

# ***NORTH CAROLINA REGISTER***

**VOLUME 32 • ISSUE 22 • Pages 2382 – 2520**

**May 15, 2018**

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**NORTH CAROLINA REGISTER**  
Publication Schedule for January 2018 – December 2018

FILING DEADLINES			NOTICE OF TEXT		PERMANENT RULE				TEMPORARY RULES
Volume & issue number	Issue date	Last day for filing	Earliest date for public hearing	End of required comment Period	Deadline to submit to RRC for review at next meeting	RRC Meeting Date	Earliest Eff. Date of Permanent Rule	Delayed Eff. Date of Permanent Rule 31st legislative day of the session beginning:	270 <sup>th</sup> day from publication in the Register
32:13	01/02/18	12/06/17	01/17/18	03/05/18	03/20/18	04/19/18	05/01/18	05/2018	09/29/18
32:14	01/16/18	12/19/17	01/31/18	03/19/18	03/20/18	04/19/18	05/01/18	05/2018	10/13/18
32:15	02/01/18	01/10/18	02/16/18	04/02/18	04/20/18	05/17/18	06/01/18	01/2019	10/29/18
32:16	02/15/18	01/25/18	03/02/18	04/16/18	04/20/18	05/17/18	06/01/18	01/2019	11/12/18
32:17	03/01/18	02/08/18	03/16/18	04/30/18	05/21/18	06/21/18	07/01/18	01/2019	11/26/18
32:18	03/15/18	02/22/18	03/30/18	05/14/18	05/21/18	06/21/18	07/01/18	01/2019	12/10/18
32:19	04/02/18	03/09/18	04/17/18	06/01/18	06/20/18	07/19/18	08/01/18	01/2019	12/28/18
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32:21	05/01/18	04/10/18	05/16/18	07/02/18	07/20/18	08/16/18	09/01/18	01/2019	01/26/19
32:22	05/15/18	04/24/18	05/30/18	07/16/18	07/20/18	08/16/18	09/01/18	01/2019	02/09/19
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33:01	07/02/18	06/11/18	07/17/18	08/31/18	09/20/18	10/18/18	11/01/18	01/2019	03/29/19
33:02	07/16/18	06/22/18	07/31/18	09/14/18	09/20/18	10/18/18	11/01/18	01/2019	04/12/19
33:03	08/01/18	07/11/18	08/16/18	10/01/18	10/22/18	11/15/18	12/01/18	01/2019	04/28/19
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33:11	12/03/18	11/07/18	12/18/18	02/01/19	02/20/19	03/21/19	04/01/19	05/2020	08/30/19
33:12	12/17/18	11/26/18	01/01/19	02/15/19	02/20/19	03/21/19	04/01/19	05/2020	09/13/19

## **EXPLANATION OF THE PUBLICATION SCHEDULE**

This Publication Schedule is prepared by the Office of Administrative Hearings as a public service and the computation of time periods are not to be deemed binding or controlling. Time is computed according to 26 NCAC 2C .0302 and the Rules of Civil Procedure, Rule 6.

### **GENERAL**

The North Carolina Register shall be published twice a month and contains the following information submitted for publication by a state agency:

- (1) temporary rules;
- (2) text of proposed rules;
- (3) text of permanent rules approved by the Rules Review Commission;
- (4) emergency rules
- (5) Executive Orders of the Governor;
- (6) final decision letters from the U.S. Attorney General concerning changes in laws affecting voting in a jurisdiction subject of Section 5 of the Voting Rights Act of 1965, as required by G.S. 120-30.9H; and
- (7) other information the Codifier of Rules determines to be helpful to the public.

**COMPUTING TIME:** In computing time in the schedule, the day of publication of the North Carolina Register is not included. The last day of the period so computed is included, unless it is a Saturday, Sunday, or State holiday, in which event the period runs until the preceding day which is not a Saturday, Sunday, or State holiday.

### **FILING DEADLINES**

**ISSUE DATE:** The Register is published on the first and fifteen of each month if the first or fifteenth of the month is not a Saturday, Sunday, or State holiday for employees mandated by the State Personnel Commission. If the first or fifteenth of any month is a Saturday, Sunday, or a holiday for State employees, the North Carolina Register issue for that day will be published on the day of that month after the first or fifteenth that is not a Saturday, Sunday, or holiday for State employees.

**LAST DAY FOR FILING:** The last day for filing for any issue is 15 days before the issue date excluding Saturdays, Sundays, and holidays for State employees.

### **NOTICE OF TEXT**

**EARLIEST DATE FOR PUBLIC HEARING:** The hearing date shall be at least 15 days after the date a notice of the hearing is published.

**END OF REQUIRED COMMENT PERIOD**  
An agency shall accept comments on the text of a proposed rule for at least 60 days after the text is published or until the date of any public hearings held on the proposed rule, whichever is longer.

**DEADLINE TO SUBMIT TO THE RULES REVIEW COMMISSION:** The Commission shall review a rule submitted to it on or before the twentieth of a month by the last day of the next month.

**FIRST LEGISLATIVE DAY OF THE NEXT REGULAR SESSION OF THE GENERAL ASSEMBLY:** This date is the first legislative day of the next regular session of the General Assembly following approval of the rule by the Rules Review Commission. See G.S. 150B-21.3, Effective date.



# State of North Carolina

**ROY COOPER**  
GOVERNOR

APRIL 20, 2018

EXECUTIVE ORDER NO. 41

## DECLARATION OF A STATE OF EMERGENCY

### BY THE GOVERNOR OF THE STATE OF NORTH CAROLINA

**WHEREAS**, a confirmed tornado struck Guilford County and Rockingham County, North Carolina on April 15, 2018; and

**WHEREAS**, the existence of a confirmed tornado and the related damages thereby sustained constitutes a state of emergency as defined in N.C. Gen. Stat. §§ 166A-19.3(6) and 166A-19.3(19); and

**WHEREAS**, certain measures are necessary to ensure the protection and safety of North Carolina residents and coordinate the emergency response among state and local entities and officials; and

**WHEREAS**, N.C. Gen. Stat. §§ 166A-19.10 and 19.20 authorize the Governor to declare a state of emergency and exercise the powers and duties set forth therein to direct and aid in the response to, recovery from, and mitigation against emergencies.

**NOW, THEREFORE**, by the authority vested in me as Governor by the Constitution and the laws of the State of North Carolina, **IT IS ORDERED**:

#### Section 1.

Pursuant to N.C. Gen. Stat. § 166A-19.20, I hereby declare that a state of emergency, as defined in N.C. Gen. Stat. §§ 166A-19.3(6) and 166A-19.3(19), exists in Guilford County, North Carolina and Rockingham County, North Carolina due to the damages sustained in those counties as a result of the April 15, 2018 tornado. A preliminary damage assessment was conducted on April 18-19, 2018, and I have determined that the emergency response requirement exceeds the capabilities of the counties to effectively respond to the event. The emergency area as defined in N.C. Gen. Stat. §§ 166A-19.3(7) and 166A-19.20(b) is Guilford County, North Carolina and Rockingham County, North Carolina ("the Emergency Area").

#### Section 2.

I order all state and local government entities and agencies to cooperate in the implementation of the provisions of this declaration and the provisions of the North Carolina Emergency Operations Plan ("the Plan").

**Section 3.**

I delegate to Erik A. Hooks, the Secretary of the North Carolina Department of Public Safety, or his designee, all power and authority granted to and required of me by Article 1A of Chapter 166A of the North Carolina General Statutes for the purpose of implementing the Plan and deploying the State Emergency Response Team to take the appropriate actions necessary to promote and secure the safety and protection of the populace in North Carolina.

**Section 4.**

Further, Secretary Hooks, as chief coordinating officer for the State of North Carolina, shall exercise the powers prescribed in N.C. Gen. Stat. § 143B-602.

**Section 5.**

I further direct Secretary Hooks or his designee to seek assistance from any and all agencies of the United States Government as may be needed to meet the emergency and seek reimbursement for costs incurred by the State in responding to this emergency.

**Section 6.**

I hereby order that this declaration be: (1) distributed to the news media and other organizations calculated to bring its contents to the attention of the general public; (2) promptly filed with the Secretary of the North Carolina Department of Public Safety, the Secretary of State, and the superior court clerks in the counties to which it applies, unless the circumstances of the state of emergency would prevent or impede this; and (3) distributed to others as necessary to ensure proper implementation of this declaration.

**Section 7.**

This declaration does not prohibit or restrict lawfully possessed firearms or ammunition or impose any limitation on the consumption, transportation, sale or purchase of alcoholic beverages as provided in N.C. Gen. Stat. § 166A-19.30(c).

**Section 8.**

Pursuant to N.C. Gen. Stat. § 166A-19.23, this declaration triggers the prohibition against excessive pricing as provided in N.C. Gen. Stat. §§ 75-37 and 75-38 in the Emergency Area.

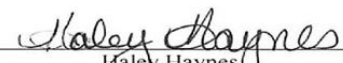
**Section 9.**

This declaration is effective immediately and shall remain in effect until rescinded.

**IN WITNESS WHEREOF**, I have hereunto signed my name and affixed the Great Seal of the State of North Carolina at the Capitol in the City of Raleigh, this 20<sup>th</sup> day of April in the year of our Lord two thousand and eighteen.

  
\_\_\_\_\_  
Roy Cooper  
Governor

ATTEST:

  
\_\_\_\_\_  
Haley Haynes  
Deputy Secretary of State



1                   **NOTICE OF RULE MAKING PROCEEDINGS AND PUBLIC HEARING**

2  
3                   **NORTH CAROLINA BUILDING CODE COUNCIL**

4  
5   **Notice of Rule-making Proceedings** *is hereby given by NC Building Code Council in accordance with*  
6   *G.S. 150B-21.5(d).*

7  
8   **Citation to Existing Rule Affected by this Rule-Making:** *North Carolina Building, Electrical, Fire, and*  
9   *Residential Code amendments.*

10  
11   **Authority for Rule-making:** *G.S. 143-136; 143-138.*

12  
13   **Reason for Proposed Action:** *To incorporate changes in the NC State Building Codes as a result of*  
14   *rulemaking petitions filed with the NC Building Code Council and to incorporate changes proposed by the*  
15   *Council.*

16  
17   **Public Hearing:** *Tuesday, June 12, 2018, 9:00AM, Albemarle Building, 325 North Salisbury Street,*  
18   *Raleigh, NC 27603, 2<sup>nd</sup> Floor Training Room 240. Comments on both the proposed rule and any fiscal*  
19   *impact will be accepted.*

20  
21   **Comment Procedures:** *Written comments may be sent to Barry Gupton, Secretary, NC Building Code*  
22   *Council, NC Department of Insurance, 1202 Mail Service Center, Raleigh, NC 27699-1202. Comments on*  
23   *both the proposed rule and any fiscal impact will be accepted. Comment period expires on July 16, 2018.*

24  
25   **Statement of Subject Matter:**

26  
27  
28   **1. Request by Joe Gorza, representing Space Walk of Currituck, to amend the 2018 NC Fire Code,**  
29   **Sections 105.6.43 & 2403.2 as follows:**

30  
31   [Note: These Section references do not match the 2018 NC Fire Code.]

32   Exception #3 tents, membrane & air inflated structures associated with single family dwellings less than  
33   800 sq. ft.

34  
35   **Motion/Second/Approved** – *The request was granted. The proposed effective date of this rule is*  
36   *December 1, 2018 (earliest through RRC), unless the BCC assigns a delayed effective date (January 1,*  
37   *2020).*

**Reason Given** – The purpose of this amendment is to increase the minimum permit and inspection size for tents, membrane & air inflated structures associated with single family dwellings

**Fiscal Statement** – This rule is anticipated to provide equivalent compliance with no net decrease/increase in cost. This rule is not expected to either have a substantial economic impact or increase local and state funds. A fiscal note has not been prepared.

**2. Request by Randall Shackelford, P.E., representing Simpson Strong-Tie Company, to amend the 2018 NC Residential Code, Section AM105.1 as follows:**

**AM105.1 General.**

Girders shall bear directly on the support post with the post attached at top to prevent lateral displacement or be connected to the side of the posts ~~with two 5/8 inch (16 mm) hot dip galvanized bolts with nut and washer with one of the methods shown in Table AM105.1.~~ Girder support is permitted to be installed in accordance with Figure AM105.1(1) for top mount; Figure AM105.1(2) for side mount and Figure AM105.1(3) for split girders. See Figure AM105.1(4) for cantilevered girders.

**Table AM105.1 Girder Connection to Side of Post**

Maximum Girder Thickness		
Any	3" (Double 2X)	1-1/2" (Single 2X)
Two 5/8" diameter bolts <sup>1</sup>	Four 6" long screws <sup>2</sup>	Three 4" long screws <sup>2</sup>

1. Bolts shall be hot dip galvanized through bolts with nut and washer

2. Screws shall be hot dipped galvanized self-drilling screw fastener having a minimum diameter of 0.270", staggered so that the screws are not in a line, and having a minimum edge distance of 1-1/2 inches.

**Motion/Second/Approved** – The request was granted. The proposed effective date of this rule is December 1, 2018 (earliest through RRC), unless the BCC assigns a delayed effective date (January 1, 2020).

**Reason Given** – The purpose of this amendment is to allow new technology self-drilling fasteners in addition to through bolts.

**Fiscal Statement** – This rule is anticipated to provide equivalent compliance with no net decrease/increase in cost. This rule is not expected to either have a substantial economic impact or increase local and state funds. A fiscal note has not been prepared.



3. Request by Randall Shackelford, P.E., representing Simpson Strong-Tie Company, to amend the 2018 NC Residential Code, Section R4603.6 as follows:

**R4603.6 Tying and bracing of wood piles.**

Beams and girders shall fully bear on pilings and butt joints shall occur over pilings. If Sills, beams or girders are shall be attached to the piling a minimum of two 5/8 inch (16 mm) galvanized steel bolts per beam member shall be through bolted using either bolts or screws at each piling connection in accordance with Table R4603.6 and Figure R4603.6 (a). When the piling is notched so that the cross-section is reduced below 50 percent or the girder is top bearing, sills, beams or girders shall be attached using 3/16 x 4 x 18-inch (5 x 102 x 467 mm) hot dip galvanized straps, one each side, bolted with two 5/8 inch (15.9 mm) galvanized through bolts fastened top and bottom in accordance with either bolts or screws in accordance with Table R4603.6 and Figure R4603.6(b) and Figure R4603.6(c). Where butt joints occur over the piling and screws are used, there shall be two straps on each side of the piling, having a minimum size of 3/16 by 2 by 18 inches (5 x 51 x 467 mm), with four self-drilling screws as described in each end.

**Table R4603.6 Minimum Fastening of Beams and Girders to Pilings**

Amount Piling is Notched	Beam/Girder Continuous		Beam/Girder Butt Joint	
	Bolts	Screws	Bolts	Screws
< 50%	two 5/8" bolts <sup>2</sup>	four screws <sup>3</sup>	four 5/8" bolts <sup>2</sup>	eight screws <sup>3</sup>
≥ 50% <sup>1</sup>	two 5/8" bolts <sup>2</sup>	four screws <sup>3</sup>	four 5/8" bolts <sup>3</sup>	eight screws

1. Where piling is notched over 50%, use strap as required in Section 4603.6. Install the specified number of bolts or screws in each end of the strap.

2. Bolts shall be 5/8" diameter hot dipped galvanized through bolts with nuts and washers.

3. Screws shall be 0.270" (6.9 mm) minimum in diameter, hot dipped galvanized to a minimum of A153, Class C, and having a minimum length of 4", and also shall be long enough to penetrate at least one inch through the remaining pile and into the girder.

**R4603.6.1 Tying at corners.** At corners, girders shall be connected to the pile with a minimum 3/16 x 4 x 18-inch (5 x 102 x 467 mm) hot dip galvanized strap bolted with two 5/8 inch (15.9 mm) galvanized through bolts on the exterior and a minimum L4 x 3/16 x 1'-6" (102 x 5 x 467 mm) galvanized steel angle bolted with two 5/8 inch (15.9 mm) galvanized through bolts on the interior in accordance with Figure R4603.6(d).

**R4603.6.2 Bracing of Pilings.** Bracing of pile foundations is required where the clear height from ground to sill, beam or girder exceeds 10 feet (3048 mm) or the dwelling is more than one story above piles. A line of X-bracing is defined as a row of piles with X-bracing provided in at least two bays. A line of X-bracing

- 1 shall be provided at all exterior pile lines. Where the perimeter lines of X-bracing exceed 40 feet (12 192  
2 mm), an additional line of X-bracing shall be provided near the center of the building. See Figure  
3 R4603.6(e). X-bracing shall be with  $2 \times 10$ s through bolted with two  $3/4$ -inch (19.1 mm) bolts at each end.  
4 The code official is permitted to accept alternate bracing designs if they bear the seal of a registered design  
5 professional.  
6  
7 Revise Figures as follows:

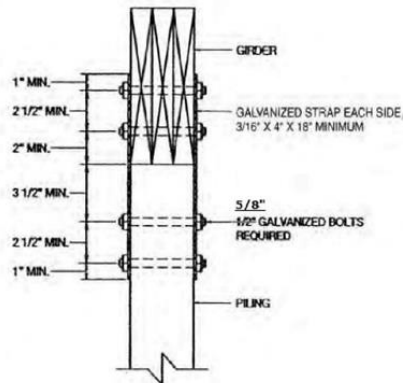


FIGURE R4603.6(b)  
TOP MOUNTED GIRDER

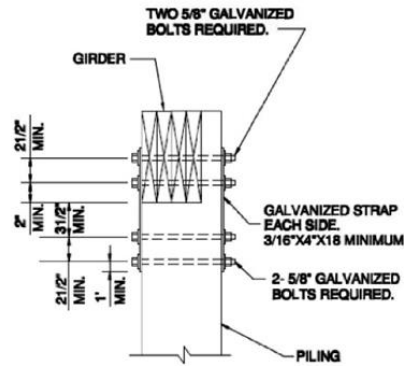


FIGURE R4603.6(c)  
PILING NOTCHED MORE THAN 50%

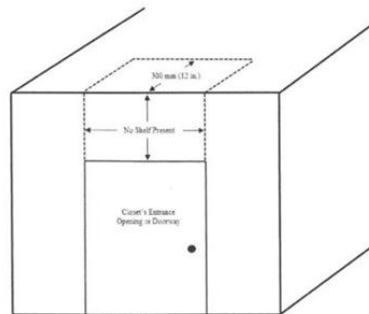
- 8  
9 **Motion/Second/Approved** – The request was granted. The proposed effective date of this rule is  
10 December 1, 2018 (earliest through RRC), unless the BCC assigns a delayed effective date (January 1,  
11 2020).  
12 **Reason Given** – The purpose of this amendment is to allow new technology self-drilling fasteners in  
13 addition to through bolts.  
14 **Fiscal Statement** – This rule is anticipated to provide equivalent compliance with no net decrease/increase  
15 in cost. This rule is not expected to either have a substantial economic impact or increase local and state  
16 funds. A fiscal note has not been prepared.  
17  
18  
19 **4. Request from Terry Cromer representing the NC Association of Electrical Contractors to amend**  
20 **the 2017 NC Electrical Code as follows:**  
21  
22 **410.2 Definition.**

**Closet Storage Space.** The volume bounded by the sides and back closet walls and planes extending from the closet floor vertically to a height of 1.8 m (6 ft) or to the highest clothes-hanging rod and parallel to the walls at a horizontal distance of 600 mm (24 in.) from the sides and back of the closet walls, respectively, and continuing vertically to the closet ceiling parallel to the walls at a horizontal distance of 300 mm (12 in.) or the width of the shelf, whichever is greater; for a closet that permits access to both sides of a hanging rod, this space includes the volume below the highest rod extending 300 mm (12 in.) on either side of the rod on a plane horizontal to the floor extending the entire length of the rod. See Figure 410.2.

Exception:

Where a shelf is not present in the area of wall above the closet's entrance opening or doorway extending from the top of such opening or doorway vertically to the ceiling, including the area of ceiling extending perpendicular from the area of wall directly above the closet's entrance opening or doorway to a horizontal distance of 300 mm (12 in.) shall not be defined as closet storage space. See Figure 410.2

Exception.



**Figure 410.2 Exception Closet Storage Space Exception**

**Motion/Second/Approved** – The request was granted. The proposed effective date of this rule is December 1, 2018 (earliest through RRC), unless the BCC assigns a delayed effective date (January 1, 2020).

**Reason Given** – The purpose of this amendment is to allow a lighting fixture above the door in a closet.

**Fiscal Statement** – This rule is anticipated to provide equivalent compliance with no net decrease/increase in cost. This rule is not expected to either have a substantial economic impact or increase local and state funds. A fiscal note has not been prepared.

**5. Request by Terry Cromer, representing the NC Association of Electrical Contractors to amend the 2017 NC Electrical Code as follows:**

1  
2 **410.16 Luminaires in Clothes Closets.**

3 **(C) Location.** The minimum clearance between luminaires installed in clothes closets and the nearest point  
4 of a closet storage space shall be as follows:

5 (1) 300 mm (12 in.) for surface-mounted incandescent or LED luminaires with a completely enclosed light  
6 source installed on the wall above the door or on the ceiling.

7 (2) 150 mm (6 in.) for surface-mounted fluorescent luminaires installed on the wall above the door or on  
8 the ceiling.

9 (3) 150 mm (6 in.) for recessed incandescent or LED luminaires with a completely enclosed light source  
10 installed in the wall or the ceiling.

11 (4) 150 mm (6 in.) for recessed fluorescent luminaires installed in the wall or the ceiling.

12 (5) Surface-mounted fluorescent or LED luminaires shall be permitted to be installed within the closet  
13 storage space where identified for this use.

14 (6) LED luminaires with a completely enclosed light source or fluorescent luminaires shall be permitted to  
15 be installed within the area defined in 410.2 Exception.

16  
17 **Motion/Second/Approved** – The request was granted. The proposed effective date of this rule is  
18 December 1, 2018 (earliest through RRC), unless the BCC assigns a delayed effective date (January 1,  
19 2020).

20 **Reason Given** – The purpose of this amendment is to allow LED luminaires above the door in a closet.

21 **Fiscal Statement** – This rule is anticipated to provide equivalent compliance with no net decrease/increase  
22 in cost. This rule is not expected to either have a substantial economic impact or increase local and state  
23 funds. A fiscal note has not been prepared.

24  
25  
26 **6. Request by Jonathan Leonard representing the NC Fire Code Revisions Committee to amend the**  
27 **2018 NC Fire Code, Section 314.4 as follows:**

28  
29 **314.4 Vehicles.** Liquid- or gas-fueled vehicles, boats or other motorcraft shall not be located indoors except  
30 as follows:

31 1. Batteries are disconnected.

32 Exception: Alternative-Fueled vehicles in which manufacturer prohibits disconnection of power supply

33 2. Fuel in fuel tanks does not exceed one-quarter tank or 5 gallons (19L) (whichever is least).

34 Exception: Diesel fueled vehicles-maximum fuel amount permitted shall be 20 gallons.

35 3. Fuel tanks and fill openings are closed and sealed to prevent tampering and the release of vapors.

36 4. Vehicles, boats or other motorcraft equipment are not fueled or defueled within the building.  
37

1 **Motion/Second/Approved** – The request was granted. The proposed effective date of this rule is  
2 December 1, 2018 (earliest through RRC), unless the BCC assigns a delayed effective date (January 1,  
3 2020).

4 **Reason Given** – The purpose of this amendment is to provide exceptions for public shows and displays of  
5 alternate fuel and diesel fuel vehicles.

6 **Fiscal Statement** – This rule is anticipated to provide equivalent compliance with no net decrease/increase  
7 in cost. This rule is not expected to either have a substantial economic impact or increase local and state  
8 funds. A fiscal note has not been prepared.

9  
10  
11 **7. Request by Jonathan Leonard representing the NC Fire Code Revisions Committee to amend the**  
12 **2018 NC Building (and Fire) Code, Section 1010.1.9.11 as follows:**

13  
14 **[BE] 1010.1.9.11 Stairway doors.**

15 Interior stairway means of egress doors shall be openable from both sides without the use of a key or  
16 special knowledge or effort.

17  
18 **Exceptions:**

19 1. Stairway discharge doors shall be openable from the egress side and shall only be locked from the  
20 opposite side.

21 2. This section shall not apply to doors arranged in accordance with Section 403.5.3 of the International  
22 Building Code.

23 ~~3. In stairways serving not more than four stories, doors are permitted to be locked from the side opposite~~  
24 ~~the egress side, provided they are openable from the egress side and capable of being unlocked~~  
25 ~~simultaneously without unlatching upon a signal from the fire command center, if present, or a signal by~~  
26 ~~emergency personnel from a single location inside the main entrance to the building.~~

27 3. Stairway exit doors are permitted to be locked from the side opposite the egress side, provided that they  
28 are openable from the egress side and capable of being unlocked simultaneously without unlatching upon a  
29 signal from the fire command center, if present, or a signal by emergency personnel from a single location  
30 inside the main entrance to the building and upon activation of the fire alarm if present.

31 4. Stairway exit doors shall be openable from the egress side and shall only be locked from the opposite  
32 side in Group B, F, M and S occupancies where the only interior access to the tenant space is from a single  
33 exit stairway where permitted in Section 1006.3.2.

34 5. Stairway exit doors shall be openable from the egress side and shall only be locked from the opposite  
35 side in Group R-2 occupancies where the only interior access to the dwelling unit is from a single exit  
36 stairway where permitted in Section 1006. 3.2.

1 ~~6. In other than highrise, stairways serving floors above a 3 hour horizontal building separation, doors are~~  
2 ~~permitted to be locked from the side opposite the egress side, provided they are openable from the egress~~  
3 ~~side and capable of being unlocked simultaneously without unlatching upon activation of the building fire~~  
4 ~~alarm system.~~

5  
6 **Motion/Second/Approved** – The request was granted. The proposed effective date of this rule is  
7 December 1, 2018 (earliest through RRC), unless the BCC assigns a delayed effective date (January 1,  
8 2020).

9 **Reason Given** – This purpose of this amendment is for occupant security and to prevent unauthorized  
10 personnel from entering the floor in non-high-rise buildings.

11 **Fiscal Statement** – This rule is anticipated to provide equivalent compliance with no net decrease/increase  
12 in cost. This rule is not expected to either have a substantial economic impact or increase local and state  
13 funds. A fiscal note has not been prepared.

14  
15  
16 **NOTICE:**

17 **Appeals and Interpretations** of the North Carolina State Building Codes are published online at the  
18 following link.

19 [http://www.ncdoi.com/OSFM/Engineering\\_and\\_Codes/Default.aspx?field1=Code\\_Interpretations&user=C](http://www.ncdoi.com/OSFM/Engineering_and_Codes/Default.aspx?field1=Code_Interpretations&user=C)  
20 [ode Enforcement Resources](#)

21  
22  
23 **NOTICE:**

24 **Objections and Legislative Review** requests may be made to the NC Office of Administrative Hearings in  
25 accordance with G.S. 150B-21.3(b2) after Rules are adopted by the Building Code Council.

26 <http://www.ncoah.com/rules/>  
27  
28

**Note from the Codifier:** The notices published in this Section of the NC Register include the text of proposed rules. The agency must accept comments on the proposed rule(s) for at least 60 days from the publication date, or until the public hearing, or a later date if specified in the notice by the agency. If the agency adopts a rule that differs substantially from a prior published notice, the agency must publish the text of the proposed different rule and accept comment on the proposed different rule for 60 days. Statutory reference: G.S. 150B-21.2.

## **TITLE 10A – DEPARTMENT OF HEALTH AND HUMAN SERVICES**

*Notice is hereby given in accordance with G.S. 150B-21.2 and G.S. 150B-21.3A(c)(2)g. that the Commission for the Blind intends to amend the rules cited as 10A NCAC 63C .0101, .0103, .0104, .0201, and .0204, repeal the rules cited as 10A NCAC 63C .0302 and .0701, readopt with substantive changes the rules cited as 10A NCAC 63C .0102, .0202, .0203, .0205, .0206, .0401-.0403, .0501, .0506, .0508, .0509, .0512, .0601, .0604, .0702; 63F .0101, .0102, and .0402 and readopt without substantive changes the rules cited as 10A NCAC 63A .0101; 63C .0511, .0603 and .0704.*

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

**NOTE:** Pursuant to G.S. 150B-21.17, the Codifier has determined that publication of the complete text of the rules proposed for repeal is impractical. The text of the repealed rules is accessible on the OAH Website: <http://www.ncoah.com>.

**Link to agency website pursuant to G.S. 150B-19.1(c):** <https://www.ncdhhs.gov/division-rules>

**Proposed Effective Date:** October 1, 2018

### **Public Hearing:**

**Date:** June 15, 2018

**Time:** 2:30-4:00 p.m.

**Location:** 309 Ashe Avenue, Fisher Building, Room 212, Raleigh, NC

**Reason for Proposed Action:** The Division of Services for the Blind submits the proposed rule revisions due to changes in program regulations. Additionally, the rules need to be revised to comply with program regulations and provide clarification of program procedures. The Division is also required to complete the periodic review of existing rules process per G.S. 150B-21.3A.

**Comments may be submitted to:** Kathie Trotter, NC Division of Services for the Blind, 2601 Mail Service Center, Raleigh, NC 27699-2601; email [dsbpubliccomment.dhhs.nc.gov](mailto:dsbpubliccomment.dhhs.nc.gov)

**Comment period ends:** July 16, 2018

### **Procedure for Subjecting a Proposed Rule to Legislative Review:**

If an objection is not resolved prior to the adoption of the rule, a person may also submit written objections to the Rules Review Commission after the adoption of the Rule. If the Rules Review Commission receives written and signed objections after

the adoption of the Rule in accordance with G.S. 150B-21.3(b2) from 10 or more persons clearly requesting review by the legislature and the Rules Review Commission approves the rule, the rule will become effective as provided in G.S. 150B-21.3(b1). The Commission will receive written objections until 5:00 p.m. on the day following the day the Commission approves the rule. The Commission will receive those objections by mail, delivery service, hand delivery, or facsimile transmission. If you have any further questions concerning the submission of objections to the Commission, please call a Commission staff attorney at 919-431-3000.

### **Fiscal impact (check all that apply).**

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

## **CHAPTER 63 – SERVICES FOR THE BLIND**

### **SUBCHAPTER 63A – ORGANIZATION**

#### **SECTION .0100 – RIGHTS**

#### **10A NCAC 63A .0101 NON-DISCRIMINATION (READOPTION WITHOUT SUBSTANTIVE CHANGES)**

### **SUBCHAPTER 63C - BUSINESS ENTERPRISES PROGRAM**

#### **SECTION .0100 – BUSINESS ENTERPRISES PROGRAM**

#### **10A NCAC 63C .0101 PURPOSE AND DEFINITIONS**

(a) The Business Enterprises Program is a rehabilitative program administered in accordance with the Department of Health and Human Services through the Division of Services for the Blind (DSB). DSB is designated as the State Licensing Agency (SLA) under 34 CFR Part 395. This program provides training and self-employment opportunities in state, federal, and other properties throughout the State of North Carolina for eligible residents who are legally blind, which helps provide employment opportunities and economic security to blind individuals. The rules in this Subchapter are promulgated pursuant to 34 CFR Part 395 and G.S. 111 for the purpose of governing the operation and administration of the Business Enterprises Program in this state.

(b) As used in this Subchapter:

- (1) "Blind person" or "legally blind" means a person who meets the criteria defined in 34 CFR 395.1(c) and G.S. 111-11.
- (2) "Division" or "DSB" means Division of Services for the Blind.
- ~~(1)(3)~~ "Blind licensee" or "licensee" means a blind person licensed by the Division to operate a Business Enterprises facility on ~~federal~~ federal, state or other property.
- ~~(2)(4)~~ "Blind operator" or "operator" means a blind licensee who is operating a Business Enterprises facility on ~~federal~~ federal, state or other property.
- ~~(3)(5)~~ The "Business Enterprises Program (BEP)" provides training and the opportunity for blind individuals to achieve self-employment with ~~remunerative~~ employment through the operation of vending and food service facilities on federal, state, and other properties.
- ~~(4)(6)~~ "Business Enterprises facility" "or facility" means any vending and food service facility operated by the North Carolina Business Enterprises Program as defined in 34 CFR 395.1.
- (7) "Elected Committee of Blind Vendors (ECBV)" means a committee as defined in 34 CFR 395.14 whose members are elected by the Business Enterprises operators.
- (8) "Active participation" means an ongoing transparent process of good-faith communications and negotiations between the Elected Committee of Blind Vendors and the Division in matters pertaining to major administrative decisions and policy and program development decisions affecting the overall administration of the Business Enterprises Program prior to implementation.
- (9) "Host facility" means sponsor or owner of the site upon which the Business Enterprises facility is located.

*Authority G.S. 111-27; 143B-157; 34 C.F.R. 395; 20 U.S.C. Sec. 107.*

#### **10A NCAC 63C .0102 DIVISION RESPONSIBILITY**

~~(a) The Division shall not provide for services or costs which pertain to the ongoing operation of an individual facility after the initial establishment period.~~

~~(b)(a)~~ The Division shall assure that each operator is provided access to all program and financial data of the Division relevant to the operation of the ~~state vending facility program~~, Business Enterprises Program, including quarterly and annual financial reports, to the extent that such disclosure does not violate applicable federal and state laws pertaining to the disclosure of confidential information; that insofar as practicable such data shall be made available electronically, on tape, disk, large print, and Braille; and that, at the request of an operator, the Division ~~will~~ shall arrange a convenient time to assist in the interpretation of such data.

~~(e)(b)~~ The Division shall furnish to each operator copies of documents relevant to the operation of the Business Enterprises facility, including the ~~rules and regulations~~, rules, regulations, and program manuals, a written description of the arrangements for providing services, and the agreement and permit covering the operation of the Business Enterprises facility, and ~~shall~~ shall, upon request, explain these documents to each operator in a timely manner. Documents shall be made available in the requested accessible format.

(c) The Division shall carry out full responsibility for the supervision and management of each Business Enterprises facility in accordance with the rules and regulations governing the Business Enterprises Program.

(d) The Division shall assist the Elected Committee of Blind Vendors in planning meetings and instructional conferences upon request.

*Authority G.S. 111-27; 143B-157; 34 C.F.R. 395; 20 U.S.C. Sec. 107.*

#### **10A NCAC 63C .0103 ~~STAND~~ BUSINESS ENTERPRISES FACILITY EQUIPMENT: MERCHANDISE: AND SUPPLIES**

(a) The Division shall furnish each Business Enterprises facility with the equipment, initial stock, and initial supplies that are determined by the Division necessary to operate the unit.

(b) Except as set forth in Paragraph (c) of this Rule, ~~The~~ the right, title to, and interest in Business Enterprises equipment, merchandise, petty cash, and all other assets used in the program is vested in the Division only and may be used and disposed of by the Division for program purposes only, and in accordance with state and federal law.

(c) If the Division and operator agree in writing that the right, title to and interest in Business Enterprises stock will be vested in the operator, then the Division shall retain a first option to repurchase such stock and in the event the operator dies, or for any other reason ceases to be an operator, or transfers to another vending facility, ownership of such stock shall become vested in the Division for transfer to a successor operator subject to an obligation on the Division to pay to such operator, or the operator's heirs, the fair value of the stock. The Division's obligation to pay the fair value of the stock to the operator, or the operator's heirs, under this rule shall be reduced by the amount of any outstanding debt owed by the operator to the Division.

~~(e)(d)~~ The Division shall maintain (or cause to be maintained) all Business Enterprises equipment in good repair and in attractive condition, and shall replace (or cause to be replaced) worn-out or obsolete equipment as required to assure the continued successful operation of the ~~facility~~, facility, ~~subject to availability of funds~~. The licensed operator of a facility shall take the initiative in identifying needed equipment repairs and replacement.

*Authority G.S. 111-27; 143B-157; 34 C.F.R. 395.6; 20 U.S.C. Sec. 107.*

#### **10A NCAC 63C .0104 TRAINING PROGRAM**

The Division shall provide for the training of legally blind individuals according to the requirements of 34 CFR 395.11 and for the training and retraining of blind operators with assistance



from the ~~state committee of blind vendors~~. Elected Committee of Blind Vendors.

*Authority G.S. 111-27; 143B-157; 34 C.F.R. 395.11; 34 C.F.R. 395.14; 20 U.S.C. Sec. 107.*

## **SECTION .0200 - LICENSING AND PLACEMENT**

### **10A NCAC 63C .0201 ISSUANCE OF LICENSES**

The Division, through the Business Enterprises Program, shall license blind ~~persons~~ individuals who meet eligibility requirements for the Business Enterprises Program. The licensee shall signify acceptance of the licensing by placing their signature or mark on the agreement. This license shall be issued for an indefinite ~~period~~ period but subject to suspension or termination if, after affording the operator or licensee an opportunity for a full evidentiary hearing, the Division finds that the Business Enterprises facility is not being operated in accordance with its rules and regulations, the terms and conditions of the permit and the terms and conditions of the agreement with the operator. The licensee shall signify his acceptance of the licensing agreement by affixing his signature or mark thereon.

*Authority G.S. 111-27; 34 C.F.R. 395.7; 20 U.S.C. Sec. 107.*

## **SECTION .0200 - LICENSING AND PLACEMENT**

### **10A NCAC 63C .0202 ELIGIBILITY FOR LICENSING**

(a) The Division shall interview prospective licensees as referred by the vocational rehabilitation program and shall make written recommendations to the Chief of Business Enterprises concerning the potential of the referral commensurate with the specific job requirements of the Business Enterprises Program.

(b) ~~To be licensed;~~ considered for training and licensure, the consumer must:

- (1) ~~The consumer must~~ meet the definition of legally blind as outlined in ~~34 CFR 395.1; 34 CFR 395.1(c) and G.S. 111-11;~~
- (2) ~~The consumer must~~ be at least ~~18~~ 21 years of age;
- (3) ~~The consumer must~~ be physically able to perform all the duties as further detailed in this Chapter;
- (4) ~~All consumers must~~ be evaluated for and demonstrate proficiency of skill in basic mobility, ~~activities of daily living, mathematics~~ mathematics, basic computer skills, verbal and written communications, reading comprehension and basic food service practices;
- (5) ~~The consumer must~~ be familiar with the rules and regulations for Business Enterprises ~~facility operators. Program.~~ The consumer must demonstrate the potential to successfully complete the Business Enterprises training program sponsored by the Division and must be certified by the Division as capable of operating a Business Enterprises facility;

- (6) ~~The consumer must~~ be a citizen of the United States; and reside in North Carolina;
- (7) ~~The consumer must have no~~ not have previous conviction(s) of ~~any felony class A through E.~~ misdemeanors involving crimes of dishonesty or any felony; and
- (8) submit to and pass a drug and alcohol screening provided by the Division.

*Authority G.S. 111-27; 34 C.F.R. 395; 20 U.S.C. sec. 107; 143B-157.*

### **10A NCAC 63C .0203 ~~SUSPEND; TERMINATE; LICENSE; SUSPENSION OR TERMINATION OF LICENSE AND REMOVAL FROM BUSINESS ENTERPRISES FACILITY~~**

(a) The Division may suspend or terminate the license of an operator, after affording the operator an opportunity ~~for to appeal the decision as set forth in Section.0400, a full evidentiary hearing, when it finds that his facility is not being operated in accordance with the rules and regulations; with the terms and conditions of the agreement, contract, or permit between the Division and the sponsor of the building or site upon which the Business Enterprises facility is located; or with the terms of the contract between the operator and the Division relating to the particular assignment.~~

(b) ~~An operator may be warned prior to suspension or termination of a license, particularly in situations where lack of compliance is not determined by the Division to pose an immediate threat to the general public or to bring discredit or irreparable damage to the Business Enterprises Program.~~

(b) The license of a licensee shall be terminated if the licensee's vision is improved by conventional means to the point at which the licensee is not legally blind.

(c) The license of an operator shall be terminated if the operator's vision is improved by conventional means to the point at which the operator is not legally blind.

