

Decision Document of the United States Environmental Protection Agency Determination Under Section 303(c) of the Clean Water Act Review of North Carolina's 2017-2019 Triennial Review

North Carolina transmitted revisions to its water quality standards (WQS) to the Environmental Protection Agency by letter dated February 10, 2020. As described more fully below, the EPA has reviewed and is approving the revisions pursuant to Section 303(c) of the Clean Water Act (CWA or Act). Regarding consultation activities for Section 7 of the Endangered Species Act, the EPA Region 4 concluded that the revisions addressed by today's action would have no effect on threatened and endangered species or their designated critical habitat. Therefore, no biological evaluation or further consultation with the United States Fish and Wildlife Service or the National Marine Fisheries Service is needed.

Part I - Overview of State and Federal Information

Background

North Carolina's submittal reflects a significant amount of revision to the State's previously approved regulations. A large portion of the changes resulted from legislative requirement, North Carolina General Statute § 150B-21.3A, which required state agencies to review existing rules every 10 years, determine which rules were necessary, and either re-adopt or repeal each rule as appropriate. As part of that revision and rulemaking effort, the state of North Carolina also reviewed its regulations to satisfy the federal CWA requirement to review existing regulations as part of a triennial review. The revisions addressed in this document were discussed in two public hearings: one held in Kernesville, North Carolina on July 2, 2018, and the other held in Raleigh, North Carolina on July 11, 2018. Following the May 15, 2018 public notice in the North Carolina Register, the comment period closed on August 4, 2018. Over 500 public comments were received. The Hearing Officer's report (HO Report) summarizes the comments, grouped by categories, along with the State's responses. The revisions were approved for adoption by the North Carolina Environmental Management Commission on July 11, 2019.

In a February 10, 2020 letter written to Regional Administrator Mary S. Walker, EPA Region 4, S. Daniel Smith, Director for the Division of Water Resources for the North Carolina Department of Environmental Quality (DEQ or the Department), submitted new and revised WQS for review pursuant to Section 303(c) of the CWA. The letter and supporting documentation were received electronically on February 11, 2020 and officially received in hard copy on February 14, 2020. In a January 17, 2020, letter, North Carolina's Senior Deputy Attorney General certified that the WQS revisions were duly adopted pursuant to North Carolina law. The revisions became effective under State law on November 1, 2019 and are further described below.

Clean Water Act and Regulatory Requirements

Under Section 303(c) of the CWA and federal implementing regulations at 40 C.F.R. Part 131, states and authorized tribes (states) have the primary responsibility for reviewing, establishing, and revising WQS, which consist of the designated uses of a waterbody or waterbody segment, the water quality criteria necessary to protect those designated uses, and an antidegradation policy. Section 303(c) of the CWA also requires states to establish WQS and to submit any new or revised standards to the EPA for review and approval or disapproval. When the EPA approves a state or tribal WQS, it becomes the applicable WQS for purposes of the CWA.

Since North Carolina last revised its WQS regulations, 40 C.F.R. Part 131 was amended to require states to provide an explanation if not adopting new or revised criteria for parameters for which the EPA has published new or updated CWA Section 304(a) criteria recommendations (40 C.F.R. Section 131.20(a)). This change was made to foster meaningful and transparent involvement of the public and intergovernmental coordination with local, state, federal, and tribal entities in light of recent science provided by the EPA through its criteria recommendations. The EPA does not approve or disapprove this explanation. For this triennial review, North Carolina explained its decision to not adopt new or revised criteria for acrolein, ammonia, recreational criteria, cyanotoxins, or the 94 human health criteria. These parameters are currently under review by the State for the next Triennial Review.

Endangered Species Requirements

In addition to the EPA's review under Section 303 of the CWA, Section 7(a)(2) of the Endangered Species Act (ESA) requires federal agencies, in consultation with the United States Fish and Wildlife Service and National Marine Fisheries Service, to ensure that their actions are not likely to jeopardize the continued existence of federally listed species or result in the destruction or adverse modification of designated critical habitat of such species. The EPA has concluded its ESA related review and a memorandum to the file is included in the record for this action.

Government to Government Consultation

The EPA recognizes its unique legal relationship with Tribal Governments as set forth in the United States Constitution, treaties, statutes, executive orders, and court decisions. Government-wide and EPA-specific policies call for regular and meaningful consultation with Indian Tribal Governments when developing policies and regulatory decisions on matters affecting their communities and resources. Due to the nature of the revisions, the EPA determined that Tribal resources would not be impacted by this action and therefore concluded that tribal consultation was not necessary.

Summary of EPA Approval Actions

Each of North Carolina's revisions is addressed in detail within Part II, along with the EPA's analysis and conclusions. North Carolina's revisions are shown below with additions to rule language presented with underlined text and removals from rule language presented with a strike-out text. Due to the quantity of revisions made by North Carolina, this document includes an Appendix A, to clearly indicate the total of the revisions submitted for the record. Part II includes longer analysis text for clarity regarding certain provisions, intended to provide a more detailed discussion due to the length of text being changed or the relocation of large sections should the origin and/or explanation of the change be needed in the future. In addition to these focused discussions, Appendix A is also referenced within Part II to be explicit in the entirety of what was covered by the EPA's full review of the 2017-2019 revisions. In a limited amount of circumstances, some revisions were determined to not be new or revised WQS and those are specifically described within Part II.

The EPA approves all of the revisions in 15 NCAC 02B, except those which it considers to not be new or revised WQS.

Part II - EPA's Analysis of the Triennial Review Revisions

North Carolina's water quality standard regulations are located in three main parts: Section .0100, Section .0200, and Section .0300. Each Section will be described in general to address changes to North Carolina's approved water quality standards, and where applicable, more detailed revisions will be specifically included verbatim using a strikeout or underline format to highlight the content that was deleted or added, respectively.

Revisions to 15A NCAC 02B .0101 - General Procedures

A number of revisions to this Section were the result of editorial changes requested by the Rules Review Committee (RRC), including simplifying and/or removing redundant phrasing, in addition to other revisions made by the Department. Other changes to the text were made to reflect updated state statute and rule references, renumbering/re-lettering, and streamlining of phrasing to unnecessary wording as part of the legislatively required review. These types of changes are reflected in detail in Appendix A. The EPA approves the revisions in Appendix A within Rule .0101 as being consistent with the CWA and 40 C.F.R. Part 131. The EPA notes however, that its approval of these changes does not re-open the EPA's prior approval of any underlying WQS.

As shown in Appendix A, there were also larger sections of revisions to reflect relocated and/or revised paragraphs. The additional discussion of these larger volume revisions will assist in the event the history behind these provisions is ever needed. Revisions to create new subparagraphs (b)(2) and (b)(3) reflect the relocation of paragraphs (f) and (g) from later within Rule .0101. With regard to the modifications that resulted in the final, adopted version of the new subparagraphs (b)(2) and (3), there were two main differences compared to the existing approved language, located at former paragraph (f):

- the generalizing of references to 40 C.F.R. Section 131.10 and
- the removal of the phrase "and all existing uses as defined by 15A NCAC 2B .0202" which used to be within paragraph (f)

The revision at (b)(2) includes a more general 40 C.F.R. Section 131.10 reference, as opposed to the prior reference to 40 C.F.R. 131.10(b), (c), (d), and (g), and results in a more inclusive citation that improves the consistency with the federal requirements laid out in Section 131.10. The State's draft materials provided an explanation into the removal of the existing uses phrase that was previously included in the paragraph (f) text. The removal of the existing use language resulted from the State's conclusion that the reference to the existing use definition at 15A NCAC 2B .0202 was unnecessary. During the comment period, the EPA asked if the revision removing the existing use language was intentional or if the language was located elsewhere. Page 31 of the HO Report clarified that the "language is located in a different location in the proposed rules. It is provided in the proposed published version of 02B .0101(b)(1)."¹ Additionally, the EPA also looked at the citation within new subparagraph (b)(2), G.S. 143-214.1(d), and concluded that existing uses are included and the State will appropriately consider existing uses in assigning classifications. Based on the explanations, the EPA considers these revisions to be consistent with the CWA and 40 C.F.R. Part 131. The revision at (b)(3) incorporates the

¹ 02B .0101(b)(1) states: The Commission, or its designee, shall determine waters to be studied for the purpose of classification and assignment of water quality standards on the basis of user requests, petitions, or the identification of existing or attainable water uses, as defined by Rule .0202 of this Subchapter, not presently included in the water classification.

substance of the text located in former paragraph (g), as well as including a more general 40 C.F.R. Section 131.10 reference, so the EPA also considers these revisions to be consistent with the CWA and 40 C.F.R. Part 131. Therefore, the revisions related to subparagraphs (b)(2) and (b)(3) are approved.

