual NPDES wastewater discharges and expansions of existing individual NPDES wastewater discharges shall be required to provide treatment for oxygen consuming wastes as described in Parts (A) ~~through (C)~~ and (B) of this Subparagraph.
 - (A) Effluent limitations shall be as follows: BOD₅ = 5 mg/l, NH₃-N = 1 mg/l and DO = 6 mg/l, or utilize site-specific best available technology on a case-by-case basis for industrial discharges in accordance with Rule .0406 (e) of this Subchapter.
 - (B) Seasonal effluent limits for oxygen consuming wastes shall be considered in accordance with Rule .0404 of this Subchapter.
 - ~~(C) Any new or expanded permitted pollutant discharge of oxygen consuming waste shall not cause the dissolved oxygen of the receiving water to drop more than 0.1 mg/l below the modeled in-stream dissolved oxygen at total permitted capacity for all discharges.~~

History Note: Authority G.S. 143-214.1; 143-215.8A;

Eff. October 1, 1995;
Amended Eff. June 30, 2017; January 1, 1996;
Readopted Eff. November 1, ~~2019~~ 2019;
Amended Eff. July 1, 2021.

SECTION .0300 - ASSIGNMENT OF STREAM CLASSIFICATIONS

15A NCAC 02B .0311 CAPE FEAR RIVER BASIN

(a) Classifications assigned to the waters within the Cape Fear River Basin are set forth in the Cape Fear River Basin Classification Schedule, which may be inspected at the following places:

- (1) the Internet at <https://deq.nc.gov/about/divisions/water-resources/water-planning/classification-standards/river-basin-classification>; and
- (2) the following offices of the North Carolina Department of Environmental Quality:
 - (A) Winston-Salem Regional Office
450 West Hanes Mill Road
Winston-Salem, North Carolina;
 - (B) Fayetteville Regional Office
225 Green Street
System Building Suite 714
Fayetteville, North Carolina;
 - (C) Raleigh Regional Office
3800 Barrett Drive
Raleigh, North Carolina;
 - (D) Washington Regional Office
943 Washington Square Mall
Washington, North Carolina;
 - (E) Wilmington Regional Office
127 Cardinal Drive Extension
Wilmington, North Carolina; and
 - (F) Division of Water Resources
Central Office
512 North Salisbury Street
Raleigh, North Carolina.

(b) The Cape Fear River Basin Classification Schedule was amended effective:

- (1) March 1, 1977;
- (2) December 13, 1979;
- (3) December 14, 1980;
- (4) August 9, 1981;
- (5) April 1, 1982;
- (6) December 1, 1983;
- (7) January 1, 1985;
- (8) August 1, 1985;
- (9) December 1, 1985;
- (10) February 1, 1986;
- (11) July 1, 1987;
- (12) October 1, 1987;
- (13) March 1, 1988;
- (14) August 1, 1990.

(c) The Cape Fear River Basin Classification Schedule was amended effective June 1, 1988 as follows:

- (1) Cane Creek [Index No. 16-21-(1)] from source to a point 0.5 mile north of N.C. Hwy. 54 (Cane Reservoir Dam) including the Cane Creek Reservoir and all tributaries has been reclassified from Class WS-III to WS-I.
- (2) Morgan Creek [Index No. 16-41-1-(1)] to the University Lake dam including University Lake and all tributaries has been reclassified from Class WS-III to WS-I.

(d) The Cape Fear River Basin Classification Schedule was amended effective July 1, 1988 by the reclassification of Crane Creek (Crains Creek) [Index No. 18-23-16-(1)] from source to mouth of Beaver Creek including all tributaries from C to WS-III.

(e) The Cape Fear River Basin Classification Schedule was amended effective January 1, 1990 as follows:

- (1) Intracoastal Waterway (Index No. 18-87) from southern edge of White Oak River Basin to western end of Permuda Island (a line from Morris Landing to Atlantic Ocean), from the eastern mouth of Old Topsail Creek to the southwestern shore of Howe Creek and from the southwest mouth of Shinn Creek to channel marker No. 153 including all tributaries except the King Creek Restricted Area, Hardison Creek, Old Topsail Creek, Mill Creek, Futch Creek and Pages Creek were reclassified from Class SA to Class SA ORW.
- (2) Topsail Sound and Middle Sound ORW Area which includes all waters between the Barrier Islands and the Intracoastal Waterway located between a line running from the western most shore of Mason Inlet to the southwestern shore of Howe Creek and a line running from the western shore of New Topsail Inlet to the eastern mouth of Old Topsail Creek was reclassified from Class SA to Class SA ORW.