(e)(d) Licenses to operators may also be suspended or terminated for any of the following reasons:

- (1) ~~Vision improves so that the operator is no longer eligible for licensing;~~
- (2)(1) Extended illness ~~extended illness, defined as lasting at least three months, occurs with medically documented diagnosis of prolonged incapacity of the operator to manage the Business Enterprises facility in a manner consistent with the needs of the location or other available locations in the Business Enterprises Program;~~
- (3)(2) Withdrawal ~~withdrawal of the operator from the program upon his written notification to the Division;~~
- (4) Gross misconduct or conduct so reprehensible as to bring discredit to the program;
- (5)(3) Conviction ~~conviction of a felony (Class A through E); misdemeanor involving crimes of dishonesty or any felony;~~
- (6)(4) Falsified ~~falsified information pertaining to eligibility requirements;~~

- ~~(7)(5)~~ ~~Willful willful~~ acts that would endanger the lives and property of others;
- ~~(8)(6)~~ Possession of firearms or lethal weapons on ~~the job~~; site at a Business Enterprises facility;
- ~~(9)(7)~~ ~~Reporting reporting~~ to Business Enterprises assignment under the influence of alcohol or any controlled substance or partaking of such on the ~~job~~; job;
- ~~(8)~~ failing to personally operate the awarded facility as set forth in the operator agreement and permit or contract with the host facility unless prior written approval to operate the facility in another manner has been obtained from the Division;
- ~~(9)~~ failing to pay fees to the Controller's Office by the 15<sup>th</sup> day of the month following the month in which the business was transacted three times during the calendar year;
- ~~(10)~~ failing to preserve required financial and other records with the Division as required by this Subchapter;
- ~~(11)~~ failing to cooperate with record keeping reviews conducted by the Division;
- ~~(12)~~ failing to cooperate with audits conducted by state or federal agencies;
- ~~(13)~~ failing to maintain bonding, liability and workers compensation insurance coverage as required by law or policy;
- ~~(14)~~ using Business Enterprises equipment and or facility to operate another business;
- ~~(15)~~ failing to maintain facility equipment in a sanitary and operable condition within the scope of the operator's level of maintenance authorization;
- ~~(16)~~ removing facility equipment without written authorization from the Division;
- ~~(17)~~ failing to comply with federal or state law prohibiting discrimination in hiring and service to customers; and
- ~~(18)~~ failing to comply with the operator's responsibilities in this Subchapter or the operator's agreement.

- ~~(1)~~ The Division shall send a notice of available facilities to all operators and licensees on the last 10 working day of the month. The notice shall provide a description of the vacancy and who to contact for more information.
- ~~(2)~~ All applications shall be post marked by the 10th of the month following the notice and mailed to the office of the Chief of Business Enterprises.
- ~~(3)~~ The Interview Committee shall interview all applicants on the second Friday of the month which follows the application deadline.
- ~~(4)~~ At least 10 working days prior to the interview, the Business Enterprises Counselor who works with the applicant shall calculate the applicant's points for sanitation, seniority, Financial Analysis/Operating Standards [Subparagraphs (d), (1), (2), (3) of this Rule] and inform the applicant of his point total. The applicant shall have five working days to review the point total and request any adjustments.
- ~~(5)~~ After adding together the points from the sanitation, seniority, Financial Analysis/Operating Standards, Customer Relations and Oral Exam/Interview Sections [Subparagraphs (d), (1), (2), (3), (4), (5), (6), (7) of this Rule] for each applicant, the applicant with the highest point total (if above 60 points) shall be awarded the vacancy. If the applicant with the highest point total declines to accept the location, it shall be offered to the next highest applicant (if above 60 points) and so on. In the case of an exact tie, the applicant with the most time in the Business Enterprises Program shall be awarded the location.
- ~~(6)~~ Applicants shall be notified as soon as possible after their interview whether or not they have been awarded a location. This notification shall be by telephone and followed up in writing.
- ~~(7)~~ Upon being awarded a location, the applicant shall have 30 days to fill the vacancy. The Division shall agree to a different time frame if adhering to the 30 day time frame would cause a hardship to the applicant awarded the facility. The location shall not be filled for 15 working days following the award to allow time for administrative appeals to be filed. If an appeal is filed, the location shall not be filled until the appeal is resolved. If there is only one applicant for a location, the 15 day waiting period shall not apply.
- ~~(8)~~ If an applicant is awarded a facility and has not had an Operator Agreement with the Agency in the last two years, and the applicant did not meet his financial analysis and operating standards for the last 12 months that his agreement was in effect, the applicant shall repeat the necessary on the job training. The Interview Committee may also recommend

(d) Suspension may be used when an apparent action or lack of action by an operator is not serious enough in the opinion of the Division to warrant termination of the license. The length of the suspension shall vary with the seriousness of the situation, but shall not exceed a maximum of 60 days.

*Authority G.S. 111-27; 34 C.F.R. 395.7; 20 U.S.C. Sec. 107.*

#### **10A NCAC 63C .0204 FILLING OF VACANCIES**

- (a) The Division shall make available a listing of available Business Enterprises facilities to all licensees.
- (b) Licensees who wish to apply for any of the locations listed may forward an application to the office of the Chief of Business Enterprises.
- (c) Transfers and promotions shall be based on ~~the following procedures:~~ seniority and performance.

- ~~refresher course training to assure qualified management.~~
- (9) ~~Licensees/operators not selected may file an administrative appeal as provided for in Subchapter 63C Section .0400. The fifteen day limit to file an appeal shall begin from the date the licensee/operator is informed by telephone of the results of the award.~~
- (10) ~~An applicant must have operated a Business Enterprises location for six months prior to the cut off date for calculating financial performance according to standards to be considered an operator, otherwise, the operator shall be in licensee status. The cut off date is defined as the 12 month period ending with the last day of the same month in which the vacancy is advertised.~~
- (11) ~~If an operator leaves the Business Enterprises Program and then applies for a location within 12 months of leaving, his financial performance according to standards for the 12 months prior to his leaving shall be used to calculate points in the Financial Performance Section.~~
- (12) ~~Financial analyses of facilities shall be done every two years. The analysis shall be on the facility not the operator; however, an operator may request a new analysis after at least four months in the new facility. If an applicant's financial analysis is less than two years old and the applicant's performance is neither above 100 percent nor below 85 percent on either measure, the financial analysis is current.~~
- (13) ~~An applicant who does not hold the required level of license for the vacancy may be awarded the facility contingent upon successfully completing the required training. Applicants who hold the required level of license but have not operated a facility at that level for at least two years shall complete refresher on the job training if the applicant did not meet his financial analysis and operating standards for the last 12 months that his agreement was in effect.~~
- (14) ~~An operator may not sit on the Interview Committee for a location for which he/she is applying or if a member of his/her immediate family has applied for a vacant facility. For this purpose immediate family is defined as spouse, parent, child, brother and sister. Also included are the step, half and in-law relationships. If the Vice Chairman and the Chairman of the Elected Committee of Vendors and the Chairman of the sub-committee on Transfer and Promotion are all restricted from sitting on the Interview Committee under this Rule, those three must pick another Elected Committee of Vendors member to sit on the Interview Committee.~~
- (15) ~~The schedule for awarding vacancies may be changed to accommodate holidays, too many applications to process in one day, or at any time necessary due to program conflicts as determined by the chief of Business Enterprises and the Vice Chairman of the Elected Committee of Vendors. All applicants shall be notified in writing of the date, time and place of their interview.~~
- (16) ~~Applicants shall be reimbursed for their expenses to come to the interview at the state's per diem rates. The Business Enterprises Program shall only reimburse for two interviews per year. After that, applicants shall bear their own expenses for coming to interviews. Licensees who have active rehabilitation cases shall be reimbursed through the rehabilitation program.~~
- (d) ~~The Division shall use the following criteria in determining points:~~
- (1) ~~Sanitation:~~
- (A) ~~Ten point maximum;~~
- (B) ~~One point for each sanitation grade point above ninety;~~
- (C) ~~Sanitation grade to be arrived at by averaging all sanitation scores received during last two years;~~
- (D) ~~Five points shall be subtracted for any adjusted B grade in the last two years;~~
- (E) ~~The Business Enterprises Counselor shall determine an adjusted grade by adding back in any points subtracted for deficiencies over which the operator has no control. The operator shall inform Business Enterprises Counselor when an inspection has occurred so he can review the inspection and adjust the grade if needed. The operator shall make sure the Business Enterprises Counselor has copies of every sanitation inspection form from the relevant period so that he or she can calculate an accurate grade.~~
- (2) ~~Seniority:~~
- (A) ~~Five point maximum;~~
- (B) ~~Seniority points shall be awarded as follows:~~
- |  |                     |
|--|---------------------|
| <del>Years in Business Enterprises Program</del> | <del>Points</del>   |
| <del>0 to 4.99</del>                             | <del>0 points</del> |
| <del>5 to 9.99</del>                             | <del>1 point</del>  |
| <del>10 to 14.99</del>                           | <del>2 points</del> |
| <del>15 to 19.99</del>                           | <del>3 points</del> |
| <del>20 to 24.99</del>                           | <del>4 points</del> |
| <del>25 and over</del>                           | <del>5 points</del> |
- (C) ~~Seniority is defined as the amount of time in yearly increments an individual has been working in the~~

- ~~Business Enterprises Program as an operator. An operator must work 51 percent of the working days in a month to receive credit for that month. The cutoff date for accruing time in the Program is the end of the month when the vacancy is advertised. Business Enterprises operators shall receive credit for one year of seniority for any combined 12 month period.~~
- (3) ~~Performance According to Financial Analysis/Operating Standards: Operating standards are determined by tabulating all the invoices for purchases for resale for each facility for a period of three months. The optimum sales and gross profit percentage is determined by computing the maximum potential for sales and gross profit without consideration for theft, waste or poor management. Each operator is required to maintain 85 percent of the optimum standard established for each facility for sales and gross profit. Eighty five percent of the optimum sales and gross profit percentage is considered the operating standard for each facility.~~
- (A) ~~50 Points Maximum;~~
- (B) ~~Applicants shall receive 20 points for meeting or exceeding 85 percent of their sales standard;~~
- (C) ~~Applicants shall receive 20 points for meeting or exceeding 85 percent of their gross profit percentage standard;~~
- (D) ~~Applicants shall receive five points for meeting or exceeding 92.5 percent of their sales optimum;~~
- (E) ~~Applicants shall receive five points for meeting or exceeding 92.5 percent of their gross profit percentage optimum.~~
- (4) ~~Customer and Building Management Relations:~~
- (A) ~~Five points shall be deducted for each written site management complaint in the past two years, up to a maximum of 10 points.~~
- (B) ~~If the applicant has more than three written site management complaints, he shall not be considered for the award. No site management complaint that is more than three years old may be used against an operator. Site management is defined as the property official for the property on which a BEP facility is located.~~
- (5) ~~Oral Exam/Interview:~~
- (A) ~~30 points maximum.~~
- (B) ~~Interview shall be face to face (no conference calls).~~
- (C) ~~All applicants shall be interviewed.~~
- (D) ~~The Interview Committee shall consist of:~~
- (i) ~~The Chief of Business Enterprises, or Deputy Chief or Assistant Director of Programs and Facilities as designated by Chief;~~
- (ii) ~~The Area Rehabilitation Supervisor or B.E. Counselor for the area in which the vacancy occurs, and~~
- (iii) ~~The Vice Chairman of the Elected Committee of Vendors or the Chairman in his absence, or in the absence of the Chairman, the Chairman of the Transfer and Promotion subcommittee.~~
- (E) ~~The Oral Exam part shall consist of 10 questions drawn either from a pool of standard questions or developed by the Interview Committee prior to the interview. The oral exam questions shall relate to any special needs of the vacant facility as well as to standard responsibilities and knowledge areas of Business Enterprises operators. Each member of the Interview Committee shall evaluate the applicant's response to each question in the oral exam. The applicant shall receive one point by demonstrating basic knowledge, the applicant shall receive one and one-half points for demonstrating above average knowledge, and the applicant shall be awarded two points for demonstrating exceptional knowledge for each interview question. There shall be at least one question involving a calculation and a talking calculator shall be provided, although applicants may bring their own. The oral exam shall yield a possible 20 points.~~
- (F) ~~The interview part shall consist of a variety of questions in a give and take format. Each member of the Interview Committee shall evaluate the applicant's response to the interview questions and shall award up to 10 additional points based on the applicant's previous food service experience, knowledge and financial performance. If the applicant meets the requirements for the facility, the applicant shall receive five additional points. If the applicant's qualifications exceed the requirements of the facility, he may be awarded up to ten additional points. The interview shall include the following elements:~~

questions related to business philosophy to promote general discussion to enable the interview panel to evaluate the applicant's expertise, maturity, experience and ability; a discussion of any related work experience outside the Business Enterprises Program; at least two business math questions. Since points are awarded for seniority, time in the Business Enterprises Program shall not be considered as a reason to award points; however, relevant work experience in the Business Enterprises Program may be discussed and taken into consideration. Applicants may bring letters of recommendation, certificates, and other documents that would aid the Interview Committee in awarding its discretionary points.

- (G) Each interviewer shall award discretionary points individually and the total score of Oral Exam and Interview points from each interviewer shall be averaged and added to the applicant's points from the other Sections.
- (6) Licensees and trainees:
  - (A) A licensee who has no previous experience in the North Carolina Business Enterprises Program shall be assigned 35 points in the Financial Analysis/Operating Standards category. If the licensee scores 90 percent or above on the National Restaurant Association's ServSafe exam, he/she shall be awarded three points in the sanitation category.
  - (B) A licensee with previous Business Enterprises experience shall be assigned 35 points in the Financial Analysis/Operating Standards category. Previous sanitation records shall be considered, if available; or the applicant may take the National Restaurant Association's ServSafe exam. If the licensee scores 90 percent or above on the ServSafe exam, he/she shall be given three points in the Sanitation Section.
  - (C) Applicants shall have satisfactorily completed Level I training or have a Level I license to be interviewed. The four levels of Business Enterprises facilities are defined as follows: Level I has no cooking or on site food preparation and includes only service via vending machines or over the counter service including snacks,

candy, pre packaged sandwiches, coffee, and assorted beverages. Level II service is similar to a deli operation where hot and cold food is prepared on site. Level III service includes all of the above with the addition of a grill and fryer. Level IV service consists of full service cafeteria style facilities. An applicant shall score at least 60 total points to be awarded a location. If the applicant scores at least 55 points but less than 60 points, the interview panel may make a conditional award if the panel agrees it is in the best interest of the Business Enterprises Program.

Authority G.S. 111-27; 143B-157; 20 U.S.C. sec. 107.

#### 10A NCAC 63C .0205 CONTRACTUAL AGREEMENT BETWEEN DIVISION AND OPERATOR

- (a) Each licensee or operator who accepts a Business Enterprises assignment must enter into a contractual operating agreement with the Division upon initial placement and upon subsequent reassignment.
- (b) When a permit or contract with the host facility is developed, it A copy of the permit or contract with the sponsor of the site upon which the Business Enterprises facility is located shall become a part of the operator agreement, and the operator shall conduct the business in accordance with the provisions of that permit or contract.
- (c) The operator agreement shall include provisions which specify:
  - (1) the responsibilities of the licensed operator as contained in the rules in this Subchapter;
  - (2) the responsibilities of the Division as contained in the rules in this Subchapter;
  - (3) that the licensed operator will receive the net proceeds [in accordance with 45 34 CFR 1369.1(k) 395.9] from the Business Enterprises facility he/she he or she operates in accordance with Section .0700 of this Subchapter;
  - (4) the right of the operator operator's right to terminate the agreement at any time;
  - (5) that the agreement will be shall terminated terminate upon termination of the permit or contract with the sponsor of the site upon which the Business Enterprises facility is located; host facility;
  - (6) that the agreement will be shall terminated terminate upon failure of the licensed operator to operate the Business Enterprises facility in accordance with the agreement or applicable federal, state, or local laws or regulations;
  - (7) that the agreement will shall be terminated terminate upon the closing of a facility which the Division Division, with ECBV active participation, has determined offers no possibility of being profitable.

*Authority G.S. 111-27; 34 C.F.R. 395.1; 34 C.F.R. 395.3; 20 U.S.C. sec. 107.*

**10A NCAC 63C .0206    CONFIDENTIAL INFORMATION**

All information and records pertaining to ~~handicapped persons served by this program~~ participants in the Business Enterprises Program shall be ~~considered~~ confidential and may not be revealed except in the administration of the program or by the consent of the ~~handicapped person, participant, or as otherwise required by law.~~

*Authority G.S. 111-27; 34 C.F.R. 361.49; 20 U.S.C. Sec. 107a et seq., as amended.*

**10A NCAC 63C .0302    TEMPORARY CLOSING**

*Authority G.S. 111-27; 34 C.F.R. 395.4; 20 U.S.C. sec. 107.*

**SECTION .0400 - ADMINISTRATIVE APPEAL PROCEDURE**

**10A NCAC 63C .0401    PURPOSE**

The purpose of the administrative appeal procedure is to provide ~~a an means of~~ appeal process to each ~~operator/licensee operator or licensee or the ECBV~~ who is dissatisfied with an action of the Division arising from the operation or administration of the Business Enterprises Program.

*Authority G.S. 111-27; 143B-157; 34 C.F.R. 395.4; 34 C.F.R. 395.13; 20 U.S.C. sec. 107.*

**10A NCAC 63C .0402    POLICY**

(a) Every ~~operator/licensee operator or licensee or the ECBV~~ has the right to present a problem or appeal free from interference, restraint, coercion, discrimination, or reprisal. This ~~policy rule~~ shall be covered fully during orientation procedures for new ~~operators/licensees, operators or licensees.~~

(b) When presenting an appeal, an ~~operator/licensee operator or licensee or the ECBV~~ may be accompanied by a person or persons of his or her choice.

(c) The filing of a complaint with the Division shall indicate consent by the blind ~~operator/licensee operator or licensee or the ECBV~~ for the release of such information as is necessary for the conduct of the administrative appeal.

*Authority G.S. 111-27; 143B-157; 34 C.F.R. 395.4; 34 C.F.R. 395.13; 20 U.S.C. sec 107.*

**10A NCAC 63C .0403    PROCEDURE**

(a) The ~~operator/licensee operator or licensee or the ECBV~~ shall submit the grievance in writing to the Division and discuss the problem with the Division staff person taking the action with which the operator or licensee or the ECBV is dissatisfied and request specific action in writing to resolve the grievance. ~~This~~ The written grievance and requested resolution shall be submitted to the Division and the discussion shall be held within 15 working business days of the occurrence of the action challenged by the ~~operator, operator or licensee or the ECBV.~~ The operator/licensee

operator or licensee or the ECBV shall receive a response within five ~~working business~~ days following the discussion. Any decision made by agency personnel at this step shall be subject to supervisory review and approval. If the grievance is not received within 15 business days of the occurrence of the action challenged, the grievance will be invalid and the Division's action final.

(b) If the complaint is not resolved and the ~~operator/licensee operator or licensee or the ECBV~~ is not satisfied with the outcome of Paragraph (a) of this Rule, he or she shall have ~~15 five working business~~ days to ask for a review by the operator relations committee in writing. Within five ~~working business~~ days after asking for a review, the ~~operator/licensee operator or licensee~~ shall be notified of the date of the hearing, which shall be held within ~~25 10 working business~~ days after the ~~operator's/licensee's~~ request for a hearing. The committee shall render its decision within ~~20 five working business~~ days after the hearing.

(c) If the decision reached in step of Paragraph (b) of this Rule is not satisfactory to the ~~operator/licensee operator or licensee or the ECBV~~ or the Division staff person responsible for the initial action, the matter may be referred by the ~~operator/licensee operator or licensee or the ECBV~~ or the Division staff person to the director of the Division. Any request for review shall be submitted within ~~4 five working business~~ days after the operator relations committee has presented its recommendation. The party requesting the referral shall provide a ~~written summary of the specific facts of the complaint~~ copy of the decision from the operators relations committee and document the request for specific action requested to resolve the grievance, copies of which shall be provided at the same time to all other parties concerned. The director shall make the decision for the Division within ~~15 five working business~~ days, and ~~his this~~ decision shall be announced immediately to all parties concerned.

(d) If the complaint is not resolved and the operator/licensee is not satisfied with steps of Paragraphs (a) through (c) of this Rule, then the ~~operator/licensee operator or licensee or the ECBV~~ may file a complaint with the Division requesting a full evidentiary hearing.

(e) If a blind ~~operator/licensee operator or licensee or the ECBV~~ requests a full evidentiary hearing, such request shall be made within 15 ~~working business~~ days after the director's adverse direction rendered through the procedures in this Rule.

(f) A blind ~~operator/licensee operator or licensee or the ECBV~~ shall request a full evidentiary hearing in writing. This request shall be transmitted to the director of the Division personally or electronically or by certified mail, return receipt requested, transmitted through the Elected Committee of Vendors in accordance with 34 C.F.R. 395.14(b)(2). This hearing shall be held in accordance with G.S. 150B, Article 3, the extent that such article does not conflict with these Rules pertaining to grievance procedures or any federal law or regulation.

(g) A blind ~~operator/licensee operator or licensee or the ECBV~~ shall be entitled to legal counsel or other representation in a full evidentiary hearing. ~~The Division shall reimburse the operator for costs of legal counsel at a rate of 50% of the total amount not to exceed a total expenditure by the Division of one thousand five hundred dollars (\$1,500). This expenditure is based on the availability of funds.~~

(h) Reader services or other communication services shall be arranged for the blind ~~operator/licensee~~ operator or licensee or the ECBV ~~should he so if request~~ requested. Transportation costs and per diem shall be provided also to the blind ~~operator/licensee~~ operator or licensee or the ECBV during the pendency of the evidentiary hearing, if the location of the hearing is in a city other than the legal residence of the ~~operator/licensee~~ operator and licensee.

(i) The hearing shall be held at a time and place convenient and accessible to the blind ~~operator/licensee~~ operator or licensee or the ECBV requesting a full evidentiary hearing. The blind ~~operator/licensee~~ operator or licensee or the ECBV shall be entitled to have the hearing held in the county of his residence unless he waives this right. A hearing held during regular Division working business hours shall be deemed among the convenient times. The hearing shall be scheduled by the Division within 15 working business days of its receipt of such a request, unless the Division and the blind ~~operator/licensee~~ operator or licensee or the ECBV mutually, in writing, agree to some other period of time. The Division shall notify the blind ~~operator/licensee~~ operator or licensee or the ECBV in writing of the time and place fixed for the hearing and of ~~his~~ their right to be represented by legal or other counsel. The Division shall provide the blind ~~operator/licensee~~ operator or licensee or the ECBV a copy of the hearing procedures and other relevant information necessary to enable him to prepare his case for the hearing.

(j) The presiding officer at the hearing, to be appointed by the Secretary of the Department of Health and Human Services, shall be impartial, unbiased, have knowledge in conducting hearings, and have no involvement either with the Division action which is at issue in the hearing or with the administration or operation of the Randolph-Sheppard Business Enterprises Program.

(k) The presiding officer shall conduct a full evidentiary hearing, avoid delay, maintain order, and make sufficient record of the proceedings for a full and true disclosure of the facts and issues. To accomplish these ends, the presiding officer shall have all powers authorized by law and may make all procedural and evidentiary rulings necessary for the conduct of the hearing.

(l) ~~Both the~~ The blind ~~operator/licensee~~ operator or licensee or the ECBV operator/licensee and the Division shall be entitled to present their case by oral or documentary evidence, to submit rebuttal evidence and to conduct such examination and cross-examination of witnesses as may be required for a full and true disclosure of all facts bearing on the issue.

(m) All papers and documents introduced into evidence at the hearing shall be filed with the presiding officer and provided to the other party. All such documents and other evidence submitted shall be open to examination by the parties, and opportunities shall be given to refute facts and arguments advanced on either side of the issues.

(n) A transcript shall be made of the oral evidence and shall be made available to the parties. The Division shall pay all transcript costs and shall provide the blind ~~operator/licensee~~ operator or licensee or the ECBV with at least one copy of the transcript.

(o) The transcript of testimony, exhibits, and all papers and documents filed in the hearing shall constitute the exclusive record for decision.

(p) The decision of the presiding officer shall set forth the principal issues and relevant facts adduced at the hearing, and the

applicable provisions in law, federal regulations, and state rules. It shall contain findings of fact and conclusions with respect to each of the issues, and the reasons and basis therefor. The decision shall also set forth any remedial action necessary to resolve the issues in dispute. The decision shall be made within 15 working business days after the receipt of the official transcript. The decision shall be mailed promptly to the blind ~~operator/licensee~~ operator or licensee or the ECBV and the division.

(q) If the dispute(s) is not resolved to the satisfaction of a blind ~~operator/licensee~~ operator or licensee or the ECBV after provision of a full evidentiary hearing, an appeal may be made to the Secretary of the U. S. Department of Education for the convening of an arbitration panel.

(r) The results of the arbitration shall be considered the final agency action and the ~~operator/licensee~~ operator or licensee or the ECBV shall have exhausted his administrative remedies.

*Authority G.S. 111-27; 143B-157; 20 U.S.C. sec. 107.*

## **SECTION .0500 - ELECTION: ORGANIZATION AND FUNCTIONS OF THE COMMITTEE ON THE STAND PROGRAM**

### **10A NCAC 63C .0501 ELECTION**

*Authority G.S. 111-27; 143B-157; 34 C.F.R. 395.14; 20 U.S.C. sec. 107.*

### **10A NCAC 63C .0506 ORGANIZATION AND OPERATION**

(a) ~~The officers of the Elected Committee of Vendors shall be a chairman and a vice chairman. They shall be elected by the Elected Committee of Vendors from among Elected Committee of Vendors members. The Division shall provide for the biennial election of a State Elected Committee of Blind Vendors (ECBV) which, to the extent possible, shall be fully representative of all blind vendors in the Business Enterprises program on the basis of such factors as geography and vending facility type with a goal of providing for proportional representation of blind vendors on Federal property and blind vendors on other property. Participation by any blind vendor in any election shall not be conditioned upon the payment of dues or any other fees.~~

(b) ~~Vacancies in any of the elective offices shall be filled by the Elected Committee of Vendors members for the unexpired term. The ECBV membership shall be composed of operators who represent all operators in the Business Enterprises Program, as elected based on the four geographic regions and the one federal region which encompasses all federal facilities. Two representatives shall be elected from each designated ECBV region.~~

(c) ~~The chairman shall preside over all the meetings of the Elected Committee of Vendors. He shall appoint subcommittees at such time as the business of the Elected Committee of Vendors may warrant, except for the Operator Relations Committee which shall be elected by the Elected Committee of Vendors from its members. The chairman shall appoint temporary replacements to this subcommittee as needed to fill any vacancy until a new member may be elected. He shall also appoint a temporary replacement for any Operator Relations Committee member who~~

~~has filed an appeal and whose appeal is pending before the Operator Relations Committee. The chairman shall serve as non voting ex officio member of all subcommittees. The term of office for ECBV members shall be two years beginning on April 1 following the election. Each region shall have one term expire in even-numbered years and one term expire in odd-numbered years.~~

~~(d) In the absence or disability of the chairman, the vice chairman shall assume all the duties of the chairman. Unexpired terms in the elective offices shall be filled by majority vote of the ECBV. Filling an unexpired term on the ECBV shall not be considered countable time toward the two-year term of office.~~

~~(e) The meetings shall be conducted according to Roberts Rules of Order. The officers of the ECBV shall be a chair and a vice-chair, as elected by the ECBV from among ECBV members.~~

~~(f) A majority shall constitute a quorum. Terms shall be limited to two consecutive two-year terms.~~

~~(g) The ECBV shall hold quarterly business meetings and at other times upon the call of the chair with majority approval of the ECBV.~~

- (1) The chair shall provide the Business Enterprises Program with a written meeting agenda ten business days before each meeting.
  - (A) The chair shall preside over all business meetings of the ECBV.
  - (B) The chair shall conduct meetings according to Roberts Rules of Order.
  - (C) A majority shall constitute a quorum.
  - (D) The chair shall create subcommittees as the business of the ECBV warrants, excluding those subcommittees specifically required in (h).
  - (E) In the absence or disability of the chair, the vice-chair shall assume all the duties of the chair.

(h) The ECBV chair shall serve as a non-voting ex-officio member of all subcommittees. The ECBV shall maintain the following standing subcommittees as defined below:

- (1) Operator Relations Subcommittee, whose function is to receive and transmit appeals at the verbal or written request of an operator.
  - (A) This subcommittee shall be elected by the Elected Committee of Blind Vendors from its members.
  - (B) The ECBV chair shall appoint temporary replacements to this subcommittee to fill any vacancy until a new member may be elected.
  - (C) The ECBV chair shall appoint a temporary replacement for any Operator Relations Subcommittee member who has filed an appeal and whose appeal is pending before the Operator Relations Subcommittee.
- (2) Transfer and Promotion Subcommittee, whose function is to actively participate with the Division in the development and administration of a system for the transfer and promotion of operators, and

- (3) Training and Retraining Subcommittee, whose function is to actively participate with the Division in the development of training and retraining programs and to assist the Division in sponsoring meetings and instructional conferences for the operators.

*Authority G.S. 111-27; 143B-157; 34 C.F.R. 395.14; 20 U.S.C. Sec. 107.*

#### **10A NCAC 63C .0508 FUNCTIONS**

(a) The Elected Committee of Vendors shall actively participate with the Division in major administrative decisions and policy and program development decision affecting the overall administration of the Business Enterprises Program. The Division and the Elected Committee of Vendors shall comply with the terms and conditions set forth in 34 C.F.R. 395.14.

(b) The ECBV shall participate in drafting Business Enterprises Program rules. The Division and ECBV shall work together in good-faith effort to come to agreement in matters related to Business Enterprises Program rule and policy changes.

(c) ECBV relationship to operators and licensees.

- (1) It shall be the sole responsibility of the operators and licensees who elect the members of the ECBV to ensure that the elected represent all operators and licensees.
- (2) The ECBV shall act as advocates for operators and licensees.
- (3) The ECBV, ECBV officers, ECBV members, operators, employees of an operator, or licensee shall not be considered employees of the Division.

*Authority G.S. 111-27; 143B-157; 34 C.F.R. 395.14; 20 U.S.C. sec. 107.*

#### **10A NCAC 63C .0511 COMMITTEE INITIATIVE (READOPTION WITHOUT SUBSTANTIVE CHANGES)**

#### **10A NCAC 63C .0509 SUBCOMMITTEES**

*Authority G.S. 111-27; 143B-157; 34 C.F.R. 395.14; 20 U.S.C. Sec. 107.*

#### **10A NCAC 63C .0512 DIVISION RESPONSIBILITY AND RELATIONSHIP WITH COMMITTEE**

~~The Division has the ultimate responsibility~~ is responsible for the administration of the Business Enterprises Program. It shall consider all recommendations forthcoming from the ~~committee, Elected Committee of Blind Vendors, which will act in an advisory capacity to the Division.~~ Elected Committee of Blind Vendors. If the Division does not adopt the views and positions of the ~~committee~~ Elected Committee of Blind Vendors on a particular issue, it shall give written notice to the committee of the decision reached, the actions taken, and the reasons therefore.

*Authority G.S. 111-27; 34 C.F.R. 395.14; 20 U.S.C. Sec. 107.*



**SECTION .0600 - RESPONSIBILITIES OF LICENSED OPERATORS**

**10A NCAC 63C .0601 GENERAL RESPONSIBILITIES**

(a) The Business Enterprises operator must shall:

- (1) perform faithfully and to the best of his ability the necessary duties in connection with to ensure the operation of the Business Enterprises facility in accordance with the rules of the Commission for the Blind and standards issued pursuant thereto and the contractual agreement between the Division and the operator, and the terms and conditions of the permit or contract with the building or property on which the host facility, facility is located;
- (2) operate the facility in accordance with all applicable health laws and Rules;
- (3) assume such responsibilities as purchasing needed supplies and merchandise, pricing, merchandising the facility, and control of inventory; purchase merchandise, price goods for sale, purchase supplies for the facility and control inventory in the Business Enterprises facility;
- (4) devote his full managerial attention to the responsibilities of operating the facility in accordance with the agreement between him and with the Division and in accordance with the Rules in this Subchapter. The operator is not required to be on site at all times; and
- (5) maintain good professional relationships with customer customers, relations with his patrons and with the property managing officials at his work site, the host facility and the Division;
- (6) maintain a neat, business-like appearance while working at the Business Enterprises facility, and shall conduct the facility in an orderly, business-like manner;
- (7) must assure that the business to be carried on at the facility shall be limited to that specified and authorized in the operator agreement and permit or contract with the sponsor of the building or property where the facility is located. host facility;
- (8) open a business account in which funds are maintained to operate the Business Enterprises facility;
- (9) submit an electronic profit and loss report (D-sheet) to the Division by the 15<sup>th</sup> of the month following the reporting month;
- (10) submit payment of all monthly fees to the Controller's Office by the 15th of the month following the month in which the business was transacted;
- (11) keep all records supporting the monthly revenue and expense report (D-sheet) for three calendar years;
- (12) provide all records for the assigned facility to the Division upon request for the purpose of

business consultation, and for conducting audits and record keeping reviews;

(13) be available for all appointments with the Division staff members to allow inspection, advice, record reviews and consultation to support operations, at the convenience of both parties;

(14) not subcontract management of the Business Enterprises facility except as approved in writing by the Division.

(15) take appropriate actions to correct deficiencies noted on Business Enterprises facility audits or reviews within 15 business days, and

(16) notify the Division of any changes to the following no later than 10 business days after the change occurs:

(A) facility telephone number;

(B) address to which Business Enterprises correspondence shall be delivered;

(C) emergency contact information.

(b) The operator shall be accountable to the Division for the proceeds of the Business Enterprises facility, and shall handle the proceeds, including payments to suppliers and deposits of funds, in accordance with Division guidelines developed to facilitate the provision of management, accounting, and technical services to operators, and in accordance with the U. S. Department of Education reporting requirements.

(e) ~~The operator shall maintain a neat, business-like appearance while working at the Business Enterprises facility, and shall conduct the facility in an orderly, business-like manner.~~

(d) ~~In accordance with Paragraph (b) of this Rule, any rebates, commissions, or bonuses received by the operator from supplier shall be considered as income or a refund of purchases and shall be accounted for accordingly.~~

(e) ~~The operator must assure that the business to be carried on at the facility shall be limited to that specified and authorized in the permit or contract with the sponsor of the building or property where the facility is located.~~

*Authority G.S. 111-27; 34 C.F.R. 395.7; 20 U.S.C. Sec. 107.*

**10A NCAC 63C .0603 SECURITY (READOPTION WITHOUT SUBSTANTIVE CHANGES)**

**10A NCAC 63C .0604 REPORTS**

*Authority G.S. 111-27; 143B-157; 34 C.F.R. 395; 20 U.S.C. Sec. 107.*

**SECTION .0700 - EARNINGS: FUNDS: AND PROCEEDS**

**10A NCAC 63C .0701 MINIMUM FAIR RETURN AND DEFINITIONS**

*Authority G.S. 111-27; 34 C.F.R. 395.8; 34 C.F.R. 395.9; 20 U.S.C. sec. 107.*

**10A NCAC 63C .0702 SET-ASIDE**

- (a) "Set-aside" and "Net Proceeds" are used as defined in 34 CFR 395.1.
- (b) The Division shall set aside funds from the net proceeds of each facility to be used for the purposes outlined in 34 C.F.R. 395.9.
- (c) The set-aside shall not exceed an amount determined to be reasonable by the Commissioner of the Rehabilitation Services Administration.
- (d) Any set-aside collected in excess of the amount needed to cover the purposes in this Rule and in excess of any reasonable reserve necessary to assure that such purposes can be achieved on a consistent basis, shall be refunded on a pro rata basis, basis at the end of the fiscal year.
- (e) Set-aside rates may be adjusted to meet program goals and objectives and shall be determined by the Division in conjunction with the operators and the NC Commission for the Blind.
- (f) The Division shall, with the active participation of the ECBV, develop an annual set-aside authorized budget for the Business Enterprises Program subject to Office of State Budget Management approval.
- (g) The Division shall provide an annual report with full and complete disclosure of all set-aside expenditures of the Business Enterprises Program to the operators.

*Authority G.S. 111-12.5; 111-13; 111-27; 111-50; 143B-157; 34 C.F.R. 395.8; 34 C.F.R. 395.9; 20 U.S.C. sec. 107.*

**10A NCAC 63C .0704 INCOME FROM VENDING MACHINES ON FEDERAL PROPERTY (READoption WITHOUT SUBSTANTIVE CHANGES)**

**SUBCHAPTER 63F - VOCATIONAL REHABILITATION**

**SECTION .0100 - SERVICES**

**10A NCAC 63F .0101 ELIGIBILITY FOR AND AUTHORIZATION OF SERVICES**

- (a) An Individualized Plan for Employment shall be developed to provide services to applicants to the vocational rehabilitation program who meet the following criteria:
- (1) the applicant for services has a physical or mental impairment;
  - (2) that the physical or mental impairment constitutes or results in a substantial impediment to employment for the applicant; and
  - (3) that the applicant requires vocational rehabilitation services in order to prepare for, secure, retain, advance in or regain employment.
- (b) It is presumed that the applicant can benefit in terms of an employment outcome from the provision of vocational rehabilitation services unless it can be demonstrated through clear and convincing evidence that the applicant is incapable of benefiting in terms of an employment outcome from vocational rehabilitation services due to the severity of the disability.
- (c) Applicants who have been determined eligible for Social Security benefits under Title II or Title XVI of the Social Security

Act are presumed eligible for vocational rehabilitation services; however, the applicant must intend to achieve an employment outcome.

(d) Authorization of Services:

- (1) The Division shall issue a written authorization for services prior to or simultaneously with the provision of the service. A copy of the authorization shall be retained in the case file.
- (2) The Division shall authorize services that are required for a consumer to participate in an assessment to determine eligibility for services. The Division shall also authorize services required for a consumer to complete the goals identified on his or her Individualized Plan for Employment (IPE).
- (3) Authorizations are issued based on availability of funds.

~~(e) Oral authorizations may be issued on occasions for services when it is a matter of urgency. Such authorizations may be made by a rehabilitation counselor or a rehabilitation supervisor. On such occasions, a record of such oral authorizations shall be made and retained in the consumer's case file. In all such cases confirming authorizations shall be written.~~

*Authority G.S. 134B-157; 34 C.F.R. 361.1; 34 C.F.R. 361.3; 34 C.F.R. 361.42(a); 34 C.F.R. 361.45.*

**10A NCAC 63F .0102 TRAINING AND TRAINING MATERIALS**

- (a) The Division shall furnish training to all eligible individuals to the extent necessary to achieve their vocational rehabilitation outcome and to the extent that entry level qualifications of the job, profession or employment are achieved.
- (b) Training provided by the Division includes vocational, prevocational, personal adjustment training, and other rehabilitation training which contributes to the determination of the rehabilitation potential or to the individual's personal and vocational adjustment; it covers training provided directly by the Division or procured from other public or private training facilities, including community rehabilitation programs.
- (c) The Division shall provide necessary books and other training materials to applicants accepted for evaluation of the rehabilitation potential and to financially eligible consumers.
- (d) The Division shall provide financial support for post-secondary education under the following terms and conditions:
- (1) Financial support for consumers attending institutions of higher learning shall not exceed the maximum rate for tuition and fees, established at state supported colleges and universities in North Carolina
  - (2) Requests for support will be considered only when the consumer has applied for grants and scholarships at the accepting institution. The Division shall deduct the grant amount from the consumer's training allotment.
  - (3) Consumers who are sponsored for an undergraduate degree shall not receive more than 10 semesters or 15 quarters of sponsorship to complete their undergraduate degree or five

- semesters/eight quarters to complete a community college program. The Division may grant an exception to the semester/quarter requirements when necessary to accommodate the special training needs of consumers with severe disabilities;
- (4) Consumers who are sponsored for undergraduate programs must maintain a grade point ~~ratio~~ average (GPA) of 2.0. Agency sponsorship will be withdrawn from any consumer in an undergraduate program whose ~~GPR~~ GPA falls below 2.0 for two consecutive semesters or quarters. If the consumer continues in the educational institution under his own sponsorship and brings his cumulative ~~GPR~~ GPA to 2.0, the consumer may again be considered for sponsorship through the VR Program of this agency. Consumers under our Agency sponsorship for graduate or professional programs must maintain a grade point ~~ratio~~ average commensurate with the standards established by the educational institution they are attending for degree requirements. Agency sponsorship shall be withdrawn from any consumer in graduate or professional programs whose ~~GPR~~ GPA falls below the standards established by the educational institution for degree requirements for two consecutive semesters or quarters. If the consumer continues in the educational institution under his own sponsorship and brings his cumulative ~~GPR~~ GPA to the standard established by the educational institution, the consumer may again be considered for sponsorship through the VR Program of this agency. Consumers may receive agency sponsorship for vocational training or on-the-job training outside of programs offered in undergraduate, graduate, and professional schools. A consumer who is participating in such a program must maintain grades or standards of performance commensurate with the standards established by the institution or trainer for satisfactory completion of the training program within an established time frame. The agency shall not sponsor a consumer in a vocational training or on-the-job training program for more than one additional unit of time as defined by the particular institution or trainer in order to complete the program. The Division may grant an exception to the length of training sponsorship when necessary to accommodate the special training needs of consumers with severe disabilities;
- (5) The Division may provide graduate training for consumers when said training is required to enter a position. The consumer's case file shall contain a letter from an official of the appropriate graduate school of higher learning

designating the number of semesters or quarters required to achieve the graduate degree. The Division shall not sponsor consumers in excess of one quarter or one semester above that specified in the letter as a time required to receive the graduate degree. The Division may grant an exception to the length of training when necessary to accommodate the special training needs of consumers with severe disabilities.