New subparagraphs (6) and (9) included edits as shown below:

~~(4)~~(6) The Commission shall make a decision on whether to grant or deny a petition in accordance with the provisions of ~~General Statute~~ G.S. 150B-20 and 15A NCAC 021 .0500 based on the information included in the petition and the recommendation of the Director. ~~The Commission may deny the petition and request that the Division study the appropriate classifications and water quality standards for the petitioned waters in accordance with Subparagraph (b)(2) of this Rule.~~

~~(7)~~(9) The Commission, ~~after due consideration of~~ shall consider the provisions of G.S. 143-214.1, the hearing records record(s), and the final recommendations recommendation(s) of the hearing officer(s), shall adopt its before taking final action with respect to the assignment of classifications; and any applicable standards or best Management practices applicable as rule(s) to the waters under consideration. ~~The Commission shall publish such action, together with the effective date for the application of the provisions of General Statute 143-215.1 and 143-215.2, as amended, as a part of the Commission's official rules.~~

The revisions to newly numbered subparagraphs (6) and (9) were determined to be rewording revisions without loss of content. The substance within the removed sentence within subparagraph (6), regarding the Commission's ability to deny the petition, still remains within the first sentence's phrase "shall make a decision on whether to grant or deny..." The revision in subparagraph (9) simply reworks the structure of the text and removes clarification that the action and effective date shall be published as part of the Commission's official rules. The EPA considers all of these revisions to be consistent with the CWA and 40 C.F.R. Part 131 and approves these revisions. The EPA notes however, that its approval of these changes does not re-open the EPA's prior approval of any underlying WQS.

The final set of revisions within the remainder of Rule .0101, specifically former paragraphs (c) through (e), were stricken. According to draft materials describing the changes, the language was moved to "individual classification rules for organizational purposes (i.e. (c)(1) is now in 2B .0211 and (e)(7) is now in 2B .0231)." The State also indicated in its previous draft materials that it removed Future Water Supply (FWS) as a classification because it was never used and is not necessary. The EPA looked at the deleted text in paragraphs (c) through (e) and determined that most of the content was relocated to the corresponding use specific Rules or Rule .0202 of the State's regulations. Table 1 captures the EPA's determination of whether the content is captured elsewhere, and where applicable, refers the reader to additional analysis in other Rules.

Table 1. EPA’s summary of text relocation revisions.

Deleted Citation (Full Text Shown in Appendix A)	Relocation Citation	Comments
.0101(c) intro clause	N/A	With the reworking of this Rule, an intro clause is no longer required, and therefore, no content was lost.
.0101(c)(1)	.0211(1)	No content was lost from old .0101(c)(1) when moving to the new location. Any additional edits to Class C will be discussed within that Rule.
.0101(c)(2)	.0219 and .0202	No content was lost from old .0101(c)(2) when moving to the new location. Any additional edits to Class B will be discussed within that Rule.
.0101(c)(3)	.0212	The term “natural” was not retained in the relocated water supply (WS) WS-I content moved to .0212. See general WS Rule for additional discussion.
.0101(c)(4)	.0214	The term “predominantly undeveloped watersheds” was not retained in the relocated WS-II content moved to .0214. See general WS Rule for additional discussion.
.0101(c)(5)	.0215	The term “low to moderate” was not retained in the relocated WS-III content moved to .0215. See general WS Rule for additional discussion.
.0101(c)(6)	.0216	The term “moderately to highly developed” was not retained in the relocated WS-IV content at .0216. See general WS Rule for additional discussion.
.0101(c)(7)	.0218	The first and third sentence content was moved to .0218, but the second sentence was not retained. See general WS Rule for additional discussion.
.0101(c)(8)	.0231	No content was lost from old .0101(c)(8).
.0101(d) intro clause	N/A	With the reworking of this Rule, formatting to include an intro clause is no longer required, and therefore, no content was lost.
.0101(d)(1)	.0220	No content was lost from old .0101(d)(1). Any additional edits to Class SC will be discussed within that Rule.
.0101(d)(2)	.0222 and .0202	No content was lost from old .0101(d)(2). Any additional edits to Class SB will be discussed within that Rule.
.0101(d)(3)	.0221	The term “commercial” is no longer included, but the rest of the content was maintained. The loss of the term “commercial” and any additional edits to Class SA will be discussed within that Rule.

.0101(d)(4)	.0231	No content was lost from old .0101(d)(4).
.0101(e) intro clause	N/A	With the reworking of this Rule, formatting to include an intro clause is no longer required, and therefore, no content was lost.
.0101(e)(1)	.0202	No content was lost from old .0101(e)(1). Any additional edits to Trout waters will be discussed within that definition.
.0101(e)(2)	.0202	No content was lost from old .0101(e)(2). Any additional edits to Swamp waters will be discussed within that definition.
.0101(e)(3)	.0223	No content was lost from old .0101(e)(3). Any additional edits to nutrient sensitive waters (NSW) will be discussed within that Rule.
.0101(e)(4)	.0225	No content was lost from old .0101(e)(4). Any additional edits to outstanding resource waters (ORWs) will be discussed within that Rule.
.0101(e)(5)	.0224	All but two phrases of the content from old .0101(e)(5) were retained. The phrases not retained were “native and special native trout waters (and their tributaries) designated by the Wildlife Resources Commission” and “or those for which a formal petition for reclassification as WS-I or WS-II has been received from the appropriate local government and accepted by the Division of Water Quality.” Any additional edits to high quality waters (HQWs) will be discussed within that Rule.
.0101(e)(6)	N/A	The Future Water Supply category and its accompanying text were not retained in the final revisions. North Carolina explained this designation was not used and therefore it was removed. The conclusions below this table capture the EPA’s conclusion regarding the deletion of this provision.
.0101(e)(7)	.0231	No content was lost from old .0101(e)(7).

With regard to all revisions within paragraphs .0101(c) - (e), which are described as not losing any content or introductory clauses that are no longer needed due to reformatting, the EPA concluded the revisions improve the readability by moving related content into fewer locations. The deletion of subparagraph .0101(e)(6) also improves the readability by removing the term, Future Water Supply, that was not otherwise used in the State's regulations. The EPA concludes that these revisions are consistent with the CWA and 40 C.F.R. Part 131, and are therefore, approved. For subparagraphs .0101(c)(3), .0101(c)(4), .0101(c)(5), .0101(c)(6), .0101(c)(7), .0101(d)(3), and .0101(e)(5), where the content was not completely retained, the EPA's review concluded that those revisions are consistent with the CWA and 40 C.F.R. Part 131 and therefore approved.

Revisions to 15A NCAC 02B .0103 - Analytical Procedures

A number of revisions to this Rule were the result of editorial changes requested by the RRC. Other changes to formatting were made by the State to reflect updated references, addresses, and other informational details. These types of changes are reflected in detail in Appendix A. The EPA approves the revisions in Appendix A within Rule .0103 as being consistent with the CWA and 40 C.F.R. Part 131. The EPA notes however, that its approval of these changes does not re-open the EPA's prior approval of any underlying WQS.

Revisions to 15A NCAC 02B .0104 - Considerations/Assigning/Implementing Water Supply Classifications

A number of revisions to this Rule were the result of editorial changes requested by the RRC. Other changes to formatting were made by the State to reflect updated references, addresses, and other informational details. These types of changes are reflected in detail in Appendix A. The EPA approves these types of revisions in Appendix A within Rule .0104 as being consistent with the CWA and 40 C.F.R. Part 131. The EPA notes however, that its approval of these changes does not re-open the EPA's prior approval of any underlying WQS.