- (3) Masonboro Sound ORW Area which includes all waters between the Barrier Islands and the mainland from a line running from the southwest mouth of Shinn Creek at the Intracoastal Waterway to the southern shore of Masonboro Inlet and a line running from the Intracoastal Waterway Channel marker No. 153 to the southside of the Carolina Beach Inlet was reclassified from Class SA to Class SA ORW.
- (f) The Cape Fear River Basin Classification Schedule was amended effective January 1, 1990 as follows: Big Alamance Creek [Index No. 16-19-(1)] from source to Lake Mackintosh Dam including all tributaries has been reclassified from Class WS-III NSW to Class WS-II NSW.
- (g) The Cape Fear River Basin Classification Schedule was amended effective August 3, 1992 with the reclassification of all water supply waters (waters with a primary classification of WS-I, WS-II or WS-III). These waters were reclassified to WS-I, WS-II, WS-III, WS-IV or WS-V as defined in the revised water supply protection rules (15A NCAC 02B .0100, .0200 and .0300), which became effective on August 3, 1992. In some cases, streams with primary classifications other than WS were reclassified to a WS classification due to their proximity and linkage to water supply waters. In other cases, waters were reclassified from a WS classification to an alternate appropriate primary classification after being identified as downstream of a water supply intake or identified as not being used for water supply purposes.
- (h) The Cape Fear River Basin Classification Schedule was amended effective June 1, 1994 as follows:
- (1) The Black River from its source to the Cape Fear River [Index Nos. 18-68-(0.5), 18-68-(3.5) and 18-65-(11.5)] was reclassified from Classes C Sw and C Sw HQW to Class C Sw ORW.
 - (2) The South River from Big Swamp to the Black River [Index Nos. 18-68-12-(0.5) and 18-68-12(11.5)] was reclassified from Classes C Sw and C Sw HQW to Class C Sw ORW.
 - (3) Six Runs Creek from Quewhiffle Swamp to the Black River [Index No. 18-68-2] was reclassified from Class C Sw to Class C Sw ORW.
- (i) The Cape Fear River Basin Classification Schedule was amended effective September 1, 1994 with the reclassification of the Deep River [Index No. 17-(36.5)] from the Town of Gulf-Goldston water supply intake to US highway 421 including associated tributaries from Class C to Classes C, WS-IV and WS-IV CA.
- (j) The Cape Fear River Basin Classification Schedule was amended effective August 1, 1998 with the revision to the primary classification for portions of the Deep River [Index No. 17-(28.5)] from Class WS-IV to Class WS-V, Deep River [Index No. 17-(41.5)] from Class WS-IV to Class C, and the Cape Fear River [Index 18-(10.5)] from Class WS-IV to Class WS-V.
- (k) The Cape Fear River Basin Classification Schedule was amended effective April 1, 1999 with the reclassification of Buckhorn Creek (Harris Lake)[Index No. 18-7-(3)] from the backwaters of Harris Lake to the Dam at Harris Lake from Class C to Class WS-V.
- (l) The Cape Fear River Basin Classification Schedule was amended effective April 1, 1999 with the reclassification of the Deep River [Index No. 17-(4)] from the dam at Oakdale-Cotton Mills, Inc. to the dam at Randleman Reservoir (located 1.6 mile upstream of U.S. Hwy 220 Business), and including tributaries from Class C and Class B to Class WS-IV and Class WS-IV & B. Streams within the Randleman Reservoir Critical Area have been reclassified to WS-IV CA. The Critical Area for a WS-IV reservoir is defined as 0.5 mile and draining to the normal pool elevation of the reservoir. All waters within the Randleman Reservoir Water Supply Watershed are within a designated Critical Water Supply Watershed and are subject to a special management strategy specified in Rule .0248 of this Subchapter.
- (m) The Cape Fear River Basin Classification Schedule was amended effective August 1, 2002 as follows:
- (1) Mill Creek [Index Nos. 18-23-11-(1), 18-23-11-(2), 18-23-11-3, 18-23-11-(5)] from its source to the Little River, including all tributaries was reclassified from Class WS-III NSW and Class WS-III B NSW to Class WS-III NSW HQW@ and Class WS-III B NSW HQW@.
 - (2) McDeed's Creek [Index Nos. 18-23-11-4, 18-23-11-4-1] from its source to Mill Creek, including all tributaries was reclassified from Class WS III NSW and Class WS-III B NSW to Class WS-III NSW HQW@ and Class WS-III B NSW HQW@.

The "@" symbol as used in this Paragraph means that if the governing municipality has deemed that a development is covered under a "5/70 provision" as described in Rule .0215(3)(b)(i)(E) of this Subchapter, then that development is not subject to the stormwater requirements as described in 15A NCAC 02H .1006.