(e) Other training services, including training at community rehabilitation programs, are purchased on the basis of agreements made between the trainer and staff members of the Division.

(f) Training at the Rehabilitation Center for the Blind and with the Business Enterprises program is purchased on the basis of rates established by the Division in consultation with the supervisors of the training units in this Rule. The rates are usually based on per diem costs.

*Authority G.S. 111-28; 34 C.F.R. 361.42; 34 C.F.R. 361.47; C.F.R. 361.48(f).*

## **SECTION .0400 – ECONOMIC NEED**

### **10A NCAC 63F .0402 ECONOMIC NEEDS POLICIES**

(a) The Division of Services for the Blind shall establish economic need for each eligible consumer either simultaneously with or prior to the provision of those services for which the Division requires a needs test. The financial need of a consumer shall be determined by the financial needs test specified in Rule .0403 of this Section. If the consumer has been determined eligible for Social Security benefits under Title II or XVI of the Social Security Act, the Division of Services for the Blind shall not apply a financial needs tests or require the financial participation of the consumer. A financial needs test shall be applied for all consumers determined eligible to receive services through the Independent Living Rehabilitation Program regardless of SSA Title II or Title XVI eligibility.

(b) The Division of Services for the Blind shall furnish the following services not conditioned on economic need:

- (1) an assessment for determining eligibility and priority for services except those non-assessed services that are provided during an exploration of the applicant's abilities, capabilities, and capacity to perform in work situations through the use of trial work experiences or an extended evaluation and an assessment by personnel skilled in rehabilitation technology;
- (2) assessment for determining rehabilitation needs by a qualified vocational rehabilitation counselor;
- (3) vocational rehabilitation counseling and guidance, including information and support services to assist an applicant or consumer in exercising informed choice;
- (4) tuition and supplies for Community Rehabilitation Program training;
- (5) tuition and fees for:

- (A) community college/college parallel and vocational programs up to the catalog rate; and
- (B) post-secondary education up to the maximum rate charged for the North Carolina public university system.

The Division shall require eligible consumers applying for training programs listed in Parts (b)(5)(A) and (B) of this Rule to first apply for all available grants and financial aid. The Division may grant an exception to the rate for tuition and required fees for post-secondary education specified in Part (b)(5)(B) of this Rule when necessary to accommodate the special training needs of severely disabled individuals who must be enrolled in special programs designed for severely physically disabled students;

- (6) interpreter services including sign language and oral interpreter services for applicants or consumers who are deaf or hard of hearing and tactile interpreting services for applicants or consumers who are deaf-blind;
- (7) reader services, rehabilitation teaching services, and orientation and mobility services;
- (8) job-related services, including job search, job placement employment assistance and job retention services;
- (9) DSB Rehabilitation Center or fundamental independent living rehabilitation adjustment services including transportation and training supplies contingent on a consumer's participation in the program;
- (10) diagnostic transportation;
- (11) on-the-job training;
- (12) training and associated maintenance and transportation costs for Business Enterprises Program trainees;
- (13) upward mobility training and associated maintenance and transportation costs for Business Enterprises Program trainees;
- (14) equipment and initial stocks and supplies for state-owned (Randolph-Sheppard) vending stands;
- (15) Supported Employment Services;
- (16) personal assistance services provided while a consumer with a disability is receiving vocational rehabilitation services;
- (17) referral and other services designed to assist applicants or consumers with disabilities in securing needed services from other agencies through agreements developed under Section 101(a)(11) of the Act (P.L. 102-569), if such services are not available under this Act and to advise those individuals about client assistance programs established under the Act;
- (18) transition services for students with disabilities that facilitate the achievement of the employment outcome identified in the student's individualized plan for employment except for those services based on economic need; and
- (19) technical assistance and other consultation services to consumers who are pursuing self-

- employment or telecommuting or establishing a business operation as an employment outcome.
- (20) provision of pre-employment transition services to students with disabilities 14-21 years of age whether they are presently a VR client or a potentially eligible individual.

(c) The following services shall be provided by the Division of Services for the Blind and conditioned on economic need:

- (1) physical and mental restoration services (medical services other than diagnostic);
- (2) maintenance for additional costs incurred while participating in rehabilitation;
- (3) transportation in connection with the rendering of any vocational rehabilitation service except where necessary in connection with determination of eligibility or nature and scope of services;
- (4) services to members of a disabled consumer's family necessary to the adjustment or rehabilitation of the consumer with a disability;
- (5) post-employment services necessary to assist consumers with visual disabilities to maintain, regain or advance in employment except for those services not conditioned on economic need listed in Paragraph (b) of this Rule;
- (6) fees necessary to obtain occupational licenses;
- (7) tools, equipment, and initial stocks and supplies for items listed in Subparagraphs (1) through (7) of this Paragraph;
- (8) expenditures for short periods not to exceed 30 days of medical care for acute conditions arising during the course of vocational rehabilitation, which if not cared for, will constitute a hazard to the achievement of the vocational rehabilitation objective; and
- (9) other goods and services not prohibited by the Act (P.L. 102-569), which can reasonably be expected to benefit an individual with a disability in terms of his employability or independent living skill development.

(d) Notwithstanding Paragraph (c) of this Rule, the following services are not subject to economic need for individuals being served through the Vocational Rehabilitation Program:

- (1) books and other training materials required for post \_ secondary training; and
- (2) rehabilitation technology including telecommunications, sensory aids, and other technological aids and devices for consumers who have an Individualized Plan for Employment (IPE); who are working toward an employment goal that requires specified technology to attain, regain, or maintain employment and who have the capability to use the equipment.

(e) The Division of Services for the Blind shall publish the standard as determined by the Legislature for measuring the financial need of consumers with respect to normal living requirements and for determining their financial ability to meet the cost of necessary rehabilitation services, and for determining

the amount of agency supplementation required to procure the necessary services.

*Authority G.S. 111-28; 34 C.F.R. 361.48; 34 C.F.R. 361.5; 34 C.F.R. 361.52; 34 C.F.R. 361.54; P.L. 102-569, Section 103; S.L. 2009-475.*

## TITLE 11 – DEPARTMENT OF INSURANCE

*Notice is hereby given in accordance with G.S. 150B-21.2 and G.S. 150B-21.3A(c)(2)g. that the Home Inspector Licensure Board intends to readopt with substantive changes the rules cited as 11 NCAC 08 .1101-.1103, .1105, .1109-.1113, .1116 and readopt without substantive changes the rules cited as 11 NCAC 08 .1104, .1106-.1108, .1114, .1115 and .1302.*

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

**Link to agency website pursuant to G.S. 150B-19.1(c):**  
*<http://www.ncdoi.com/LS/Rules.aspx>*

**Proposed Effective Date:** *October 1, 2018*

**Public Hearing:**

**Date:** *July 13, 2018*

**Time:** *9:00 a.m.*

**Location:** *2<sup>nd</sup> Floor Training Room, Room 240 (Albemarle Building) located at 325 N. Salisbury Street, Raleigh, NC 27603*

**Reason for Proposed Action:** *Pursuant to the periodic review and expiration of existing rules as set forth in G.S. 150B-21-3A(c)(2)g the North Carolina Home Inspector Licensure Board is initiating the readoption process for 11 NCAC 08 .1101-.1116 and .1302.*

**Comments may be submitted to:** *Loretta Peace-Bunch, 1201 Mail Service Center, Raleigh, NC 27699-1201; phone (919) 807-6004; email [NCDOIRulesComments@ncdoi.gov](mailto:NCDOIRulesComments@ncdoi.gov)*

**Comment period ends:** *July 16, 2018*

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

Commission, please call a Commission staff attorney at 919-431-3000.

**Fiscal impact (check all that apply).**

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

## CHAPTER 08 - ENGINEERING AND BUILDING CODES DIVISION

### SECTION .1100 - N.C. HOME INSPECTOR STANDARDS OF PRACTICE AND CODE OF ETHICS

#### 11 NCAC 08 .1101 DEFINITIONS

The following definitions apply to this Section:

- (1) "Abnormal" means nontypical or unusual conditions that could cause damage to systems and components of the home.
- (4)(2) "Automatic safety controls" means devices designed and installed to protect systems and components from excessively high or low pressures and temperatures, excessive electrical current, loss of water, loss of ignition, fuel leaks, fire, freezing, or other unsafe conditions.
- (2)(3) "Central air conditioning" means a system that uses ducts to distribute cooled or dehumidified air to more than one room or uses pipes to distribute chilled water to heat exchangers in more than one room, and that is not plugged into an electrical convenience outlet.
- (3)(4) "Component" means a readily accessible and observable aspect of a system, such as a floor, or wall, but not individual pieces such as boards or nails where many similar pieces make up the component.
- (4)(5) "Cosmetic damage" means superficial blemishes or defects that do not interfere with the functionality of the component or system.
- (5)(6) "Cross connection" means any physical connection or arrangement between potable water and any source of contamination.
- (6)(7) "Dangerous or adverse situations" means situations that pose a threat of injury to the inspector, or those situations that require the use of special protective clothing or safety equipment.
- (7)(8) "Describe" means report in writing a system or component by its type, or other inspected characteristics, to distinguish it from other systems or components used for the same purpose.
- (8)(9) "Dismantle" means to take apart or remove any component, device or piece of equipment that is

- bolted, screwed, or fastened by other means and that would not be dismantled by a homeowner in the course of normal household maintenance
- (9)(10) "Enter" means to go into an area to inspect all visible components.
- (10)(11) "Functional drainage" means a drain that empties in a reasonable amount of time and does not overflow when another fixture is drained simultaneously.
- (11)(12) "Functional flow" means a reasonable flow at the highest fixture in a dwelling when another fixture is operated simultaneously.
- (12)(13) "Habitable space" means a space in a building for living, sleeping, eating or cooking. "Habitable space" does not mean a bathroom, toilet room, closet, or any space used or designed for storage.
- (14) "Harmful" means conditions that do cause damage to systems and components of the home.
- (13)(15) "Inspect" means to make a visual examination.
- (14)(16) "Installed" means attached or connected such that an item requires tools for removal.
- (15)(17) "Normal operating controls" means homeowner operated devices such as a thermostat, wall switch, or safety switch.
- (16)(18) "On-site water supply quality" means water quality based on the bacterial, chemical, mineral, and solids content of the water.
- (17)(19) "On-site water supply quantity" means the rate of flow of on-site well water.
- (18)(20) "Operate" means to cause systems or equipment to function.
- (19)(21) "Readily accessible" means approachable or enterable for visual inspection without the risk of damage to any property or alteration of the accessible space, equipment, or opening.
- (20)(22) "Readily openable access panel" means a panel provided for homeowner inspection and maintenance that has removable or operable fasteners or latch devices in order to be lifted off, swung open, or otherwise removed by one person; and its edges and fasteners are not painted in place. This definition is limited to those panels within normal reach or from a four-foot stepladder, and that are not blocked by stored items, furniture, or building components.
- (21)(23) "Readily visible" means seen by using natural or artificial light without the use of equipment or tools other than a flashlight.
- (22)(24) "Representative number" means, for multiple identical components such as windows and electrical outlets, one such component per room; and, for multiple identical exterior components, one such component on each side of the building.
- (23)(25) "Roof drainage systems" means gutters, downspouts, leaders, splash blocks, and similar

components used to carry water off a roof and away from a building.

- (24)(26) "Shut down" means a piece of equipment or a system which cannot be operated by the device or control that a homeowner should normally use to operate it. If its safety switch or circuit breaker is in the "off" position, or its fuse is missing or blown, the inspector is not required to reestablish the circuit for the purpose of operating the equipment or system.
- (25)(27) "Solid fuel heating device" means any wood, coal, fossil, or other similar organic fuel burning device, including fireplaces whether masonry or factory built, fireplace inserts and stoves, wood stoves (room heaters), central furnaces, and combinations of these devices.
- (26)(28) "Structural component" means a component that supports non-variable forces or weights (dead loads) and variable forces or weights (live loads).
- (27)(29) "System" means a combination of interacting or interdependent components, assembled to carry out one or more functions.
- (28)(30) "Technically exhaustive" means an inspection involving the use of measurements, instruments, testing, calculations, and other means to develop scientific or engineering findings, conclusions, and recommendations.
- (29)(31) "Under floor crawl space" means the area within the confines of the foundation and between the ground and the underside of the lowest floor structural component.

*Authority G.S. 143-151.49.*

#### **11 NCAC 08 .1102 STANDARDS OF PRACTICE**

This Section sets forth the minimum standards of practice required of licensed home inspectors. ~~inspectors and licensed associate home inspectors~~. In this Section, the term "home inspectors" means ~~both~~ licensed home inspectors. ~~inspectors and licensed associate home inspectors~~.

*Authority G.S. 143-151.49(a)(2); 143-151.49(a)(13).*

#### **11 NCAC 08 .1103 PURPOSE AND SCOPE**

(a) Home inspections performed according to this Section shall provide the client with an understanding of the property conditions, as inspected at the time of the home inspection.

(b) Home inspectors shall:

- (1) provide a written contract, signed by the client, before the home inspection is performed that shall:
  - (A) State that the home inspection is in accordance with the Standards of Practice of the North Carolina Home Inspector Licensure Board as set forth in this Section;
  - (B) Describe what services shall be provided and the cost; and

- (C) State, when an inspection is for only one or a limited number of systems or components, that the inspection is limited to only those systems or components;
- (2) inspect readily visible and readily accessible installed systems and components described in Rules .1106 through .1115 of this Section; ~~and~~
- (3) submit a written report ~~and summary~~, pursuant to G.S. ~~143-151.58(a1)~~, 143-151.58 to the client that shall:
  - (A) Describe those systems and components required to be described in Rules .1106 through .1115 of this Section;
  - (B) State which systems and components present at the home and designated for inspection in this Section were not inspected, and the reason for not inspecting;
  - (C) State any systems or components inspected that do not function as intended, allowing for normal wear and tear, or appear not to function as intended, based upon documented tangible evidence;
  - (D) Describe the system or component; state how the condition is defective; explain the implications of defective conditions listed in the summary; reported; and direct the client to a course of action for repair, further investigation by a specialist, or subsequent observation; and
  - (E) State the name, license number, and signature of the person conducting the inspection.

(4) submit a summary section pursuant to G.S. 143-151.58(a1).

(c) This Section does not limit home inspectors from:

- (1) reporting observations and conditions, including safety or habitability concerns, or rendering opinions of items in addition to those required in Paragraph (b) of this Rule; or
- (2) excluding systems and components from the inspection if requested by the client, and so stated in the written contract.

*Authority G.S. 143-151.49; 143-151.58.*

**11 NCAC 08 .1104 GENERAL LIMITATIONS  
(READoption WITHOUT SUBSTANTIVE CHANGES)**

**11 NCAC 08 .1105 GENERAL EXCLUSIONS**

(a) Home inspectors are not required to report on:

- (1) Life expectancy of any component or system;
- (2) The causes of the need for a repair;
- (3) The methods, materials, and costs of corrections;

- (4) The suitability of the property for any specialized use;
- (5) Compliance or non-compliance with codes, ordinances, statutes, regulatory requirements or restrictions;
- (6) The market value of the property or its marketability;
- (7) The advisability or inadvisability of purchase of the property;
- (8) Any component or system that was not inspected;
- (9) The presence or absence of pests such as wood damaging organisms, rodents, or insects; ~~or~~
- (10) Cosmetic damage, underground items, or items not permanently ~~installed~~; installed; or
- (11) The presence or absence of systems installed to control or remove suspected hazardous substances.

(b) Home inspectors are not required to:

- (1) Offer warranties or guarantees of any kind;
- (2) Calculate the strength, adequacy, or efficiency of any system or component;
- (3) Enter any area or perform any procedure that may damage the property or its components or be dangerous to or adversely affect the health or safety of the home inspector or other persons;
- (4) Operate any system or component that is shut down or otherwise inoperable;
- (5) Operate any system or component that does not respond to normal operating controls;
- (6) Move personal items, panels, furniture, equipment, plant life, soil, snow, ice, or debris that obstructs access or visibility;
- (7) Determine the presence or absence of any suspected adverse environmental condition or hazardous substance, including but not limited to mold, toxins, carcinogens, noise, contaminants in the building or in soil, water, and air;
- (8) Determine the effectiveness of any system installed to control or remove suspected hazardous substances;
- (9) Determine House Energy Ratings (HER), insulation R values, system or component efficiencies;
- (10) Inspect heat recovery and similar whole house ventilation systems;
- ~~(9)~~(11) Predict future condition, including failure of components;
- ~~(40)~~(12) Project operating costs of components;
- ~~(44)~~(13) Evaluate acoustical characteristics of any system or component;
- ~~(42)~~(14) Inspect special equipment or accessories that are not listed as components to be inspected in this Section; or
- ~~(43)~~(15) Disturb insulation, except as required in Rule .1114 of this Section.

(c) Home inspectors shall not:

- (1) Offer or perform any act or service contrary to law; or
- (2) Offer or perform engineering, architectural, plumbing, electrical or any other job function requiring an occupational license in the jurisdiction where the inspection is taking place, unless the home inspector holds a valid occupational license, in which case the home inspector shall inform the client that the home inspector is so licensed, and therefore qualified to go beyond this Section and perform additional inspections beyond those within the scope of the Standards of Practice.

*Authority G.S. 143-151.49.*

**11 NCAC 08 .1106 STRUCTURAL COMPONENTS  
(READOPTION WITHOUT SUBSTANTIVE CHANGES)**

**11 NCAC 08 .1107 EXTERIOR (READOPTION  
WITHOUT SUBSTANTIVE CHANGES)**

**11 NCAC 08 .1108 ROOFING (READOPTION  
WITHOUT SUBSTANTIVE CHANGES)**

**11 NCAC 08 .1109 PLUMBING**

- (a) The home inspector shall inspect:
  - (1) Interior water supply and distribution system, including: piping materials, supports, and insulation; fixtures and faucets; functional flow; leaks; and cross connections;
  - (2) Interior drain, waste, and vent system, including: traps; drain, waste, and vent piping; piping supports and pipe insulation; leaks; and functional drainage;
  - (3) Hot water systems including: water heating equipment; normal operating controls; automatic safety controls; and chimneys, flues, and vents;
  - (4) Fuel storage and distribution systems including: interior fuel storage equipment, supply piping, venting, and supports; leaks; and
  - (5) Sump pumps.
- (b) The home inspector shall describe:
  - (1) Water supply and distribution piping materials;
  - (2) Drain, waste, and vent piping materials;
  - (3) Water heating equipment, including fuel or power source, storage ~~capacity~~, capacity or tankless point of use demand systems, and location; and
  - (4) The location of any main water supply shutoff device.
- (c) The home inspector shall operate all plumbing fixtures, including their faucets and all exterior faucets attached to the house, except where the flow end of the faucet is connected to an appliance.
- (d) The home inspector is not required to:
  - (1) State the requirement for or effectiveness of anti-siphon devices;

- (2) Determine whether water supply and waste disposal systems are public or ~~private~~; private or the presence or absence of backflow devices;
- (3) Operate automatic safety controls;
- (4) Operate any valve except water closet flush valves, fixture faucets, and hose faucets;
- (5) Inspect:
  - (A) Water conditioning systems;
  - (B) Fire and lawn sprinkler systems;
  - (C) On-site water supply quantity and quality;
  - (D) On-site waste disposal systems;
  - (E) Foundation irrigation systems;
  - (F) Bathroom spas, whirlpools or air jet tubs except as to functional flow and functional drainage;
  - (G) Swimming pools;
  - (H) Solar water heating equipment; ~~or~~
  - (I) Fixture overflow devices or shower pan liners; or
- (6) Inspect the system for proper sizing, design, or use of ~~proper materials~~; approved materials;
- (7) Report on the absence or presence of thermal expansion tanks; or
- (8) Report on the adequacy of the reported water heater capacity.

*Authority G.S. 143-151.49.*

**11 NCAC 08 .1110 ELECTRICAL**

- (a) The home inspector shall inspect:
  - (1) Electrical service entrance conductors;
  - (2) Electrical service equipment, grounding equipment, main overcurrent device, and ~~main and distribution panels~~; interiors of panelboard enclosures unless unsafe conditions are reported;
  - (3) Amperage and voltage ratings of the electrical service;
  - (4) Branch circuit conductors, their overcurrent devices, and the compatibility of their ~~ampacities~~; ampacities at the interiors of panelboard enclosures unless unsafe conditions are reported;
  - (5) The operation of a representative number of installed ceiling fans, lighting fixtures, switches and receptacles located inside the house, garage, and on the dwelling's exterior walls;
  - (6) The polarity and grounding of all receptacles within six feet of interior plumbing fixtures, and all receptacles in the garage or carport, and on the exterior of inspected structures;
  - (7) The operation of ground fault circuit interrupters; and
  - (8) Smoke detectors and permanently installed carbon monoxide alarms.
- (b) The home inspector shall describe:
  - (1) Electrical service amperage and voltage;
  - (2) Electrical service entry conductor materials;



- (3) The electrical service type as being overhead or underground; and
- (4) The location of main and distribution panels.
- (c) The home inspector shall report in writing the presence of any readily accessible single strand aluminum branch circuit wiring.
- (d) The home inspector shall report in writing on the presence or absence of smoke detectors, and permanently installed carbon monoxide alarms in any homes with fireplaces, fuel fired appliances or attached garages, and operate their test function, if accessible, except when detectors are part of a central alarm system.
- (e) The home inspector is not required to:
  - (1) Insert any tool, probe, or testing device inside the panels;
  - (2) Test or operate any overcurrent device except ground fault circuit interrupters;
  - (3) Dismantle any electrical device or control other than to remove the covers of ~~the main and auxiliary distribution panels;~~ panelboard enclosures; or
  - (4) Inspect:
    - (A) Low voltage systems;
    - (B) Security systems and heat detectors;
    - (C) Telephone, security, cable TV, intercoms, or other ancillary wiring that is not a part of the primary electrical distribution system;
    - (D) Built-in vacuum equipment;
    - (E) Back up electrical generating equipment; ~~or~~
    - (F) Other alternative electrical generating or renewable energy systems such as solar, wind or hydro ~~power, power;~~
    - (G) Battery or electrical automotive charging systems; or
    - (H) Electrical systems to swimming pools or spas including bonding and grounding.

*Authority G.S. 143-151.49; 143-151.58.*

#### **11 NCAC 08 .1111 HEATING**

- (a) The home inspector shall inspect permanently installed heating systems including:
  - (1) Heating equipment;
  - (2) Normal operating controls;
  - (3) Automatic safety controls;
  - (4) Chimneys, flues, and vents, where readily visible;
  - (5) Solid fuel heating devices;
  - (6) Heat distribution systems including fans, pumps, ducts and piping, with supports, insulation, air filters, registers, radiators, fan coil units, convectors; and
  - (7) The presence or absence of an installed heat source for each habitable space.
- (b) The home inspector shall describe:
  - (1) Energy source; and
  - (2) Heating equipment and distribution type.

- (c) The home inspector shall operate the systems using normal operating ~~controls.~~ controls appropriate to weather conditions at the time of the inspection.
- (d) The home inspector shall open readily openable access panels provided by the manufacturer or installer for routine homeowner maintenance. The home inspector shall report the method of inspection used to inspect the heating system and whether or not access panels were removed.
- (e) The home inspector is not required to:
  - (1) Operate heating systems when weather conditions or other circumstances may cause equipment ~~damage;~~ or when inappropriate to weather conditions at the time of inspection;
  - (2) Operate automatic safety controls;
  - (3) Ignite or extinguish solid fuel fires;
  - (4) Ignite a pilot light; or
  - (5) Inspect:
    - (A) The interior of flues;
    - (B) Fireplace insert flue connections;
    - (C) Heat exchangers;
    - (D) Humidifiers;
    - (E) Electronic air filters;
    - (F) The uniformity or adequacy of heat supply to the various rooms; or
    - (G) Solar space heating equipment.

*Authority G.S. 143-151.49.*

#### **11 NCAC 08 .1112 AIR CONDITIONING**

- (a) The home inspector shall inspect:
  - (1) Central air conditioning and through-the-wall installed cooling systems including:
    - (A) Cooling and air handling equipment; and
    - (B) Normal operating controls.
  - (2) Distribution systems including:
    - (A) Fans, pumps, ducts and piping, with associated supports, dampers, insulation, air filters, registers, fan-coil units; and
    - (B) The presence or absence of an installed cooling source for each habitable space.
- (b) The home inspector shall describe:
  - (1) Energy sources; and
  - (2) Cooling equipment type.
- (c) The home inspector shall operate the systems using normal operating ~~controls.~~ controls appropriate to weather conditions at the time of the inspection.
- (d) The home inspector shall open readily openable access panels provided by the manufacturer or installer for routine homeowner maintenance. The home inspector shall report the method used to inspect the air conditioning system and whether or not access panels were removed.
- (e) The home inspector is not required to:
  - (1) Operate cooling systems when weather conditions or other circumstances may cause equipment damage;
  - (2) Inspect window air conditioners; or

- (3) Inspect the uniformity or adequacy of cool-air supply to the various rooms.

*Authority G.S. 143-151.49.*

#### **11 NCAC 08 .1113 INTERIORS**

- (a) The home inspector shall inspect:
- (1) Walls, ceiling, and floors;
  - (2) Steps, stairways, balconies, and railings;
  - (3) Counters and a representative number of built-in cabinets; and
  - (4) A representative number of doors and windows.
- (b) The home inspector shall:
- (1) Operate a representative number of windows and interior doors; and
  - (2) Report signs of water penetration into the building or signs of abnormal or harmful condensation on building components.
- (c) The home inspector is not required to inspect:
- (1) Paint, wallpaper, and other finish treatments on the interior walls, ceilings, and floors;
  - (2) Carpeting; ~~or~~
  - (3) Draperies, blinds, or other window ~~treatments.~~ treatments; or
  - (4) Coatings on and hermetic seals between panes of glass in windows and doors.

*Authority G.S. 143-151.49.*

#### **11 NCAC 08 .1114 INSULATION AND VENTILATION (READOPTION WITHOUT SUBSTANTIVE CHANGES)**

#### **11 NCAC 08 .1115 BUILT-IN KITCHEN APPLIANCES (READOPTION WITHOUT SUBSTANTIVE CHANGES)**

#### **11 NCAC 08 .1116 CODE OF ETHICS**

- (a) Licensees shall discharge their duties with fidelity to the public and to their clients, with fairness and impartiality to all.
- (b) Opinions expressed by licensees shall be based only on their education, experience, and honest convictions.
- (c) A licensee shall not disclose any information about the results of an inspection without the approval of the client for whom the inspection was performed, or the client's designated representative.
- (d) No licensee shall accept compensation or any other consideration from more than one interested party for the same service without the consent of all interested parties.
- (e) No licensee shall compensate, either financially or through other services or benefits, realty agents or other parties with a financial interest in closing or settlement of real estate transactions for the following:
- (1) Referral of inspections; or
  - (2) Inclusion on a list of recommended inspectors or preferred providers.
- (f) No licensee shall express, within the context of an inspection, an appraisal or opinion of the market value of the inspected property.

(g) Before the execution of a contract to perform a home inspection, a licensee shall disclose to the client any interest he or she has in a business that may affect the client. No licensee shall allow his or her interest in any business to affect the quality or results of the inspection work that the licensee may be called upon to perform.

(h) A licensee shall not solicit for repairs of systems or components found defective in the course of a home inspection performed by the licensee or that licensee's company.

(i) Licensees shall not engage in false or misleading advertising or otherwise misrepresent any matters to the public.

(j) Licensees shall not inspect properties under contingent arrangements whereby any compensation or future referrals are dependent on reported findings or on the sale of a property.

(k) A licensee shall not attempt to injure, maliciously or falsely, directly or indirectly, the professional reputation, prospects, practice or employment of another Home Inspector, nor indiscriminately criticize another Inspector's work in public. If the licensee believes that another Inspector is guilty of misconduct or illegal practice, such information shall be presented to the North Carolina Home Inspector Licensure Board.

*Authority G.S. 143-151.49.*

#### **SECTION .1300 - HOME INSPECTOR CONTINUING EDUCATION**

#### **11 NCAC 08 .1302 CONTINUING EDUCATION REQUIRED FOR RENEWAL OF ACTIVE LICENSE (READOPTION WITHOUT SUBSTANTIVE CHANGES)**

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#### **TITLE 15A – DEPARTMENT OF ENVIRONMENTAL QUALITY**

*Notice is hereby given in accordance with G.S. 150B-21.2 and G.S. 150B-21.3A(c)(2)g. that the Environmental Management Commission intends to readopt with substantive changes the rules cited as 15A NCAC 02B .0101, .0103, .0104, .0106, .0108, .0110, .0201, .0202, .0204, .0206, .0211, .0212, .0214-.0216, .0218-.0225, .0231, .0301-.0317 and readopt without substantive changes the rules cited as 15A NCAC 02B .0203, .0205, .0208, .0226-.0228, .0230.*

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

**Link to agency website pursuant to G.S. 150B-19.1(c):**  
<https://deq.nc.gov/permits-regulations/rules-regulations/proposed-rules>

**Link to Public Notices and Hearings:**  
<https://deq.nc.gov/news/events/public-notice-hearings>

**Proposed Effective Date:** January 1, 2019

**Public Hearing:**

**Date:** July 2, 2018

**Time:** 6:00 p.m.

**Location:** Piedmont Triad Regional Council, 1398 Carrollton Crossing Dr., Kernersville, NC 27284

**Public Hearing:**

**Date:** July 11, 2018

**Time:** 6:00 p.m.

**Location:** Ground Floor Hearing Room, Archdale Building, 512 N. Salisbury St., Raleigh, NC, 27604

**Reason for Proposed Action:**

The Environmental Management Commission (EMC) will conduct public hearings to consider proposed permanent amendments to various rules that establish the surface water quality standards and classifications for North Carolina. These proposed amendments comprise the state's Triennial Review of Surface Water Quality Standards mandated by the federal Clean Water Act (CWA) and, additionally, the readoption of rules pursuant to North Carolina General Statute §150B-21.3A. While updated aquatic life protective concentrations for Arsenic, Beryllium, Cadmium, Chromium III, Chromium VI, Copper, Lead, Nickel, Silver and Zinc were adopted by the EMC (effective date January 1, 2015), in April of 2016, the Division of Water Resources (DWR) received notice from Region IV US Environmental Protection Agency (US EPA) that certain executing provisions were not approved for purposes under the Clean Water Act. This disapproval creates a situation where state rules are not in agreement with how the state is required to implement National Pollutant Discharge Elimination System (NPDES) permits for regulated parties within the state.

If the proposed amendments are adopted they will implement the following changes to the surface water quality standards and classifications for North Carolina:

- 1) 15A NCAC 02B .0211 (11)(c)(i): Where metals toxicity is hardness-dependent, applicable hardness values were defined as an instream-hardness with a lower cap of 25 mg/L. The low-end cap was disapproved. Current proposals remove the low-end cap of 25 mg/l hardness cap for use in deriving water quality standards.
- 2) 15A NCAC 02B .0211 (11)(f): With the exception of Mercury and Selenium, the previous proposals allowed for careful consideration of aquatic life biological integrity to take precedence over ambient standard violations, a biological confirmation approach. This provision was disapproved. The provision is proposed to be deleted from the rule.
- 3) 15A NCAC 02B .0211(11)(c)(i): When hardness-dependent water quality standards are used in deriving NPDES permit limits, the use of the median instream hardness values was previously adopted for application in the permitting equations. The US EPA disapproved the provision and it has been removed. The hardness-dependent metals standards will apply the actual instream hardness.
- 4) Classifications and Water Quality Standards Applicable to Surface Waters and Wetlands of North Carolina Rules were reviewed in accordance with G.S. §150B-21.3A and proposes to re-adopt all of the rules. As part of the

review process, the Division identified necessary changes in some of these rules, including:

- a. Correction of agency names and addresses;
- b. Correction of cross-references and other regulatory citations;
- c. Correction of spelling and typographical errors;
- d. Necessary clarifications;
- e. Removal or modification of provisions superseded by statutes and session laws;
- f. Removal of components deemed not necessary; and
- g. Relocation of some program components into other rules.

- 5) The public is invited to comment on existing variances from surface water quality standards and federal 316(a) thermal variances. A variance from the chloride standard is applicable to Mt. Olive Pickle Company (NC0001074) and Bay Valley Foods, LLC (NC0001970). A variance from the color standard is applicable to Evergreen Packaging (d.b.a. Blue Ridge Paper Products) (NC0000272).

**Topic Survey: Triennial Review 2020-2022**

With this action, DWR is also accepting topics for consideration from the public, external partners and DWR staff to focus priorities that integrate the latest science, technology, and federal requirements into how the state regulates water quality. The EMC highly encourages the public to participate in this process. Suggestions may include, but are not limited to: revisions or improvements to DWR policies, rules and guidance related to designated uses, water quality criteria, antidegradation and variances. These topics will be carefully reviewed and prioritized for inclusion in the next cycle of the Triennial Review.

Some topics that have already been suggested are:

• **Human Health Criteria (HHC):**

HHC are health based water quality standards the US EPA and NC adopt to limit the amount of chemicals in waterbodies to protect North Carolinians against adverse health effects over a lifetime of exposure.

- US EPA's 2015 update for 94 human health criteria. <https://www.epa.gov/wqc/human-health-water-quality-criteria-and-methods-toxics>

Exposure factor modifications relating to updated reference doses and cancer potency factors, body weight, drinking water intake, fish consumption rate, bioaccumulation and an examination of non-water exposure are suggested by the 2015 publication. The Division seeks input from the public on adopting modifications to the current default exposure factors.

• **Contaminants of Emerging Concern (CECs):**

Across the country, contaminants of various chemical classes (neonicotinoids, pharmaceuticals, personal care products, pesticides, industrial solvents, metals, etc) are being found in surface water, drinking water, stormwater and wastewater. Many of these chemicals are not currently regulated, primarily due to the lack of information on the toxicity of the chemical. The Division seeks comments on how best to handle these varied situations and chemicals of concern.

• **Ammonia:**

The US EPA's 2013 Aquatic Life Criteria for Ammonia (<https://www.epa.gov/wqc/aquatic-life-criteria-ammonia>) is an update to previous ammonia.

• **Recreational (bacteriological) criteria:**

The US EPA modified its criteria recommendation for Recreational Water Quality in 2012. <https://www.epa.gov/wqc/2012-recreational-water-quality-criteria>

• **Metals:**

- **Selenium:** EPA's 2016 Freshwater Aquatic Life Criteria (<https://www.epa.gov/wqc/aquatic-life-criterion-selenium>)
- **Cadmium:** EPA's 2016 Freshwater Aquatic Life Criteria (<https://www.epa.gov/wqc/aquatic-life-criteria-cadmium>). The Division revised the criteria for Cadmium in 2015. EPA published amended criteria in March 2016. The 2016 criteria are slightly less stringent for acute & chronic Class C waters and slightly more stringent for trout waters. The criteria are also slightly more stringent for acute & chronic SC waters.
- **Aluminum:** EPA's DRAFT 2017 Freshwater Aquatic Life. <https://www.epa.gov/wqc/aquatic-life-criteria-aluminum>
- **Copper:** EPA's DRAFT 2016 Marine Biotic Ligand Model (<https://www.epa.gov/wqc/2016-draft-estuarinemarine-copper-aquatic-life-ambient-water-quality-criteria>)

• **Cyanotoxins**

EPA's Draft 2016 Human Health Recreational Ambient Water Quality Criteria for Microcystins and Cylindrospermopsin proposes protective values for recreational swimmers in freshwaters: <https://www.epa.gov/wqc/draft-human-health-recreational-ambient-water-quality-criteria-and-or-swimming-advisories> Completion of this EPA recommendation is expected in the summer of 2018.

**Comment Procedures:**

It is important that all interested and potentially affected persons or parties make their views known to the EMC whether in favor of, or opposed to, any and all of the proposed amendments and current regulations. As the state and US Environmental Protection Agency have a strong interest in assuring that the decisions are legally defensible, are based on the best scientific information available, and are subject to full and meaningful public comment and participation, clear records are critical to the administrative review by the EMC and the US EPA. The EMC may not adopt a rule that differs substantially from the text of the proposed rule published in the NC Register <http://www.ncoah.com/rules/register/> unless the EMC publishes the text of the proposed different rule and accepts comments on the new text.

The public hearings will be recorded. They will consist of a short presentation by DWR staff, followed by a time for public comment. The EMC appointed hearing officer may limit the length of time that you may speak, if necessary, so that all those who wish to speak will have an opportunity. You may attend the public hearings to make verbal comments and/or submit written

comments. You may present conceptual ideas, technical justifications, or specific language you believe is necessary and relevant to 15A NCAC 02B surface water quality classifications and standards regulations. No items will be voted on and no decisions will be made at the hearing.

All written comments, data or relevant information received by **July 16, 2018** will be considered and included in this Triennial Review and public hearing record.

**Please submit to:**

Connie Brower  
DEQ/Division of Water Resources/Water Planning Section  
1611 Mail Service Center  
Raleigh, NC 27699-1611

Or e-mail to:

15ANCAC02B\_TriRev\_Rule\_Comments@ncdenr.gov

**Additional questions should be directed to:**

Connie Brower: [connie.brower@ncdenr.gov](mailto:connie.brower@ncdenr.gov)  
(919) 807-6416.

**Comments may be submitted to:** Connie Brower, DEQ/Division of Water Resources/Water Planning Section, 1611 Mail Service Center, Raleigh, NC 27699-1611, email 15ANCAC02B\_TriRev\_Rule\_Comments@ncdenr.gov

**Comment period ends:** July 16, 2018

**Procedure for Subjecting a Proposed Rule to Legislative Review:**

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

**Fiscal impact (check all that apply).**

- ☐ **State funds affected**
- ☐ **Environmental permitting of DOT affected**
- ☒ **Analysis submitted to Board of Transportation**
- ☒ **Local funds affected** 15A NCAC 02B .0211 and .0220
- ☒ **Substantial economic impact (≥\$1,000,000)** 15A NCAC 02B .0211 and .0220
- ☒ **Approved by OSBM**  
[https://files.nc.gov/ncosbm/documents/files/DEQ\\_2018-04-16.pdf](https://files.nc.gov/ncosbm/documents/files/DEQ_2018-04-16.pdf); 15A NCAC 02B .0201-.0206, .0208, .0211-.0212, .0214-.0216, .0218-.0228, .0230-.0231

- ☒ **No fiscal note required by G.S. 150B-21.4 15A NCAC 02B .0101, .0103, .0104, .0106, .0108, .0110, .0301-.0317**
- ☐ **No fiscal note required by G.S. 150B-21.3A(d)(2)**

## CHAPTER 02 - ENVIRONMENTAL MANAGEMENT

### SUBCHAPTER 02B - SURFACE WATER AND WETLAND STANDARDS

#### SECTION .0100 - PROCEDURES FOR ASSIGNMENT OF WATER QUALITY STANDARDS

##### **15A NCAC 02B .0101 GENERAL PROCEDURES**

(a) The rules contained in Sections .0100, .0200 and .0300 of this Subchapter which pertain to the series of classifications and water quality standards shall be known as the "Classifications and Water Quality Standards Applicable to the Surface Waters and Wetlands of North Carolina."