Revisions to 15A NCAC 02B .0106 - Considerations/Assigning Classifications for Primary Recreation

The text in this Rule was deleted and the content was relocated to Class B and SB Rules. The EPA determined the content in Rules .0219 and .0222 to be consistent with the language previously included at Rule .0106. Therefore, the deletion of the content at Rule .0106 (and its relocation to the other Rules) is consistent with the CWA and 40 C.F.R. Part 131 and is approved. The EPA notes however, that its approval of these changes does not re-open the EPA's prior approval of any underlying WQS.

Revisions to 15A NCAC 02B .0108 - Considerations in Assigning the Shellfishing Area Classification

The text in this Rule was deleted and the content was relocated to the Class SA Rule. The EPA determined the content in Rule .0221 to be consistent with the language previously included at Rule .0108. Therefore, the deletion of the content at Rule .0108 (and its relocation to the other Rule) is consistent with the CWA and 40 C.F.R. Part 131 and is approved. The EPA notes however, that its approval of these changes does not re-open the EPA's prior approval of any underlying WQS.

Revisions to 15A NCAC 02B .0110 - Considerations for Federally-Listed Threatened or Endangered Aquatic Species

The revisions to Rule .0110 are as follows:

Certain waters provide habitat for federally-listed aquatic animal species that are listed as threatened or endangered by the U.S. Fish and Wildlife Service or National Marine Fisheries Service under the provisions of the Endangered Species Act, 16 U.S.C. 1531-1544 and subsequent modifications. Maintenance and recovery of the water quality conditions required to sustain and recover federally-listed threatened and endangered aquatic animal species contributes to the support and maintenance of a balanced and indigenous community of aquatic organisms and thereby protects the biological integrity of the waters. ~~The Division Rules .0225 and .0227 of this Subchapter shall develop apply to the development of site-specific management strategies under the provisions of 15A NCAC 2B .0225 to maintain or 15A NCAC 2B .0227 for those waters. These plans shall be developed within recover the basinwide planning schedule with all plans completed at the end of each watershed's first complete five year cycle following adoption of this Rule~~ water quality conditions required to sustain and recover federally-listed threatened or endangered aquatic animal species. Nothing in this Rule shall prevent the Division or Commission from taking other actions within its authority to maintain and restore the quality of these waters.

The EPA has concluded that these edits have not changed the protection for threatened and endangered species. Therefore, the EPA determined these revisions were consistent with the CWA and 40 C.F.R. Part 131 and are approved.

Revisions to 15A NCAC 02B .0201 - Antidegradation Policy

The Department made revisions such as correcting references and removing parts of the provisions related to High Quality Waters and Outstanding Resource Waters due to the relocation of the corresponding text to the respective Rules later in the regulations. A number of revisions to this Rule were the result of editorial changes requested by the RRC. These types of changes are reflected in detail in Appendix A. The EPA approves the revisions in Appendix A within Rule .0201 as being consistent with the CWA and 40 C.F.R. Part 131. The EPA notes however, that its approval of these changes does not re-open the EPA's prior approval of any underlying WQS.

The first sentence of this Rule was deleted, and the second sentence was modified to specifically reference the "policy and implementation methods" of 40 C.F.R. Section 131.12. Given that the previous text incorporated amendments as part of its content, the EPA concluded these revisions are consistent with the CWA and 40 C.F.R. Part 131.

Within Rule .0201, the State also added a reference to "40 CFR 131.12" within sub-paragraph (c)(3) as shown below.

(c)(3) The Division may require supplemental documentation from ~~the~~ an affected local government to show that a proposed project or parts of the project are necessary for important economic and social development under 40 CFR 131.12.

The revision to sub-paragraph (c)(3) clarifies the relevant federal reference applicable to this provision is consistent with the CWA and 40 C.F.R. Part 131 and is approved.

Revisions to 15A NCAC 02B .0202 - Definitions

Most of the revisions in Rule .0202 are the result of the RRC's editorial comments and general review related to the state legislative requirement. These types of changes are reflected in detail in Appendix A. The EPA approves the revisions in Appendix A within Rule .0202 as being consistent with the CWA and 40 C.F.R. Part 131. The EPA notes however, that its approval of these changes does not re-open the EPA's prior approval of any underlying WQS.

Attainable Water Uses Definition

The State added, through relocation out of the "existing uses" definition, a definition for "attainable water uses" which states:

"Attainable water uses" means uses that can be achieved by the imposition of effluent limits and cost effective and reasonable best management practices (BMP) for nonpoint source control.

The language included in this definition reflects the same content previously located within the "existing uses" definition. This provision was also the subject of an EPA comment during the public comment period in which clarification was sought on whether the effluent limits are Technology Based Effluent Limits or Water Quality Based Effluent Limits. The State clarified in the HO Report that additional clarification within this definition was not necessarily due to coverage of these two terms in the State's wastewater treatment Rules at 02B .0403. Therefore, the relocation of the definition for attainable uses is consistent with the CWA and 40 C.F.R. Part 131, and the revision is approved.

Average Definition

The State revised the definition of average as follows:

~~(6)(7) "Average (except bacterial)" means the arithmetical average and includes of the analytical results of all representative samples taken under prevailing environmental conditions during the a specified period; all sampling shall be done as to obtain the most representative sample under prevailing conditions: (for example: daily, weekly, or monthly).~~

~~(a) Daily Average for dissolved oxygen, shall be of at least four samples;~~

~~(b) Weekly Average means the average of all daily composite samples obtained during the calendar week. If only one grab sample is taken each day, the weekly average is the average of all daily grab samples. A minimum of three daily grab samples is needed to calculate a weekly average.~~

~~(c) Monthly Average means the average of all daily composites (or grab samples if only one per day) obtained during the calendar month.~~

~~The definitions in this Paragraph do not affect the monitoring requirements for NPDES permits but rather shall be used by the Division along with other methodologies in determining violations of water quality standards. Arithmetical averages as defined by this Section, and not confidence limits nor other statistical descriptions, shall be used in all calculations of limitations which require the use of averages pursuant to this Section and 40 CFR 122.41(l)(4)(iii).~~

After review of this provision, the EPA has concluded that it is not a new or revised water quality standard and is therefore not subject to the EPA's review. This provision does not establish or change a level of protection related to magnitude, frequency or duration of water quality criteria nor establish designated uses. Rather, this provision is related to data sufficiency requirements. As such, this provision is not a new or revised WQS under the Act.

Existing Uses Definition

The definition of existing uses was revised, as shown below:

~~(30)(27)~~ (27) "Existing uses" mean uses actually attained in the water body, ~~in a significant and not incidental manner~~, on or after November 28, 1975, whether or not they are included in the water quality standards, ~~which either have been actually available to the public or are uses deemed attainable by the Environmental Management Commission. At a minimum, uses shall be deemed attainable if they can be achieved by the imposition of effluent limits and cost-effective and reasonable best management practices (BMPs) for nonpoint source control.~~

The revisions to the existing uses definition are consistent with the CWA and 40 C.F.R. Part 131 and are approved.

Fishing Definition

The definition of "fishing" was revised, as shown below:

~~(33)(29)~~ (29) "Fishing" means the taking of fish by ~~sport recreational~~ or commercial methods as well as, the consumption of fish or shellfish ~~or~~, the propagation of fish ~~and such~~, or the propagation of other aquatic life as is necessary to ~~provide a suitable~~ protect the biological integrity of the environment for fish.

The phrase "protect the biological integrity of the" was added to the newly numbered Item (29), the definition of fishing. This clarification was the result of the RRC's request to clarify what "suitable" meant in terms of the environment for the fish. This clarification provides a better link to existing terminology and reduces ambiguity. All of the revisions to the fishing definition are consistent with the CWA and 40 C.F.R. Part 131 and are approved.

Nutrient Sensitive Waters Definition

The definition of "nutrient sensitive waters" was removed from Rule .0202. However, the content is addressed in Rule .0223 and the State further responded to the change in response to EPA's comment. The HO Report states:

The EPA noted that in an effort to consolidate NSW language, the proposed rules left out the phrases "requiring limitations on nutrient impacts" and "in order to limit the discharge of nutrients (usually nitrogen and phosphorus)." EPA noted that 02B .0223(e) addresses controlling excessive growth, but still suggests keeping the cited phrases in the rules.