- (n) The Cape Fear River Basin Classification Schedule was amended effective November 1, 2004 as follows:
- (1) the portion of Rocky River [Index Number 17-43-(1)] from a point 0.3 mile upstream of Town of Siler City upper reservoir dam to a point 0.3 mile downstream of Lacy Creek from WS-III to WS-III CA.
 - (2) the portion of Rocky River [Index Number 17-43-(8)] from dam at lower water supply reservoir for Town of Siler City to a point 65 feet below dam (site of proposed dam) from C to WS-III CA.
 - (3) the portion of Mud Lick Creek (Index No. 17-43-6) from a point 0.4 mile upstream of Chatham County SR 1355 to Town of Siler City lower water supply reservoir from WS-III to WS-III CA.
 - (4) the portion of Lacy Creek (17-43-7) from a point 0.6 mile downstream of Chatham County SR 1362 to Town of Siler City lower water supply reservoir from WS-III to WS-III CA.
- (o) The Cape Fear River Basin Classification Schedule was amended effective November 1, 2007 with the reclassifications listed below, and the North Carolina Division of Water Resources maintains a Geographic Information Systems data layer of these UWLs.
- (1) Military Ocean Terminal Sunny Point Pools, all on the eastern shore of the Cape Fear River [Index No. 18-(71)] were reclassified to Class WL UWL.
 - (2) Salters Lake Bay near Salters Lake [Index No. 18-44-4] was reclassified to Class WL UWL.
 - (3) Jones Lake Bay near Jones Lake [Index No. 18-46-7-1] was reclassified to Class WL UWL.
 - (4) Weymouth Woods Sandhill Seep near Mill Creek [18-23-11-(1)] was reclassified to Class UWL.
 - (5) Fly Trap Savanna near Cape Fear River [Index No. 18-(71)] was reclassified to Class WL UWL.
 - (6) Lily Pond near Cape Fear River [Index No. 18-(71)] was reclassified to Class WL UWL.
 - (7) Grassy Pond near Cape Fear River [Index No. 18-(71)] was reclassified to Class WL UWL.

- (8) The Neck Savanna near Sandy Run Swamp [Index No. 18-74-33-2] was reclassified to Class WL UWL.
 - (9) Bower's Bog near Mill Creek [Index No. 18-23-11-(1)] was reclassified to Class WL UWL.
 - (10) Bushy Lake near Turnbull Creek [Index No. 18-46] was reclassified to Class WL UWL.
- (p) The Cape Fear River Basin Classification Schedule was amended effective January 1, 2009 as follows:
- (1) the portion of Cape Fear River [Index No. 18-(26)] (including tributaries) from Smithfield Packing Company's intake, located approximately 2 miles upstream of County Road 1316, to a point 0.5 miles upstream of Smithfield Packing Company's intake from Class C to Class WS-IV CA.
 - (2) the portion of Cape Fear River [Index No. 18-(26)] (including tributaries) from a point 0.5 miles upstream of Smithfield Packing Company's intake to a point 1 mile upstream of Grays Creek from Class C to Class WS-IV.
- (q) The Cape Fear River Basin Classification Schedule was amended effective August 11, 2009 with the reclassification of all Class C NSW waters and all Class B NSW waters upstream of the dam at B. Everett Jordan Reservoir from Class C NSW and Class B NSW to Class WS-V NSW and Class WS-V & B NSW, respectively. All waters within the B. Everett Jordan Reservoir Watershed are within a designated Critical Water Supply Watershed and are subject to a special management strategy specified in Rules .0262 through .0273 of this Subchapter.
- (r) The Cape Fear River Basin Classification Schedule was amended effective September 1, 2009 with the reclassification of a portion of the Haw River [Index No. 16-(28.5)] from the Town of Pittsboro water supply intake, which is located approximately 0.15 mile west of U.S. 15/501, to a point 0.5 mile upstream of the Town of Pittsboro water supply intake from Class WS-IV to Class WS-IV CA.
- (s) The Cape Fear River Basin Classification Schedule was amended effective March 1, 2012 with the reclassification of the portion of the Haw River [Index No. 16-(1)] from the City of Greensboro's intake, located approximately 650 feet upstream of Guilford County 2712, to a point 0.5 miles upstream of the intake from Class WS-V NSW to Class WS-IV CA NSW, and the portion of the Haw River [Index No. 16-(1)] from a point 0.5 miles upstream of the intake to a point 0.6 miles downstream of U.S. Route 29 from Class WS-V NSW to Class WS-IV NSW.
- ~~(t) The Cape Fear River Basin Classification Schedule was amended effective June 30, 2017 with the reclassification of a section of 18 (71) from upstream mouth of Toomers Creek to a line across the river between Lilliput Creek and Snows Cut from Class SC to Class SC Sw. A site specific management strategy is outlined in 15A NCAC 02B .0227.~~
- ~~(u)~~(t) The Cape Fear River Basin Classification Schedule was amended effective September 1, 2019 with the reclassification of a portion of Sandy Creek [Index No. 17-16-(1)] (including tributaries) from a point 0.4 mile upstream of SR-2481 to a point 0.6 mile upstream of N.C. Hwy 22 from WS-III to WS-III CA. The reclassification resulted in an updated representation of the water supply watershed for the Sandy Creek reservoir.

*History Note: Authority G.S. 143-214.1; 143-215.1; 143-215.3(a)(1);
 Eff. February 1, 1976;
 Amended Eff. June 30, 2017; March 1, 2012; September 1, 2009; August 11, 2009; January 1, 2009; November 1, 2007; November 1, 2004; August 1, 2002; April 1, 1999; August 1, 1998; September 1, 1994; June 1, 1994; August 3, 1992; August 1, 1990;
 Readopted Eff. November 1, ~~2019~~ 2019;
 Amended Eff. July 1, 2021.*