(b) The Environmental Management Commission, prior to classifying and assigning standards of water quality to any waters of the state, shall proceed as follows:

- (1) 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 ~~15A NCAC 2B .0202~~, Rule .0202 of this Subchapter, not presently included in the water classification.
- (2) In determining the best usage of waters and assigning classifications of such waters, the Commission shall consider the criteria specified in G.S. 143-214.1(d). In determining whether to revise a designated best usage for waters through a revision to the classifications, the Commission shall follow the requirements of 40 CFR 131.10(b)(c)(d) and (g), which are hereby incorporated by reference including subsequent amendments and editions. A copy of the most current version of the requirements is available free of charge on the internet at <http://www.gpo.gov/fdsys/>.
- (3) When revising the classification of waters, the Division shall collect water quality data within the watershed for those substances which require more stringent control than required by the existing classification. However, such sampling may be limited to only those parameters which are of concern. If the revision to classifications involves the removal of a designated use, the Division shall conduct a use attainability analysis as required by the provisions of 40 CFR 131.10(j), which are hereby incorporated by reference including subsequent amendments and editions. A copy of the most current version of the provisions is available free of charge on the internet at <http://www.gpo.gov/fdsys/>.

~~(2)~~(4) After appropriate studies of the identified waters to obtain the data and information required for determining the proper classification of the waters or segments of water are completed, the Commission, or its designee, shall make a decision on whether to initiate proceedings to modify the classifications and water quality standards of identified waters. In the case of the Commission's designee deciding to initiate said proceedings, the designee shall inform the Commission of the decision prior to scheduling a public hearing.

~~(3)~~(5) In the case of a petition for classification and assignment of water quality standards according to the requirements of ~~General Statute G.S.~~ 150B-20, the Director shall make a preliminary recommendation on the appropriate classifications and water quality standards of the identified waters on the basis of the study findings or information included in the petition supporting the classification and standards changes.

~~(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 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)(4) of this Rule.~~

~~(5)~~(7) The Director shall give due notice of such hearing or hearings in accordance with the requirements of ~~General Statute G.S.~~ 143-214.1 and G.S. 150B, and shall appoint a hearing officer(s) in consultation with the chairman of the Commission.

~~(6)~~(8) The hearing officer(s) shall, as soon as practicable after the completion of the hearing, submit a complete report of the proceedings of the hearing to the Commission. The hearing officer(s) shall include in the report a transcript or summary of testimony presented at such public hearing, relevant exhibits, a summary of relevant information from the stream studies conducted by the technical staff of the Commission, and final recommendations as to classification of the designated waters and the standards of water quality and best management practices which should be applied to the classifications recommended.

~~(7)~~(9) ~~The Commission, after due consideration of the hearing records and the final recommendations of the hearing officer(s), shall adopt its final action with respect to the assignment of classifications, and any applicable standards or best management practices applicable 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 Commission shall consider the hearing record(s) and final recommendation(s) of the hearing officer(s) before adopting its 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.

- (8)(10) The final action of the Commission with respect to the assignment of classification with its accompanying standards and best management practices shall contain the Commission's conclusions relative to the various factors given in G.S. 143-214.1(d), and shall specifically include the class or classes to which such specifically designated waters in the watershed or watersheds shall be assigned on the basis of best usage in the interest of the public.

~~(e) Freshwater shall be assigned to one of the following classification:~~

- (1) ~~Class C: freshwaters protected for secondary recreation, fishing, aquatic life including propagation and survival, and wildlife. All freshwaters shall be classified to protect these uses at a minimum.~~
- (2) ~~Class B: freshwaters protected for primary recreation which includes swimming on a frequent or organized basis and all Class C uses.~~
- (3) ~~Class WS I: waters protected as water supplies which are essentially in natural and undeveloped watersheds. Point source discharges of treated wastewater are permitted pursuant to Rules .0104 and .0211 of this Subchapter. Local programs to control nonpoint sources and stormwater discharges of pollution are required. Suitable for all Class C uses.~~
- (4) ~~Class WS II: waters protected as water supplies which are generally in predominantly undeveloped watersheds. Point source discharges of treated wastewater are permitted pursuant to Rules .0104 and .0211 of this Subchapter. Local programs to control nonpoint sources and stormwater discharges of pollution shall be required. Suitable for all Class C uses.~~
- (5) ~~Class WS III: waters protected as water supplies which are generally in low to moderately developed watersheds. Point source discharges of treated wastewater are permitted pursuant to Rules .0104 and .0211 of this Subchapter. Local programs to control nonpoint sources and stormwater discharges of~~

~~pollution shall be required. Suitable for all Class C uses.~~

- (6) ~~Class WS IV: waters protected as water supplies which are generally in moderately to highly developed watersheds. Point source discharges of treated wastewater are permitted pursuant to Rules .0104 and .0211 of this Subchapter. Local programs to control nonpoint sources and stormwater discharges of pollution shall be required; suitable for all Class C uses.~~

- (7) ~~Class WS V: waters protected as water supplies which are generally upstream of and draining to Class WS IV waters. No categorical restrictions on watershed development or treated wastewater discharges shall be required. However, the Commission or its designee may apply appropriate management requirements as deemed necessary for the protection of downstream receiving waters (15A NCAC 2B .0203); suitable for all Class C uses.~~

- (8) ~~Class WL: waters that meet the definition of wetlands found in 15A NCAC 2B .0202 except those designated as Class SWL.~~

~~(d) Tidal Salt Waters shall be assigned to one of the following:~~

- (1) ~~Class SC: saltwaters protected for secondary recreation, fishing, aquatic life including propagation and survival, and wildlife. All saltwaters shall be classified to protect these uses at a minimum.~~
- (2) ~~Class SB: saltwaters protected for primary recreation which includes swimming on a frequent or organized basis and all Class SC uses.~~
- (3) ~~Class SA: suitable for commercial shellfishing and all other tidal saltwater uses.~~
- (4) ~~Class SWL: waters that meet the definition of coastal wetlands as defined by 15A NCAC 2H .0205, and which are landward of the mean high water line, and wetlands contiguous to estuarine waters as defined by 15A NCAC 2H .0206.~~

~~(e) The following are supplemental classifications:~~

- (1) ~~Trout waters (Tr): freshwaters protected for natural trout propagation and survival of stocked trout.~~
- (2) ~~Swamp waters (Sw): waters which have low velocities and other natural characteristics which are different from adjacent streams.~~
- (3) ~~Nutrient Sensitive Waters (NSW): waters subject to growths of microscopic or macroscopic vegetation requiring limitations on nutrient inputs.~~
- (4) ~~Outstanding Resource Waters (ORW): unique and special waters of exceptional state or national recreational or ecological significance which require special protection to maintain existing uses.~~
- (5) ~~High Quality Waters (HQW): waters which are rated as excellent based on biological and~~

physical/chemical characteristics through Division monitoring or special studies, native and special native trout waters (and their tributaries) designated by the Wildlife Resources Commission, primary nursery areas (PNA) designated by the Marine Fisheries Commission and other functional nursery areas designated by the Marine Fisheries Commission, all water supply watersheds which are either classified as WS I or WS II 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 and all Class SA waters.

- (6) Future Water Supply (FWS): waters that have been requested by a local government and adopted by the Commission as a future source for drinking, culinary, or food processing purposes. Local government(s) requesting this reclassification shall provide to the Division evidence of intent which may include one or a combination of the following: capitol improvement plans, a Water Supply Plan as described in G.S. 143-355(1), bond issuance for the water treatment plant or land acquisition records. Local governments shall provide a 1:24,000 scale USGS topographical map delineating the location of the intended water supply intake. Requirements for activities administered by the State of North Carolina, such as the issuance of permits for landfills, NPDES wastewater discharges, land application of residuals and road construction activities shall be effective upon reclassification for future water supply use. The requirements shall apply to the critical area and balance of the watershed or protected area as appropriate. Upon receipt of the final approval letter from the Division of Environmental Health for construction of the water treatment plant and water supply intake, the Commission shall initiate rule making to modify the Future Water Supply supplemental classification. Local government implementation is not required until 270 days after the Commission has modified the Future Water Supply (FWS) supplemental classification through the rule-making process and notified the affected local government(s) that the appropriate local government land use requirements applicable for the water supply classifications are to be adopted, implemented and submitted to the Commission for approval. Local governments may also adopt land use ordinances that meet or exceed the state's minimum requirements for water supply watershed protection prior to the end of the 270 day deadline. The requirements for FWS may also be applied to waters formerly

used for drinking water supply use, and currently classified for water supply use, at the request of local government(s) desiring protection of the watershed for future water supply use.

- (7) Unique wetland (UWL): wetlands of exceptional state or national ecological significance which require special protection to maintain existing uses. These wetlands may include wetlands that have been documented to the satisfaction of the Commission as habitat essential for the conservation of state or federally listed threatened or endangered species.

(f) In determining the best usage of waters and assigning classifications of such waters, the Commission shall consider the criteria specified in General Statute 143-214.1(d) and all existing uses as defined by 15A NCAC 2B .0202. In determining whether to revise a designated best usage for waters through a revision to the classifications, the Commission shall follow the requirements of 40 CFR 131.10(b),(c),(d) and (g) which are hereby incorporated by reference including any subsequent amendments and editions. This material is available for inspection at the Department of Environment, Health, and Natural Resources, Division of Water Quality, Water Quality Section, 512 North Salisbury Street, Raleigh, North Carolina. Copies may be obtained from the U.S. Government Printing Office, Superintendent of Documents, Washington, DC 20402-9325 at a cost of thirteen dollars (\$13.00).

(g) When revising the classification of waters, the Division shall collect water quality data within the watershed for those substances which require more stringent control than required by the existing classification. However, such sampling may be limited to only those parameters which are of concern. If the revision to classifications involves the removal of a designated use, the Division shall conduct a use attainability study as required by the provisions of 40 CFR 131.10(j) which are hereby incorporated by reference including any subsequent amendments and editions. This material is available for inspection at the Department of Environment, Health, and Natural Resources, Division of Water Quality, Water Quality Section, 512 North Salisbury Street, Raleigh, North Carolina. Copies may be obtained from the U.S. Government Printing Office, Superintendent of Documents, Washington, DC 20402-9325 at a cost of thirteen dollars (\$13.00).

Authority G.S. 143-214.1; 143-215.3(a)(1).

#### 15A NCAC 02B .0103 ANALYTICAL PROCEDURES

(a) Chemical/Physical Procedures. Tests or analytical procedures to determine conformity or non-conformity with standards shall, insofar as practicable and applicable, conform to the guidelines by the Environmental Protection Agency codified as 40 CFR, Part 136, which are hereby incorporated by reference including any subsequent amendments and editions. This material is available for inspection at the Department of Environment, Health, and Natural Resources, Division of Water Quality, Water Quality Section, 512 North Salisbury Street, Raleigh, North Carolina. Copies may be obtained from the U.S. Government Printing

Office, Superintendent of Documents, Washington, DC 20402-9325 at a cost of thirteen dollars (\$13.00). A copy of the most current version of 40 CFR Part 136 is available free of charge on the internet at <http://www.gpo.gov/fdsys/>. Methods not codified by 40 CFR, Part 136 will, insofar as practicable and applicable, conform to the guidelines by the American Public Health Association, Association (APHA), American Water Works Association, Association (AWWA), and Water Environment Federation (WEF) publication A "Standard Methods for the Examination of Water and Wastewater, 19th edition (1996) 20th edition" or subsequent editions, which are hereby incorporated by reference. Copies may be obtained from the Water Environment Federation, 601 Wythe St., Alexandria, VA, 22314 at a cost of one hundred and eighty dollars (\$180.00). The 20th edition is available for inspection at the Department of Environmental Quality, Division of Water Resources, 512 North Salisbury Street, Raleigh, North Carolina 27604-1170. A copy of the most current edition of the "Standards Methods for the Examination of Water and Wastewater" is available for purchase from the following places: APHA, 8001 Street, NW Washington, DC 20001; AWWA, 6666 W. Quincy Avenue, Denver, CO 80235; or WEF, 601 Wythe Street, Alexandria, VA 22314.

(b) Biological Procedures. Biological tests to determine conformity or non-conformity with standards shall be based on methods published by the U.S. Environmental Protection Agency as codified as 40 CFR, Part 136, which are hereby incorporated by reference including any subsequent amendments and editions. A copy of the most current version of 40 CFR Part 136 is available free of charge on the internet at <http://www.gpo.gov/fdsys/>, including any subsequent amendments and editions. This material is available for inspection at the Department of Environment, Health and Natural Resources, Division of Water Quality, Water Quality Planning Branch, 512 North Salisbury Street, Raleigh, North Carolina. Copies may be obtained from the U.S. Government Printing Office, Superintendent of Documents, Washington, DC 20402-9325 at a cost of thirteen dollars (\$13.00).

(c) Wetland Evaluation Procedures. Evaluations of wetlands for the presence of existing uses shall be based on procedures approved by the Director. The Director shall approve wetland evaluation procedures that have been demonstrated to produce verifiable and repeatable results and that have widespread acceptance in the scientific community. Copies of approved methods or guidance may be obtained by submitting a written request to NCDWQ, Ecological Assessment Group, P.O. Box 29535, Raleigh, NC 27626-0535. NCDWR, Wetlands Branch, 1617 Mail Service Center, Raleigh, NC 27699-1617.

Authority G.S. 143-214.1; 143-215.3(a)(1).

#### 15A NCAC 02B .0104 CONSIDERATIONS/ASSIGNING/IMPLEMENTING WATER SUPPLY CLASSIFICATIONS

(a) In determining the suitability of waters for use as a source of water supply for drinking, culinary or food processing purposes after approved treatment, the Commission will be guided by the physical, chemical, and bacteriological maximum contaminant levels specified by Environmental Protection Agency regulations adopted pursuant to the Public Health Service Act, 42 U.S.C. 201 et seq., as amended by the Safe Drinking Water Act, 42 U.S.C. 300(f) et seq. In addition, the Commission shall be guided by the

requirements for unfiltered and filtered water supplies and the maximum contaminant levels specified in the North Carolina Rules Governing Public Water Supplies, 15A NCAC 18C .1100, .1200 and .1500 .1500, which are hereby incorporated by reference including subsequent amendments and editions, and comments provided by the Division of Environmental Health.

(b) All local governments that have land use authority within designated water supply watersheds shall adopt and enforce ordinances that at a minimum meet the requirements of G.S. 143-214.5 and this Subchapter. The Commission shall approve local water supply protection programs if it determines that the requirements of the local program equal or exceed the minimum statewide water supply watershed management requirements adopted pursuant to this Section. Local governments may adopt and enforce more stringent controls. Local management programs and modifications to these programs must be approved by the Commission and shall be kept on file by the Division of Environmental Management, Division of Environmental Health and the Division of Community Assistance.

(c)(b) All waters used for water supply purposes or intended for future water supply use shall be classified to the most appropriate water supply classification as determined by the Commission. Water supplies may be reclassified to a more or less protective water supply classification on a case-by-case basis through the rule-making process. A more protective water supply classification may be applied to existing water supply watersheds after receipt of a resolution from all local governments having land use jurisdiction within the designated water supply watershed requesting a more protective water supply classification. Requests for reclassification of non-water supply segments and watersheds to a water supply classification shall include submittal to the Commission of resolutions from all local governments having land use jurisdiction within the proposed water supply watershed for which a water supply classification is being requested, provided that the Commission may reclassify waters without the consent of local governments where the Commission deems such reclassifications appropriate and necessary. Local governments requesting water supply reclassifications shall provide a topographic map (such as a 1:24,000 scale USGS map) indicating the normal pool elevation for backwaters of water supply reservoirs, longitude and latitude coordinates of intended water supply intakes, and critical areas and other watershed boundaries as appropriate. Local government(s) requesting the Future Water Supply classification must provide to the Division evidence of intent which may include one or a combination of the following: capital improvement plans; a Water Supply Plan as described in G.S. 143-355(l), bond issuance for the water treatment plant or land acquisition records. A 1:24,000 scale USGS topographical map delineating the location of the intended water supply intake is also required. Requirements for activities administered by the State of North Carolina, such as the issuance of permits for landfills, NPDES wastewater discharges, land application of residuals and road construction activities shall be effective upon reclassification for future water supply use. The requirements shall apply to the critical area and balance of the watershed or protected area as appropriate. Upon receipt of the final approval letter from the Division of Environmental Health for construction of the water treatment plant and water supply intake, the Commission shall



~~initiate rule making to modify the Future Water Supply supplemental classification. Local government implementation is not required until 270 days after the Commission has modified the Future Water Supply (FWS) supplemental classification through the rule making process and notified the affected local government(s) that the appropriate local government land use requirements applicable for the water supply classifications are to be adopted, implemented and submitted to the Commission for approval. Local governments may also adopt land use ordinances that meet or exceed the state's minimum requirements for water supply watershed protection prior to the end of the 270 day deadline. The requirements for FWS may also be applied to waters formerly used for drinking water supply purposes, and currently classified for water supply use, at the request of local government(s) desiring protection of the watershed for future water supply use.~~

~~(d)(c)~~ In considering the reclassification of waters for water supply purposes, the Commission shall take into consideration the relative proximity, quantity, composition, natural dilution and diminution of potential sources of pollution to determine that risks posed by all significant pollutants are adequately considered.

~~(e)(d)~~ For the purposes of implementing the water supply watershed protection ~~rules (15A NCAC 2B .0100, .0200 and .0300) and the requirements of Rules .0620 through .0624 of this Subchapter and G.S. 143-214.5, the following schedule of implementation shall be applicable: effective dates are applicable to State agencies and units of local government with land use authority in water supply watersheds that were classified as such before and including August 3, 1992:~~

August 3, 1992 - Activities administered by the State of North Carolina, such as the issuance of permits for landfills, NPDES wastewater discharges, and land application of sludge/residuals, and road construction activities, ~~shall become effective regardless of the deadlines for municipal and county water supply watershed protection ordinance adoptions; activities;~~

By July 1, 1993 - Affected ~~municipalities~~ Municipalities with a population greater than 5,000 shall adopt and submit the appropriate drinking water supply protection, maps and ordinances that meet or exceed the minimum management requirements of these Rules; 5,000;

By October 1, 1993 - Affected ~~municipalities~~ Municipalities with a population less than 5,000 shall adopt and submit the appropriate drinking water supply protection, maps and ordinances that meet or exceed the minimum management requirements of these Rules; 5,000; and

By January 1, 1994 - Affected ~~county~~ County governments shall adopt and submit the appropriate drinking water supply protection, maps and ordinances that meet or exceed the minimum management requirements of these Rules, and other units of local government, as applicable.

Affected local government drinking water supply protection ordinances shall become effective on or before these dates. Local

governments may choose to adopt, implement and enforce these provisions prior to this date. Three copies of the adopted and effective relevant ordinances shall be sent to the Division along with a cover letter from the municipal or county attorney, or its designated legal counsel, stating that the local government drinking water supply protection ordinances shall meet or exceed the rules in 15A NCAC 2B .0100, .0200 and .0300. If the rules in 15A NCAC 2B .0100, .0200 and .0300 are revised, the Division shall modify and distribute to local governments, as appropriate, a revised model ordinance. The Division shall approve the amended local maps and ordinances, or request the Commission to take appropriate action under G.S. 143-214.5. For water supply watersheds classified as such after August 3, 1992, the effective dates for implementation of the water supply watershed protection requirements shall be as follows:

(1) For activities administered by the State of North Carolina, such as the issuance of permits for landfills, NPDES wastewater dischargers, and land application of sludge/residuals, and road construction activities, the effective date is the date the reclassification became effective.

(2) For local governments, the effective date shall be the date the local watershed ordinance was adopted or revised to reflect the reclassification, but no later than 270 days after receiving notice of a reclassification from the Commission.

~~(f) Wherever in this Subchapter it is provided that local governments assume responsibility for operation and maintenance of engineered stormwater control(s), this shall be construed to require responsible local governments to inspect such controls at least once per year, to determine whether the controls are performing as designed and intended. Records of inspections shall be maintained on forms supplied by the Division. Local governments may require payment of reasonable inspection fees by entities which own the controls, as authorized by law. In the event inspection shows that a control is not performing adequately, the local government shall order the owning entity to take corrective actions. If the entity fails to take sufficient corrective actions, the local government may impose civil penalties and pursue other available remedies in accordance with the law. The availability of new engineered stormwater controls as an alternative to lower development density and other measures under the provisions of this Subchapter and local ordinances approved by the Commission shall be conditioned on the posting of adequate financial assurance, in the form of a cash deposit or bond made payable to the responsible local government, or other acceptable security. The establishment of a stormwater utility by the responsible local government shall be deemed adequate financial assurance. The purpose of the required financial assurance is to assure that maintenance, repairs or reconstruction necessary for adequate performance of the controls may be made by the owning entity or the local government which may choose to assume ownership and maintenance responsibility.~~

~~(g) Where higher density developments are allowed, stormwater control systems must use wet detention ponds as described in 15A NCAC 2H .1003(g)(2), (g)(3), (i), (j), (k), and (l). Alternative stormwater management systems consisting of other treatment options, or a combination of treatment options, may be approved by the Director. The design criteria for approval shall be 85~~

percent average annual removal of Total Suspended Solids. Also the discharge rate shall meet one of the following criteria:

- (1) the discharge rate following the 1-inch design storm shall be such that the runoff draws down to the pre storm design stage within five days, but not less than two days; or
- (2) the post development peak discharge rate shall equal the predevelopment rate for the 1-year, 24-hour storm.

~~(h)(e)~~ Where no practicable alternative exists, discharge from groundwater remediation projects addressing water quality problems shall be allowed in accordance with other applicable requirements in all water supply classifications.

~~(i)~~ To further the cooperative nature of the water supply watershed management and protection program provided for herein, local governments with jurisdiction over portions of classified watersheds and local governments which derive their water supply from within such watersheds are encouraged to establish joint water quality monitoring and information sharing programs, by interlocal agreement or otherwise. Such cooperative programs shall be established in consultation with the Division.

~~(j)(f)~~ Where no practicable alternative exists other than surface water discharge, previously unknown existing unpermitted wastewater discharges shall incorporate the best possible technology treatment as deemed appropriate by the Division.

~~(k)(g)~~ The Commission may designate water supply watersheds or portions thereof as critical water supply watersheds pursuant to G.S. 143-214.5(b).

~~(h)(h)~~ A more protective classification may be allowed by the Commission although minor occurrences of nonconforming activities are present prior to reclassification. When the Commission allows a more protective classification, expansions of existing wastewater discharges that otherwise would have been prohibited may be allowed if there is no increase in permitted pollutant loading; other discharges of treated wastewater existing at the time of reclassification may be required to meet more stringent effluent limitations as determined by the Division. Consideration of all practicable alternatives to surface water discharge must be documented.

~~(m)~~ The construction of new roads and bridges and non-residential development shall minimize built-upon area, divert stormwater away from surface water supply waters as much as possible, and employ best management practices (BMPs) to minimize water quality impacts. To the extent practicable, the construction of new roads in the critical area shall be avoided. The Department of Transportation shall use BMPs as outlined in their document entitled "Best Management Practices for the Protection of Surface Waters" which is hereby incorporated by reference including all subsequent amendments and editions. This material is available for inspection at the Department of Environment, Health, and Natural Resources, Division of Environmental Management, Water Quality Planning Branch, 512 North Salisbury Street, Raleigh, North Carolina, -

~~(n)~~ Activities within water supply watersheds are also governed by the North Carolina Rules Governing Public Water Supplies, 15A NCAC 18C .1100, .1200 and .1500. Proposed expansions of treated wastewater discharges to water supply waters must be approved by the Division of Environmental Health.

~~(o)~~ Local governments shall correctly delineate the approximate normal pool elevation for backwaters of water supply reservoirs for the purposes of determining the critical and protected area boundaries as appropriate. Local governments must submit to the Division a 1:24,000 scale U.S.G.S. topographic map which shows the local government's corporate and extraterritorial jurisdiction boundaries, the Commission's adopted critical and protected area boundaries, as well as the local government's interpreted critical and protected area boundaries. All revisions (expansions or deletions) to these areas must be submitted to the Division and approved by the Commission prior to local government revision.

~~(p)(i)~~ Local governments shall encourage participation in the Agricultural Cost Share Program. The Soil and Water Conservation Commission is the designated management agency responsible for implementing the provisions of the rules in 15A NCAC 2H .0200 pertaining to agricultural activities. Agricultural activities are subject to the provisions of the Food Security Act of 1985 and the Food, Agriculture, Conservation and Trade Act of 1990 (Public Law 101-624) and 15A NCAC 2H .0217. The following shall be required within WS I watersheds and the critical areas of WS II, WS III and WS IV watersheds:

- (1) Agricultural activities conducted after January 1, 1993 shall maintain a minimum 10-foot vegetated buffer, or equivalent control as determined by the Soil and Water Conservation Commission, along all perennial waters indicated on the most recent versions of U.S.G.S. 1:24,000 (7.5-minute) scale topographic maps or as determined by local government studies; and
- (2) Animal operation deemed permitted and permitted under 15A NCAC 2H .0217 2T .1300 are allowed in all classified water supply watersheds.

~~(q)~~ Existing development is not subject to the requirements of these Rules. Redevelopment is allowed if the rebuilding activity does not have a net increase in built-upon area or provides equal or greater stormwater control than the previous development, except that there are no restrictions on single-family residential redevelopment. Expansions to structures classified as existing development must meet the requirements of the rules in 15A NCAC 2B .0100, .0200 and .0300; however, the built-upon area of the existing development is not required to be included in the density calculations. Expansions to structures other than existing development must meet the density requirements of these Rules for the entire project site. If a nonconforming lot of record is not contiguous to any other lot owned by the same party, then that lot of record shall not be subject to the development restrictions of these Rules if it is developed for single-family residential purposes. Local governments may, however, require the combination of contiguous nonconforming lots of record owned by the same party in order to establish a lot or lots that meet or nearly meet the development restrictions of the rules under 15A NCAC 2B. Any lot or parcel created as part of a family subdivision after the effective date of these Rules shall be exempt from these Rules if it is developed for one single-family detached residence and if it is exempt from local subdivision regulation. Any lot or parcel created as part of any other type of subdivision that is exempt from a local subdivision ordinance shall be subject

~~to the land use requirements (including impervious surface requirements) of these Rules, except that such a lot or parcel must meet the minimum buffer requirements to the maximum extent practicable. Local governments may also apply more stringent controls relating to determining existing development, redevelopment or expansions.~~

~~(r) Development activities may be granted minor variances by local governments utilizing the procedures of G.S. 153A Article 18, or G.S. 160A, Article 19. A description of each project receiving a variance and the reason for granting the variance shall be submitted to the Commission on an annual basis by January 1. For all proposed major and minor variances from the minimum statewide watershed protection rules, the local Watershed Review Board shall make findings of fact showing that:~~

- ~~(1) there are practical difficulties or unnecessary hardships that prevent compliance with the strict letter of the ordinance;~~
- ~~(2) the variance is in harmony with the general purpose and intent of the local watershed protection ordinance and preserves its spirit; and~~
- ~~(3) in granting the variance, the public safety and welfare have been assured and substantial justice has been done.~~

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

~~(s) Cluster development is allowed on a project by project basis as follows:~~

- ~~(1) Overall density of the project meets associated density or stormwater control requirements under 15A NCAC 2B .0200;~~

- ~~(2) Buffers meet the minimum statewide water supply watershed protection requirements;~~
- ~~(3) Built upon areas are designed and located to minimize stormwater runoff impact to the receiving waters, minimize concentrated stormwater flow, maximize the use of sheet flow through vegetated areas, and maximize the flow length through vegetated areas;~~
- ~~(4) Areas of concentrated density development are located in upland areas and away, to the maximum extent practicable, from surface waters and drainageways;~~
- ~~(5) Remainder of tract to remain in vegetated or natural state;~~
- ~~(6) The area in the vegetated or natural state may be conveyed to a property owners association; a local government for preservation as a park or greenway; a conservation organization; or placed in a permanent conservation or farmland preservation easement. A maintenance agreement shall be filed with the property deeds; and~~
- ~~(7) Cluster developments that meet the applicable low density requirements shall transport stormwater runoff by vegetated conveyances to the maximum extent practicable.~~

~~(t) Local governments may administer oversight of future development activities in single family residential developments that exceed the applicable low density requirements by tracking dwelling units rather than percentage built upon area, as long as the wet detention pond or other approved stormwater control system is sized to capture and treat runoff from all pervious and built upon surfaces shown on the development plan and any off site drainage from pervious and built upon surfaces, and when an additional safety factor of 15 percent of built upon area of the project site is figured in.~~

~~(u) All new development shall meet the development requirements on a project by project basis except local governments may submit ordinances and ordinance revisions which use density or built upon area criteria averaged throughout the local government's watershed jurisdiction instead of on a project by project basis within the watershed. Prior to approval of the ordinance or amendment, the local government must demonstrate to the Commission that the provisions as averaged meet or exceed the statewide minimum requirements, and that a mechanism exists to ensure the orderly and planned distribution of development potential throughout the watershed jurisdiction.~~

~~(v) Silviculture activities are subject to the provisions of the Forest Practices Guidelines Related to Water Quality (15A NCAC 11 .0101—.0209). The Division of Forest Resources is the designated management agency responsible for implementing the provisions of the rules in 15A NCAC 2B .0200 pertaining to silviculture activities.~~

~~(w) Local governments shall, as the existing laws allow, develop, implement, and enforce comprehensive nonpoint source and stormwater discharge control programs to reduce water pollution from activities within water supply watersheds such as development, forestry, landfills, mining, on site sanitary sewage~~

~~systems which utilize ground adsorption, toxic and hazardous materials, transportation, and water based recreation.~~

~~(x) When the Commission assumes a local water supply protection program as specified under G.S. 143-214.5(e) all local permits authorizing construction and development activities as regulated by the statewide minimum water supply watershed protection rules of this Subchapter must be approved by the Commission prior to local government issuance.~~

~~(y) In the event that stormwater management systems or facilities may impact existing waters or wetlands of the United States, the Clean Water Act requires that these systems or facilities be consistent with all federal and state requirements.~~

~~(z) A model local water supply watershed management and protection ordinance, as approved by the Commission in accordance with G.S. 143-214.5, is on file with the Office of Administrative Hearings and may be obtained by writing to: Water Quality Planning Branch, Division of Environmental Management, Post Office Box 29535, Raleigh, North Carolina 27626-0535.~~

~~(aa) The Commission may delegate such matters as variance approval, extension of deadlines for submission of corrected ordinances and assessment of civil penalties to the Director.~~

(j) Local government water supply watershed ordinances for water supply classified watersheds shall be implemented in accordance with Rules .0620 through .0624 of this Subchapter.

*Authority G.S. 143-214.1; 143-215.3(a)(1).*

#### **15A NCAC 02B .0106 CONSIDERATIONS/ASSIGNING CLASSIFICATIONS FOR PRIMARY RECREATION**

~~In assigning the B or SB classification to waters intended for primary recreation, the Commission will take into consideration the relative proximity of sources of water pollution and will recognize the potential hazards involved in locating swimming areas close to sources of water pollution and will not assign this classification to waters in which such water pollution could result in a hazard to public health. Discharges to waters classified as B or SB will meet the reliability requirements specified in 15A NCAC 2H .0124. Discharges to waters where a primary recreational use is determined by the Director to be attainable will be required to meet water quality standards and reliability requirements to protect this use concurrently with reclassification efforts.~~

*Authority G.S. 143-214.1; 143-215.3(a)(1).*

#### **15A NCAC 02B .0108 CONSIDERATIONS IN ASSIGNING THE SHELLFISHING AREA CLASSIFICATION**

~~In determining the safety or suitability of Class SA waters to be used for shellfishing for market purposes, the Commission will be guided by the existing water quality of the area in relation to the standards to protect shellfishing uses, the potential contamination of the area from both point and nonpoint sources of pollution, and the presence of harvestable quantities of shellfish or the potential for the area to have harvestable quantities through management efforts of the Division of Marine Fisheries. Waters will not be classified SA without the written concurrence of the Division of Health Services, North Carolina Department of Human~~

~~Resources Division of Marine Fisheries, North Carolina Department of Environmental Health and Natural Resources.~~

*Authority G.S. 143-214.1.*

#### **15A NCAC 02B .0110 CONSIDERATIONS FOR FEDERALLY-LISTED THREATENED OR ENDANGERED AQUATIC SPECIES**

~~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 shall develop site specific management strategies under the provisions of 15A NCAC 2B .0225 or 15A NCAC 2B .0227 for those waters. The Commission shall utilize Rule .0225 or .0227 of this Subchapter for site specific strategies for those waters. These plans shall be developed within 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. Nothing in this Rule shall prevent the Division or EMC Commission from taking other actions within its authority to maintain and restore the quality of these waters.~~

*Authority G.S. 143-214.1; 143-215.3(a)(1); 143-215.8A.*

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

#### **15A NCAC 02B .0201 ANTIDegradation Policy**

(a) It is the policy of the Environmental Management Commission to maintain, protect, and enhance water quality within the State of North Carolina. Pursuant to this policy, the requirements of 40 CFR 131.12 are hereby incorporated by reference including any subsequent amendments and editions. This material is available for inspection at the Department of ~~Environment, Health, Environmental Quality, and Natural Resources~~, Division of Water Quality, Resources, ~~Water Quality Section~~, 512 North Salisbury Street, Raleigh, North Carolina, ~~Carolina~~, 27604-1170. Copies may be obtained from the U.S. Government Printing Office, Superintendent of Documents, ~~Washington, DC 20402-9325~~ at a cost of thirteen dollars (\$13.00). A copy of the most current version of 40 CFR 131.12 is available free of charge on the internet at <http://www.gpo.gov/fdsys/>. These requirements shall be implemented in North Carolina as set forth in Paragraphs (b), (c), (d), (e) and (f) of this Rule.

(b) Existing uses, as defined by Rule .0202 of this Section, and the water quality to protect such uses shall be protected by properly classifying surface waters and having standards sufficient to protect these uses. In cases where the Commission or its designee determines that an existing use is not included in the classification of waters, a project which shall affect these waters shall not be permitted unless the existing uses are protected.

(c) The Commission shall consider the present and anticipated usage of waters with quality higher than the standards, including any uses not specified by the assigned classification (such as outstanding national resource waters or waters of exceptional water quality) and shall not allow degradation of the quality of waters with quality higher than the standards below the water quality necessary to maintain existing and anticipated uses of those waters. Waters with quality higher than the standards are defined by Rule .0202 of this Section. The following procedures shall be implemented in order to meet these requirements:

- (1) Each applicant for an NPDES National Pollutant Discharge Elimination System (NPDES) permit or NPDES permit expansion to discharge treated waste shall document an effort to consider non-discharge alternatives pursuant to 15A NCAC 2H .0105(c)(2).
- (2) Public Notices for NPDES permits shall list parameters that would be water quality limited and state whether or not the discharge shall use the entire available load capacity of the receiving waters and may cause more stringent water quality based effluent limitations to be established for dischargers downstream.
- (3) The Division may require supplemental documentation from the affected local government that a proposed project or parts of the project are necessary for important economic and social development.
- (4) The Commission and Division shall work with local governments on a voluntary basis to identify and develop appropriate management strategies or classifications for waters with unused pollutant loading capacity to accommodate future economic growth.

Waters with quality higher than the standards shall be identified by the Division on a case-by-case basis through the NPDES permitting and waste load allocation processes (pursuant to the provisions of 15A NCAC 2H .0100). Dischargers affected by the requirements of ~~Paragraphs~~ Subparagraphs (c)(1) through (c)(4) of this Rule and the public at large shall be notified according to the provisions described herein, and all other appropriate provisions pursuant to 15A NCAC 2H .0109. If an applicant objects to the requirements to protect waters with quality higher than the standards and believes degradation is necessary to accommodate important social and economic development, the applicant may contest these requirements according to the provisions of ~~General Statute~~ G.S. 143-215.1(e) and 150B-23.

(d) The Commission shall consider the present and anticipated usage of High Quality Waters (HW), including any uses not specified by the assigned classification (such as outstanding national resource waters or waters of exceptional water quality) and shall not allow degradation of the quality of High Quality Waters below the water quality necessary to maintain existing and anticipated uses of those waters. ~~High Quality Waters are a subset of waters with quality higher than the standards and are as described by 15A NCAC 2B .0101(e)(5). The procedures described in Rule .0224 of this Section shall be implemented in order to meet the requirements of this part.~~ Rule.

(e) Outstanding Resource Waters (ORW) are a special subset of High Quality Waters with unique and special characteristics as described in Rule .0225 of this Section. The water quality of waters classified as ORW shall be maintained such that existing uses, including the outstanding resource values of said Outstanding Resource Waters, shall be maintained and protected.

(f) Activities regulated under Section 404 of the Federal Clean Water Act (33 U.S.C. 1344), 33 U.S.C. 1344 which require a water quality certification as described in Section 401 of the Federal Clean Water Act (33 U.S.C. 1341), 33 U.S.C. 1344 shall be evaluated according to the procedures outlined in 15A NCAC 2H .0500. Activities which receive a water quality certification pursuant to these procedures shall not be considered to remove existing uses. The evaluation of permits issued pursuant to G.S. 143-215.1 that involve the assimilation of wastewater or stormwater by wetlands shall incorporate the criteria found in ~~15A NCAC 2H .0506(e)(1)-(5)~~ .0506(c)(1) through (5) in determining the potential impact of the proposed activity on the existing uses of the wetland per ~~15A NCAC 2H .0231~~ Rule .0231 of this Section.