[DEQ Division of Water Resources] *proposes to add language to 02B .0223(e) to address this concern. More specifically, the phrase “to limit nutrients” is proposed to be added between “Commission” and “to control” in 02B .0223(e).*

Based on the State’s responses, the EPA concludes that the intention of the previous language exists in the revised regulations at 02B .0223(e) and therefore, the deletion is approved as being consistent with the CWA and 40 C.F.R. Part 131.

Primary Contact Recreation Definition

The term “contact” was added to the prior definition of “primary recreation” and the revised definition of “primary contact recreation” was relocated to its new location based on alphabetical order. Additionally, the revisions include adding the word “contact,” removing the term “skin” from “skin diving,” and adding the term “full” to “human body contact.” The term “contact” was also added to the term “secondary recreation.” These clarifications result in a closer alignment with the current EPA terminology used to describe primary contact and secondary contact recreation respectively. Therefore, the revisions are approved as being consistent with the CWA and 40 C.F.R. Part 131.

Swamp Waters Definition

The State revised the definition of “swamp waters” as follows:

~~(62)-(52) "Swamp waters mean" means those waters which that are classified as such by the Environmental Management Commission, pursuant to Rule .0101 of this Subchapter, and which are topographically located so as to generally that have very low velocities and other natural characteristics which due to topography, such as low velocity, dissolved oxygen, or pH, that are different from adjacent streams draining steeper topography. They are designated by "Sw" following the water classification.~~

The State’s draft materials indicated that swamp waters definitions from other rule areas were consolidated to provide clarity on swamp characteristics. The end result of the consolidation is that the terms “adjacent” and “very” (with regard to the phrase low velocity) were removed in the consolidation and “dissolved oxygen” was added as an example of a parameter that can be different due to topography. These revisions simplify the description of swamp waters into one location and supplement the examples previously listed in the definition. The revisions are consistent with the CWA and 40 C.F.R. Part 131 and therefore approved.

Trout Waters Definition

The State revised the definition of “trout waters” as follows:

~~(65)—55) ___ "Trout waters are" means those waters which have conditions which shall sustain and allow for trout propagation and survival of stocked trout on a year-round basis. These waters shall be that are classified as such by the Environmental Management Commission after considering the requirements of, pursuant to Rule .0101(b) and (e) of this Subchapter and include all waters designated by "Tr" in the water classification, and have conditions that sustain and allow for natural trout propagation and survival and for year-round maintenance of stocked trout.~~

The definition now consolidates the descriptions relocated from .0101(e)(1) and within Rule .0202. All of the content has been retained so the EPA approves the revisions as consistent with the CWA and 40 C.F.R. Part 131.

Watershed Definition

The State revised the definition of “watershed” as follows:

~~(70)—(59)~~ "Watershed" means the entire land area of drainage, including all tributaries contributing surface drainage to a specific point. For the purpose of the water supply protection rules in 15A NCAC 2B .0104 and .0211 local governments may use of at least one major landmarks such as highways or property lines waterway within the State, the specific limits of each separate watershed to delineate be designated by the outer boundary of Commission as defined by G.S. 143-213(21).

Page 40 of the HO Report clarifies that the revision is identical to the statutory definition and therefore, the State concludes that the language is unchanged. The revision now is in alignment with the current State terminology. Therefore, this revision is approved as being consistent with the CWA and 40 C.F.R. Part 131 and therefore approved.

Wetlands Definition

The State revised the definition of “wetlands” as follows:

~~(71)—(61)~~ "Wetlands" are "waters" as defined by G.S. 143-212(6) and are areas that are inundated or saturated by an accumulation of surface or ground water at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands generally include swamps, marshes, bogs and similar areas. Wetlands classified as waters of the state are restricted to waters of the United States as defined by 33 CFR 328.3 and 40 CFR 230.3. Wetlands do not include prior converted cropland as defined in the National Food Security Act Manual, Fifth Edition, which is hereby incorporated by reference, not including subsequent amendments and editions, and is available free of charge at <https://directives.sc.egov.usda.gov/RollupViewer.aspx?hid=29340>.

The removal of general examples is consistent with the effort to improve readability and streamline the regulatory text itself. The removal of the sentence with federal citations was noted as a revision to ensure that the State’s isolated wetlands program would remain unimpacted by the State’s re-adoption effort. Finally, North Carolina’s inclusion of a sentence to highlight that prior converted cropland is not included in the definition of wetlands is a reasonable clarification considering that such land is not considered jurisdictional under the CWA. Therefore, these revisions are consistent with the CWA and 40 C.F.R. Part 131, and are therefore, approved.

Revisions to 15A NCAC 02B .0203 - Protection of Waters Downstream of Receiving Waters

The revisions to Rule .0203 were the result of editorial changes and are reflected in detail in Appendix A. The EPA approves the revisions in Appendix A within Rule .0203 as being consistent with the CWA

and 40 C.F.R. Part 131. The EPA notes however, that its approval of these changes does not re-open the EPA's prior approval of any underlying WQS.

Revisions to 15A NCAC 02B .0204 - Location of Sampling Sites and Mixing Zones

The revisions to Rule .0204 were the result of editorial changes and are reflected in detail in Appendix A. The EPA approves the revisions in Appendix A within Rule .0204 as being consistent with the CWA and 40 C.F.R. Part 131. The EPA notes however, that its approval of these changes does not re-open the EPA's prior approval of any underlying WQS.

Revisions to 15A NCAC 02B .0205 - Natural Characteristics Outside Standards Limits

The revisions to Rule .0205 were the result of editorial changes and are reflected in detail in Appendix A. The EPA approves the revisions in Appendix A within Rule .0205 as being consistent with the CWA and 40 C.F.R. Part 131. The EPA notes however, that its approval of these changes does not re-open the EPA's prior approval of any underlying WQS.

Revisions to 15A NCAC 02B .0206 - Flow Design Criteria for Effluent Limitations

The revisions to Rule .0206 were the result of editorial changes and are reflected in detail in Appendix A. The EPA approves the revisions in Appendix A within Rule .0206 as being consistent with the CWA and 40 C.F.R. Part 131. The EPA notes however, that its approval of these changes does not re-open the EPA's prior approval of any underlying WQS.

Revisions to 15A NCAC 02B .0208 - Standards for Toxic Substances and Temperature

All of the revisions, except any discussed below, to Rule .0208 are the result of editorial type changes and are reflected in detail in Appendix A. The EPA approves these types of revisions in Rule .0208, shown in Appendix A, as being consistent with the CWA and 40 C.F.R. Part 131. The EPA notes however, that its approval of these changes does not re-open the EPA's prior approval of any underlying WQS.

The addition of the term "aquatic life," the EPA document in paragraph (1), and the addition of "recreation" to paragraph (2) provide additional clarity for the application of certain criteria. Therefore, the revisions are consistent with the CWA and 40 C.F.R. Part 131 and are approved.

Revisions to 15A NCAC 02B .0211 - Fresh Surface Water Quality Standards for Class C Waters

All of the revisions, except any discussed below, in Rule .0211 are the result of the RRC's comments and general review related to the state legislative requirement. These types of changes are reflected in detail in Appendix A. The EPA approves these types of revisions in Rule .0211, shown in Appendix A, as being consistent with the CWA and 40 C.F.R. Part 131. The EPA notes however, that its approval of these changes does not re-open the EPA's prior approval of any underlying WQS.

Descriptive Language for Designated Use

There were a number of changes to consolidate the descriptive terms related to the Class C designated use in the first three paragraphs of Rule .0211. The EPA has concluded that these edits have not changed

the expectation for the Class C designated use. These types of revisions do not change the meaning of the phrasing that previously existed. Therefore, the EPA determined these revisions were consistent with the CWA and 40 C.F.R. Part 131 and are approved.

The sentence “[a]ll freshwaters shall be classified to protect these uses at a minimum” was added to 15A NCAC 02B .0211(1). This additional phrase adds clarity that these designated uses are the default designated uses for all freshwaters. This is consistent with North Carolina’s past practice and is consistent with the CWA and 40 C.F.R. Part 131. Therefore, this revision is approved.