*Authority G.S. 143-214.1; 143-215.1; 143-215.3(a)(1).*

#### **15A NCAC 02B .0202 DEFINITIONS**

The definition of any word or phrase used in this Section shall be the same as given in G.S. 143, Article 21. The following words and phrases, which are not defined in this article, shall be interpreted as follows:

- (1) Acute toxicity to aquatic life means lethality or other harmful effects sustained by either resident aquatic populations or indicator species used as test organisms in a controlled toxicity test due to a short-term exposure (relative to the life cycle of the organism) to a specific chemical or mixture of chemicals (as in an effluent). Short-term exposure for acute tests is generally 96 hours or less. Acute toxicity shall be determined using the following procedures:
  - (a) for specific chemical constituents or compounds, acceptable levels shall be equivalent to a concentration of one-half or less of the Final Acute Value (FAV) as determined according to "Guidelines for Deriving Numerical Water Quality Criteria for the Protection of Aquatic Life and its Uses" published by the Environmental Protection Agency and referenced in the Federal Register (50 FR 30784, July 29, 1985) which is hereby incorporated by reference including any subsequent ~~amendments.~~ amendments and editions.
  - (b) for specific chemical constituents or compounds for which values described under ~~Subparagraph~~ Sub-Item (1)(a) of this Rule cannot be determined, acceptable levels shall be

- equivalent to a concentration of one-third or less of the lowest available LC50 value.
- (c) for effluents, acceptable levels are defined as no statistically measurable lethality (99 percent confidence level using Students test) test, a LC50>100%, or a No Observed Adverse Effect Concentration, during a specified exposure period. Concentrations of exposure and critical values for the No Observed Adverse Effect Concentration shall be determined on a case-by-case basis.
- (d) in instances where detailed dose response data indicate that levels of acute toxicity are significantly different from those defined in this Rule, the Director may determine on a case-by-case basis an alternate acceptable level through statistical analyses of the dose response curve.
- (2) Acute to Chronic Ratio (ACR) means the ratio of acute toxicity expressed as an LC50 for a specific toxicant or an effluent to the chronic value for the same toxicant or effluent.
- (3) Agricultural uses include the use of waters for stock watering, irrigation, and other farm purposes.
- (4) Applicator means any person, firm, corporation, wholesaler, retailer, distributor, any local, state, or federal governmental agency, or any other person who applies fertilizer to the land of a consumer or client or to land they own or to land which they lease or otherwise hold rights.
- (5) Approved treatment, as applied to water supplies, means treatment accepted as satisfactory by the Division of Environmental Health ~~or Division of Water Quality Resources~~.
- (6) Attainable uses are uses that can be achieved by the imposition of effluent limits and cost effective and reasonable best management practices (BMP) for nonpoint source control.
- (6)(7) Average (except bacterial) means arithmetical average and ~~includes~~ consists of the analytical results of all samples taken during the specified period (for example: daily, weekly, or monthly); all sampling shall be done as to obtain ~~the most a~~ representative sample under prevailing ~~conditions~~; conditions.
- (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.~~
- (e) ~~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(i)(4)(iii).~~
- (7)(8) Best Management Practice (BMP) means a structural or nonstructural management-based practice used singularly or in combination to reduce nonpoint source inputs to receiving waters in order to achieve water quality protection goals.
- (8)(9) Best usage of waters as specified for each class means those uses as determined by the Environmental Management Commission in accordance with the provisions of G.S. 143-214.1.
- (9)(10) Bioaccumulation factor (BAF) is a unitless value that describes the degree to which substances are taken up or accumulated into tissues of aquatic organisms from water directly and from food or other ingested materials containing the accumulated substances, and is usually measured as a ratio of a substance's concentration in tissue versus its concentration in water in situations where exposure to the substance is occurring from both water and the food chain.
- (10)(11) Bioconcentration factor (BCF) is a unitless value that describes the degree to which substances are absorbed or concentrated into tissues of aquatic organisms from water directly and is usually measured as a ratio of substance's concentration in tissue versus its concentration in water in situations where exposure to the substance is occurring from water only.
- (11)(12) Biological integrity means the ability of an aquatic ecosystem to support and maintain a balanced and indigenous community of organisms having species composition, diversity, population densities and functional organization similar to that of reference conditions.
- (12)(13) Buffer means a natural or vegetated area through which stormwater runoff flows in a diffuse manner so that the runoff does not become channelized and which provides for infiltration of the runoff and filtering of pollutants. ~~The buffer shall be measured landward from the normal pool elevation of~~

- ~~impounded structures and from the bank of each side of streams or rivers.~~
- (13) ~~Built upon area means that portion of a development project that is covered by impervious or partially impervious cover including buildings, pavement, gravel areas (e.g. roads, parking lots, paths), recreation facilities (e.g. tennis courts), etc. (Note: Wooden slatted decks and the water area of a swimming pool are considered pervious.)~~
- (14) Chronic toxicity to aquatic life means any harmful effect sustained by either resident aquatic populations or indicator species used as test organisms in a controlled toxicity test due to long-term exposure (relative to the life cycle of the organism) or exposure during a substantial portion of the duration of a sensitive period of the life cycle to a specific chemical substance or mixture of chemicals (as in an effluent). In absence of extended periods of exposure, early life stage or reproductive toxicity tests may be used to define chronic impacts.
- (15) Chronic value for aquatic life means the geometric mean of two concentrations identified in a controlled toxicity test as the No Observable Effect Concentration (NOEC) and the Lowest Observable Effect Concentration (LOEC).
- (16) ~~Cluster development means the grouping of buildings in order to conserve land resources and provide for innovation in the design of the project including minimizing stormwater runoff impacts. This term includes nonresidential development as well as single family residential and multi family developments. For the purpose of Sections .0100, .0200 and .0300 of this Subchapter, planned unit developments and mixed use development shall be considered as cluster development.~~
- (17)(16) Commercial applicator means any person, firm, corporation, wholesaler, retailer, distributor or any other person who for hire or compensation applies fertilizer to the land of a consumer or client.
- (18)(17) Concentrations are the mass of a substance per volume of water and for the purposes of this Section shall be expressed as milligrams per liter (mg/l), micrograms per liter (ug/l), or nanograms per liter (ng/l).
- (19)(18) Contiguous refers to those wetlands landward of the mean high water line or normal water level and within 575 feet of classified surface waters which appear as solid blue lines on the most recently published versions of U.S.G.S. 1:24,000 (7.5 minute) scale topographic maps.
- (20)(19) Critical area means the area adjacent to a water supply intake or reservoir where risk associated with pollution is greater than from the remaining portions of the watershed. The critical area is defined as extending either 1/2 mile in a straight line fashion upstream from and draining to the normal pool elevation of the reservoir in which the intake is located or to the ridge line of the watershed (whichever comes first); or 1/2 mile in a straight line fashion upstream from and draining to the intake (or other appropriate downstream location associated with the water supply) located directly in the stream or river (run-of-the-river), or to the ridge line of the watershed (whichever comes first). Since WS-I watersheds are essentially undeveloped, establishment of a critical area is not required. ~~Local governments may extend the critical area as needed. Major landmarks such as highways or property lines may be used to delineate the outer boundary of the critical area if these landmarks are immediately adjacent to the appropriate outer boundary of 1/2 mile.~~ The Commission may adopt a different critical area size during the reclassification process.
- (21)(20) Cropland means agricultural land that is not covered by a certified animal waste management plan and is used for growing corn, grains, oilseed crops, cotton, forages, tobacco, beans, or other vegetables or fruits.
- (22)(21) Designated Nonpoint Source Agency means those agencies specified by the Governor in the North Carolina Nonpoint Source Management Program, as approved by the Environmental Protection Agency.
- (23) ~~Development means any land disturbing activity which adds to or changes the amount of impervious or partially impervious cover on a land area or which otherwise decreases the infiltration of precipitation into the soil.~~
- (24)(22) Director means the Director of the Division of Water Quality Resources.
- (25)(23) Discharge is the addition of any man-induced waste effluent either directly or indirectly to state surface waters.
- (26)(24) Division means the Division of Water Quality Resources or its successors.
- (27)(25) Domestic wastewater discharge means the discharge of sewage, non-process industrial wastewater, other domestic wastewater or any combination of these items. Domestic wastewater includes, but is not limited to, liquid waste generated by domestic water using fixtures and appliances, from any residence, place of business, or place of public assembly even if it contains no sewage. Examples of domestic wastewater include once-through non-contact cooling water, seafood packing facility discharges and wastewater from restaurants.

~~(28)~~(26) Effluent channel means a discernable confined and discrete conveyance which is used for transporting treated wastewater to a receiving stream or other body of water as provided in Rule ~~.0215~~ .0228 of this Section.

~~(29)~~ Existing development, for projects that do not require a state permit, shall be defined as those projects that are built or those projects that at a minimum have established a vested right under North Carolina zoning law as of the effective date of the local government water supply ordinance, or such earlier time that an affected local government's ordinances shall specify, based on at least one of the following criteria:

- ~~(a)~~ substantial expenditures of resources (time, labor, money) based on a good faith reliance upon having received a valid local government approval to proceed with the project, or
- ~~(b)~~ having an outstanding valid building permit in compliance with G.S. 153A 344.1 or G.S. 160A 385.1, or
- ~~(c)~~ having an approved site specific or phased development plan in compliance with G.S. 153A 344.1 or G.S. 160A 385.1.

For projects that require a state permit, such as landfills, NPDES wastewater discharges, land application of residuals and road construction activities, existing development shall be defined as those projects that are built or those projects for which a state permit was issued prior to August 3, 1992.

~~(30)~~(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 standards.

~~(31)~~ Family subdivision means a division of a tract of land:

- ~~(a)~~ to convey the resulting parcels, with the exception of parcels retained by the grantor, to a relative or relatives as a gift or for nominal consideration, but only if no more than one parcel is conveyed by the grantor from the tract to any one relative; or
- ~~(b)~~ to divide land from a common ancestor among tenants in common, all of whom inherited by intestacy or by will.

~~(32)~~(28) Fertilizer means any substance containing nitrogen or phosphorus which is used primarily for its plant food content.

~~(33)~~(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 other aquatic life as is necessary to provide a suitable environment for fish.

~~(34)~~(30) Forest vegetation means the plants of an area which grow together in disturbed or undisturbed conditions in various wooded plant communities in any combination of trees, saplings, shrubs, vines and herbaceous plants. This includes mature and successional forests as well as cutover stands.

~~(35)~~(31) Freshwater means all waters that under natural conditions would have a chloride ion content of 500 mg/l or less.

~~(36)~~(32) Industrial discharge means the discharge of industrial process treated wastewater or wastewater other than sewage. Stormwater shall not be considered to be an industrial wastewater unless it is contaminated with industrial wastewater. Industrial discharge includes:

- ~~(a)~~ wastewater resulting from any process of industry or manufacture, or from the development of any natural resource;
- ~~(b)~~ wastewater resulting from processes of trade or business, including wastewater from laundromats and car washes, but not wastewater from restaurants; or
- ~~(c)~~ wastewater discharged from a municipal wastewater treatment plant requiring a pretreatment program.

~~(37)~~(33) Land-disturbing activity means any use of the land that results in a change in the natural cover or topography that may cause or contribute to sedimentation.

~~(38)~~(34) LC50 means that concentration of a toxic substance which is lethal (or immobilizing, if appropriate) to 50 percent of the organisms tested during a specified exposure period. The LC50 concentration for toxic materials shall be determined for sensitive species as defined by Subparagraph ~~(43)~~(50) of this Rule under aquatic conditions characteristic of the receiving waters.

~~(39)~~(35) Local government means a city or county in singular or plural as defined in G.S. 160A-1(2) and G.S. 158A-10.

~~(40)~~(36) Lower piedmont and coastal plain waters mean those waters of the Catawba River Basin below Lookout Shoals Dam; the Yadkin River Basin below the junction of the Forsyth, Yadkin, and Davie County lines; and all of the waters of



- Cape Fear, Lumber, Roanoke, Neuse, Tar-Pamlico, Chowan, Pasquotank, and White Oak River Basins; except tidal salt waters which are assigned S classifications.
- (41)(37) MF is an abbreviation for the membrane filter procedure for bacteriological analysis.
- (42) ~~Major variance means a variance from the minimum statewide watershed protection rules that results in the relaxation, by a factor greater than five percent of any buffer, density or built-upon area requirement under the high density option; any variation in the design, maintenance or operation requirements of a wet detention pond or other approved stormwater management system; or relaxation by a factor greater than 10 percent, of any management requirement under the low density option.~~
- (43) ~~Minor variance means a variance from the minimum statewide watershed protection rules that results in a relaxation, by a factor of up to five percent of any buffer, density or built-upon area requirement under the high density option; or that results in a relaxation by a factor up to 10 percent, of any management requirement under the low density option.~~
- (44)(38) Mixing zone means a region of the receiving water in the vicinity of a discharge within which dispersion and dilution of constituents in the discharge occurs and such zones shall be subject to conditions established in accordance with 15A NCAC 2B .0204(b). .0204(b) of this Section.
- (45)(39) Mountain and upper piedmont waters mean all of the waters of the Hiwassee; Little Tennessee, including the Savannah River drainage area; French Broad; Broad; New; and Watauga River Basins; and those portions of the Catawba River Basin above Lookout Shoals Dam and the Yadkin River Basin above the junction of the Forsyth, Yadkin, and Davie County lines.
- (46) ~~Nonconforming lot of record means a lot described by a plat or a deed that was recorded prior to the effective date of local watershed regulations (or their amendments) that does not meet the minimum lot size or other development requirements of Rule .0211 of this Subchapter.~~
- (47)(40) Nonpoint source pollution means pollution which enters waters mainly as a result of precipitation and subsequent runoff from lands which have been disturbed by man's activities and includes all sources of water pollution which are not required to have a permit in accordance with G.S. 143-215.1(c).
- (48)(41) Non-process discharge means industrial effluent not directly resulting from the manufacturing process. An example would be non-contact cooling water from a compressor.
- (49) ~~Nutrient sensitive waters mean those waters which are so designated in the classification schedule in order to limit the discharge of nutrients (usually nitrogen and phosphorus). They are designated by "NSW" following the water classification.~~
- (50)(42) Offensive condition means any condition or conditions resulting from the presence of sewage, industrial wastes or other wastes within the waters of the state or along the shorelines thereof which shall either directly or indirectly cause foul or noxious odors, unsightly conditions, or breeding of abnormally large quantities of mosquitoes or other insect pests, or shall damage private or public water supplies or other structures, result in the development of gases which destroy or damage surrounding property, herbage or grasses, or which may cause the impairment of taste, such as from fish flesh tainting, or affect the health of any person residing or working in the area.
- (51)(43) ~~Primary Nursery Areas (PNAs) are tidal saltwaters which provide essential habitat for the early development of commercially important fish and shellfish and are so designated by the Marine Fisheries Commission. Primary contact recreation includes swimming, diving, skiing, and similar uses involving full human body contact with water where such activities take place in an organized or on a frequent basis.~~
- (52)(44) ~~Primary recreation includes swimming, skin diving, skiing, and similar uses involving human body contact with water where such activities take place in an organized or on a frequent basis. Primary Nursery Areas (PNAs) are tidal saltwaters which provide essential habitat for the early development of commercially important fish and shellfish and are so designated by the Marine Fisheries Commission.~~
- (53)(45) Protected area means the area adjoining and upstream of the critical area in a WS-IV water supply in which protection measures are required. The ~~boundaries of the protected areas~~ area is defined as within extending five miles in an as-the-river-runs manner upstream from and draining to ~~of~~ the normal pool elevation of the reservoir in which the intake is located and draining to water supply reservoirs (measured from the normal pool elevation) or to the ridge line of the watershed (whichever comes first); or 10 miles in an as-the-river-runs manner upstream from and draining to the intake located directly in the stream or river (run-of-the-river), or to the ridge line of the watershed (whichever comes first). ~~Local governments may extend the protected area. Major landmarks such as highways or property~~

- lines may be used to delineate the outer boundary of the protected area if these landmarks are immediately adjacent to the appropriate outer boundary of five or 10 miles. In some cases the protected area shall encompass the entire watershed. The Commission may adopt a different protected area size during the reclassification process.
- (54)(46) Residential development means buildings for residence such as attached and detached single family dwellings, apartment complexes, condominiums, townhouses, cottages, and their associated outbuildings such as garages, storage buildings, and gazebos.
- (55)(47) ~~Residuals means any solid or demisolid waste generated from a wastewater treatment plant, water treatment plant or air pollution control facility permitted under the authority of the Environmental Management Commission. Residuals are defined in 15A NCAC 02T .0103.~~
- (56)(48) Riparian area means an area that is adjacent to a body of water.
- (57)(49) Secondary contact recreation includes wading, boating, other uses not involving human body contact with water, and activities involving human body contact with water where such activities take place on an infrequent, unorganized, or incidental basis.
- (58)(50) Sensitive species for aquatic toxicity testing is any species utilized in procedures accepted by the Commission or its designee in accordance with Rule .0103 of this Subchapter, or the following genera:
- (a) Daphnia;
  - (b) Ceriodaphnia;
  - (c) Salmo;
  - (d) Pimephales;
  - (e) Mysidopsis;
  - (f) Champia;
  - (g) Cyprinodon;
  - (h) Arbacia;
  - (i) Penaeus;
  - (j) Menidia;
  - (k) Notropis;
  - (l) Salvelinus;
  - (m) Oncorhynchus;
  - (n) Selenastrum;
  - (o) Chironomus;
  - (p) Hyalella;
  - (q) Lumbriculus.
- (59)(51) Shellfish culture includes the use of waters for the propagation, storage and gathering of oysters, clams, and other shellfish for market purposes.
- (60) ~~Stormwater collection system means any conduit, pipe, channel, curb or gutter for the primary purpose of transporting (not treating) runoff. A stormwater collection system does not include vegetated swales, swales stabilized~~
- ~~with armoring or alternative methods where natural topography prevents the use of vegetated swales (subject to case by case review), curb outlet systems or pipes used to carry drainage underneath built upon surfaces that are associated with development controlled by the provisions of 15A NCAC 2H .1003(c)(1).~~
- (61) ~~Source of water supply for drinking, culinary or food processing purposes means any source, either public or private, the waters from which are used for human consumption, or used in connection with the processing of milk, beverages, food, or other purpose which requires water suitable for human consumption.~~
- (62)(52) Swamp waters mean those waters which are classified by the Environmental Management Commission and which are topographically located so as to generally have very low velocities and other characteristics which are different from adjacent streams draining steeper topography. They are designated by "Sw" following the water classification. Swamp waters are those waters which are classified by the Environmental Management Commission as such and which are topographically located so as to generally have natural characteristics such as low velocity, dissolved oxygen, or pH, which are different from streams draining steeper topography.
- (63)(53) ~~Tidal salt waters mean all tidal waters which are classified by the Environmental Management Commission which generally have a natural chloride ion content in excess of 500 parts per million and include all waters assigned S classifications. million.~~
- (64)(54) Toxic substance or toxicant means any substance or combination of substances (including disease-causing agents), which after discharge and upon exposure, ingestion, inhalation, or assimilation into any organism, either directly from the environment or indirectly by ingestion through food chains, has the potential to cause death, disease, behavioral abnormalities, cancer, genetic mutations, physiological malfunctions (including malfunctions or suppression in reproduction or growth) or physical deformities in such organisms or their offspring.
- (65)(55) ~~Trout waters are 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 classified by the Commission after considering the requirements of Rule .0101(b) and (c) of this Subchapter and include all waters designated by "Tr" in the water classification. Trout waters are those waters which are classified by the Environmental Management~~

Commission as such and have conditions which shall sustain and allow for natural trout propagation and survival and maintenance of stocked trout on a year round basis.

~~(66)~~(56) Waste disposal includes the use of waters for disposal of sewage, industrial waste or other waste after approved treatment.

~~(67)~~(57) Water dependent structures are those structures for which the use requires access or proximity to or siting within surface waters to fulfill its basic purpose, such as boat ramps, boat houses, docks and bulkheads. Ancillary facilities such as restaurants, outlets for boat supplies, parking lots and commercial boat storage areas are not water dependent structures.

~~(68)~~(58) Water quality based effluent limits and best management practices are limitations or best management practices developed by the Division for the purpose of protecting water quality standards and best usage of surface waters consistent with the requirements of G.S. 143-214.1 and the Federal Water Pollution Control Act as amended.

~~(69)~~(59) Waters with quality higher than the standards means all waters for which the determination of waste load allocations (pursuant to Rule .0206 of this Section) indicates that water quality is sufficiently greater than that defined by the standards such that significant pollutant loading capacity still exists in those waters.

~~(70)~~(60) Watershed means a natural area of drainage, including all tributaries contributing to the supply of at least one major waterway within the State, the specific limits of each separate watershed to be designated by the Commission as defined by G.S. 143-213 (21), the entire land area 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 major landmarks such as highways or property lines to delineate the outer boundary of the drainage area if these landmarks are immediately adjacent to the ridgeline.

~~(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. do not include prior converted cropland as defined in the National Food Security Act Manual, Fifth Edition, available free of charge on the internet at <https://directives.sc.egov.usda.gov/RollupViewer.aspx?hid=29340>. ~~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.~~

~~(62)~~ For purposes of applicability to Rules 15A NCAC 02B .0265, .0266, .0277 and .0278 and until those rules are removed from Section .0200 and recodified into Section .0700, refer to rule 15A NCAC 02B .0621 for the definitions of "built-upon area" and "development".

Authority G.S. 143-214.1; 143-215.3(a)(1).

## **15A NCAC 02B .0203 PROTECTION OF WATERS DOWNSTREAM OF RECEIVING WATERS (READoption WITHOUT SUBSTANTIVE CHANGES)**

### **15A NCAC 02B .0204 LOCATION OF SAMPLING SITES AND MIXING ZONES**

(a) Location of Sampling Sites: in conducting tests or making analytical determinations of classified waters to determine conformity or nonconformity with the established standards, samples shall be collected outside the limits of prescribed mixing zones. However, where appropriate, samples shall be collected within the mixing zone in order to ensure compliance with in-zone water quality requirements as outlined in Paragraph (b) of this Rule.

(b) Mixing Zones: a mixing zone may be established in the area of a discharge in order to provide reasonable opportunity for the mixture of the wastewater with the receiving waters. Water quality standards shall not apply within regions defined as mixing zones, except that such zones shall be subject to the conditions established in accordance with this Rule. The limits of such mixing zones shall be defined by the ~~division~~ Division on a case-by-case basis after consideration of the magnitude and character of the waste discharge and the size and character of the receiving waters. Mixing zones shall be determined such that discharges shall not:

- (1) result in acute toxicity to aquatic ~~life~~ life, ~~as defined by in Rule .0202(1) of this Section~~ Section, or prevent free passage of aquatic organisms around the mixing zone;
- (2) result in offensive conditions;
- (3) produce undesirable aquatic life or result in a dominance of nuisance species outside of the assigned mixing zone; or
- (4) endanger the public health or welfare.

In addition, a mixing zone shall not be assigned for point source discharges of fecal coliform organisms in waters classified "WS-II," "WS-III," "B," or "SA". "SA" as defined in Rule .0301 of this Subchapter. Mixing zones shall not be assigned for point source discharges of enterococci in waters classified "SB" or "SA". "SA" as defined in Rule .0301 of this Subchapter. For the discharge of heated wastewater, compliance with federal rules and regulations pursuant to Section 316(a) of the Federal Water Pollution Control Act as amended, shall constitute compliance with ~~Subparagraph~~ Paragraph (b) of this Rule.

Authority G.S. 143-214.1.

**15A NCAC 02B .0205 NATURAL CHARACTERISTICS  
OUTSIDE STANDARDS LIMITS (READOPTION  
WITHOUT SUBSTANTIVE CHANGES)**

**15A NCAC 02B .0206 FLOW DESIGN CRITERIA FOR  
EFFLUENT LIMITATIONS**

(a) Water quality based effluent limitations shall be developed to allow appropriate frequency and duration of deviations from water quality standards so that the designated uses of receiving waters are protected. There are water quality standards for a number of categories of pollutants and to protect a range of water uses. For this reason, the appropriate frequency and duration of deviations from water quality standards shall not be the same for all categories of standards. A flow design criterion shall be used in the development of water quality based effluent limitations as a simplified means of estimating the acceptable frequency and duration of deviations. More complex modeling techniques may also be used to set effluent limitations directly based on frequency and duration criteria published by the U.S. Environmental Protection Agency available free of charge at <http://water.epa.gov/scitech/swguidance/standards/criteria/current/index.cfm> are hereby incorporated by reference including any subsequent ~~amendments~~, amendments and editions. Use of more complex modeling techniques to set water quality based effluent limitations shall be approved by the Commission or its designee on a case-by-case basis. Flow design criteria to calculate water quality based effluent limitations for categories of water quality standards shall be the following:

- (1) All standards except toxic substances and aesthetics shall be protected using the minimum average flow for a period of seven consecutive days that has an average recurrence of once in ten years (7Q10 flow). Other governing flow strategies, such as varying discharges with the receiving waters ability to assimilate wastes, may be designated by the Commission or its designee on a case-by-case basis if the discharger or permit applicant provides evidence that establishes to the satisfaction of the Director that the alternative flow strategies will give equal or better protection for the water quality standards. "Better protection for the water quality standards" means that deviations from the standard would be expected less frequently than provided by using the 7Q10 flow.
- (2) Toxic substance standards to protect aquatic life from chronic toxicity shall be protected using the 7Q10 flow.
- (3) Toxic substance standards to protect aquatic life from acute toxicity shall be protected using the 1Q10 flow.
- (4) Toxic substance standards to protect human health shall be the following:
  - (A) The 7Q10 flow for standards to protect human health through the consumption of water, fish, and shellfish from noncarcinogens; and

- (B) The mean annual flow to protect human health from carcinogens through the consumption of water, fish, and shellfish unless site specific fish contamination concerns necessitate the use of an alternative design flow;

- (5) Aesthetic quality shall be protected using the minimum average flow for a period of 30 consecutive days that has an average recurrence of once in two years (30Q2 flow).

(b) In cases where the stream flow is regulated, a minimum daily low flow may be used as a substitute for the 7Q10 flow, except in cases where there are acute toxicity concerns for aquatic life. In the cases where there are acute toxicity concerns, an alternative low flow, such as the instantaneous minimum release, shall be approved by the Director on a case-by-case basis so that the designated uses of receiving waters are protected.

(c) Flow design criteria shall be used to develop water quality based effluent limitations and for the design of wastewater treatment facilities. Deviations from a specific water quality standard resulting from discharges that are affirmatively demonstrated to be in compliance with water quality based effluent limitations for that standard shall not be a violation pursuant to G.S. 143-215.6 when the actual flow is significantly less than the design flow.

(d) In cases where the 7Q10 flow of the receiving stream is estimated to be zero, water quality based effluent limitations shall be assigned as follows:

- (1) Where the 30Q2 flow is estimated to be greater than zero, effluent limitations for new or expanded (additional) discharges of oxygen consuming waste shall be set at BOD<sub>5</sub> = 5 mg/l, NH<sub>3</sub>-N = 2 mg/l and DO = 6 mg/l, unless it is determined by the Director that these limitations will not protect water quality standards. Requirements for existing discharges shall be determined on a case-by-case basis by the Director. More stringent limits shall be applied in cases where violations of water quality standards are predicted to occur for a new or expanded discharge with the limits set pursuant to this Rule, or where existing limits are determined to be inadequate to protect water quality standards.
- (2) If the 30Q2 and 7Q10 flows are both estimated to be zero, no new or expanded (additional) discharge of oxygen consuming waste shall be allowed. Requirements for existing discharges to streams where the 30Q2 and 7Q10 flows are both estimated to be zero shall be determined on a case-by-case basis.
- (3) Other water quality standards shall be protected by requiring the discharge to meet the standards unless the Director determines that alternative limitations protect the classified water uses.

(e) Receiving water flow statistics shall be estimated through consultation with the U.S. Geological Survey. Estimates for any given location may be based on actual flow data, modeling

analyses, or other methods determined to be appropriate by the Commission or its designee.

*Authority G.S. 143-214.1; 143-215.3(a)(1).*

**15A NCAC 02B .0208 STANDARDS FOR TOXIC SUBSTANCES AND TEMPERATURE (READoption WITHOUT SUBSTANTIVE CHANGES)**

**15A NCAC 02B .0211 FRESH SURFACE WATER QUALITY STANDARDS FOR CLASS C WATERS**

General. The water quality standards for all fresh surface waters shall be the basic standards applicable to Class C waters. Water quality standards for temperature and numerical water quality standards for the protection of human health applicable to all ~~fresh~~ surface waters are in Rule .0208 of this Section. Additional and more stringent standards applicable to other specific freshwater classifications are specified in Rules .0212, .0214, .0215, .0216, .0218, .0219, .0223, .0224 and .0225 of this Section. ~~Action Levels for purposes of National Pollutant Discharge Elimination System (NPDES) permitting are specified in Item (22) of this Rule.~~

- (1) ~~Best Usage of Waters: aquatic life propagation and maintenance of biological integrity (including fishing and fish), wildlife, secondary recreation, agriculture and any other usage except for primary recreation or as a source of water supply for drinking, culinary or food processing purposes; survival, and maintenance of biological integrity (including fishing and fish); wildlife; secondary contact recreation as defined in Rule .0202 of this Section; agriculture; and any other usage except for primary contact recreation or as a source of water supply for drinking, culinary, and food processing purposes. All freshwaters shall be classified to protect these uses at a minimum.~~
- (2) ~~Conditions Related to Best Usage: the waters shall be suitable for aquatic life propagation and maintenance of biological integrity, wildlife, secondary recreation, and agriculture. all best uses specified in this Rule. Sources of water pollution that preclude any of these uses on either a short term or long term basis shall be considered to be violating a water quality standard;~~
- (3) Chlorine, total residual: 17 ug/l;
- (4) Chlorophyll a (corrected): not greater than 40 ug/l (based upon monthly averaging where such data are available during the growing season which is generally April 1 – October 31) for lakes, reservoirs, and other waters subject to growths of macroscopic or microscopic vegetation not designated as trout waters, and not greater than 15 ug/l for lakes, reservoirs, and other waters subject to growths of macroscopic or microscopic vegetation designated as trout waters (not applicable to lakes or reservoirs less than 10 acres in surface

area). The Commission or its designee may prohibit or limit any discharge of waste into surface waters if the surface waters experience or the discharge would result in growths of microscopic or macroscopic vegetation such that the standards established pursuant to this Rule would be violated or the intended best usage of the waters would be impaired;

- (5) Cyanide, total: 5.0 ~~ug/L~~; ug/l;
- (6) Dissolved oxygen: not less than 6.0 mg/l for trout waters; for non-trout waters, not less than a daily average of 5.0 mg/l with a minimum instantaneous value of not less than 4.0 mg/l; swamp waters, lake coves, or backwaters, and lake bottom waters may have lower values if caused by natural conditions;
- (7) Fecal coliform: shall not exceed a geometric mean of 200/100ml (MF count) based upon at least five consecutive samples examined during any 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 are expected during rainfall events and, in some cases, this violation is expected to be caused by uncontrollable nonpoint source pollution. All coliform concentrations shall be analyzed using the membrane filter technique, unless high turbidity or other adverse conditions necessitate the tube dilution method. In case of controversy over results, the MPN 5-tube dilution technique shall be used as the reference method;
- (8) Floating solids, settleable solids, or sludge deposits: only such amounts attributable to sewage, industrial wastes, or other wastes as shall not make the water unsafe or unsuitable for aquatic life and wildlife or impair the waters for any designated uses;
- (9) Fluoride: 1.8 mg/l;
- (10) Gases, total dissolved: not greater than 110 percent of saturation;
- (11) Metals:
  - (a) With the exception of mercury and selenium, freshwater aquatic life standards for metals shall be based upon measurement of the dissolved fraction of the metal. Mercury and selenium water quality standards shall be based upon measurement of the total recoverable metal;
  - (b) Freshwater metals standards that are not hardness-dependent shall be as follows:
    - (i) Arsenic, dissolved, acute: WER· 340 ug/l;
    - (ii) Arsenic, dissolved, chronic: WER· 150 ug/l;
    - (iii) Beryllium, dissolved, acute: WER· 65 ug/l;

- (iv) Beryllium, dissolved, chronic: WER· 6.5 ug/l;
- (v) Chromium VI, dissolved, acute: WER· 16 ug/l;
- (vi) Chromium VI, dissolved, chronic: WER· 11 ug/l;
- (vii) Mercury, total recoverable, chronic: 0.012 ug/l;
- (viii) Selenium, total recoverable, chronic: 5 ug/l;
- (ix) Silver, dissolved, chronic: WER· 0.06 ug/l;

With the exception of mercury and selenium, acute and chronic freshwater aquatic life standards for metals listed in this Subparagraph apply to the dissolved form of the metal and apply as a function of the pollutant's water effect ratio (WER). A WER expresses the difference between the measures of the toxicity of a substance in laboratory waters and the toxicity in site water. The WER shall be assigned a value equal to one unless any person demonstrates to the Division's satisfaction in a permit proceeding that another value is developed in accordance with the "Water Quality Standards Handbook: Second Edition" published by the US Environmental Protection Agency (EPA-823-B-12-002), free of charge, at

<http://water.epa.gov/scitech/swguidance/standards/handbook/>, hereby incorporated by reference including any subsequent ~~amendments~~ amendments and editions. Alternative site-specific standards may also be developed when any person submits values that demonstrate to the Commissions' satisfaction that they were derived in accordance with the "Water Quality Standards Handbook: Second Edition, Recalculation Procedure or the Resident Species Procedure", hereby incorporated by reference including subsequent amendments at <http://water.epa.gov/scitech/swguidance/standards/handbook/>.

This material is available free of charge.

Hardness-dependent freshwater metals standards are located in Sub-Item (c) and (d) of this Rule and in Table A: Dissolved Freshwater Standards for Hardness-Dependent Metals;

(c) 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 CaCO<sub>3</sub> 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.~~

(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 CaCO<sub>3</sub> 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;~~

(d) Alternatives:  
Acute and chronic freshwater aquatic life standards for metals listed in Table A apply to the dissolved form of the metal and apply as a function of the pollutant's water effect ratio (WER), which is set forth in Sub-Item (b) of this Rule. Alternative site-specific

standards may also be developed as set forth in Sub-Item (b) of this Rule;

Table A: Dissolved Freshwater Standards for Hardness-Dependent Metals

Numeric standards calculated at 25 mg/l hardness are listed below for illustrative purposes. The Water Effects Ratio (WER) is equal to one unless determined otherwise under Sub-Item (d) of this Rule.

Metal	Equations for Hardness-Dependent Freshwater Metals (ug/l)	Standard at 25 mg/l hardness (ug/l)
Cadmium, Acute	$WER \cdot \{1.136672 - [\ln \text{ hardness}](0.041838)\} \cdot e^{\{0.9151 [\ln \text{ hardness}] - 3.1485\}}$	0.82
Cadmium, Acute, Trout waters	$WER \cdot \{1.136672 - [\ln \text{ hardness}](0.041838)\} \cdot e^{\{0.9151 [\ln \text{ hardness}] - 3.6236\}}$	0.51
Cadmium, Chronic	$WER \cdot \{1.101672 - [\ln \text{ hardness}](0.041838)\} \cdot e^{\{0.7998 [\ln \text{ hardness}] - 4.4451\}}$	0.15
Chromium III, Acute	$WER \cdot [0.316 \cdot e^{\{0.8190 [\ln \text{ hardness}] + 3.7256\}}]$	180
Chromium III, Chronic	$WER \cdot [0.860 \cdot e^{\{0.8190 [\ln \text{ hardness}] + 0.6848\}}]$	24
Copper, Acute	$WER \cdot [0.960 \cdot e^{\{0.9422 [\ln \text{ hardness}] - 1.700\}}]$ Or, Aquatic Life Ambient Freshwater Quality Criteria—Copper 2007 Revision (EPA-822-R-07-001)	3.6  NA
Copper, Chronic	$WER \cdot [0.960 \cdot e^{\{0.8545 [\ln \text{ hardness}] - 1.702\}}]$ Or, Aquatic Life Ambient Freshwater Quality Criteria—Copper 2007 Revision (EPA-822-R-07-001)	2.7  NA
Lead, Acute	$WER \cdot \{1.46203 - [\ln \text{ hardness}](0.145712)\} \cdot e^{\{1.273 [\ln \text{ hardness}] - 1.460\}}$	14
Lead, Chronic	$WER \cdot \{1.46203 - [\ln \text{ hardness}](0.145712)\} \cdot e^{\{1.273 [\ln \text{ hardness}] - 4.705\}}$	0.54
Nickel, Acute	$WER \cdot [0.998 \cdot e^{\{0.8460 [\ln \text{ hardness}] + 2.255\}}]$	140
Nickel, Chronic	$WER \cdot [0.997 \cdot e^{\{0.8460 [\ln \text{ hardness}] + 0.0584\}}]$	16
Silver, Acute	$WER \cdot [0.85 \cdot e^{\{1.72 [\ln \text{ hardness}] - 6.59\}}]$	0.30
Zinc, Acute	$WER \cdot [0.978 \cdot e^{\{0.8473 [\ln \text{ hardness}] + 0.884\}}]$	36
Zinc, Chronic	$WER \cdot [0.986 \cdot e^{\{0.8473 [\ln \text{ hardness}] + 0.884\}}]$	36

- (e) Compliance with acute instream metals standards shall only be evaluated using an average of two or more samples collected within one hour. Compliance with chronic instream metals standards shall only be evaluated using an average of a minimum of four samples taken on consecutive days, or as a 96-hour average;
- (f) ~~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 complexities 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;~~
- (12) Oils, deleterious substances, colored, or other wastes: only such amounts as shall not render the waters injurious to public health, secondary recreation, or to aquatic life and wildlife, or adversely affect the palatability of fish, aesthetic quality, or impair the waters for any designated uses. For the purpose of implementing this Rule, oils, deleterious substances, colored, or other wastes shall include substances that cause a film or sheen upon or discoloration of the surface of the water or adjoining shorelines pursuant to 40 CFR 110.3(a)-(b) which are hereby incorporated by reference including any subsequent amendments and ~~additions~~, editions. This material is available, free of charge, at: <http://www.ecfr.gov/>;
- (13) Pesticides:
- (a) Aldrin: 0.002 ug/l;
  - (b) Chlordane: 0.004 ug/l;
  - (c) DDT: 0.001 ug/l;
  - (d) Demeton: 0.1 ug/l;
  - (e) Dieldrin: 0.002 ug/l;
  - (f) Endosulfan: 0.05 ug/l;
  - (g) Endrin: 0.002 ug/l;
  - (h) Guthion: 0.01 ug/l;
  - (i) Heptachlor: 0.004 ug/l;
  - (j) Lindane: 0.01 ug/l;
  - (k) Methoxychlor: 0.03 ug/l;
  - (l) Mirex: 0.001 ug/l;
  - (m) Parathion: 0.013 ug/l; and
  - (n) Toxaphene: 0.0002 ug/l;
- (14) pH: shall be normal for the waters in the area, which range between 6.0 and 9.0 except that swamp waters may have a pH as low as 4.3 if it is the result of natural conditions;
- (15) Phenolic compounds: only such levels as shall not result in fish-flesh tainting or impairment of other best usage;
- (16) Polychlorinated biphenyls (total of all PCBs and congeners identified): 0.001 ug/l;
- (17) Radioactive substances:
- (a) Combined radium-226 and radium-228: the average annual activity level (based on at least one sample collected per quarter) for combined radium-226 and radium-228 shall not exceed five picoCuries per liter;
  - (b) Alpha Emitters: the average annual gross alpha particle activity (including radium-226, but excluding radon and uranium) shall not exceed 15 picoCuries per liter;
  - (c) Beta Emitters: the average annual activity level (based on at least one sample collected per quarter) for strontium-90 shall not exceed eight picoCuries per liter; nor shall the average annual gross beta particle activity (excluding potassium-40 and other naturally occurring radionuclides) exceed 50 picoCuries per liter; nor shall the average annual activity level for tritium exceed 20,000 picoCuries per liter;
- (18) Temperature: not to exceed 2.8 degrees C (5.04 degrees F) above the natural water temperature, and in no case to exceed 29 degrees C (84.2 degrees F) for mountain and upper piedmont waters and 32 degrees C (89.6 degrees F) for lower piedmont and coastal plain Waters; the temperature for trout waters shall not be increased by more than 0.5 degrees C (0.9 degrees F) due to the discharge of heated liquids, but in no case to exceed 20 degrees C (68 degrees F);
- (19) Toluene: 11 ug/l or 0.36 ug/l in trout classified waters;
- (20) Trialkyltin compounds: 0.07 ug/l expressed as tributyltin;
- (21) Turbidity: the turbidity in the receiving water shall not exceed 50 Nephelometric Turbidity Units (NTU) in streams not designated as trout waters and 10 NTU in streams, lakes, or reservoirs designated as trout waters; for lakes and reservoirs not designated as trout waters, the turbidity shall not exceed 25 NTU; if turbidity exceeds these levels due to natural background conditions, the existing turbidity level shall not be increased. Compliance with this turbidity standard can be met when land management activities employ Best Management Practices (BMPs) [as defined by Rule .0202 of this Section] recommended by the Designated Nonpoint Source Agency [as defined by Rule .0202 of this Section]. BMPs shall be in full compliance with all specifications governing the proper design, installation, operation, and maintenance of such ~~BMPs; BMPs.~~
- (22) ~~Action Levels for Toxic Substances~~ Toxic Substance Levels 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 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) are 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 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 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.

Authority G.S. 143-214.1; 143-215.3(a)(1).

#### 15A NCAC 02B .0212 FRESH SURFACE WATER QUALITY STANDARDS FOR CLASS WS-I WATERS

The following water quality standards apply to surface waters within water supply watersheds classified as WS-I. Water quality standards applicable to Class C waters as described in Rule .0211 of this Section shall also apply to Class WS-I waters.

- (1) ~~The best usage of WS-I waters are as follows: a source of water supply for drinking, culinary, or food processing purposes for those users desiring maximum protection of their water supplies; waters located on land in public ownership; and any best usage specified for Class C waters; Best Usage of Waters: a source of water supply for drinking, culinary, or food processing purposes for those users desiring maximum protection of their water supplies and any best usage specified for Class C waters; waters located on land in public ownership and in undeveloped watersheds.~~
- (2) ~~The conditions related to the best usage shall be as follows: waters of this class are protected water supplies within essentially natural and undeveloped watersheds in public ownership with no permitted point source dischargers except those specified in Rule .0104 of this Subchapter; waters within this class shall be~~

~~relatively unimpacted by nonpoint sources of pollution; land use management programs are required to protect waters from nonpoint source pollution; Conditions Related to Best Usage:~~

- (a) Chemical and physical water quality parameters in a WS-I watershed shall meet requirements as specified in Item (3) of this Rule.
- (b) Wastewater and stormwater point source discharges in a WS-I watershed shall meet requirements as specified in Item (4) of this Rule.
- (c) Nonpoint source pollution in a WS-I watershed shall meet requirements as specified in Item (5) of this Rule.
- (d) ~~the~~ The waters, following treatment required by the Division, shall meet the Maximum Contaminant Level concentrations considered safe for drinking, culinary, and food-processing purposes that are specified in the national drinking water regulations and in the North Carolina Rules Governing Public Water Supplies, 15A NCAC 18C .1500. .1500, which are hereby incorporated by reference including subsequent amendments and editions.
- (e) Sources of water pollution that preclude any of ~~these~~ the best uses on either a short term or long term basis shall be considered to be violating a water quality standard.
- (f) The Class WS-I classification may be used to protect portions of Class WS-II, WS-III, and WS-IV water supplies. For reclassifications occurring after the July 1, 1992 statewide reclassification, the more protective classification requested by local governments shall be considered by the Commission when all local governments having jurisdiction in the affected area(s) have adopted a resolution and the appropriate ordinances to protect the watershed or the Commission acts to protect a watershed when one or more local governments has failed to adopt necessary protection measures;
- (3) ~~Quality standards applicable to Class WS-I Waters shall be as follows: Chemical and physical water quality parameters in a WS-I watershed shall meet the following requirements:~~
  - (a) MBAS (Methylene-Blue Active Substances): not greater than 0.5 mg/l to protect the aesthetic qualities of water supplies and to prevent foaming;

- (b) ~~Nonpoint Source Pollution: none shall be allowed that would adversely impact the waters for use as a water supply or any other designated use;~~
- (e)(b) Organisms of coliform group: total coliforms not to exceed 50/100 ml (MF count) as a monthly geometric mean value in watersheds serving as unfiltered water supplies;
- (d)(c) Chlorinated phenolic compounds: not greater than 1.0 ug/l to protect water supplies from taste and odor problems from chlorinated phenols;
- (e) ~~Sewage, industrial wastes: none shall be allowed except those specified in Item (2) of this Rule or Rule .0104 of this Subchapter;~~
- (d)(d) Solids, total dissolved: not greater than 500 mg/l;
- (e)(e) Total hardness: not greater than 100 mg/l as calcium carbonate (CaCO<sub>3</sub> or Ca + Mg);
- (f)(f) Toxic and other deleterious substances:
- (i) Water quality standards (maximum permissible concentrations) to protect human health through water consumption and fish tissue consumption for ~~non-carcinogens in Class WS-I waters:~~ non-carcinogens:
- (A) Barium: 1.0 mg/l;
- (B) Chloride: 250 mg/l;
- (C) Nickel: 25 ug/l;
- (D) Nitrate nitrogen: 10.0 mg/l;
- (E) 2,4-D: 70 ug/l;
- (F) 2,4,5-TP (Silvex): 10 ug/l; and
- (G) Sulfates: 250 mg/l;
- (ii) Water quality standards (maximum permissible concentrations) to protect human health through water consumption and fish tissue consumption for ~~carcinogens in Class WS-I waters:~~ carcinogens:
- (A) Aldrin: 0.05 ng/l;
- (B) Arsenic: 10 ug/l;
- (C) Benzene: 1.19 ug/l;
- (D) Carbon tetrachloride: 0.254 ug/l;
- (E) Chlordane: 0.8 ng/l;
- (F) Chlorinated benzenes: 488 ug/l;
- (G) DDT: 0.2 ng/l;
- (H) Dieldrin: 0.05 ng/l;
- (I) Dioxin: 0.000005 ng/l;
- (J) Heptachlor: 0.08 ng/l;
- (K) Hexachlorobutadiene: 0.44 ug/l;
- (L) Polynuclear aromatic hydrocarbons (total of all PAHs): 2.8 ng/l;
- (M) Tetrachloroethane (1,1,2,2): 0.17 ug/l;
- (N) Tetrachloroethylene: 0.7 ug/l;
- (O) Trichloroethylene: 2.5 ug/l; and
- (P) Vinyl Chloride: 0.025 ug/l.
- (4) Wastewater and stormwater point source discharges in a WS-I watershed shall meet the following requirements: Point source discharges shall be permitted pursuant to 15A NCAC 02B .0104.
- (5) Nonpoint source pollution in a WS-I watershed shall meet the following requirements: Nonpoint sources of pollution shall not have an adverse impact, as defined in 15A NCAC 02H .1002, on waters within this class.

*Authority G.S. 143-214.1; 143-215.3(a)(1).*

#### **15A NCAC 02B .0214 FRESH SURFACE WATER QUALITY STANDARDS FOR CLASS WS-II WATERS**

The following water quality standards apply to surface waters within water supply watersheds classified as WS-II. Water quality standards applicable to Class C waters as described in Rule .0211 of this Section shall also apply to Class WS-II waters.

- (1) ~~The best usage of WS-II waters are as follows: a source of water supply for drinking, culinary, or food processing purposes for those users desiring maximum protection for their water supplies where a WS-I classification is not feasible and any best usage specified for Class C waters;~~ Best Usage of Waters: a source of water supply for drinking, culinary, or food-processing purposes for those users desiring maximum protection for their water supplies where a WS-I classification is not feasible and any best usage specified for Class C waters.
- (2) ~~The conditions related to the best usage shall be as follows: waters of this class are protected as water supplies which are in predominantly undeveloped watersheds and meet average watershed development density levels as specified in Sub Items (3)(b)(i)(A), (3)(b)(i)(B), (3)(b)(ii)(A) and (3)(b)(ii)(B) of this Rule; discharges that qualify for a General Permit pursuant to 15A NCAC 02H .0127, trout farm discharges, recycle (closed loop) systems that only discharge in response to 10 year storm events and other stormwater discharges shall be~~

~~allowed in the entire watershed; new domestic and industrial discharges of treated wastewater shall not be allowed in the entire watershed;~~  
Conditions Related to Best Usage:

- (a) Chemical and physical water quality parameters in a WS-II watershed shall meet requirements as specified in Item (3) of this Rule.
  - (b) Wastewater and stormwater point source discharges in a WS-II watershed shall meet requirements as specified in Item (4) of this Rule.
  - (c) Nonpoint source pollution in a WS-II watershed shall meet requirements as specified in Item (5) of this Rule.
  - (d) ~~the~~ The waters, following treatment required by the Division, shall meet the Maximum Contaminant Level concentrations considered safe for drinking, culinary, and food-processing purposes that are specified in the national drinking water regulations and in the North Carolina Rules Governing Public Water Supplies, 15A NCAC 18C .1500. .1500, which are hereby incorporated by reference including subsequent amendments and editions.
  - (e) Sources of water pollution that preclude any of ~~these~~ the best uses ~~on either a short term or long term basis~~ shall be considered to be violating a water quality standard.
  - (f) The Class WS-II classification may be used to protect portions of Class WS-III and WS-IV water supplies. For reclassifications of these portions of Class WS-III and WS-IV water supplies occurring after the July 1, 1992 statewide reclassification, the more protective classification requested by local governments shall be considered by the Commission when all local governments having jurisdiction in the affected area(s) have adopted a resolution and the appropriate ordinances to protect the watershed or the Commission acts to protect a watershed when one or more local governments has failed to adopt necessary protection measures;
- (3) ~~Quality standards applicable to Class WS-II Waters shall be as follows:~~ Chemical and physical water quality parameters in a WS-II watershed shall meet the following requirements:
- (a) ~~Sewage, industrial wastes, non-process industrial wastes, or other wastes: none shall be allowed except~~

~~for those specified in either Item (2) of this Rule and Rule .0104 of this Subchapter; none shall be allowed that have an adverse effect on human health or that are not treated to the satisfaction of the Commission and in accordance with the requirements of the Division. Any discharger shall be required upon request by the Commission to disclose all chemical constituents present or potentially present in their wastes and chemicals that could be spilled or be present in runoff from their facility that may have an adverse impact on downstream water quality. These facilities may be required to have spill and treatment failure control plans as well as perform special monitoring for toxic substances;~~

(b) ~~Nonpoint Source and Stormwater Pollution: none that would adversely impact the waters for use as a water supply or any other designated use;~~

(i) ~~Nonpoint Source and Stormwater Pollution Control Criteria for Entire Watershed:~~

(A) ~~Low Density Option: development density shall be limited to either no more than one dwelling unit per acre of single family detached residential development (or 40,000 square foot lot excluding roadway right of way), or 12 percent built upon area for all other residential and non-residential development in the watershed outside of the critical area; stormwater runoff from the development shall be transported by vegetated conveyances to the maximum extent practicable;~~

(B) ~~High Density Option: if new development~~

- exceeds the low density option requirements as stated in Sub Item (3)(b)(i)(A) of this Rule, then engineered stormwater controls shall be used to control runoff from the first inch of rainfall; new residential and non-residential development shall not exceed 30 percent built upon area;
- (C) Land within the watershed shall be deemed compliant with the density requirements if the following condition is met: the density of all existing development at the time of reclassification does not exceed the density requirement when densities are averaged throughout the entire watershed area at the time of classification;
- (D) Cluster development shall be allowed on a project by project basis as follows:
- (I) overall density of the project meets associated density or stormwater control requirements of this Rule;
- (II) buffers meet the minimum statewide water supply watershed protection requirements;
- (III) built upon areas shall be designed and located to minimize stormwater runoff impact to the receiving waters; minimize concentrated stormwater flow; maximize the use of sheet flow through vegetated areas; and maximize the flow length through vegetated areas;
- (IV) areas of concentrated development shall be located in upland areas and away, to the maximum extent practicable, from surface waters and drainageways;
- (V) remainder of tract to remain in vegetated or natural state;
- (VI) area in the vegetated or natural state may be conveyed to a property owners association, a local government for preservation as a park or greenway, a conservation organization, or placed in a permanent

conservation  
or ~~farmland~~  
preservation  
easement;  
(VII) a maintenance  
agreement for  
the vegetated  
or natural area  
shall be filed  
with ~~the~~  
Register ~~of~~  
Deeds; and  
(VIII) cluster  
development  
that meets the  
applicable low  
density option  
requirements  
shall transport  
stormwater  
runoff from  
the  
development  
by vegetated  
conveyances  
to ~~the~~  
maximum  
extent  
practicable;  
(E) A maximum of 10  
percent of each  
jurisdiction's  
portion of the  
watershed outside  
of the critical area as  
delineated on July 1,  
1993 may be  
developed with new  
development  
projects ~~and~~  
expansions ~~of~~  
existing  
development of up  
to 70 percent  
built upon surface  
area (the "10/70  
option") in addition  
to ~~the~~ new  
development  
approved ~~in~~  
compliance with the  
appropriate  
requirements ~~of~~  
Sub-Item  
(3)(b)(i)(A) ~~or~~  
Sub-Item  
(3)(b)(i)(B) of this  
Rule. ~~For~~  
expansions ~~to~~

existing  
development, ~~the~~  
existing built upon  
surface area shall  
not be counted  
toward the allowed  
70 percent  
built upon surface  
area. A local  
government having  
jurisdiction within  
the watershed may  
transfer, in whole or  
in part, its right to  
the 10/70 option  
land area to another  
local government  
within ~~the~~  
watershed upon  
submittal of a joint  
resolution ~~and~~  
review by the  
Commission. When  
the water supply  
watershed ~~is~~  
composed of public  
lands, such as  
National Forest  
land, ~~local~~  
governments may  
count the public  
land acreage within  
the watershed  
outside of the  
critical area in  
calculating the  
acreage allowed  
under ~~this~~  
provision. For local  
governments that do  
not choose to use  
the high density  
option in that WS II  
watershed, each  
project shall, to the  
maximum extent  
practicable,  
minimize  
built upon surface  
area, ~~direct~~  
stormwater runoff  
away from surface  
waters, ~~and~~  
incorporate best  
management  
practices, as defined  
in Rule .0202 of this  
Section, ~~to~~  
minimize water

- quality impacts. If the ~~local~~ government selects the high density development option within that WS II watershed, then engineered stormwater controls shall be employed for the new development;
- (F) If ~~local~~ governments choose the high density development option that requires stormwater controls, then they shall assume ultimate responsibility for operation and maintenance of the required controls as outlined in Rule .0104 of this Subchapter;
- (G) A minimum 100 foot vegetative buffer shall be required for all new development activities that exceed the low density option requirements as specified in Sub Items (3)(b)(i)(A) and Sub Item (3)(b)(ii)(A) of this Rule, otherwise a minimum 30 foot vegetative buffer for development activities shall be required along all perennial waters indicated on the most recent versions of U.S.G.S. U.S. Geological Survey 1:24,000 (7.5 minute) scale topographic maps or as determined by local government studies. Nothing in this Rule shall stand as a bar to artificial streambank or shoreline stabilization;
- (H) No new development shall be allowed in the buffer; water dependent structures, or other structures such as flag poles, signs, and security lights, which result in only de minimus increases in impervious area and public projects such as road crossings and greenways may be allowed where no practicable alternative exists. These activities shall minimize built upon surface area and avoid channelizing stormwater;
- (I) No National Pollutant Discharge Elimination System (NPDES) permits shall be issued for landfills that discharge treated leachate;
- (ii) Critical Area Nonpoint Source and Stormwater Pollution Control Criteria:
- (A) Low Density Option: new development shall be limited to either no more than one dwelling unit of single family detached residential development per two acres (or 80,000 square foot lot excluding roadway right of way), or six percent built upon area for all other residential and non-residential

- development;  
stormwater runoff  
from the  
development shall  
be transported by  
vegetated  
conveyances to the  
maximum extent  
practicable;
- (B) High Density  
Option: if new  
development  
density exceeds the  
low density  
requirements  
specified in  
Sub Item  
(3)(b)(ii)(A) of this  
Rule, then  
engineered  
stormwater controls  
shall be used to  
control runoff from  
the first inch of  
rainfall; new  
residential and  
non residential  
development  
density shall not  
exceed 24 percent  
built upon area;
- (C) No new permitted  
sites for land  
application of  
residuals or  
petroleum  
contaminated soils  
shall be allowed;
- (D) No new landfills  
shall be allowed;
- (e)(a) MBAS (Methylene-Blue Active  
Substances): not greater than 0.5 mg/l  
to protect the aesthetic qualities of  
water supplies and to prevent foaming;
- (e)(b) Odor producing substances contained  
in sewage or other wastes: only such  
amounts, whether alone or in  
combination with other substances or  
wastes, as shall not cause taste and  
odor difficulties in water supplies that  
cannot be corrected by treatment,  
impair the palatability of fish, or have  
a deleterious effect upon any best  
usage established for waters of this  
class;
- (e)(c) Chlorinated phenolic compounds: not  
greater than 1.0 ug/l to protect water  
supplies from taste and odor problems  
from chlorinated phenols;
- (f)(d) Total hardness: not greater than 100  
mg/l as calcium carbonate (CaCO<sub>3</sub> or  
Ca + Mg);
- (g)(e) Total dissolved solids: not greater than  
500 mg/l;
- (h)(f) Toxic and other deleterious  
substances:
- (i) Water quality standards  
(maximum permissible  
concentrations) to protect  
human health through water  
consumption and fish tissue  
consumption for  
non-carcinogens in Class  
WS-II waters: non-  
carcinogens:
- (A) Barium: 1.0 mg/l;  
(B) Chloride: 250 mg/l;  
(C) Nickel: 25 ug/l;  
(D) Nitrate nitrogen: 10  
mg/l;  
(E) 2,4-D: 70 ug/l;  
(F) 2,4,5-TP (Silvex):  
10 ug/l; and  
(G) Sulfates: 250 mg/l;
- (ii) Water quality standards  
(maximum permissible  
concentrations) to protect  
human health through water  
consumption and fish tissue  
consumption for carcinogens  
in Class WS-II waters:  
carcinogens:
- (A) Aldrin: 0.05 ng/l;  
(B) Arsenic: 10 ug/l;  
(C) Benzene: 1.19 ug/l;  
(D) Carbon tetrachloride:  
0.254 ug/l;  
(E) Chlordane: 0.8 ng/l;  
(F) Chlorinated benzenes:  
488 ug/l;  
(G) DDT: 0.2 ng/l;  
(H) Dieldrin: 0.05 ng/l;  
(I) Dioxin: 0.000005  
ng/l;  
(J) Heptachlor: 0.08 ng/l;  
(K) Hexachlorobutadiene:  
0.44 ug/l;  
(L) Polynuclear aromatic  
hydrocarbons (total of  
all PAHs): 2.8 ng/l;  
(M) Tetrachloroethane  
(1,1,2,2): 0.17 ug/l;  
(N) Tetrachloroethylene:  
0.7 ug/l;  
(O) Trichloroethylene: 2.5  
ug/l; and  
(P) Vinyl Chloride: 0.025  
ug/l.

- (4) Wastewater and stormwater point source discharges in a WS-II watershed shall meet the following requirements:
- (a) Discharges that qualify for a General NPDES Permit pursuant to 15A NCAC 02H .0127 shall be allowed in the entire watershed.
  - (b) Discharges from trout farms that are subject to Individual NPDES Permits shall be allowed in the entire watershed.
  - (c) Stormwater discharges that qualify for an Individual NPDES Permit pursuant to 15A NCAC 02H .0126 shall be allowed in the entire watershed.
  - (d) No discharge of sewage, industrial or other wastes shall be allowed in the entire watershed except for those allowed by Sub-Items (4)(a) through (4)(c) of this Rule or Rule .0104 of this Subchapter; none shall be allowed that have an adverse effect on human health or that are not treated to the satisfaction of the Commission and in accordance with the requirements of the Division. Any discharger shall be required upon request by the Commission to disclose all chemical constituents present or potentially present in their wastes and chemicals that could be spilled or be present in runoff from their facility that may have an adverse impact on downstream water quality. These facilities may be required to have spill and treatment failure control plans as well as perform special monitoring for toxic substances.
  - (e) New domestic and industrial discharges of treated wastewater that are subject to Individual NPDES Permits shall not be allowed in the entire watershed.
  - (f) No new landfills shall be allowed in the Critical Area, and no NPDES permits shall be issued for landfills that discharge treated leachate in the remainder of the watershed.
  - (g) No new permitted sites for land application of residuals or petroleum contaminated soils shall be allowed in the Critical Area.
- (5) Nonpoint source pollution in a WS-II watershed shall meet the following requirements:
- (a) None that would have an adverse impact, as that term is defined in 15A NCAC 02H .1002, on waters for use as a water supply or any other designated use.

- (b) Waters of this class shall be protected as water supplies that are located in watersheds that meet average watershed development density levels specified in Rule .0624 of this Subchapter.

*Authority G.S. 143-214.1; 143-215.3(a)(1).*

**15A NCAC 02B .0215 FRESH SURFACE WATER QUALITY STANDARDS FOR CLASS WS-III WATERS**

The following water quality standards apply to surface waters within water supply watersheds classified as WS-III. Water quality standards applicable to Class C waters as described in Rule .0211 of this Section shall also apply to Class WS-III waters.

- (1) ~~The best usage of WS-III waters are as follows: a source of water supply for drinking, culinary, or food processing purposes for those users where a more protective WS-I or WS-II classification is not feasible and any other best usage specified for Class C waters; Best Usage of Waters: a source of water supply for drinking, culinary, or food-processing purposes for those users where a more protective WS-I or WS-II classification is not feasible and any other best usage specified for Class C waters.~~
- (2) ~~The conditions related to the best usage shall be as follows: waters of this class are protected as water supplies that are in low to moderately developed watersheds and meet average watershed development density levels as specified in Sub-Items (3)(b)(i)(A), (3)(b)(i)(B), (3)(b)(ii)(A) and (3)(b)(ii)(B) of this Rule; discharges that qualify for a General Permit pursuant to 15A NCAC 2H .0127, trout farm discharges, recycle (closed-loop) systems that only discharge in response to 10-year storm events, and other stormwater discharges shall be allowed in the entire watershed; treated domestic wastewater discharges shall be allowed in the entire watershed but no new domestic wastewater discharges shall be allowed in the critical area; no new industrial wastewater discharges except non-process industrial discharges shall be allowed in the entire watershed; Conditions Related to Best Usage:~~
  - (a) Chemical and physical water quality parameters in a WS-III watershed shall meet requirements as specified in Item (3) of this Rule.
  - (b) Wastewater and stormwater point source discharges in a WS-III watershed shall meet requirements as specified in Item (4) of this Rule.
  - (c) Nonpoint source pollution in a WS-III watershed shall meet requirements as specified in Item (5) of this Rule.



- (d) ~~the~~ The waters, following treatment required by the Division, shall meet the Maximum Contaminant Level concentrations considered safe for drinking, culinary, or food-processing purposes that are specified in the national drinking water regulations and in the North Carolina Rules Governing Public Water Supplies, 15A NCAC 18C ~~.1500~~, .1500 which are hereby incorporated by reference including any subsequent amendments and editions.
- (e) Sources of water pollution that preclude any of ~~these~~ the best uses ~~on~~ either a short term or long term basis shall be considered to be violating a water quality standard.
- (f) The Class WS-III classification may be used to protect portions of Class WS-IV water supplies. For reclassifications of these portions of WS-IV water supplies occurring after the July 1, 1992 statewide reclassification, the more protective classification requested by local governments shall be considered by the Commission when all local governments having jurisdiction in the affected area(s) have adopted a resolution and the appropriate ordinances to protect the watershed or the Commission acts to protect a watershed when one or more local governments has failed to adopt necessary protection measures;
- (3) ~~Quality standards applicable to Class WS-III Waters shall be as follows: Chemical and physical water quality parameters in a WS-III watershed shall meet the following requirements:~~
- (a) ~~Sewage, industrial wastes, non-process industrial wastes, or other wastes: none shall be allowed except for those specified in Item (2) of this Rule and Rule .0104 of this Subchapter; none shall be allowed that have an adverse effect on human health or that are not treated to the satisfaction of the Commission and in accordance with the requirements of the Division. Any discharger may be required by the Commission to disclose all chemical constituents present or potentially present in their wastes and chemicals that could be spilled or be present in runoff from their facility that may have an adverse impact on downstream water quality.~~
- ~~These facilities may be required to have spill and treatment failure control plans as well as perform special monitoring for toxic substances;~~
- (b) ~~Nonpoint Source and Stormwater Pollution: none that would adversely impact the waters for use as water supply or any other designated use;~~
- (i) ~~Nonpoint Source and Stormwater Pollution Control Criteria For Entire Watershed:~~
- (A) ~~Low Density Option: development density shall be limited to either no more than two dwelling units of single family detached residential development per acre (or 20,000 square foot lot excluding roadway right-of-way), or 24 percent built upon area for all other residential and non-residential development in watershed outside of the critical area; stormwater runoff from the development shall be transported by vegetated conveyances to the maximum extent practicable;~~
- (B) ~~High Density Option: if new development density exceeds the low density option requirements specified in Sub-Item (3)(b)(i)(A) of this Rule then development shall control runoff from the first inch of rainfall; new residential and non-residential development shall not exceed 50~~

- percent—built upon area;
- (C) Land—within the watershed shall be deemed compliant with the density requirements if the following condition is met: the density of all existing development at the time—of reclassification does not—exceed the density requirement when densities are averaged throughout—the entire watershed area;
- (D) Cluster development shall be allowed on a project by project basis as follows:
- (I) overall density of the project meets associated density—or stormwater control requirements of this Rule;
- (II) buffers—meet the minimum statewide water—supply watershed protection requirements;
- (III) built upon areas shall be designed and located—to minimize stormwater runoff impact to—the receiving waters; minimize concentrated stormwater flow; maximize the use of sheet flow through vegetated areas,—and maximize the flow—length through vegetated areas;
- (IV) areas—of concentrated development shall—be located—in upland areas and away, to the maximum extent practicable, from—surface waters—and drainageways;
- (V) remainder—of tract to remain in vegetated or natural state;
- (VI) area—in the vegetated—or natural—state may—be conveyed to a property owners association,—a local government for preservation as a park or greenway,—a conservation organization, or placed in a permanent conservation or—farmland preservation easement;
- (VII) a maintenance agreement for the—vegetated or natural area shall be filed with—the Register—of Deeds; and
- (VIII) cluster development that—meets the applicable low—density

	option requirements shall transport stormwater runoff from the development by vegetated conveyances to the maximum extent practicable;	land area to another local government within the watershed upon submittal of a joint resolution and review by the Commission. When the water supply watershed is composed of public lands, such as National Forest land, local governments may count the public land acreage within the watershed outside of the critical area in figuring the acreage allowed under this provision. For local governments that do not choose to use the high density option in that WS III watershed, each project shall, to the maximum extent practicable, minimize built upon surface area, direct stormwater runoff away from surface waters, and incorporate best management practices, as defined in Rule .0202 of this Section, to minimize water quality impacts. If the local government selects the high density development option within that WS III watershed, then engineered stormwater controls shall be employed for the new development;
(E)	A maximum of 10 percent of each jurisdiction's portion of the watershed outside of the critical area as delineated on July 1, 1993 may be developed with new development projects and expansions of existing development of up to 70 percent built upon surface area (the "10/70 option") in addition to the new development approved in compliance with the appropriate requirements of Sub Item (3)(b)(i)(A) or Sub Item (3)(b)(i)(B) of this Rule. For expansions to existing development, the existing built upon surface area shall not be counted toward the allowed 70 percent built upon surface area. A local government having jurisdiction within the watershed may transfer, in whole or in part, its right to the 10/70 option	If local governments choose the high density

(F)

- development option that ~~requires~~ engineered stormwater controls, then they shall ~~assume~~ ultimate responsibility for operation and maintenance of the required controls as outlined in Rule .0104 of this Subchapter;
- (G) A minimum 100 foot vegetative buffer shall be required for all new development activities that exceed the low density requirements as specified in Sub Item (3)(b)(i)(A) and Sub Item (3)(b)(ii)(A) of this Rule, otherwise a minimum 30 foot vegetative buffer for development shall be required along all perennial waters indicated on the most recent versions of ~~U.S.G.S. 1:24,000 (7.5 minute) scale~~ topographic maps or as determined by local government studies. Nothing in this Rule shall stand as a bar to artificial streambank or shoreline stabilization;
- (H) No ~~new~~ development shall be allowed in the buffer; ~~water dependent~~ structures, or other structures such as flag poles, signs, and security lights, which result in only ~~de~~ ~~minus~~ increases in impervious area and public projects such as road crossings and greenways may be allowed where no practicable alternative exists. These activities shall minimize built upon surface area and avoid channelizing stormwater; (I) No National Pollutant Discharge Elimination System (NPDES) permits shall be issued for landfills that discharge treated leachate;
- (ii) Critical Area Nonpoint Source and Stormwater Pollution Control Criteria:
- (A) Low Density Option: new development shall be limited to either no more than one dwelling unit of single family detached residential development per acre (or 40,000 square foot lot excluding roadway right of way), or 12 percent built upon area for all other residential and non residential development; stormwater runoff from the development shall be transported by vegetated conveyances to the maximum extent practicable;
- (B) High Density Option: if new development exceeds the low density requirements specified in Sub Item (3)(b)(ii)(A) of this

- ~~Rule, \_\_\_\_\_ then engineered stormwater controls shall be used to control runoff from the first inch of rainfall; development shall not exceed 30 percent built upon area;~~
- ~~(C) No new permitted sites for land application of residuals or petroleum contaminated soils shall be allowed;~~
- ~~(D) No new landfills shall be allowed;~~
- ~~(e)(a)~~ MBAS (Methylene-Blue Active Substances): not greater than 0.5 mg/l to protect the aesthetic qualities of water supplies and to prevent foaming;
- ~~(e)(b)~~ Odor producing substances contained in sewage, industrial wastes, or other wastes: only such amounts, whether alone or in combination with other substances or wastes, as shall not cause taste and odor difficulties in water supplies that cannot be corrected by treatment, impair the palatability of fish, or have a deleterious effect upon any best usage established for waters of this class;
- ~~(e)(c)~~ Chlorinated phenolic compounds: not greater than 1.0 ug/l to protect water supplies from taste and odor problems from chlorinated phenols;
- ~~(e)(d)~~ Total hardness: not greater than 100 mg/l as calcium carbonate (CaCO<sub>3</sub> or Ca + Mg);
- ~~(e)(e)~~ Total dissolved solids: not greater than 500 mg/l;
- ~~(e)(f)~~ Toxic and other deleterious substances:
- (i) Water quality standards (maximum permissible concentrations) to protect human health through water consumption and fish tissue consumption for ~~non-carcinogens in Class WS-III waters: non-carcinogens:~~
- (A) Barium: 1.0 mg/l;
- (B) Chloride: 250 mg/l;
- (C) Nickel: 25 ug/l;
- (D) Nitrate nitrogen: 10 mg/l;
- (E) 2,4-D: 70 ug/l;
- (F) 2,4,5-TP (Silvex): 10 ug/l; and
- (G) Sulfates: 250 mg/l;
- (ii) Water quality standards (maximum permissible concentrations) to protect human health through water consumption and fish tissue consumption for carcinogens in Class WS-III waters: carcinogens:
- (A) Aldrin: 0.05 ng/l;
- (B) Arsenic: 10 ug/l;
- (C) Benzene: 1.19 ug/l;
- (D) Carbon tetrachloride: 0.254 ug/l;
- (E) Chlordane: 0.8 ng/l;
- (F) Chlorinated benzenes: 488 ug/l;
- (G) DDT: 0.2 ng/l;
- (H) Dieldrin: 0.05 ng/l;
- (I) Dioxin: 0.000005 ng/l;
- (J) Heptachlor: 0.08 ng/l;
- (K) Hexachlorobutadiene: 0.44 ug/l;
- (L) Polynuclear aromatic hydrocarbons (total of all PAHs): 2.8 ng/l;
- (M) Tetrachloroethane (1,1,2,2): 0.17 ug/l;
- (N) Tetrachloroethylene: 0.7 ug/l;
- (O) Trichloroethylene: 2.5 ug/l; and
- (P) Vinyl Chloride: 0.025 ug/l.
- (4) Wastewater and stormwater point source discharges in a WS-III watershed shall meet the following requirements:
- (a) Discharges that qualify for a General NPDES Permit pursuant to 15A NCAC 02H .0127 shall be allowed in the entire watershed.
- (b) Discharges from trout farms that are subject to Individual NPDES Permits shall be allowed in the entire watershed.
- (c) Stormwater discharges that qualify for an Individual NPDES Permit pursuant to 15A NCAC 02H .0126 shall be allowed in the entire watershed.
- (d) New domestic wastewater discharges that are subject to Individual NPDES Permits shall not be allowed in the

- Critical Area and are allowed in the remainder of the watershed.
- (e) New industrial wastewater discharges that are subject to Individual NPDES Permits except non-process industrial discharges shall not be allowed in the entire watershed.
  - (f) No discharge of sewage, industrial or other wastes shall be allowed in the entire watershed except for those allowed by Sub-Items (4)(a) through (4)(e) of this Rule or Rule .0104 of this Subchapter; none shall be allowed that have an adverse effect on human health or that are not treated to the satisfaction of the Commission and in accordance with the requirements of the Division. Any discharger may be required by the Commission to disclose all chemical constituents present or potentially present in their wastes and chemicals that could be spilled or be present in runoff from their facility that may have an adverse impact on downstream water quality. These facilities may be required to have spill and treatment failure control plans as well as perform special monitoring for toxic substances.
  - (g) No new landfills shall be allowed in the Critical Area, and no NPDES permits shall be issued for landfills to discharge treated leachate in the remainder of the watershed.
  - (h) No new permitted sites for land application of residuals or petroleum contaminated soils shall be allowed in the Critical Area.
- (5) Nonpoint source pollution in a WS-III watershed shall meet the following requirements:
- (a) None that would have an adverse impact, as that term is defined in 15A NCAC 02H .1002, on waters for use as a water supply or any other designated use.
  - (b) Waters of this class shall be protected as water supplies that are located in watersheds that meet average watershed development density levels specified in Rule .0624 of this Subchapter.
- quality standards applicable to Class C waters as described in Rule .0211 of this Section shall also apply to Class WS-IV waters.
- (1) ~~The best usage of WS-IV waters shall be as follows: a source of water supply for drinking, culinary, or food processing purposes for those users where a more protective WS-I, WS-II or WS-III classification is not feasible and any other best usage specified for Class C waters; Best Usage of Waters: a source of water supply for drinking, culinary, or food-processing purposes for those users where a more protective WS-I, WS-II or WS-III classification is not feasible and any other best usage specified for Class C waters.~~
  - (2) ~~The conditions related to the best usage shall be as follows: waters of this class are protected as water supplies that are in moderately to highly developed watersheds or protected areas and which meet average watershed development density levels as specified in Sub Items (3)(b)(i)(A), (3)(b)(i)(B), (3)(b)(ii)(A) and (3)(b)(ii)(B) of this Rule; discharges that qualify for a General Permit pursuant to 15A NCAC 02H .0127, trout farm discharges, recycle (closed loop) systems that only discharge in response to 10 year storm events, other stormwater discharges, and domestic wastewater discharges shall be allowed in the protected and critical areas; treated industrial wastewater discharges shall be allowed in the protected and critical areas; however, new industrial wastewater discharges in the critical area shall be required to meet the provisions of 15A NCAC 02B .0224 (1)(b)(iv), (v) and (vii), and 15A NCAC 02B .0203; new industrial connections and expansions to existing municipal discharges with a pretreatment program pursuant to 15A NCAC 02H .0904 shall be allowed; Conditions Related to Best Usage:~~
    - (a) Chemical and physical water quality parameters in a WS-IV watershed shall meet requirements as specified in Item (3) of this Rule.
    - (b) Wastewater and stormwater point source discharges in a WS-IV watershed shall meet requirements as specified in Item (4) of this Rule.
    - (c) Nonpoint source pollution in a WS-IV watershed shall meet requirements as specified in Item (5) of this Rule.
    - (d) ~~the~~ The waters, following treatment required by the Division, shall meet the Maximum Contaminant Level concentrations considered safe for drinking, culinary, or food-processing purposes that are specified in the national drinking water regulations and in the North Carolina Rules

*Authority G.S. 143-214.1; 143-215.3(a)(1).*

**15A NCAC 02B .0216 FRESH SURFACE WATER  
QUALITY STANDARDS FOR CLASS WS-IV WATERS**

The following water quality standards apply to surface waters within water supply watersheds classified as WS-IV. Water

- Governing Public Water Supplies, 15A NCAC 18C .1500- .1500, which are hereby incorporated by reference including subsequent amendments and editions.
- (e) Sources of water pollution that preclude any of ~~these~~ the best uses on either a short term or long term basis shall be considered to be violating a water quality standard.
- (f) The Class WS-II or WS-III classifications may be used to protect portions of Class WS-IV water supplies. For reclassifications of these portions of WS-IV water supplies occurring after the July 1, 1992 statewide reclassification, the more protective classification requested by local governments shall be considered by the Commission when all local governments having jurisdiction in the affected area(s) have adopted a resolution and the appropriate ordinances to protect the watershed or the Commission acts to protect a watershed when one or more local governments has failed to adopt necessary protection ~~measures;~~ measures.
- (3) Quality standards applicable to Class WS-IV Waters shall be as follows: Chemical and physical water quality parameters in a WS-IV watershed shall meet the following requirements:
- (a) ~~Sewage, industrial wastes, non process industrial wastes, or other wastes: none shall be allowed except for those specified in Item (2) of this Rule and Rule .0104 of this Subchapter and none shall be allowed that have an adverse effect on human health or that are not treated to the satisfaction of the Commission and in accordance with the requirements of the Division. Any dischargers or industrial users subject to pretreatment standards may be required by the Commission to disclose all chemical constituents present or potentially present in their wastes and chemicals that could be spilled or be present in runoff from their facility which may have an adverse impact on downstream water supplies. These facilities may be required to have spill and treatment failure control plans as well as perform special monitoring for toxic substances;~~
- (b) ~~Nonpoint Source and Stormwater Pollution: none shall be allowed that would adversely impact the waters for use as water supply or any other designated use.~~
- (i) ~~Nonpoint Source and Stormwater Pollution Control Criteria For Entire Watershed or Protected Area:~~
- (A) ~~Low Density Option: development activities that require a Sedimentation/Erosion Control Plan in accordance with 15A NCAC 04 established by the North Carolina Sedimentation Control Commission or approved local government programs as delegated by the Sedimentation Control Commission shall be limited to no more than either: two dwelling units of single family detached development per acre (or 20,000 square foot lot excluding roadway right of way), or 24 percent built upon on area for all other residential and non-residential development; or three dwelling units per acre, or 36 percent built upon area for projects without curb and gutter street systems in the protected area outside of the critical area; stormwater runoff from the development shall be transported by vegetated~~

- (B) conveyances to the maximum extent practicable;  
~~High Density~~  
 Option: if new development activities that require a Sedimentation/Erosion Control Plan exceed the low density requirements of Sub-Item (3)(b)(i)(A) of this Rule, then development shall control the runoff from the first inch of rainfall; new residential and non-residential development shall not exceed 70 percent built upon area;
- (C) Land within the critical and protected area shall be deemed compliant with the density requirements if the following condition is met: the density of all existing development at the time of reclassification does not exceed the density requirement when densities are averaged throughout the entire area;
- (D) Cluster development shall be allowed on a project by project basis as follows:
- (I) overall density of the project meets associated density or stormwater control requirements of this Rule;
  - (II) buffers meet the minimum statewide water supply watershed protection requirements;
  - (III) built upon areas shall be designed and located to minimize stormwater runoff impact to the receiving waters; minimize concentrated stormwater flow; maximize the use of sheet flow through vegetated areas; and maximize the flow length through vegetated areas;
  - (IV) areas of concentrated development shall be located in upland areas and away, to the maximum extent practicable, from surface waters and drainageways;
  - (V) remainder of tract to remain in vegetated or natural state;
  - (VI) area in the vegetated or natural state may be conveyed to a property owners association, a local government for



- preservation  
as a park or  
greenway, a  
conservation  
organization,  
or placed in a  
permanent  
conservation  
or farmland  
preservation  
easement;
- (VII) a maintenance  
agreement for  
the vegetated  
or natural area  
shall be filed  
with the  
Register of  
Deeds; and
- (VIII) cluster  
development  
that meets the  
applicable low  
density option  
requirements  
shall transport  
stormwater  
runoff from  
the  
development  
by vegetated  
conveyances  
to the  
maximum  
extent  
practicable;
- (E) If local  
governments  
choose the high  
density  
development option  
that requires  
engineered  
stormwater  
controls, then they  
shall assume  
responsibility for  
operation and  
maintenance of the  
required controls as  
outlined in Rule  
.0104 of this  
Subchapter;
- (F) A minimum 100  
foot vegetative  
buffer shall be  
required for all new  
development  
activities that
- exceed the low  
density option  
requirements as  
specified in Sub-  
Item (3)(b)(i)(A) or  
Sub-Item  
(3)(b)(ii)(A) of this  
Rule, otherwise a  
minimum 30 foot  
vegetative buffer for  
development shall  
be required along all  
perennial waters  
indicated on the  
most recent versions  
of U.S.G.S.  
1:24,000 (7.5  
minute) scale  
topographic maps or  
as determined by  
local government  
studies;
- (G) No new  
development shall  
be allowed in the  
buffer; water  
dependent  
structures, or other  
structures, such as  
flag poles, signs,  
and security lights,  
which result in only  
de minimus  
increases in  
impervious area and  
public projects such  
as road crossings  
and greenways may  
be allowed where  
no practicable  
alternative exists.  
These activities  
shall minimize  
built upon surface  
area and avoid  
channelizing  
stormwater;
- (H) For local  
governments that do  
not use the high  
density option, a  
maximum of 10  
percent of each  
jurisdiction's  
portion of the  
watershed outside  
of the critical area as  
delineated on July 1,  
1995 may be

developed with new development projects and expansions to existing development of up to 70 percent built upon surface area (the "10/70 option") in addition to the new development approved in compliance with the appropriate requirements of Sub Item (3)(b)(i)(A) of this Rule. For expansions to existing development, the existing built upon surface area shall not be counted toward the allowed 70 percent built upon surface area. A local government having jurisdiction within the watershed may transfer, in whole or in part, its right to the 10/70 option land area to another local government within the watershed upon submittal of a joint resolution for review by the Commission. When the designated water supply watershed area is composed of public land, such as National Forest land, local governments may count the public land acreage within the designated watershed area outside of the critical area in figuring the acreage allowed under this provision. Each

- project shall, to the maximum extent practicable, minimize built upon surface area, direct stormwater runoff away from surface waters and incorporate best management practices, as defined in Rule .0202 of this Section, to minimize water quality impacts;
- (ii) Critical Area Nonpoint Source and Stormwater Pollution Control Criteria:
- (A) Low Density Option: new development activities that require a Sedimentation/Erosion Control Plan in accordance with 15A NCAC 4 established by the North Carolina Sedimentation Control Commission or approved local government programs as delegated by the Sedimentation Control Commission shall be limited to no more than two dwelling units of single family detached development per acre (or 20,000 square foot lot excluding roadway right of way), or 24 percent built upon area for all other residential and non-residential development; stormwater runoff from the development shall

- ~~(B)~~ ~~be transported by vegetated conveyances to the maximum extent practicable;~~ ~~High Density Option: if new development density exceeds the low density requirements specified in Sub-Item (3)(b)(ii)(A) of this Rule, engineered stormwater controls shall be used to control runoff from the first inch of rainfall; new residential and non-residential development shall not exceed 50 percent built upon area;~~
- ~~(C)~~ ~~No new permitted sites for land application of residuals or petroleum contaminated soils shall be allowed;~~
- ~~(D)~~ ~~No new landfills shall be allowed;~~
- ~~(e)(a)~~ MBAS (Methylene-Blue Active Substances): not greater than 0.5 mg/l to protect the aesthetic qualities of water supplies and to prevent foaming;
- ~~(d)(b)~~ Odor producing substances contained in sewage, industrial wastes, or other wastes: only such amounts, whether alone or in combination with other substances or waste, as will not cause taste and odor difficulties in water supplies that cannot be corrected by treatment, impair the palatability of fish, or have a deleterious effect upon any best usage established for waters of this class;
- ~~(e)(c)~~ Chlorinated phenolic compounds: not greater than 1.0 ug/l to protect water supplies from taste and odor problems due to chlorinated phenols shall be allowed. Specific phenolic compounds may be given a different limit if it is demonstrated not to cause taste and odor problems and not to be detrimental to other best usage;
- ~~(f)(d)~~ Total hardness shall not exceed 100 mg/l as calcium carbonate (CaCO<sub>3</sub> or Ca + Mg);
- ~~(g)(e)~~ Total dissolved solids shall not exceed 500 mg/l;
- ~~(h)(f)~~ Toxic and other deleterious substances:
- (i) Water quality standards (maximum permissible concentrations) to protect human health through water consumption and fish tissue consumption for ~~non-carcinogens in Class WS-IV waters:~~ non-carcinogens:
- (A) Barium: 1.0 mg/l;
  - (B) Chloride: 250 mg/l;
  - (C) Nickel: 25 ug/l;
  - (D) Nitrate nitrogen: 10.0 mg/l;
  - (E) 2,4-D: 70 ug/l;
  - (F) 2,4,5-TP (Silvex): 10 ug/l; and
  - (G) Sulfates: 250 mg/l;
- (ii) Water quality standards (maximum permissible concentrations) to protect human health through water consumption and fish tissue consumption for ~~carcinogens in Class WS-IV waters:~~ carcinogens:
- (A) Aldrin: 0.05 ng/l;
  - (B) Arsenic: 10 ug/l;
  - (C) Benzene: 1.19 ug/l;
  - (D) Carbon tetrachloride: 0.254 ug/l;
  - (E) Chlordane: 0.8 ng/l;
  - (F) Chlorinated benzenes: 488 ug/l;
  - (G) DDT: 0.2 ng/l;
  - (H) Dieldrin: 0.05 ng/l;
  - (I) Dioxin: 0.000005 ng/l;
  - (J) Heptachlor: 0.08 ng/l;
  - (K) Hexachlorobutadiene: 0.44 ug/l;
  - (L) Polynuclear aromatic hydrocarbons (total of all PAHs): 2.8 ng/l;
  - (M) Tetrachloroethane (1,1,2,2): 0.17 ug/l;
  - (N) Tetrachloroethylene: 0.7 ug/l;
  - (O) Trichloroethylene: 2.5 ug/l; and
  - (P) Vinyl Chloride: 0.025 ug/l.