Fecal Coliform

Item (7), fecal coliform, was revised as follows:

Fecal coliform: shall not exceed a geometric mean of 200/100ml (MF count) based upon at least five ~~consecutive~~ samples ~~examined during any~~ taken over a 30-day period, nor exceed 400/100ml in more than 20 percent of the samples examined during such period. Violations of the ~~fecal coliform standard this Item~~ are expected during rainfall events and, ~~in some cases, this violation is expected to~~ may be caused by uncontrollable nonpoint source pollution. All coliform concentrations shall be analyzed using the membrane filter technique, ~~unless. If~~ high turbidity or other ~~adverse~~ conditions ~~necessitate~~ would cause the membrane filter technique to produce inaccurate data, the most probable number (MPN) 5-tube multiple dilution method. ~~In case of controversy over results, the MPN 5-tube dilution technique shall be used as the reference method;~~

The revisions were made to improve readability of the provision and therefore is consistent with the CWA and 40 C.F.R. Part 131, and is therefore, approved.

Metals

Sub-item .0211(11)(d) was revised as follows:

~~(e)(d)~~ Hardness-dependent freshwater metals standards shall be as follows:

- ~~(i)~~ Hardness-dependent metals standards shall be derived using the equations specified in Table A: Dissolved Freshwater Standards for Hardness-Dependent Metals. If the actual instream hardness (expressed as CaCO₃ or Ca+Mg) is less than 25 milligrams/liter (mg/l), standards shall be calculated based upon 25 mg/l hardness. If the actual instream hardness is greater than 25 mg/l and less than 400 mg/l, standards shall be calculated based upon the actual instream hardness. If the instream hardness is greater than 400 mg/l, the maximum applicable hardness shall be 400 mg/l; mg/l.
- ~~(ii)~~ Hardness-dependent metals in NPDES permitting: for NPDES permitting purposes, application of the equations in Table A: Dissolved Freshwater Standards for Hardness-Dependent Metals shall have hardness values (expressed as CaCO₃ or Ca+Mg) established using the median of instream hardness data collected within the local US Geological Survey (USGS) and Natural Resources Conservation Service (NRCS) 8-digit Hydrologic Unit (HU). The minimum applicable instream hardness shall be 25 mg/l and the maximum applicable instream hardness shall be 400 mg/l, even when the actual median instream

~~hardness is less than 25 mg/l and greater than 400 mg/l;~~

Consistent with the recommendation within the EPA's April 6, 2016 (2016 action) disapproval of the low-end hardness cap, North Carolina has deleted the disapproved text. The end result is language that reads as follows:

(d) Hardness-dependent freshwater metals standards shall be derived using the equations specified in Table A: Dissolved Freshwater Standards for Hardness-Dependent Metals. If the actual instream hardness (expressed as CaCO₃ or Ca+Mg) is less than 400 mg/l, standards shall be calculated based upon the actual instream hardness. If the instream hardness is greater than 400 mg/l, the maximum applicable hardness shall be 400 mg/l....

The revisions now ensure that the state regulations, related to the consideration of instream hardness values, are consistent with the text of the CWA effective provisions, which were approved by the EPA as part of its 2016 action. Therefore, these revisions are consistent with CWA and 40 C.F.R. Part 131 and are therefore approved.

Sub-item .0211(11)(f) was deleted in its entirety as follows:

~~Metals criteria shall be used for proactive environmental management. An instream exceedence of the numeric criterion for metals shall not be considered to have caused an adverse impact to the instream aquatic community without biological confirmation and a comparison of all available monitoring data and applicable water quality standards. This weight of evidence evaluation shall take into account data quality and the overall confidence in how representative the sampling is of conditions in the waterbody segment before an assessment of aquatic life use attainment, or non-attainment, shall be made by the Division. Recognizing the synergistic and antagonistic complexitie of other water quality variables on the actual toxicity of metals, with the exception of mercury and selenium, biological monitoring will be used to validate, by direct measurement, whether or not the aquatic life use is supported;~~

Consistent with the recommendation within the EPA's 2016 action, regarding the disapproval of the biological confirmation provision, North Carolina has deleted the disapproved text. The revisions now ensure that the state regulations no longer contain a biological confirmation provision which was not effective for purposes of the CWA. Therefore, this deletion is consistent with CWA and 40 C.F.R. Part 131 and is therefore approved.

Former Action Levels Provision

In the EPA's 2016 action, the Agency disapproved the State's revisions to copper, silver, and zinc, as well as a portion of the text located in the final paragraph of Item .0211(22), previously described as narrative text in (22)(e). For clarity, the following is an excerpt of the relevant portion of the provision contained in the EPA's 2016 action to highlight the text which was subject to the EPA's review and disapproved:

~~(4)(22) Action Levels for Toxic Substances: Substances Applicable to NPDES Permits:~~

- ~~(a) Copper: 7 ug/l; Copper, dissolved, chronic: 2.7 ug/l;~~
- ~~(b) Iron: 1.0 mg/l;~~
- ~~(c) Silver: Silver, dissolved, chronic: 0.06 ug/l;~~
- ~~(d) Zinc: Zinc, dissolved, chronic: 50 ug/l; 36 [ug/l;] ug/l; and~~

(e) Chloride: 230 mg/l;
The hardness-dependent freshwater action levels for ~~Copper and Zinc~~, copper and zinc, provided here for illustrative purposes, corresponds to a hardness of 25 mg/l. Copper and [Zinc] zinc action level values for other instream hardness values shall be calculated per the chronic equations specified in Item (11) of this Rule and in Table A: Dissolved Freshwater Standards for Hardness-Dependent Metals. If the ~~Action Levels~~ action levels for any of the substances listed in this ~~Subparagraph~~Item (which are generally not bioaccumulative and have variable toxicity to aquatic life because of chemical form, solubility, stream characteristics or associated waste characteristics) are determined by the waste load allocation to be exceeded in a receiving water by a discharge under the specified ~~low flow~~ 7Q10 criterion for toxic ~~substances (Rule .0206 in this Section)~~ substances, the discharger shall monitor the chemical or biological effects of the discharge; efforts shall be made by all dischargers to reduce or eliminate these substances from their effluents. Those substances for which ~~Action Levels~~ action levels are listed in this ~~Subparagraph~~Item shall be limited as appropriate in the NPDES permit based on the Action Levels listed in this Subparagraph if sufficient information (to be determined for metals by measurements of that portion of the dissolved instream concentration of the ~~Action Levels~~ action levels parameter attributable to a specific NPDES permitted discharge) exists to indicate that any of those substances may be a causative factor resulting in toxicity of the effluent....

In the 2017-2019 triennial review, Item .0211(22) was revised as follows:

~~Action Levels for Toxic Substances~~ Substance Level Applicable to NPDES Permits:

- (a) ~~Copper, dissolved, chronic: 2.7 ug/l;~~
- (b) ~~Silver, dissolved, chronic: 0.06 ug/l;~~
- (c) ~~Zinc, dissolved, chronic: 36 ug/l; and~~
- (d) Chloride: 230 mg/l;

~~The hardness-dependent freshwater action levels for copper and zinc, provided here for illustrative purposes, corresponds to a hardness of 25 mg/l. Copper and zinc action level values for other instream hardness values shall be calculated per the chronic equations specified in Item (11) of this Rule and in Table A: Dissolved Freshwater Standards for Hardness-Dependent Metals. If the action levels for any of the substances listed in his Item (which are generally not bioaccumulative and have variable toxicity to aquatic life because of chemical form, solubility, stream characteristics or associated waste characteristics) are chloride is determined by the waste load allocation to be exceeded in a receiving water by a discharge under the specified 7Q10 criterion for toxic substances, the discharger shall monitor the chemical or biological effects of the discharge; efforts. Efforts shall be made by all dischargers to reduce or eliminate these substances-chloride from their effluents. Those substance for which action levels are listed in this Item Chloride shall be limited as appropriate in the NPDES permit if sufficient information (to be determined for metals by measurements of that portion of the dissolved instream concentration of the action levels parameter attributable to a specific NPDES permitted discharge) exists to indicate that any of those substances it may be a causative factor resulting in toxicity of the effluent.~~

As shown in the newly revised Item .0211(22), consistent with the EPA's recommendations for deletion, the disapproved text for copper, silver, zinc, and portions of the narrative were deleted by the State. The

revisions now ensure that the state regulations will be consistent with the provisions which are effective for CWA purposes.