- (4) Wastewater and stormwater point source discharges in a WS-IV watershed shall meet the following requirements:
- (a) Discharges that qualify for a General NPDES Permit pursuant to 15A NCAC 02H .0127 shall be allowed in the entire watershed.
  - (b) Discharges from domestic facilities, industrial facilities and trout farms that are subject to Individual NPDES Permits shall be allowed in the entire watershed.
  - (c) Stormwater discharges that qualify for an Individual NPDES Permit pursuant to 15A NCAC 02H .0126 shall be allowed in the entire watershed.
  - (d) No discharge of sewage, industrial wastes, or other wastes shall be allowed in the entire watershed except for those allowed by Sub-Items (4)(a) through (4)(c) of this Rule or Rule .0104 of this Subchapter; none shall be allowed that have an adverse effect on human health or that are not treated to the satisfaction of the Commission and in accordance with the requirements of the Division. Any dischargers or industrial users subject to pretreatment standards may be required by the Commission to disclose all chemical constituents present or potentially present in their wastes and chemicals that could be spilled or be present in runoff from their facility which may have an adverse impact on downstream water supplies. These facilities may be required to have spill and treatment failure control plans as well as perform special monitoring for toxic substances.
  - (e) New industrial discharges of treated wastewater in the critical area shall be required to meet the provisions of Sub-Items (c)(2)(iv), (v), and (vii) of Rule .0224 of this Section and Rule .0203 of this Section.
  - (f) New industrial connections and expansions to existing municipal discharges with a pretreatment program pursuant to 15A NCAC 02H .0904 shall be allowed in the entire watershed.
  - (g) No new landfills shall be allowed in the Critical Area.
  - (h) No new permitted sites for land application residuals or petroleum contaminated soils shall be allowed in the Critical Area.

- (5) Nonpoint source pollution in a WS-IV watershed shall meet the following requirements:
- (a) None that would have an adverse impact, as that term is defined in 15A NCAC 02H .1002, on waters for use as a water supply or any other designated use.
  - (b) Waters of this class shall be protected as water supplies that are located in watersheds that meet average watershed development density levels specified in Rule .0624 of this Subchapter.

*Authority G.S. 143-214.1; 143-215.3(a)(1).*

#### **15A NCAC 02B .0218 FRESH SURFACE WATER QUALITY STANDARDS FOR CLASS WS-V WATERS**

The following water quality standards apply to surface waters within water supply watersheds classified as WS-V. Water quality standards applicable to Class C waters as described in Rule .0211 of this Section shall also apply to Class WS-V waters.

- (1) ~~The best usage of WS-V waters shall be as follows: waters that are protected as water supplies that are upstream and draining to Class WS-IV waters; or waters previously used for drinking water supply purposes; or waters used by industry to supply their employees, but not municipalities or counties, with a raw drinking water supply source, although this type of use shall not be restricted to WS-V classification; and all Class C uses. The Commission may consider a more protective classification for the water supply if a resolution requesting a more protective classification is submitted from all local governments having land use jurisdiction within the affected watershed; Best Usage of Waters: waters that are protected as water supplies which are generally upstream and draining to Class WS-IV waters; or waters previously used for drinking water supply purposes; or waters used by industry to supply their employees, but not municipalities or counties, with a raw drinking water supply source, although this type of use is not restricted to WS-V classification; and all Class C uses.~~
- (2) ~~The conditions related to the best usage shall be as follows: waters of this class are protected water supplies; Conditions Related to Best Usage:~~
  - (a) Chemical and physical water quality parameters in a WS-V water shall meet requirements as specified in Item (3) of this Rule.
  - (b) Wastewater and stormwater point source discharges in a WS-V water shall meet requirements as specified in Item (4) of this Rule.

- (c) Nonpoint source pollution in a WS-V water shall meet requirements as specified in Item (5) of this Rule.
- (d) The waters, following treatment required by the Division, shall meet the Maximum Contaminant Level concentrations considered safe for drinking, culinary, or food-processing purposes that are specified in the national drinking water regulations and in the North Carolina Rules Governing Public Water Supplies, 15A NCAC 18C .1500; .1500, which are hereby incorporated by reference including subsequent amendments and editions;
- (e) no categorical restrictions on watershed development or wastewater discharges shall be required, however, the Commission or its designee may apply management requirements for the protection of waters downstream of receiving waters (15A NCAC 02B .0203); provided in Rule .0203 of this Section.
- (f) The Commission may consider a more protective classification for the water supply if a resolution requesting a more protective classification is submitted from all local governments having land use jurisdiction within the affected watershed.
- (g) Sources of water pollution that preclude any of these the best uses on either a short term or long term basis shall be considered to be violating a water quality standard;
- (3) Quality standards applicable to Class WS-V Waters shall be as follows: Chemical and physical water quality parameters in a WS-V water shall meet the following requirements:
- (a) Sewage, industrial wastes, non-process industrial wastes, or other wastes: none shall be allowed that have an adverse effect on human health or that are not treated to the satisfaction of the Commission and in accordance with the requirements of the Division. Any discharges or industrial users subject to pretreatment standards shall be required by the Commission to disclose all chemical constituents present or potentially present in their wastes and chemicals that could be spilled or be present in runoff from their facility which may have an adverse impact on downstream water supplies. These facilities may be required to have spill and treatment failure control plans as well as perform special monitoring for toxic substances;
- (b)(a) MBAS (Methylene-Blue Active Substances): not greater than 0.5 mg/l to protect the aesthetic qualities of water supplies and to prevent foaming;
- (c) ~~Nonpoint Source and Stormwater Pollution: none that would adversely impact the waters for use as water supply or any other designated use;~~
- (d)(b) Odor producing substances contained in sewage, industrial wastes, or other wastes: only such amounts, whether alone or in combination with other substances or waste, as will not cause taste and odor difficulties in water supplies that ~~cannot~~ can not be corrected by treatment, impair the palatability of fish, or have a deleterious effect upon any best usage established for waters of this class;
- (e)(c) Chlorinated phenolic compounds: not greater than 1.0 ug/l to protect water supplies from taste and odor problems due to chlorinated phenols; specific phenolic compounds may be given a different limit if it is demonstrated not to cause taste and odor problems and not to be detrimental to other best usage;
- (f)(d) Total hardness: not greater than 100 mg/l as calcium carbonate (CaCO<sub>3</sub> or Ca + Mg);
- (g)(e) Total dissolved solids: not greater than 500 mg/l;
- (h)(f) Toxic and other deleterious substances:
- (i) Water quality standards (maximum permissible concentrations) to protect human health through water consumption and fish tissue consumption for ~~non-carcinogens~~ non-carcinogens in Class WS-V waters: non-carcinogens:
- (A) Barium: 1.0 mg/l;
- (B) Chloride: 250 mg/l;
- (C) Nickel: 25 ug/l;
- (D) Nitrate nitrogen: 10.0 mg/l;
- (E) 2,4-D: 70 ug/l;
- (F) 2,4,5-TP (Silvex): 10 ug/l; and
- (G) Sulfates: 250 mg/l.
- (ii) Water quality standards (maximum permissible concentrations) to protect

human health through water consumption and fish tissue consumption for ~~carcinogens~~ carcinogens in ~~Class WS-V waters~~ Class WS-V waters:

- (A) Aldrin: 0.05 ng/l;
- (B) Arsenic: 10 ug/l;
- (C) Benzene: 1.19 ug/l;
- (D) Carbon tetrachloride: 0.254 ug/l;
- (E) Chlordane: 0.8 ng/l;
- (F) Chlorinated benzenes: 488 ug/l;
- (G) DDT: 0.2 ng/l;
- (H) Dieldrin: 0.05 ng/l;
- (I) Dioxin: 0.000005 ng/l;
- (J) Heptachlor: 0.08 ng/l;
- (K) Hexachlorobutadiene: 0.44 ug/l;
- (L) Polynuclear aromatic hydrocarbons (total of all PAHs): 2.8 ng/l;
- (M) Tetrachloroethane (1,1,2,2): 0.17 ug/l;
- (N) Tetrachloroethylene: 0.7 ug/l;
- (O) Trichloroethylene: 2.5 ug/l; and
- (P) Vinyl Chloride: 0.025 ug/l.

(4) Wastewater and stormwater point source discharges in a WS-V water shall meet the following requirements: No discharge of sewage, industrial wastes, or other wastes shall be allowed that have an adverse effect on human health or that are not treated to the satisfaction of the Commission and in accordance with the requirements of the Division. Any dischargers or industrial users subject to pretreatment standards may be required by the Commission to disclose all chemical constituents present or potentially present in their wastes and chemicals that could be spilled or be present in runoff from their facility which may have an adverse impact on downstream water quality. These facilities may be required to have spill and treatment failure control plans as well as perform special monitoring for toxic substances.

(5) Nonpoint Source pollution in a WS-V water shall meet the following requirements: None that would adversely impact, as that term is defined in 15A NCAC 02H.1002, on waters for use as water supply or any other designated use;

**15A NCAC 02B .0219 FRESH SURFACE WATER QUALITY STANDARDS FOR CLASS B WATERS**

The following water quality standards apply to surface waters that are for primary contact recreation ~~including frequent or organized swimming as defined in Rule .0202 of this Section~~, and are classified as Class B waters. Water quality standards applicable to Class C waters as described in Rule .0211 of this Section also apply to Class B waters.

(1) ~~Best Usage of Waters. Primary recreation and any other best usage specified by the "C" classification; Best Usage of Waters. Best Usage of Waters: Primary contact recreation as defined in Rule .0202 of this Section and any other best usage specified by the "C" classification.~~

(2) Conditions Related to Best Usage. In assigning the B classification to waters intended for primary contact recreation, the Commission will take into consideration the relative proximity of sources of water pollution and the potential hazards involved in locating swimming areas close to sources of water pollution and will not assign this classification to waters in which such water pollution could result in a hazard to public health. The waters shall meet accepted standards of water quality for outdoor bathing places as specified in Item (3) of this Rule and shall be of sufficient size and depth for primary contact recreation purposes. Sources of water pollution which preclude any of these uses ~~on either a short term or long term basis~~ shall be considered to be violating a water quality ~~standard; standard.~~

(3) Quality standards applicable to Class B waters:

(a) Sewage, industrial wastes, or other wastes: none which are not effectively treated to the satisfaction of the Commission; in determining the degree of treatment required for such waste when discharged into waters to be used for bathing, the Commission shall consider the quality and quantity of the sewage and wastes involved and the proximity of such discharges to waters in this class; discharges in the immediate vicinity of bathing areas may not be allowed if the Director determines that the waste ~~can not~~ cannot be reliably treated to ensure the protection of primary contact recreation;

(b) Organisms of coliform group: fecal coliforms not to exceed geometric mean of 200/100 ml (MF count) based on at least five consecutive samples examined during any 30-day period and not to exceed 400/100 ml in more than 20 percent of the samples examined during such period.

Authority G.S. 143-214.1; 143-215.3(a)(1).

- (4) Wastewater discharges to waters classified as B shall meet the reliability requirements specified in 15A NCAC 02H .0124. Discharges to waters where a primary contact recreational use is determined by the Director to be attainable shall be required to meet water quality standards and reliability requirements to protect this use concurrently with reclassification efforts.

*Authority G.S. 143-214.1; 143-215.3(a)(1).*

## **15A NCAC 02B .0220 TIDAL SALT WATER QUALITY STANDARDS FOR CLASS SC WATERS**

~~General.~~ The water quality standards for all tidal salt waters shall be the basic standards applicable to Class SC waters. Water quality standards for temperature and numerical water quality standards for the protection of human health applicable to all surface waters are in Rule .0208 of this Section. 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.

- (1) ~~Best Usage of Waters: any usage except primary recreation or shellfishing for market purposes; usages include aquatic life propagation and maintenance of biological integrity (including fishing, fish and functioning PNAs), wildlife, and secondary recreation; Best Usage of Waters: aquatic life propagation, survival, and maintenance of biological integrity (including fishing, fish and Primary Nursery Areas (PNAs)); wildlife; secondary contact recreation as defined in Rule .0202 in this Section; and any usage except primary contact recreation or shellfishing for market purposes. All saltwaters shall be classified to protect these uses at a minimum.~~
- (2) ~~Conditions Related to Best Usage: the waters shall be suitable for aquatic life propagation and maintenance of biological integrity, wildlife, and secondary recreation. all best uses specified in this Rule. Any source of water pollution that precludes any of these uses, including their functioning as PNAs, on either a short term or a long term basis uses shall be considered to be violating a water quality standard;~~
- (3) Chlorophyll a (corrected): not greater than 40 ug/l (based upon monthly averaging where such data are available during the growing season which is generally April 1 – October 31) in sounds, estuaries, and other waters subject to growths of macroscopic or microscopic vegetation. The Commission or its designee may prohibit or limit any discharge of waste into surface waters if, in the opinion of the Director, the surface waters experience or the discharge would result in growths of microscopic or macroscopic vegetation such

that the standards established pursuant to this Rule would be violated or the intended best usage of the waters would be impaired;

- (4) Cyanide: 1 ug/l;
- (5) Dissolved oxygen: not less than 5.0 mg/l, except that swamp waters, poorly flushed tidally influenced streams or embayments, or estuarine bottom waters may have lower values if caused by natural conditions;
- (6) ~~Enterococcus, including Enterococcus faecalis, Enterococcus faecium, Enterococcus avium and Enterococcus gallinarum; including Enterococcus faecalis, Enterococcus faecium, Enterococcus avium and Enterococcus gallinarum;~~ not to exceed a geometric mean of 35 enterococci per 100 ml based upon a minimum of five samples within any consecutive 30 days. For purposes of beach monitoring and notification, "Coastal Recreational Waters Monitoring, Evaluation and Notification" regulations (15A NCAC 18A .3400), available free of charge at: <http://www.ncoah.com/>, are hereby incorporated by reference including any subsequent amendments; amendments and editions;
- (7) Floating solids, settleable solids, or sludge deposits: only such amounts attributable to sewage, industrial wastes, or other wastes, as shall not make the waters unsafe or unsuitable for aquatic life and wildlife, or impair the waters for any designated uses;
- (8) Gases, total dissolved: not greater than 110 percent of saturation;
- (9) Metals:
- (a) With the exception of mercury and selenium, tidal salt water quality standards for metals shall be based upon measurement of the dissolved fraction of the metals. Mercury and selenium shall be based upon measurement of the total recoverable metal;
- (b) Compliance with acute instream metals standards shall only be evaluated using an average of two or more samples collected within one hour. Compliance with chronic instream metals standards shall only be evaluated using averages of a minimum of four samples taken on consecutive days, or as a 96-hour average;
- (c) ~~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.~~

(4)(c) Acute and chronic tidal salt water quality metals standards are as follows:

- (i) Arsenic, acute: WER· 69 ug/l;
- (ii) Arsenic, chronic: WER· 36 ug/l;
- (iii) Cadmium, acute: WER· 40 ug/l;
- (iv) Cadmium, chronic: WER· 8.8 ug/l;
- (v) Chromium VI, acute: WER· 1100 ug/l;
- (vi) Chromium VI, chronic: WER· 50 ug/l;
- (vii) Copper, acute: WER· 4.8 ug/l;
- (viii) Copper, chronic: WER· 3.1 ug/l;
- (ix) Lead, acute: WER· 210 ug/l;
- (x) Lead, chronic: WER· 8.1 ug/l;
- (xi) Mercury, total recoverable, chronic: 0.025 ug/l;
- (xii) Nickel, acute: WER· 74 ug/l;
- (xiii) Nickel, chronic: WER· 8.2 ug/l;
- (xiv) Selenium, total recoverable, chronic: 71 ug/l;
- (xv) Silver, acute: WER· 1.9 ug/l;
- (xvi) Silver, chronic: WER· 0.1 ug/l;
- (xvii) Zinc, acute: WER· 90 ug/l; and
- (xviii) Zinc, chronic: WER· 81 ug/l;

With the exception of mercury and selenium, acute and chronic tidal saltwater quality aquatic life standards for metals listed above apply to the dissolved form of the metal and apply as a function of the pollutant's water effect ratio (WER). A WER expresses the difference between the measures of the toxicity of a substance in laboratory waters and the toxicity in site water. The WER shall be assigned a value equal to one unless any person

demonstrates to the Division's satisfaction in a permit proceeding that another value is developed in accordance with the "Water Quality Standards Handbook: Second Edition" published by the US Environmental Protection Agency (EPA-823-B-12-002), free of charge, at <http://water.epa.gov/scitech/swguidance/standards/handbook/>, hereby incorporated by reference including any subsequent ~~amendments~~, amendments and editions. Alternative site-specific standards may also be developed when any person submits values that demonstrate to the Commissions' satisfaction that they were derived in accordance with the "Water Quality Standards Handbook: Second Edition, Recalculation Procedure or the Resident Species Procedure", hereby incorporated by reference including subsequent amendments and editions at <http://water.epa.gov/scitech/swguidance/standards/handbook/>. This material is available free of charge;

- (10) Oils, deleterious substances, colored, or other wastes: only such amounts as shall not render the waters injurious to public health, secondary recreation, aquatic life, and wildlife or adversely affect the palatability of fish, aesthetic quality, or impair the waters for any designated uses. For the purpose of implementing this Rule, oils, deleterious substances, colored, or other wastes shall include substances that cause a film or sheen upon or discoloration of the surface of the water or adjoining shorelines pursuant to ~~40 CFR 110.3; 40 CFR 110.3~~ which are incorporated by reference including any subsequent amendments and editions. This material is available free of charge on the internet at <http://www.gpo.gov/fdsys/>.

(11) Pesticides:

- (a) Aldrin: 0.003 ug/l;
- (b) Chlordane: 0.004 ug/l;
- (c) DDT: 0.001 ug/l;
- (d) Demeton: 0.1 ug/l;
- (e) Dieldrin: 0.002 ug/l;
- (f) Endosulfan: 0.009 ug/l;
- (g) Endrin: 0.002 ug/l;
- (h) Guthion: 0.01 ug/l;
- (i) Heptachlor: 0.004 ug/l;
- (j) Lindane: 0.004 ug/l;
- (k) Methoxychlor: 0.03 ug/l;
- (l) Mirex: 0.001 ug/l;
- (m) Parathion: 0.178 ug/l; and
- (n) Toxaphene: 0.0002 ug/l;

- (12) pH: shall be normal for the waters in the area, which range between 6.8 and 8.5, except that swamp waters may have a pH as low as 4.3 if it is the result of natural conditions;
- (13) Phenolic compounds: only such levels as shall not result in fish-flesh tainting or impairment of other best usage;
- (14) Polychlorinated biphenyls: (total of all PCBs and congeners identified) 0.001 ug/l;
- (15) Radioactive substances:



- (a) Combined radium-226 and radium-228: The average annual activity level (based on at least one sample collected per quarter) for combined radium-226, and radium-228 shall not exceed five picoCuries per liter;
- (b) Alpha Emitters. The average annual gross alpha particle activity (including radium-226, but excluding radon and uranium) shall not exceed 15 picoCuries per liter;
- (c) Beta Emitters. The average annual activity level (based on at least one sample collected per quarter) for strontium-90 shall not exceed eight picoCuries per liter; nor shall the average annual gross beta particle activity (excluding potassium-40 and other naturally occurring radionuclides exceed 50 picoCuries per liter; nor shall the average annual activity level for tritium exceed 20,000 picoCuries per liter;
- (16) Salinity: changes in salinity due to hydrological modifications shall not result in removal of the functions of a PNA. Projects that are determined by the Director to result in modifications of salinity such that functions of a PNA are impaired shall be required to employ water management practices to mitigate salinity impacts;
- (17) Temperature: shall not be increased above the natural water temperature by more than 0.8 degrees C (1.44 degrees F) during the months of June, July, and August nor more than 2.2 degrees C (3.96 degrees F) during other months and in no cases to exceed 32 degrees C (89.6 degrees F) due to the discharge of heated liquids;
- (18) Trialkyltin compounds: 0.007 ug/l expressed as tributyltin;
- (19) Turbidity: the turbidity in the receiving water shall not exceed 25 Nephelometric Turbidity Units (NTU); if turbidity exceeds this level due to natural background conditions, the existing turbidity level shall not be increased. Compliance with this turbidity standard can be met when land management activities employ Best Management Practices (BMPs) [as defined by Rule .0202 of this Section] recommended by the Designated Nonpoint Source Agency (as defined by Rule .0202 of this Section). BMPs shall be in full compliance with all specifications governing the proper design, installation, operation, and maintenance of such ~~BMPs; BMPs.~~
- (20) ~~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.~~

*Authority G.S. 143-214.1; 143-215.3(a)(1).*

#### **15A NCAC 02B .0221 TIDAL SALT WATER QUALITY STANDARDS FOR CLASS SA WATERS**

The following water quality standards apply to surface waters that are used for shellfishing for market purposes and are classified SA. Water quality standards applicable to Class SC and SB waters as described in Rule .0220 and Rule .0222 of this ~~Section~~ Section, respectively, also apply to Class SA waters.

- (1) Best Usage of Waters: shellfishing for market purposes and any other usage specified by the "SB" or "SC" classification;
- (2) Conditions Related to Best Usage:  
In determining the safety or suitability of Class SA waters to be used for shellfishing for market purposes, the Commission will be guided by the existing water quality of the area in relation to the standards to protect shellfishing uses, the potential contamination of the area from both point and nonpoint sources of pollution, and the presence of harvestable quantities of shellfish or the potential for the area to have harvestable quantities through management efforts of the Division of Marine Fisheries. waters Waters shall meet the current sanitary and bacteriological standards as adopted by the Commission for Public Health and shall be suitable for shellfish culture. Any source of water pollution which precludes any of these uses, ~~including their functioning as PNAs, Primary Nursery Areas on either a short term or a long term basis~~ shall be considered to be

violating a water quality standard. Waters will not be classified SA without the written concurrence of the Division of Marine Fisheries.

- (3) Quality Standards applicable to Class SA Waters:
- (a) Floating solids, settleable solids, or sludge deposits: none attributable to sewage, industrial wastes or other wastes;
  - (b) Sewage: none;
  - (c) Industrial wastes, or other wastes: none shall be allowed that are not effectively treated to the satisfaction of the Commission in accordance with the requirements of the ~~Division of Environmental Health; Division; and~~
  - (d) Organisms of coliform group: fecal coliform group not to exceed a median MF of 14/100 ml and not more than 10 percent of the samples shall exceed an MF count of 43/100 ml in those areas most probably exposed to fecal contamination during the most unfavorable hydrographic and pollution conditions.

*Authority G.S. 143-214.1; 143-215.3(a)(1).*

#### **15A NCAC 02B .0222 TIDAL SALT WATER QUALITY STANDARDS FOR CLASS SB WATERS**

The following water quality standards apply to surface waters that are used for primary contact recreation ~~including frequent or as defined in Rule .0202 of this Section organized swimming,~~ and are classified SB. Water quality standards applicable to Class SC waters are described in Rule .0220 of this Section also apply to SB waters.

- (1) ~~Best Usage of waters: primary recreation and any other usage specified by the "SC" classification; Best Usage of Waters: primary contact recreation as defined in Rule .0202 of this Section and any other usage specified by the "SC" classification;~~
- (2) Conditions Related to Best Usage: In assigning the SB classification to waters intended for primary contact recreation, the Commission will take into consideration the relative proximity of sources of water pollution and the potential hazards involved in locating swimming areas close to sources of water pollution and will not assign this classification to waters in which such water pollution could result in a hazard to public health. ~~the~~ The waters shall meet accepted sanitary standards of water quality for outdoor bathing places as specified in Item (3) of this Rule and will be of sufficient size and depth for primary contact recreation purposes. Any source of water pollution which precludes any of these uses,

~~including their functioning as PNAs, Primary Nursery Areas on either a short term or a long term basis~~ shall be considered to be violating a water quality ~~standard; standard.~~

- (3) Quality Standards applicable to Class SB waters:
- (a) Floating solids, settleable solids, or sludge deposits: none attributable to sewage, industrial wastes or other wastes;
  - (b) Sewage, industrial wastes, or other wastes: none shall be allowed that are not effectively treated to the satisfaction of the Commission; in determining the degree of treatment required for such waters discharged into waters which are to be used for bathing, the Commission shall take into consideration quantity and quality of the sewage and other wastes involved and the proximity of such discharges to the waters in this class; discharges in the immediate vicinity of bathing areas may not be allowed if the Director determines that the waste ~~can not~~ cannot be treated to ensure the protection of primary contact recreation;
  - (c) Enterococcus, including Enterococcus faecalis, Enterococcus faecium, Enterococcus avium and Enterococcus gallinarum: not to exceed a geometric mean of 35 enterococci per 100 ml based upon a minimum of five samples within any consecutive 30 days. In accordance with Federal Clean Water Act, 33 U.S.C. 1313 (Federal Water Pollution Control Act) for purposes of beach monitoring and notification, "Coastal Recreation Waters Monitoring, Evaluation and Notification" regulations (15A NCAC 18A .3400) are hereby incorporated by reference including any subsequent ~~amendments.~~ amendments and editions.
  - (4) Wastewater discharges to waters classified as SB shall meet the reliability requirements specified in 15A NCAC 02H .0124. Discharges to waters where a primary contact recreational use is determined by the Director to be attainable shall be required to meet water quality standards and reliability requirements to protect this use concurrently with reclassification efforts.

*Authority G.S. 143-214.1; 143-215.3(a)(1).*

**15A NCAC 02B .0223 WATER QUALITY STANDARDS FOR NUTRIENT SENSITIVE WATERS**

- (a) In addition to existing classifications, the Commission may classify any surface waters of the state as ~~nutrient sensitive waters~~ Nutrient Sensitive Waters (NSW) upon a finding that such waters are experiencing or are subject to excessive growths of microscopic or macroscopic vegetation. Excessive growths are growths which the Commission determines impair the use of the water for its best usage as determined by the classification applied to such waters.
- (b) NSW may include any or all waters within a particular river basin as the Commission deems necessary to effectively control excessive growths of microscopic or macroscopic vegetation.
- (c) For the purpose of this Rule, the term "nutrients" shall mean phosphorous or nitrogen or any other chemical parameter or combination of parameters which the commission determines to be contributing to excessive growths of microscopic or macroscopic vegetation.
- (d) Those waters of the state that are additionally classified as nutrient sensitive shall be identified in the appropriate schedule of classifications as referenced in Section .0300 of this Subchapter. ~~river basin classification schedule. The schedules are available online at <http://portal.ncdenr.org/web/wq/ps/csu/classifications>.~~
- (e) Nutrient strategies applicable to NSW shall be developed by the Commission to control the magnitude, duration, or frequencies of excessive growths of microscopic or macroscopic vegetation so that the existing and designated uses of the waterbody are protected or restored.

*Authority G.S. 143-214.1; 143-215.8B.*

**15A NCAC 02B .0224 WATER QUALITY STANDARDS FOR HIGH QUALITY WATERS**

- (a) High Quality Waters (HQW) are a subset of ~~waters "waters with quality higher than the standards" standards and are as described by 15A NCAC 2B .0101(e)(5) as defined in Rule .0202(59) of this Section.~~ waters ~~The following procedures in this rule shall be implemented in order to implement meet the requirements of Rule .0201(d) of this Section.~~
- (b) All water supply watersheds which are classified as WS I or WS II, and all waters classified as Class SA waters are HQW. The Commission may classify, if case by case reclassification proceedings are conducted, any surface waters of the state as High Quality Waters (HQW) upon finding that such waters are:
- (1) rated excellent based on biological and physical/chemical characteristics through monitoring or special studies, or
  - (2) primary nursery areas (PNA) and other functional nursery areas designated by the Marine Fisheries Commission or the Wildlife Resources Commission.
- (c) New or expanded wastewater discharges in High Quality Waters shall comply with the following:
- (1) Discharges from new single family residences shall be prohibited. Those existing subsurface systems for single family residences which fail and must discharge shall install a septic tank, dual or recirculating sand filters, disinfection and step aeration.

- (2) All new ~~NPDES~~ National Pollutant Discharge Elimination System (NPDES) wastewater discharges (except single family residences) shall be required to provide the treatment described below:
- (A) Oxygen Consuming Wastes: Effluent limitations shall be as follows: BOD<sub>5</sub> = 5 mg/l, NH<sub>3</sub>-N = 2 mg/l and DO = 6 mg/l. More stringent limitations shall be set, if necessary, to ensure that the cumulative pollutant discharge of oxygen-consuming wastes shall not cause the DO of the receiving water to drop more than 0.5 mg/l below background levels, and in no case below the standard. Where background information is not readily available, evaluations shall assume a percent saturation determined by staff to be generally applicable to that hydroenvironment.
  - (B) Total Suspended Solids: Discharges of total suspended solids (TSS) shall be limited to effluent concentrations of 10 mg/l for trout waters and HQW-classified PNAs ~~PNA's~~; and to 20 mg/l for all other High Quality Waters.
  - (C) Disinfection: Alternative methods to chlorination shall be required for discharges to trout streams, except that single family residences may use chlorination if other options are not economically feasible. Domestic discharges are prohibited to SA waters.
  - (D) Emergency Requirements: Failsafe treatment designs shall be employed, including stand-by power capability for entire treatment works, dual train design for all treatment components, or equivalent failsafe treatment designs.
  - (E) Volume: The total volume of treated wastewater for all discharges combined shall not exceed 50 percent of the total instream flow under 7Q10 conditions.
  - (F) Nutrients: Where nutrient overenrichment is projected to be a concern, appropriate effluent limitations shall be set for phosphorus or nitrogen, or both.
  - (G) Toxic substances: In cases where complex wastes (those containing or potentially containing toxicants) may be present in a discharge, a safety factor shall be applied to any chemical or whole effluent toxicity allocation. The limit for a specific chemical

constituent shall be allocated at one-half of the normal standard at design conditions. Whole effluent toxicity shall be allocated to protect for chronic toxicity at an effluent concentration equal to twice that which is acceptable under design conditions. In all instances there may be no acute toxicity in an effluent concentration of 90 percent. Ammonia toxicity shall be evaluated according to EPA guidelines promulgated in "Ambient Water Quality Criteria for Ammonia - 1984"; EPA document number 440/5-85-001; NITS number PB85-227114; July 29, 1985 (50 FR 30784) or "Ambient Water Quality Criteria for Ammonia (Saltwater) - 1989"; EPA document number 440/5-88-004; NTIS number PB89-169825. This material related to ammonia toxicity is hereby incorporated by reference including any subsequent amendments and editions and is available for inspection at the Department of Environment and Natural Resources Library, 512 North Salisbury Street, Raleigh, North Carolina. editions. Copies may be obtained from the National Technical Information Service, 5285 Port Royal Road, Springfield, Virginia 22161 at a cost of forty seven dollars (\$47.00).

~~(e)~~(3) All expanded NPDES wastewater discharges in High Quality Waters shall be required to provide the treatment described in ~~Sub Item (1)~~(b) Subparagraph (c)(2) of this Rule, except for those existing discharges which expand with no increase in permitted pollutant loading.

~~(2)~~(d) Development activities which require an Erosion and Sedimentation Control Plan in accordance with rules established by the NC Sedimentation Control Commission ~~or local erosion and sedimentation control program approved in accordance with 15A NCAC 4B .0218~~, and which drain to and are within one mile of High Quality Waters (HQW) shall be required to follow the stormwater management rules as specified in 15A NCAC 2H .1000, .1019 (coastal county waters) or .1021 (non-coastal county waters). Stormwater management requirements specific to HQW are described in 15A NCAC 2H .1006.

~~(3)~~(e) Listing of Waters Classified HQW with Specific Actions. Waters classified as HQW with specific actions to protect exceptional water quality are listed as follows: Thorpe Reservoir [Little Tennessee River Basin, Index No. 2-79-23-(1)] including all of its tributaries shall be managed with respect to wastewater discharges through ~~Item (1)~~ Paragraph (c) of this Rule. ~~Item (2)~~ Paragraph (d) of this Rule shall not be applied in association with this HQW because of the local government implementation of WS-III stormwater management requirements.

~~If an applicant objects to the requirements to protect high quality waters and believes 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.~~

Authority G.S. 143-214.1; 143-215.1; 143-215.3(a)(1).

## **15A NCAC 02B .0225 WATER QUALITY STANDARDS FOR OUTSTANDING RESOURCE WATERS**

~~(a) General. In addition to the existing classifications, the~~ The Commission may classify unique and special surface waters of the state as outstanding resource waters (ORW) upon finding that such waters are of exceptional state or national recreational or ecological significance which require special protection to maintain existing uses and that the waters have exceptional water quality while meeting the following conditions:

- (1) that the water quality is rated as excellent based on physical, chemical or biological information; and
- (2) the characteristics which make these waters unique and special may not be protected by the assigned narrative and numerical water quality standards.

~~(b) Outstanding Resource Values. Best Usage of Waters:~~ In order to be classified as ORW, a water body must exhibit one or more of the following ~~values or ORW~~ uses to demonstrate it is of exceptional state or national recreational or ecological significance:

- (1) there are outstanding fish (or commercially important aquatic species) habitat and fisheries;
- (2) there is an unusually high level of water-based recreation or the potential for such recreation;
- (3) the waters have already received some special designation such as a North Carolina or National Wild and Scenic River, ~~Native or Special Native Trout Waters~~ or National Wildlife Refuge, which do not provide any water quality protection;
- (4) the waters represent an important component of a state or national park or forest; or
- (5) the waters are of special ecological or scientific significance such as habitat for rare or endangered species or as areas for research and education.

(c) Quality Standards for ORW.

- (1) Freshwater: Water quality conditions shall be maintained to protect the outstanding resource values of waters classified ORW. Management strategies to protect resource values shall be developed on a site specific basis during the proceedings to classify waters as ORW. No new discharges or expansions of existing discharges shall be permitted, and stormwater controls for all new development activities requiring an Erosion and Sedimentation Control Plan in accordance with rules established by the NC Sedimentation Control Commission or an appropriate local erosion and sedimentation

control program shall be required to follow the stormwater provisions as specified in 15A NCAC 02H .1000. Specific stormwater requirements for ORW areas are described in 15A NCAC 02H .1007.

- (2) Saltwater: Water quality conditions shall be maintained to protect the outstanding resource values of waters classified ORW. Management strategies to protect resource values shall be developed on a site-specific basis during the proceedings to classify waters as ORW. New development shall comply with the stormwater provisions as specified in 15A NCAC 02H .1000. Specific stormwater management requirements for saltwater ORWs are described in 15A NCAC 02H .1007. ~~New non-discharge permits shall meet reduced loading rates and increased buffer zones, to be determined on a case-by-case basis.~~ No dredge or fill activities shall be allowed if those activities would result in a reduction of the beds of ~~submerged~~ "submerged aquatic vegetation habitat" or a ~~reduction of shellfish~~ "shellfish producing habitat habitat" as that are defined in 15A NCAC 03I .0101(b)(20)(A) and (B), .0101, hereby incorporated by reference including subsequent amendments and editions, except for maintenance dredging, such as that required to maintain access to existing channels and facilities located within the designated areas or maintenance dredging for activities such as agriculture. A public hearing is mandatory for any proposed permits to discharge to waters classified as ORW.