The EPA also noted in its 2016 action that the previously approved action level values (copper: 7 µg/L, silver: 0.06 µg/L, and zinc: 50 µg/L) would remain in place in addition to the criteria approved by the EPA as part of the 2016 action. However, with the State's deletion of the copper, silver, and zinc parameters, the criteria at Item .0211(11), which were approved in the 2016 action, are now all that remain in the State's regulations with regard to these three parameters. The HO Report states: "One of the goals of the NC 2018 Triennial Review is to update the language in 15A NCAC 02B .0211 and .0220 so that there is agreement between the NC Administrative Code and the EPA decisions on CWA requirements." Since the historically approved action levels, while technically still CWA effective, were not the controlling criteria for these three parameters, it is consistent with the State's effort to streamline this paragraph with the existing EPA decisions on action levels. Therefore, the revisions are consistent with the CWA and 40 C.F.R. Part 131 and are approved.

Therefore, the remaining content at Item .0211(22), shown without tracked changes, is as follows:

Toxic Substance Level Applicable to NPDES Permits: Chloride: 230 mg/l. If chloride is determined by the waste load allocation to be exceeded in a receiving water by a discharge under the specified 7Q10 criterion for toxic substances, the discharger shall monitor the chemical or biological effects of the discharge. Efforts shall be made by all dischargers to reduce or eliminate chloride from their effluents. Chloride shall be limited as appropriate in the NPDES permit if sufficient information exists to indicate that it may be a causative factor resulting in toxicity of the effluent.

The State's revision to remove the term "action level" in a paragraph related to levels applicable to National Pollutant Discharge Elimination System (NPDES) permits reflects the modifications over time by North Carolina to address previous comments and actions by the EPA. In addition, based on the information in the HO Report, the EPA recognizes that the State is continuing its evaluation of chloride. The EPA continues to recommend that chloride be addressed as a water quality criterion within 15A NCAC 02B .0211, applicable for all CWA purposes. In the EPA's 2016 action, the Agency recommended including the following statement which previously was contained in this paragraph.

"For purposes other than consideration of NPDES permitting of point source discharges as described in this Subparagraph, the Action Levels in this Rule, as measured by an appropriate analytical technique, per 15A NCAC 02B .0103(a), shall be considered as numerical instream water quality standards."

In conclusion, as revised, the numeric value for chloride still remains and the EPA anticipates that the State will continue using the chloride value of 230 mg/L as a WQS for all purposes under the CWA. The revisions to this paragraph are consistent with the CWA and 40 C.F.R. Part 131 and are approved.

Revisions to 15A NCAC 02B .0212, .0214, .0215, .0216, and .0218 - Fresh Surface Water Quality Standards for Class WS-I through WS-V Waters

The revisions in the Class WS-I through WS-V Rules are the result of the RRC's comments and general review related to the state legislative requirement. These changes are reflected in detail in Appendix A. The EPA approves these revisions in Rules .0212, .0214, .0215, .0216, and .0218, as shown in Appendix

A, as being consistent with the CWA and 40 C.F.R. Part 131. The EPA notes however, that its approval of these changes does not re-open the EPA's prior approval of any underlying WQS.

Revisions to 15A NCAC 02B .0219 - Fresh Surface Water Quality Standards for Class B Waters

The term "contact" was added to the phrase "primary recreation," which results in a closer alignment with the current EPA terminology used to describe primary contact recreation. Therefore, the revisions are approved as being consistent with the CWA and 40 C.F.R. Part 131.

As described in the analysis of revisions to Rule .0106, the new content within Item .0219(4) was a relocation to align with the Class B waters content. The only difference is that the State added the term "wastewater" before the term "discharges." This is consistent with how the term "discharges" is used elsewhere in the regulation. Therefore, the revision is consistent with the CWA and 40 C.F.R. Part 131 and is approved.

Revisions to 15A NCAC 02B .0220 - Tidal Salt Water Quality Standards for Class SC Waters

Except as noted below, the revisions in the Class SC Rule are the result of the RRC's comments and general review related to the state legislative requirement. These types of changes are reflected in detail in Appendix A. The EPA approves the revisions in Appendix A within Rule .0220 as being consistent with the CWA and 40 C.F.R. Part 131. The EPA notes however, that its approval of these changes does not re-open the EPA's prior approval of any underlying WQS. Revisions requiring additional discussion and analysis are provided below.

Opening Paragraph

The following revisions were made to the General opening paragraph of Rule .0220.

~~General. The~~ In addition to the standards set forth in Rule .0208 of this Section, the following water quality standards for all tidal salt waters shall be the basis standards applicable to apply to all Class SC waters. Additional and more stringent standards applicable to other specific tidal salt water classifications are specified in Rules .0221 and .0222 of this Section. Action Levels, for purposes of National Pollutant Discharge Elimination System (NPDES) permitting, are specified in Item (20) of this Rule.

A reference to Rule .0208 was added to this paragraph. It does not change the applicability of Rule .0208 but makes the formatting consistent for both the fresh and tidal salt water Class C designated uses. The last sentence of the paragraph was deleted to remove the reference to a provision which was deleted as part of the current rulemaking effort and therefore, is clearer to the reader. These changes to improve consistency and clarity are approved as consistent with the CWA and 40 C.F.R. Part 131.

Descriptive Language for Designated Use

There were a number of changes to consolidate the descriptive terms related to the Class SC designated use in the first three paragraphs of Rule .0220. The EPA has concluded that these edits have not changed the expectation for the Class SC designated use. Therefore, the EPA determined these revisions were consistent with the CWA and 40 C.F.R. Part 131 and are approved.

Metals

Sub-item .0220(9)(c) was deleted in its entirety as shown:

~~Metals criteria shall be used for proactive environmental management. An instream exceedence of the numeric criterion for metals shall not be considered to have caused an adverse impact to the aquatic community without biological confirmation and a comparison of all available monitoring data and applicable water quality standards. This weight of evidence evaluation shall take into account data quality and the overall confidence in how representative the sampling is of conditions in the waterbody segment before an assessment of aquatic life use attainment, or non-attainment, is made by the Division. Recognizing the synergistic and antagonistic complexities of other water quality variables on the actual toxicity of metals, with the exception of mercury and selenium, biological monitoring shall be used to validate, by direct measurement, whether or not the aquatic life use is supported.~~

Consistent with the recommendation within the EPA's 2016 action, regarding the disapproval of the biological confirmation provision, North Carolina has deleted the disapproved text. The revisions now ensure that the state regulations no longer contain a biological confirmation provision which was not effective for purposes of the CWA. Therefore, this deletion is consistent with the CWA and 40 C.F.R. Part 131 and is therefore approved.

Former Action Levels Provision

In the EPA's 2016 action, the Agency disapproved the State's revisions to Item .0220(20), which had been revised as follows:

~~(4)(20) Action Levels for Toxic Substances:Substances Applicable to NPDES Permits:~~

~~(a) Copper:Copper, dissolved, chronic: 3 ug/l;3.1 ug/l;~~

~~(b) Silver:Silver, dissolved, chronic: 0.1 ug/l;~~

~~(c) Zinc:Zinc, dissolved, chronic: 86 ug/l;81 ug/l~~

~~If the [chronic] Action Levels-action levels for any of the substances listed in this SubparagraphItem (which are generally not bioaccumulative and have variable toxicity to aquatic life because of chemical form, solubility, stream ~~characteristics~~-characteristics, or associated waste characteristics) ~~are~~-shall be determined by the waste load allocation to be exceeded in a receiving water by a discharge under the ~~specified low~~7Q10 flow criterion for toxic ~~substances~~ (Rule .0206 in this Section),substances, the discharger shall be required to monitor the chemical or biological effects of the discharge; efforts shall be made by all dischargers to reduce or eliminate these substances from their effluents. Those substances for which ~~Action Levels~~-action levels are listed in this SubparagraphItem ~~may~~shall be limited as appropriate in the NPDES permit if sufficient information (to be determined for metals by measurements of that portion of the dissolved instream concentration of the ~~Action Level~~-action level parameter attributable to a specific NPDES permitted discharge) exists to indicate that any of those substances may be a causative factor resulting in toxicity of the effluent. ~~NPDES permit limits may be based on translation of the toxic form to total recoverable metals. Studies used to determine the toxic form or translators must be designed according to: "Water Quality Standards Handbook Second Edition" published by the Environmental Protection Agency (EPA 823-B-94-005a) or "The Metals Translator: Guidance For Calculating a Total Recoverable Permit Limit From a Dissolved Criterion" published by the Environmental Protection Agency~~~~

~~(EPA 823-B-96-007) which are hereby incorporated by reference including any subsequent amendments. The Director shall consider conformance to EPA guidance as well as the presence of environmental conditions that limit the applicability of translators in approving the use of metal translators.~~

In the 2017-2019 triennial review, Item .0220(20) was revised to be deleted in its entirety as follows:

~~Action Levels for Toxic Substances Applicable to NPDES Permits:~~

- ~~(a) Copper, dissolved, chronic: 3.1 ug/l;~~
- ~~(b) Silver, dissolved, chronic: 0.1 ug/l;~~
- ~~(c) Zinc, dissolved, chronic: 81 ug/l~~

~~If the action levels for any of the substances listed in this Item (which are generally not bioaccumulative and have variable toxicity to aquatic life because of chemical form, solubility, stream characteristics, or associated waste characteristics) shall be determined by the waste load allocation to be exceeded in a receiving water by a discharge under the 7Q10 flow criterion for toxic substances, the discharger shall monitor the chemical or biological effects of the discharge; efforts shall be made by all dischargers to reduce or eliminate these substances from their effluents. Those substances for which action levels are listed in this Item shall be limited as appropriate in the NPDES permit if sufficient information (to be determined for metals by measurements of that portion of the dissolved instream concentration of the action level parameter attributable to a specific NPDES permitted discharge) exists to indicate that any of those substances may be a causative factor resulting in toxicity of the effluent.~~

As a result of the State's deletions, Item .0220(20) no longer exists in the State's regulations. This revision is consistent with the EPA's 2016 recommendations for deletion and the revisions now ensure that the state regulations will be consistent with the provisions which are effective for CWA purposes. Therefore, the deletions are consistent with CWA and 40 C.F.R. Part 131 and are approved.

The EPA also noted in its 2016 action that the previously approved action level values, shown in the excerpt above from the EPA's 2016 action, would remain in place in addition to the criteria approved by the EPA as part of the 2016 action. Following the State's deletion of this Item, the criteria at Item .0220(9), which were approved in the 2016 action, are now all that remain in the State's regulations with regard to these three parameters. The HO Report states: "One of the goals of the NC 2018 Triennial Review is to update the language in 15A NCAC 02B .0211 and .0220 so that there is agreement between the NC Administrative Code and the EPA decisions on CWA requirements." Since the historically approved action levels, while technically still CWA effective, were not the controlling criteria for these three parameters, it is consistent with the State's effort to streamline this paragraph with the existing EPA decisions on action levels. Therefore, the removal of Item .0220(20) is consistent with the CWA and 40 C.F.R. Part 131 and is approved.

Revisions to 15A NCAC 02B .0221 - Tidal Salt Water Quality Standards for Class SA Waters

Except as noted below, most of the revisions in the Class SA Rule are the result of the RRC's comments and general review related to the state legislative requirement. These types of changes are reflected in detail in Appendix A. The EPA approves the revisions in Appendix A within Rule .0221 as being consistent with the CWA and 40 C.F.R. Part 131. The EPA notes however, that its approval of these changes does not re-open the EPA's prior approval of any underlying substantive WQS. Any revisions requiring additional discussion and analysis are provided below.

Descriptive Language for Designated Use

There were a number of changes to consolidate the descriptive terms related to the Class SA designated use in the first three paragraphs of Rule .0221. The EPA has concluded that these edits have not changed the expectation for the Class SA designated use. Therefore, the EPA determined these revisions were consistent with the CWA and 40 C.F.R. Part 131 and are approved.

Deletion of the term “commercial”

As noted in the table earlier in this document, summarizing the .0101(d)(3) revisions, the term “commercial” was not retained in the relocated SA content moved to Rule .0221. The language moved from .0101(d)(3) stated: “suitable for commercial shellfishing and all other tidal saltwater uses.” The best usage of waters classified as SA “shall be shellfishing for market purposes and any other usage specified by the ‘SB’ or ‘SC’ classification.” With the deletion of the term “commercial”, the EPA now interprets the SA classification to include both recreational and commercial shellfishing, resulting in an expansion of activities covered under this use. The revisions are consistent with the CWA and 40 C.F.R. Part 131 and are approved.

Revisions to 15A NCAC 02B .0222 - Tidal Salt Water Quality Standards for Class SB Waters

Except as noted below, most of the revisions in the Class SB Rule are the result of the RRC’s comments and general review related to the state legislative requirement. These types of changes are reflected in detail in Appendix A. The EPA approves the revisions in Appendix A within Rule .0222 as being consistent with the CWA and 40 C.F.R. Part 131 and are approved. The EPA notes however, that its approval of these changes does not re-open the EPA’s prior approval of any underlying WQS. Any revisions requiring additional discussion and analysis are provided below.

Descriptive Language for Designated Use

There were a number of changes to consolidate the descriptive terms related to the Class SB designated use in the first three paragraphs of Rule .0222. The EPA has concluded that these edits have not changed the expectation for the Class SB designated use. Therefore, the EPA determined these revisions were consistent with the CWA and 40 C.F.R. Part 131 and are approved.

Wastewater Discharges

As described in the analysis of revisions to Rule .0106, the new content within Item .0222(4) was a relocation to align with the Class SB waters content. The only difference is that the State added the term “wastewater” before the term “discharges.” This is consistent with how the term “discharges” is used elsewhere in the regulation. Therefore, the revision is consistent with the CWA and 40 C.F.R. Part 131 and is approved.

Revisions to 15A NCAC 02B .0223 - Water Quality Standards for Nutrient Sensitive Waters

The revisions in the Nutrient Sensitive Waters (NSW) Rule are the result of the RRC’s comments and general review related to the state legislative requirement. These types of changes are reflected in detail in Appendix A. The EPA approves the revisions in Appendix A within Rule .0223 as being consistent with the CWA and 40 C.F.R. Part 131. The EPA notes however, that its approval of these changes does

not re-open the EPA's prior approval of any underlying WQS. Any revisions requiring additional discussion and analysis are provided below.

North Carolina added "Water Quality Standards for" to the title for this Rule. This revision clarifies the purpose of this Rule and is consistent with the reference to this Rule within Class C to other Rules with "additional and more stringent standards" which are applicable to the waters. Additionally, the consolidation of the text relating to NSWs does not change the meaning of the originally adopted provisions. Therefore, the EPA approves these revisions, as being consistent with the CWA and 40 C.F.R. Part 131.

Revisions to 15A NCAC 02B .0224 - Water Quality Standards for High Quality Waters

Except as noted below, most of the revisions in the High Quality Waters (HQW) Rule are the result of the RRC's comments and general review related to the state legislative requirement. These types of changes are reflected in detail in Appendix A. The EPA approves these types of revisions in Appendix A within Rule .0224 as being consistent with the CWA and 40 C.F.R. Part 131. The EPA notes however, that its approval of these changes does not re-open the EPA's prior approval of any underlying WQSs. Any revisions requiring additional discussion and analysis are provided below.

North Carolina added "Water Quality Standards for" to the title of Rule .0224. This title revision clarifies the purpose of this Rule and is consistent with the reference to Rule .0224 within the Class C introduction language found at .0211. The EPA approves these revisions, as being consistent with the CWA and 40 C.F.R. Part 131.

Descriptive Language for Designated Use

All but two phrases of the content from former sub-item .0101(e)(5) were retained in the relocation to Rule .0224. The two phrases are: (1) native and special native trout waters (and their tributaries) designated by the Wildlife Resources Commission, and (2) or those for which a formal petition for reclassification as WS-I or WS-II has been received from the appropriate local government and accepted by the Division of Water Quality.

With regard to the first phrase, page 32 of the HO Report indicates that the revisions are a clean-up of terminology no longer utilized in North Carolina. The HO Report explains: "there no longer exists a list of native and special native trout waters in the state. These revisions do not impact HQW or ORW existing classifications for waters that were identified in the past based on the utilization of the language that is proposed to be removed, and those classifications are 'grandfathered in.'" Given this explanation, the EPA finds the removal of the phrase to be consistent with the CWA and 40 C.F.R. Part 131. With regard to the second phrase, the State removed the phrase about petitions for WS-I and II reclassifications because it was "inconsistent with Administrative Procedures Act." Since the intention is to have regulations which are consistent with the Administrative Procedures Act, the removal of the second phrase is consistent with the CWA and 40 C.F.R. Part 131. Therefore, the removal of these two phrases is approved.

Total Suspended Solids Provision

Within .0224(c)(2)(B), the State revised the reference to Primary Nursery Areas, or "PNAs," to now refer to "HQW-classified PNAs." This was clarified in the State's materials as being modified in order

to clarify that HQW-classified PNAs, as opposed to all PNAs, have discharge limits on effluent concentrations. This is consistent with the expectation that a water must be designated as HQW in order to the HQW wastewater discharge requirements to apply. This clarification does not change the underlying intent of this provision. Therefore, the revision is approved as consistent with the CWA and 40 C.F.R. Part 131.

Waters Classified HQW with Specific Actions

The State chose to delete the sentence “If an applicant objects to the requirements to protect high quality waters and believes that degradation is necessary to accommodate important social and economic development, the applicant may contest these requirements according to the provisions of G.S. 143-215.1(e) and 150B 23.” The State’s draft materials indicate that this provision is available to all waters regardless of classification. Therefore, this deletion does not affect an applicant’s ability to object to the requirements and contest through the provisions of the general statute. This revision is consistent with the CWA and 40 C.F.R. Part 131 and is approved.

Revisions to 15A NCAC 02B .0225 - Water Quality Standards for Outstanding Resource Waters

Except as noted below, most of the revisions in the Outstanding Resource Waters (ORW) Rule are the result of the RRC’s comments and general review related to the state legislative requirement. These types of changes are reflected in detail in Appendix A. The EPA approves the revisions in Appendix A within Rule .0225 as being consistent with the CWA and 40 C.F.R. Part 131. The EPA notes however, that its approval of these changes does not re-open the EPA’s prior approval of any underlying WQS. Any revisions requiring additional discussion and analysis are provided below.

North Carolina added “Water Quality Standards for” to the title of Rule 0255. This title revision clarifies the purpose of this Rule and is consistent with the reference to Rule .0225 within the Class C introduction language found at .0211. The EPA approves this revision as being consistent with the CWA and 40 C.F.R. Part 131.

ORW Characteristics List

Within the list of characteristics that may cause a waterbody to be identified as an ORW at .0225(b), the phrase “Native or Special Native Trout Waters” is no longer included. Page 32 of the HO Report indicates that the revisions are a clean-up of terminology no longer utilized in North Carolina. The HO Report goes on to explain: “there no longer exists a list of native and special native trout waters in the state. These revisions do not impact HQW or ORW existing classifications for waters that were identified in the past based on the utilization of the language that is proposed to be removed, and those classifications are ‘grandfathered in.’” Given this explanation, the EPA finds the revisions to be consistent with the CWA and 40 C.F.R. Part 131 and approves the revision.

Revisions to 15A NCAC 02B .0301 - Classifications: General

With the exception of specific provisions identified below, the changes within 15A NCAC 02B .0301 reflect minor, editorial changes, streamlining of text, and clarifications on where specific details of classifications can be reviewed either online or in person. These types of changes are reflected in detail in Appendix A. The EPA approves the revisions in Appendix A within Rule .0301 as being consistent

with the CWA and 40 C.F.R. Part 131. The EPA notes however, that its approval of these changes does not re-open the EPA's prior approval of any underlying WQS.

Revisions to 15A NCAC 02B .0302 - .0317

With the exception of specific provisions identified below, the changes within 15A NCAC 02B .0302 - .0317 reflect minor, editorial changes, streamlining of text, and clarifications on where specific details of classifications can be reviewed either online or in person. These types of changes are reflected in detail in Appendix A. The EPA approves these types of revisions in Appendix A within Rules .0302-.0317 as being consistent with the CWA and 40 C.F.R. Part 131. The EPA notes however, that its approval of these changes does not re-open the EPA's prior approval of any underlying WQS.

Additionally, text was added to Rule .0311, Cape Fear River Basin, to incorporate the critical area (CA) designation to a portion of Sandy Creek.

(u) 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.

The following information was provided in the HO Report to explain the change in the Sandy Creek classification from WS-III to WS-III CA.

A segment of Sandy Creek, which is located in Randolph County (Cape Fear River Basin), is to be reclassified from Class WS-III (Balance of the Watershed or BW) to Class WS-III Critical Area (CA). This proposed reclassification affects a portion of the Sandy Creek water supply watershed, including Sandy Creek reservoir.

Randolph County informed state staff that DWR's water supply watershed boundary information for the reservoir is different than the county's water supply watershed boundary information for the reservoir. Based on available historical and current data, DWR staff agree with the county staff. The proposed reclassification will result in an updated representation of the water supply watershed for the reservoir; thus, this proposal serves the public interest per Executive Order #70 and complies with NCGS 150B.

Per Winston Salem Regional Office (WSRO) DWR staff, the Town of Ramseur switched from using a run-of-river intake in the creek to an intake built within a reservoir on the creek in the 1990s. A map of a Water Supply classified watershed is based primarily on the location of an intake within a reservoir or a river, and the rule language pertaining to a water supply watershed results from the map. For a run-of-river intake, a CA is measured as the area ½ mile and draining to the intake whereas for an intake in a reservoir, the CA is the area measured as ½ mile and draining to the normal pool elevation of the reservoir. The remainder of the area protected as a WS-III for a reservoir intake or run-of-river intake is the rest of the watershed (beyond the CA) draining to the normal pool elevation of the reservoir or the run-of-river intake, respectively, and is called the Balance of the Watershed (BW). The proposed reclassification would result in the

CA and BW for the reservoir totaling nearly 2,618 acres and 38,027 acres, respectively. There are no named tributaries affected by this reclassification proposal.

In a WS-III watershed, water supply water quality standards apply throughout the watershed. Other requirements within a WS-III watershed are no new landfills, no new residual or septage land application sites, and the allowance of only general NPDES wastewater discharges in the CA. In the BW, domestic and non-process industrial individual NPDES wastewater discharges are also allowed. There are no permitted or planned NPDES wastewater discharges that would be impacted by the proposal, and there are not any planned septage or residual land application sites or landfills in the proposed CA, according to WSRO and Central Office DEQ staff.

Guilford and Randolph Counties are the only local governments with jurisdiction in the proposed water supply watershed, and the current water supply watershed ordinances of these two local governments already meet the requirements of the proposed reclassification. Thus, these local governments would not need to modify their water supply watershed protection ordinances as a result of the proposal. A regulatory impact analysis for this proposal shows a one-time cost of approximately \$2,265 to the state. These costs to the state are to be incurred for notifying staff of local governments in the proposed water supply watershed, reviewing and approving local ordinances and maps for compliance, and updating the DEMLR interactive stormwater map and website once the proposal becomes effective.

The CA designation is for the area adjacent to a water supply intake or reservoir where risk associated with pollution is greater than the remaining portions of the watershed. Since the local governments already meet the requirements of the proposed reclassification, no additional sampling was needed to show that the waters met the standards to be classified as a water supply. The proposed reclassification will result in an updated representation of the water supply watershed for the reservoir. This revision retains the goals of the Class C waters, including protection of all aquatic life uses and supporting water quality criteria of the State's Class C designation, which also applies to WS-III CA waters. Therefore, since the criteria and uses of this designation provides for protection of the CWA Section 101(a)(2) uses, these revisions are consistent with the goals of the CWA and 40 C.F.R. Part 131 and are approved.

Part III - EPA's Conclusions

Based on the reasons outlined above, it is our conclusion that the requirements of the CWA and 40 C.F.R. Part 131 have been met for the new or revised WQS contained in North Carolina's submission. Therefore, the new or revised criteria addressed in this Decision Document and further identified in Appendix A are approved by the EPA pursuant to Section 303(c) of the CWA.

Date

Jeanne M. Gettle, Director
Water Division