Additional actions to protect resource values shall be considered on a site specific basis during the proceedings to classify waters as ORW and shall be specified in Paragraph ~~(e)~~(d) of this Rule. These actions may include anything within the powers of the Commission. The Commission shall also consider local actions which have been taken to protect a water body in determining the appropriate state protection options. ~~Descriptions of boundaries of waters classified as ORW are included in Paragraph (e) of this Rule and in the Schedule of Classifications (15A NCAC 02B .0302 through 02B .0317) as specified for the appropriate river basin and shall also be described on maps maintained by the Division of Water Quality.~~

~~(d) Petition Process. Any person may petition the Commission to classify a surface water of the state as an ORW. The petition shall identify the exceptional resource value to be protected, address how the water body meets the general criteria in Paragraph (a) of this Rule, and the suggested actions to protect the resource values. The Commission may request additional supporting information from the petitioner. The Commission or its designee shall initiate public proceedings to classify waters as ORW or shall inform the petitioner that the waters do not meet the criteria for ORW with an explanation of the basis for this decision. The petition shall be sent to:~~

Director

DENR/Division of Water Quality  
1617 Mail Service Center  
Raleigh, North Carolina 27699

~~The envelope containing the petition shall clearly bear the notation: RULE MAKING PETITION FOR ORW CLASSIFICATION.~~

~~(e)~~(d) Listing of Waters Classified ORW with Specific Actions. Waters classified as ORW with specific actions to protect exceptional resource values are listed as follows:

- (1) Roosevelt Natural Area [White Oak River Basin, Index Nos. 20-36-9.5-(1) and 20-36-9.5-(2)] including all fresh and saline waters within the property boundaries of the natural area shall have only new development which complies with the low density option in the stormwater rules as specified in 15A NCAC 2H .1005(2)(a) within 575 feet of the Roosevelt Natural Area (if the development site naturally drains to the Roosevelt Natural Area);
- (2) Chattooga River ORW Area (Little Tennessee River Basin and Savannah River Drainage Area): the following undesignated waterbodies that are tributary to ORW designated segments shall comply with Paragraph (c) of this Rule in order to protect the designated waters as per Rule .0203 of this Section. However, expansions of existing discharges to these segments shall be allowed if there is no increase in pollutant loading:
  - (A) North and South Fowler Creeks;
  - (B) Green and Norton Mill Creeks;
  - (C) Cane Creek;
  - (D) Ammons Branch;
  - (E) Glade Creek; and
  - (F) Associated tributaries;
- (3) Henry Fork ORW Area (Catawba River Basin): the following undesignated waterbodies that are tributary to ORW designated segments shall comply with Paragraph (c) of this Rule in order to protect the designated waters as per Rule .0203 of this Section:
  - (A) Ivy Creek;
  - (B) Rock Creek; and
  - (C) Associated tributaries;
- (4) South Fork New and New Rivers ORW Area [New River Basin (Index Nos. 10-1-33.5 and 10)]: the following management strategies, in addition to the discharge requirements specified in Subparagraph (c)(1) of this Rule, shall be applied to protect the designated ORW areas:
  - (A) Stormwater controls described in Subparagraph (c)(1) of this Rule shall apply to land within one mile of and that drains to the designated ORW areas;
  - (B) New or expanded National Pollutant Discharge Elimination System NPDES (NPDES) permitted

wastewater discharges located upstream of the designated ORW (for the North Fork New River ORW ~~are~~ area; see Subparagraph (14) of this Paragraph) shall be permitted such that the following water quality standards are maintained in the ORW segment:

- (i) the total volume of treated wastewater for all upstream discharges combined shall not exceed 50 percent of the total instream flow in the designated ORW under 7Q10 conditions, which are defined in Rule .0206(a)(1) of this Section;
  - (ii) a safety factor shall be applied to any chemical allocation such that the effluent limitation for a specific chemical constituent shall be the more stringent of either the limitation allocated under design conditions ~~(pursuant to 15A NCAC 02B .0206)~~ pursuant to Rule .0206 of this Section for the normal standard at the point of discharge, or the limitation allocated under design conditions for one-half the normal standard at the upstream border of the ORW segment;
  - (iii) a safety factor shall be applied to any discharge of complex wastewater (those containing or potentially containing toxicants) to protect for chronic toxicity in the ORW segment by setting the whole effluent toxicity limitation at the higher (more stringent) percentage effluent determined under design conditions ~~(pursuant to 15A NCAC 02B .0206)~~ pursuant to Rule .0206 of this Section for either the instream effluent concentration at the point of discharge or twice the effluent concentration calculated as if the discharge were at the upstream border of the ORW segment;
- (C) New or expanded NPDES permitted wastewater discharges located upstream of the designated ORW (for

the North Fork New River ORW area; see Subparagraph (14) of this Paragraph) shall comply with the following:

- (i) Oxygen Consuming Wastes: Effluent limitations shall be as follows: BOD = 5 mg/l, and NH<sub>3</sub>-N = 2 mg/l;
  - (ii) Total Suspended Solids: Discharges of total suspended solids (TSS) shall be limited to effluent concentrations of 10 mg/l for trout waters and to 20 mg/l for all other waters;
  - (iii) Emergency Requirements: Failsafe treatment designs shall be employed, including stand-by power capability for entire treatment works, dual train design for all treatment components, or equivalent failsafe treatment designs;
  - (iv) Nutrients: Where nutrient overenrichment is projected to be a concern, effluent limitations shall be set for phosphorus or nitrogen, or both;
- (5) Old Field Creek (New River Basin): the undesignated portion of Old Field Creek (from its source to Call Creek) shall comply with Paragraph (c) of this Rule in order to protect the designated waters as per Rule .0203 of this Section;
- (6) In the following designated waterbodies, no additional restrictions shall be placed on new or expanded marinas. The only new or expanded NPDES permitted discharges that shall be allowed shall be non-domestic, non-process industrial discharges. The Alligator River Area (Pasquotank River Basin) extending from the source of the Alligator River to the U.S. Highway 64 bridge including New Lake Fork, North West Fork Alligator River, Juniper Creek, Southwest Fork Alligator River, Scouts Bay, Gum Neck Creek, Georgia Bay, Winn Bay, Stumpy Creek Bay, Stumpy Creek, Swann Creek (Swann Creek Lake), Whipping Creek (Whipping Creek Lake), Grapevine Bay, Rattlesnake Bay, The Straits, The Frying Pan, Coopers Creek, Babbitt Bay, Goose Creek, Milltail Creek, Boat Bay, Sandy Ridge Gut (Sawyer Lake) and Second Creek, but excluding the Intracoastal Waterway (Pungo River-Alligator River Canal) and all other tributary streams and canals;
- (7) In the following designated waterbodies, the only type of new or expanded marina that shall

be allowed shall be those marinas located in upland basin areas, or those with less than 10 slips, having no boats over 21 feet in length and no boats with heads. The only new or expanded NPDES permitted discharges that shall be allowed shall be non-domestic, non-process industrial discharges:

- (A) The Northeast Swanquarter Bay Area including all waters northeast of a line from a point at Lat. 35E 23N 51O and Long. 76E 21N 02O thence southeast along the Swanquarter National Wildlife Refuge hunting closure boundary (as defined by the 1935 Presidential Proclamation) to Drum Point.
- (B) The Neuse-Southeast Pamlico Sound Area (Southeast Pamlico Sound Section of the Southeast Pamlico, Core and Back Sound Area); (Neuse River Basin) including all waters within an area defined by a line extending from the southern shore of Ocracoke Inlet northwest to the Tar-Pamlico River and Neuse River basin boundary, then southwest to Ship Point.
- (C) The Core Sound Section of the Southeast Pamlico, Core and Back Sound Area (White Oak River Basin), including all waters of Core Sound and its tributaries, but excluding Nelson Bay, Little Port Branch and Atlantic Harbor at its mouth, and those tributaries of Jarrett Bay that are closed to shellfishing.
- (D) The Western Bogue Sound Section of the Western Bogue Sound and Bear Island Area (White Oak River Basin) including all waters within an area defined by a line from Bogue Inlet to the mainland at SR 1117 to a line across Bogue Sound from the southwest side of Gales Creek to Rock Point, including Taylor Bay and the Intracoastal Waterway.
- (E) The Stump Sound Area (Cape Fear River Basin) including all waters of Stump Sound and Alligator Bay from marker Number 17 to the western end of Permuda Island, but excluding Rogers Bay, the Kings Creek Restricted Area and Mill Creek.
- (F) The Topsail Sound and Middle Sound Area (Cape Fear River Basin) including all estuarine waters from New Topsail Inlet to Mason Inlet, including the Intracoastal Waterway

and Howe Creek, but excluding Pages Creek and Futch Creek;

- (8) In the following designated waterbodies, no new or expanded NPDES permitted discharges and only new or expanded marinas with less than 10 slips, having no boats over 21 feet in length and no boats with heads shall be allowed:
  - (A) The Swanquarter Bay and Juniper Bay Area (Tar-Pamlico River Basin) including all waters within a line beginning at Juniper Bay Point and running south and then west below Great Island, then northwest to Shell Point and including Shell Bay, Swanquarter and Juniper Bays and their tributaries, but excluding all waters northeast of a line from a point at Lat. 35E 23N 51O and Long. 76E 21N 02O thence southeast along the Swanquarter National Wildlife Refuge hunting closure boundary (as defined by the 1935 Presidential Proclamation) to Drum Point and also excluding the Blowout Canal, Hydeland Canal, Juniper Canal and Quarter Canal.
  - (B) The Back Sound Section of the Southeast Pamlico, Core and Back Sound Area (White Oak River Basin) including that area of Back Sound extending from Core Sound west along Shackleford Banks, then north to the western most point of Middle Marshes and along the northwest shore of Middle Marshes (to include all of Middle Marshes), then west to Rush Point on Harker's Island, and along the southern shore of Harker's Island back to Core Sound.
  - (C) The Bear Island Section of the Western Bogue Sound and Bear Island Area (White Oak River Basin) including all waters within an area defined by a line from the western most point on Bear Island to the northeast mouth of Goose Creek on the mainland, east to the southwest mouth of Queen Creek, then south to green marker No. 49, then northeast to the northern most point on Huggins Island, then southeast along the shoreline of Huggins Island to the southeastern most point of Huggins Island, then south to the northeastern most point on Dudley Island, then southwest along the shoreline of Dudley Island to the eastern tip of Bear Island.

- (D) The Masonboro Sound Area (Cape Fear River Basin) including all waters between the Barrier Islands and the mainland from Carolina Beach Inlet to Masonboro Inlet;
- (9) Black and South Rivers ORW Area (Cape Fear River Basin) [Index Nos. 18-68-(0.5), 18-68-(3.5), 18-68-(11.5), 18-68-12-(0.5), 18-68-12-(11.5), and 18-68-2]: the following management strategies, in addition to the discharge requirements specified in Subparagraph (c)(1) of this Rule, shall be applied to protect the designated ORW areas:
- (A) Stormwater controls described in Subparagraph (c)(1) of this Rule shall apply to land within one mile of and that drains to the designated ORW areas;
- (B) New or expanded NPDES permitted wastewater discharges located one mile upstream of the stream segments designated ORW (upstream on the designated mainstem and upstream into direct tributaries to the designated mainstem) shall comply with the following discharge restrictions:
- (i) Oxygen Consuming Wastes: Effluent limitations shall be as follows: BOD = 5 mg/l and NH<sub>3</sub>-N = 2 mg/l;
- (ii) Total Suspended Solids: Discharges of total suspended solids (TSS) shall be limited to effluent concentrations of 20 mg/l;
- (iii) Emergency Requirements: Failsafe treatment designs shall be employed, including stand-by power capability for entire treatment works, dual train design for all treatment components, or equivalent failsafe treatment designs;
- (iv) Nutrients: Where nutrient overenrichment is projected to be a concern, effluent limitations shall be set for phosphorus or nitrogen, or both.
- (v) Toxic substances: In cases where complex discharges (those containing or potentially containing toxicants) may be currently present in the discharge, a safety factor shall be applied to any chemical or whole effluent toxicity allocation. The limit for a specific chemical constituent shall be allocated at one-half of the normal standard at design conditions. Whole effluent toxicity shall be allocated to protect for chronic toxicity at an effluent concentration equal to twice that which is acceptable under flow design criteria ~~(pursuant to 15A NCAC 02B .0206); pursuant to Rule .0206 of the Section.~~
- (10) Lake Waccamaw ORW Area (Lumber River Basin) [Index No. 15-2]: all undesignated waterbodies that are tributary to Lake Waccamaw shall comply with Paragraph (c) of this Rule in order to protect the designated waters as per Rule .0203 of this Section;
- (11) Swift Creek and Sandy Creek ORW Area (Tar-Pamlico River Basin) [portion of Index No. 28-78-(0.5) and Index No. 28-78-1-(19)]: all undesignated waterbodies that drain to the designated waters shall comply with Paragraph (c) of this Rule in order to protect the designated waters as per Rule .0203 of this Section and to protect outstanding resource values found in the designated waters as well as in the undesignated waters that drain to the designated waters;
- (12) Fontana Lake North Shore ORW Area (Little Tennessee River Basin and Savannah River Drainage Area) [Index Nos. 2-96 through 2-164 (excluding all waterbodies that drain to the south shore of Fontana Lake) consists of the entire watersheds of all creeks that drain to the north shore of Fontana Lake between Eagle and Forney Creeks, including Eagle and Forney Creeks. In addition to the requirements specified in Subparagraph (c)(1) of this Rule, any person conducting development activity disturbing greater than or equal to 5,000 square feet of land area in the designated ORW area shall undertake the following actions to protect the outstanding resource values of the designated ORW and downstream waters:
- (A) investigate for the presence of and identify the composition of acid-producing rocks by exploratory drilling or other means and characterize the net neutralization potential of the acid-producing rocks prior to commencing the land-disturbing activity;
- (B) avoid areas to the maximum extent practical where acid-producing rocks are found with net neutralization potential of -5 or less;
- (C) establish background levels of acidity and mineralization prior to



- commencing land-disturbing activity, and monitor and maintain baseline water quality conditions for the duration of the land-disturbing activity and for any period thereafter not less than two years as determined by the Division as part of a certification issued in accordance with 15A NCAC 02H .0500 or stormwater permit issued pursuant to this Rule;
- (D) obtain a ~~National Pollutant Discharge Elimination System~~ NPDES permit for construction pursuant to Rule 15A NCAC 02H .0126 prior to initiating land-disturbing activity;
- (E) design stormwater control systems to control and treat stormwater runoff generated from all surfaces generated by one inch of rainfall in accordance with 15A NCAC 02H. 1008; and
- (F) replicate pre-development runoff characteristics and mimic the natural and unique hydrology of the site, post development.
- (13) Horsepasture River ORW Area (Savannah Drainage Area) [Index No. 4-13-(0.5) and Index No. 4-13-(12.5)]: all undesignated waterbodies that are located within the Horsepasture River watershed shall comply with Paragraph (c) of this Rule in order to protect the designated waters as per Rule .0203 of this Section and to protect outstanding resource values found throughout the watershed. However, new domestic wastewater discharges and expansions of existing wastewater discharges may be allowed provided that:
- (A) Oxygen Consuming Wastes: Effluent limitations shall be as follows: BOD = 5 mg/l, and NH<sub>3</sub>-N = 2 mg/l;
- (B) Total Suspended Solids: Discharges of total suspended solids (TSS) shall be limited to effluent concentrations of 10 mg/l for trout waters and to 20 mg/l for all other waters except for mining operations, which will be held to their respective NPDES TSS permit limits;
- (C) Nutrients: Where nutrient overenrichment is projected to be a concern, effluent limitations shall be set for phosphorus or nitrogen, or both; and
- (D) Volume: The total volume of treated wastewater for all discharges combined shall not exceed 25 percent of the total instream flow in the designated ORW under 7Q10 conditions, which are defined in Rule .0206(a)(1) of this Section;

- (14) North Fork New River ORW Area (New River Basin) [Index Nos. 10-2-(1), 10-2-(11) and 10-2-(12)]: all non-ORW waterbodies including Little Buffalo Creek and Claybank Creek [Index Nos. 10-2-20-1 and 10-2-20-1-1] that are located within the North Fork New River watershed shall comply with Rule .0224 of this Section in order to protect the ORW designated waters.

*Authority G.S. 143-214.1; S.L. 2005-97.*

**15A NCAC 02B .0226 EXEMPTIONS FROM SURFACE WATER QUALITY STANDARDS (READOPTION WITHOUT SUBSTANTIVE CHANGES)**

**15A NCAC 02B .0227 WATER QUALITY MANAGEMENT PLANS (READOPTION WITHOUT SUBSTANTIVE CHANGES)**

**15A NCAC 02B .0228 EFFLUENT CHANNELS (READOPTION WITHOUT SUBSTANTIVE CHANGES)**

**15A NCAC 02B .0230 ACTIVITIES DEEMED TO COMPLY WITH WETLANDS STANDARDS (READOPTION WITHOUT SUBSTANTIVE CHANGES)**

**15A NCAC 02B .0231 WETLAND STANDARDS**

(a) Wetlands shall be assigned to one of the following classifications:

- (1) Class WL: waters that meet the definition of wetlands as defined in Rule .0202 of this Section except those designated as SWL.
- (2) Class SWL: waters that meet the definition of coastal wetlands as defined by 15A NCAC 07H .0205, which are landward of the mean high water line, and wetlands contiguous to estuarine waters as defined by 15A NCAC 07H .0206.

In addition, the EMC may classify wetlands that are of exceptional state or national ecological significance which require special protection to maintain existing uses as unique wetlands (UWL). UWLs may include wetlands that have been documented as habitat essential for the conservation of state or federally listed threatened or endangered species.

~~(a)(b) General.~~ The water quality standards for all wetlands are designed to protect, preserve, restore and enhance the quality and uses of wetlands and other waters of the state influenced by wetlands. The following are wetland uses:

- (1) Storm and flood water storage and retention and the moderation of extreme water level fluctuations;
- (2) Hydrologic functions including groundwater discharge that contributes to maintain dry weather streamflow and, at other locations or times, groundwater recharge that replenishes the groundwater system;
- (3) Filtration or storage of sediments, nutrients, toxic substances, or other pollutants that would

otherwise adversely impact the quality of other waters of the state;

- (4) Shoreline protection against erosion through the dissipation of wave energy and water velocity and stabilization of sediments;
- (5) Habitat for the propagation of resident wetland-dependent aquatic organisms including, but not limited to fish, crustaceans, mollusks, insects, annelids, planktonic organisms and the plants and animals upon which these aquatic organisms feed and depend upon for their needs in all life stages; and
- (6) Habitat for the propagation of resident wetland-dependent wildlife species, including mammals, birds, reptiles and amphibians for breeding, nesting, cover, travel corridors and food.

~~(b)(c)~~ The following standards shall be used to assure the maintenance or enhancement of the existing uses of wetlands identified in Paragraph ~~(a)~~(b) of this Rule:

- (1) Liquids, fill or other solids or dissolved gases may not be present in amounts which may cause adverse impacts on existing wetland uses;
- (2) Floating or submerged debris, oil, deleterious substances, or other material may not be present in amounts which may cause adverse impacts on existing wetland uses;
- (3) Materials producing color, odor, taste or unsightliness may not be present in amounts which may cause adverse impacts on existing wetland uses;
- (4) Concentrations or combinations of substances which are toxic or harmful to human, animal or plant life may not be present in amounts which individually or cumulatively may cause adverse impacts on existing wetland uses;
- (5) Hydrological conditions necessary to support the biological and physical characteristics naturally present in wetlands shall be protected to prevent adverse impacts on:
  - (A) Water currents, erosion or sedimentation patterns;
  - (B) Natural water temperature variations;
  - (C) The chemical, nutrient and dissolved oxygen regime of the wetland;
  - (D) The movement of aquatic fauna;
  - (E) The pH of the wetland; and
  - (F) Water levels or elevations.
- (6) The populations of wetland flora and fauna shall be maintained to protect biological integrity as defined at ~~15A NCAC 2B .0202~~. Rule .0202 of this Section.

Authority G.S. 143-214.1; 143-215.3(a)(1).

## SECTION .0300 - ASSIGNMENT OF STREAM CLASSIFICATIONS

### 15A NCAC 02B .0301 CLASSIFICATIONS: GENERAL

~~(a) Schedule of Classifications.~~ The classifications assigned to the waters of the State of North Carolina are set forth in the ~~schedules of classifications and water quality standards assigned to the waters of the river basins of North Carolina, 15A NCAC 2B .0302 to .0317.~~ river basin classification schedules provided on the Internet at

<http://portal.ncdenr.org/web/wq/ps/csu/classifications> and in Rules .0302 to .0317 of this Section. These classifications are based upon ~~the existing or contemplated best usage of the various streams and segments of streams in the basin, as determined through studies and evaluations and the holding of public hearings for consideration of the classifications proposed.~~ procedures described in Rule .0101 of this Subchapter.

~~(b) Stream Names.~~ The names of the streams listed in the schedules of assigned classifications were taken as far as possible from United States Geological Survey topographic maps. Where topographic maps were unavailable, U.S. Corps of Engineers maps, U.S. Department of Agriculture soil maps, and North Carolina highway maps were used for the selection of stream names.

~~(c)(b) Classifications.~~ The classifications assigned to the waters of North Carolina are denoted by the letters ~~WS I, WS II, WS III, WS IV, WS V, B, C, SA, SB, and SC~~ in the column headed ~~"class."~~ C, B, WS-I, WS-II, WS-III, WS-IV, WS-V, WL, SC, SB, SA, SWL, Tr, Sw, NSW, ORW, HQW, and UWL. A brief explanation of the "best usage" for which the waters in each class must be protected is given as follows: The "best usage", as defined in Rule .0202 of this Subchapter, for each classification is defined in the rules as follows:

#### Fresh Waters

~~Class WS I:~~ waters protected as water supplies which are in natural and undeveloped watersheds; in public ownership; point source discharges of treated wastewater are permitted pursuant to Rules .0104 and .0211 of this Subchapter; local programs to control nonpoint source and stormwater discharge of pollution are required; suitable for all Class C uses;

~~Class WS II:~~ waters protected as water supplies which are generally in predominantly undeveloped watersheds; point source discharges of treated wastewater are permitted pursuant to Rules .0104 and .0211 of this Subchapter; local programs to control nonpoint source and stormwater discharge of pollution are required; suitable for all Class C uses;

~~Class WS III:~~ waters protected as water supplies which are generally in low to moderately developed watersheds; point source discharges of treated wastewater are permitted pursuant to Rules .0104 and .0211 of this Subchapter; local programs to control nonpoint source and stormwater discharge of pollution are required; suitable for all Class C uses;

~~Class WS IV:~~ waters protected as water supplies which are generally in moderately to highly developed watersheds; point source discharges of treated wastewater are permitted pursuant to Rules .0104 and .0211 of this Subchapter; local programs to control nonpoint source and stormwater discharge of pollution are required; suitable for all Class C uses;

~~Class WS V:~~ waters protected as water supplies which are generally upstream and draining to Class WS IV waters or waters previously used for drinking water supply purposes or waters used by industry to supply their employees, but not municipalities or

counties, with a raw drinking water supply source, although this type of use is not restricted to a WS-V classification; no categorical restrictions on watershed development or treated wastewater discharges are required, however, the Commission or its designee may apply appropriate management requirements as deemed necessary for the protection of downstream receiving waters (15A NCAC 2B .0203); suitable for all Class C uses;

Class B: primary recreation and any other usage specified by the "C" classification;

Class C: aquatic life propagation and survival, fishing, wildlife, secondary recreation, and agriculture.

Tidal Salt Waters:

Class SA: shellfishing for market purposes and any other usage specified by the "SB" and "SC" classification;

Class SB: primary recreation and any other usage specified by the "SC" classification;

Class SC: aquatic life propagation and survival, fishing, wildlife, and secondary recreation.

Supplemental Classifications

Trout Waters: Suitable for natural trout propagation and maintenance of stocked trout;

Swamp Waters: Waters which have low velocities and other natural characteristics which are different from adjacent streams;

NSW: Nutrient Sensitive Waters which require limitations on nutrient inputs;

HQW: High Quality Waters which are waters that are rated as excellent based on biological and physical/chemical characteristics through division monitoring or special studies; native and special native trout waters (waters and their tributaries) designated by the Wildlife Resources Commission, primary nursery areas (PNA) designated by the Marine Fisheries Commission and other functional nursery areas designated by the Wildlife Resources Commission, critical habitat areas designated by the Wildlife Resources Commission or the Department of Agriculture, all water supply watersheds which are either classified as WS-I or WS-II 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 Environmental Management and all Class SA waters.

ORW: Outstanding Resource Waters which are unique and special waters of exceptional state or national recreational or ecological significance which require special protection to maintain existing uses.

FWS: Future Water Supply Waters which are waters intended for future drinking water supply purposes.

(1) Fresh Waters Classifications:

(A) Class C: Rule .0211 of this Subchapter;

(B) Class B: Rule .0219 of this Subchapter;

(C) Class WS-I (Water Supply): Rule .0212 of this Subchapter;

(D) Class WS-II (Water Supply): Rule .0214 of this Subchapter;

(E) Class WS-III (Water Supply): Rule .0215 of this Subchapter;

(F) Class WS-IV (Water Supply): Rule .0216 of this Subchapter;

(G) Class WS-V (Water Supply): Rule .0218 of this Subchapter; and

(H) Class WL (Wetlands): Rule .0231 of this Subchapter.

(2) Tidal Salt Waters Classifications:

(A) Class SC: Rule .0220 of this Subchapter;

(B) Class SB: Rule .0222 of this Subchapter;

(C) Class SA: Rule .0221 of this Subchapter; and

(D) Class SWL: Rule .0231 of this Subchapter.

(3) Supplemental Classifications:

(A) Class Tr (Trout Waters): Rule .0202 of this Subchapter;

(B) Class Sw (Swamp): Rule .0202 of this Subchapter;

(C) Class NSW (Nutrient Sensitive Waters): Rule .0223 of this Subchapter;

(D) Class ORW (Outstanding Resource Waters): Rule .0225 of this Subchapter;

(E) Class HQW (High Quality Waters): Rule .0224 of this Subchapter; and

(F) Class UWL (Unique Wetlands): Rule .0231 of this Subchapter.

(d)(c) Water Quality Standards. The water quality standards applicable to each classification assigned are those established in 15A NCAC 2B .0200, Classifications and Water Quality Standards Applicable to the Surface Waters of North Carolina, as adopted by the North Carolina Environmental Management Commission; the rules of Section .0200 of this Subchapter.

(e)(1) Reading the Index Number. The index number appearing in the column so designated is an identification number assigned to each stream or segment of a stream, indicating the specific tributary progression between the main stem stream and the tributary stream.

(2) Cross Referencing the Index Number. The inclusion of the index number in the schedule is to provide a cross reference between the classification schedules and an alphabetic list of streams.

(d) Index Number. The index number is an identification number assigned to each stream or segment of a stream, indicating the specific tributary progression between the main stem stream and tributary stream. The index number can be referenced to the Division's river basin classification schedules (hydrologic and alphabetic) for each river basin. The schedules are available online at <http://portal.ncdenr.org/web/wq/ps/csu/classifications>

(f)(e) Classification Date. The classification date indicates the date on which enforcement of the provisions of Section 143-215.1 of the General Statutes 143-215.1 of North Carolina became effective with reference to the classification assigned to the various streams in North Carolina.

(g) Reference. Copies of the schedules of classifications adopted and assigned to the waters of the various river basins may be obtained at no charge by writing to:

Director  
Division of Environmental Management  
Department of Environment, Health, and Natural Resources  
Post Office Box 29535  
Raleigh, North Carolina 27626-0535

(h) Places where the schedules may be inspected:

Division of State Library  
Archives—State Library Building  
109 E. Jones Street  
Raleigh, North Carolina.

~~(+)(f)~~ Unnamed Streams.

(1) Any stream ~~which that~~ is not ~~named~~ listed in the ~~schedule of stream classifications~~ a river basin classification schedule carries the same classification as that assigned to the stream segment to which it is tributary except:

(A) ~~unnamed streams specifically described in the schedule of classifications; or~~

~~(B)(A)~~ unnamed freshwaters tributary to tidal saltwaters will be classified "C"; or

~~(C)(B)~~ after November 1, 1986, any ~~newly created~~ areas of tidal saltwater created by approved dredging projects and which are connected to Class SA waters by approved dredging projects will be classified "SC" unless case-by-case reclassification proceedings are ~~conducted~~ conducted per Rule .0101 of this Subchapter.

(2) The following river basins have different policies for unnamed streams entering other states or for specific areas of the basin:

~~Hiwassee River Basin (Rule .0302); Little Tennessee River Basin and Savannah River Drainage Area (Rule .0303); French Broad River Basin (Rule .0304); Watauga River Basin (Rule .0305); Broad River Basin (Rule .0306); New River Basin (Rule .0307); Catawba River Basin (Rule .0308); Yadkin Pee Dee River Basin (Rule .0309); Lumber River Basin (Rule .0310); Roanoke River Basin (Rule .0313); Tar Pamlico River Basin (Rule .0316); Pasquotank River Basin (Rule .0317).~~

(A) Hiwassee River Basin (Rule .0302 of this Section);

(B) Little Tennessee River Basin and Savannah River Drainage Area (Rule .0303 of this Section);

(C) French Broad River Basin (Rule .0304 of this Section);

(D) Watauga River Basin (Rule .0305 of this Section);

(E) Broad River Basin (Rule .0306 of this Section);

(F) New River Basin (Rule .0307 of this Section);

(G) Catawba River Basin (Rule .0308 of this Section);

(H) Yadkin-Pee Dee River Basin (Rule .0309 of this Section);

(I) Lumber River Basin (Rule .0310 of this Section);

(J) Roanoke River Basin (Rule .0313 of this Section);

(K) Tar-Pamlico River Basin (Rule .0316 of this Section); and

(L) Pasquotank River Basin (Rule .0317 of this Section).

Authority G.S. 143-214.1; 143-214.5; 143-215.1; 143-215.3(a)(1).

### 15A NCAC 02B .0302 HIWASSEE RIVER BASIN

(a) ~~Places where the schedule may be inspected:~~ Classifications assigned to the waters within the Hiwassee River Basin are set forth in the Hiwassee River Basin Classification Schedule, which may be inspected at the following places:

(1) ~~Clerk of Court;~~

Cherokee County

Clay County; the Internet at <http://portal.ncdenr.org/web/wq/ps/csu/classifications>; and

(2) the North Carolina Department of Environment, Health, and Natural Resources Environmental Quality

(A) Asheville Regional Office Interchange Building

59 Woodfin Place 2090 US 70

Asheville, North Carolina.

Swannanoa, North Carolina; and

(B) Division of Water Resources

Central Office

512 North Salisbury Street

Raleigh, North Carolina.

(b) Unnamed Streams. Such streams entering Georgia or Tennessee shall be classified "C Tr."

(c) ~~The Hiwassee River Basin Schedule of Classifications and Water Quality Standards~~ Classification Schedule was amended effective:

(1) August 9, 1981;

(2) February 1, 1986;

(3) March 1, 1989;

(4) August 1, 1990;

(5) August 3, 1992;

(6) July 1, 1995;

(7) August 1, 2002.

(d) ~~The Schedule of Classifications and Water Quality Standards for the Hiwassee River Basin~~ Classification Schedule was amended effective March 1, 1989 as follows:

(1) Fires Creek (Index No. 1-27) and all tributary waters were reclassified from Class C-trout and Class C to Class C-trout ORW and Class C ORW.

(2) Gipp Creek (Index No. 1-52-23) and all tributary waters were reclassified from Class C-trout and Class C to Class C-trout ORW and Class C ORW.

(e) ~~The Schedule of Classifications and Water Quality Standards for the Hiwassee River Basin~~ Classification Schedule was amended effective August 3, 1992 with the reclassification of all water supply 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.

(f) ~~The Schedule of Classifications and Water Quality Standards for the Hiwassee River Basin~~ Classification Schedule was amended effective July 1, 1995 with the reclassification of the Hiwassee River [Index Nos. 1-(42.7) and 1-(48.5)] from McComb Branch to the Town of Murphy water supply intake including tributaries from Classes WS-IV and WS-IV CA to Classes WS-IV, WS-IV CA, WS-V and C.

(g) ~~The Schedule of Classifications and Water Quality Standards for the Hiwassee River Basin~~ Classification Schedule was amended effective August 1, 2002 with the reclassification of the Hiwassee River [portion of Index No. 1-(16.5)] from a point 1.2 mile upstream of mouth of McComb Branch to a point 0.6 mile upstream of McComb Branch (Town of Murphy proposed water supply intake) from Class WS-IV to Class WS-IV CA.

*Authority G.S. 143-214.1; 143-215.1; 143-215.3(a)(1).*

**15A NCAC 02B .0303 LITTLE TENNESSEE RIVER BASIN AND SAVANNAH RIVER DRAINAGE AREA**

(a) ~~The Classifications assigned to the waters within the Little Tennessee River Basin and Savannah River Drainage Area Schedule of Classifications and Water Quality Standards are set forth in the Little Tennessee River Basin and Savannah River Drainage Area Classification Schedule, which may be inspected at the following places:~~

- (1) the Internet at <http://h2o.enr.state.nc.us/csu/>; <http://portal.ncdenr.org/web/wq/ps/csu/classifications>; and
- (2) the North Carolina Department of ~~Environment and Natural Resources~~ Environmental Quality:
  - (A) Asheville Regional Office  
2090 US Highway 70  
Swannanoa, North Carolina ~~Carolina~~; and
  - (B) Division of Water ~~Quality Resources~~ Resources  
Central Office  
512 North Salisbury Street  
Raleigh, North Carolina.

(b) Unnamed Streams. Such streams entering Georgia or Tennessee shall be classified "C Tr." Such streams in the Savannah River drainage area entering South Carolina shall be classified "B Tr."

(c) The Little Tennessee River Basin and Savannah River Drainage Area ~~Schedule of Classifications and Water Quality Standards~~ Classification Schedule was amended effective:

- (1) February 16, 1977;
- (2) March 1, 1977;
- (3) July 13, 1980;
- (4) February 1, 1986;
- (5) October 1, 1987;
- (6) March 1, 1989;
- (7) January 1, 1990;
- (8) July 1, 1990;
- (9) August 1, 1990;
- (10) March 1, 1991;
- (11) August 3, 1992;
- (12) February 1, 1993;
- (13) August 1, 1994;
- (14) September 1, 1996;
- (15) August 1, 1998;
- (16) August 1, 2000;
- (17) April 1, 2003;
- (18) January 1, 2007;
- (19) November 1, 2007;
- (20) July 1, 2009.

(d) ~~The Schedule of Classifications of Water Quality Standards for the Little Tennessee Basin and Savannah River Drainage Area~~ Classification Schedule was amended effective March 1, 1989 as follows:

- (1) Nantahala River (Index No. 2-57) from source to the backwaters of Nantahala Lake and all tributary waters were reclassified from Class B-trout, Class C-trout and Class C to Class B-trout ORW, Class C-trout ORW and Class C ORW.
- (2) Chattooga River (Index No. 3) including Scotsman Creek, Overflow Creek, Big Creek, Talley Mill Creek and all tributary waters were reclassified from Class B-trout, Class C-trout and Class C to Class B-trout ORW, Class C-trout ORW and Class C ORW and Clear Creek and all tributary waters were reclassified from Class C-trout and Class C to Class B-trout and Class B.

(e) ~~The Schedule of Classifications and Water Quality Standards for the Little Tennessee River Basin and Savannah River Drainage Area~~ Classification Schedule was amended effective January 1, 1990 as follows:

- (1) North Fork Coweeta Creek (Index No. 2-10-4) and Falls Branch (Index No. 2-10-4-1) were reclassified from Class C to Class B.
- (2) Burningtown Creek (Index No. 2-38) was reclassified from C-trout to B-trout.

(f) ~~The Schedule of Classifications and Water Quality Standards for the Little Tennessee River Basin and Savannah River Drainage Area~~ Classification Schedule was amended effective July 1, 1990 by the reclassification of Alarka Creek (Index No. 2-69) from source to Upper Long Creek (Index No. 2-69-2) including all tributaries from Classes C and C Tr to Classes C HQW and C Tr HQW.

(g) ~~The Schedule of Classifications and Water Quality Standards for the Little Tennessee River Basin and Savannah River Drainage Area~~ Classification Schedule was amended effective March 1, 1991 as follows:

- (1) Cartoogechaye Creek [Index Nos. 2-19-(1) and 2-19-(16)] from Gibson Cove Branch to bridge at U.S. Hwy. 23 and 441 and from the bridge at U.S. Hwy. 23 and 441 to the Little Tennessee River was reclassified from Classes WS-III Tr and C Tr to Classes WS-III and B Tr and B Tr respectively.
  - (2) Coweeta Creek (Index Nos. 2-10) from its source to the Little Tennessee River including all tributaries except Dryman Fork (Index No. 2-10-3) and North Fork Coweeta Creek (Index No. 2-10-4) was reclassified from Classes C and C Tr to Classes B and B Tr.
- (h) ~~The Schedule of Classifications and Water Quality Standards for the Little Tennessee River Basin and Savannah River Drainage Area~~ 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.
- (i) ~~The Schedule of Classifications and Water Quality Standards for the Little Tennessee River Basin and Savannah River Drainage Area~~ Classification Schedule has been amended effective February 1, 1993 as follows:
- (1) Bearwallow Creek from its source to 2.3 miles upstream of the Toxaway River [Index No. 4-7-(1)] was revised to indicate the application of an additional management strategy (~~referencing 15A NCAC 02B .0201(d)~~ (.0201(d) of this Subchapter) to protect downstream waters; and
  - (2) the Tuckasegee River from its source to Tennessee Creek [Index No. 2-79-(0.5)] including all tributaries was reclassified from Classes WS-III&B Tr HQW, WS-III HQW and WS-III to Classes WS-III Tr ORW and WS-III ORW.
- (j) ~~The Schedule of Classifications and Water Quality Standards for the Little Tennessee River Basin and Savannah River Drainage Area~~ Classification Schedule was amended effective August 1, 1994 with the reclassification of Deep Creek [Index Nos. 2-79-63-(1) and 2-79-63-(16)] from its source to the Great Smokey Mountains National Park Boundary including tributaries from Classes C Tr, B Tr and C Tr HQW to Classes WS-II Tr and WS-II Tr CA.
- (k) ~~The Schedule of Classifications and Water Quality Standards for the Little Tennessee River Basin and Savannah River Drainage Area~~ Classification Schedule was amended effective September 1, 1996 as follows:
- (1) Deep Creek from the Great Smoky Mountains National Park Boundary to the Tuckasegee River [Index no. 2-79-63-(21)] was reclassified from Class C Tr to Class B Tr; and
  - (2) the Tuckasegee River from the West Fork Tuckasegee River to Savannah Creek and from Macks Town Branch to Cochran Branch [Index Nos. 2-79-(24), 2-79(29.5) and 2-79-(38)] was reclassified from Classes WS-III Tr, WS-III Tr CA and C to Classes WS-III&B Tr, WS-III&B Tr CA and B.
- (l) ~~The Schedule of Classifications and Water Quality Standards for the Little Tennessee River Basin and Savannah River Drainage Area~~ Classification Schedule was amended effective August 1, 1998 with the reclassifications of Thorpe Reservoir (Lake Glenville), Hurricane Creek, and Laurel Branch [Index Nos. 2-79-23-(1), 2-79-23-2, and 2-79-23-2-1 respectively] from classes WS-III&B, WS-III Tr and WS-III to classes WS-III&B HQW, WS-III Tr HQW, and WS-III HQW.
- (m) ~~The Schedule of Classifications and Water Quality Standards for the Little Tennessee River Basin and Savannah River Drainage Area~~ Classification Schedule was amended August 1, 2000 with the reclassification of Wesser Creek [Index No. 2-79-52-5-1] from its source to Williams Branch from Class C to Class C Tr.
- (n) ~~The Schedule of Classifications and Water Quality Standards for the Little Tennessee River Basin and Savannah River Drainage Area~~ Classification Schedule was amended April 1, 2003 with the reclassification of a portion of the Little Tennessee River [Index No. 2-(1)] from a point 0.4 mile upstream of N.C. Highway 28 to Nantahala River Arm of Fontana Lake from Class C to Class B.
- (o) ~~The Schedule of Classifications and Water Quality Standards for the Little Tennessee River Basin and Savannah River Drainage Area~~ Classification Schedule was amended January 1, 2007 with the reclassification of the entire watersheds of all creeks that drain to the north shore of Fontana Lake between Eagle and Forney Creeks, including Eagle and Forney Creeks, [Index Nos. 2-96 through 2-164 (excluding all waterbodies that drain to the south shore of Fontana Lake)] from Class B, C Tr, WS-IV Tr CA, WS-IV Tr, and WS-IV & B CA to Class B ORW, C Tr ORW, WS-IV Tr ORW CA, WS-IV Tr ORW, and WS-IV & B ORW CA, respectively. Additional site-specific management strategies are outlined in ~~Rule 15A NCAC 02B .0225(e)(12)~~ Rule .0225(e)(12) of this Subchapter.
- (p) ~~The Schedule of Classifications and Water Quality Standards for the Little Tennessee River Basin and Savannah River Drainage Area~~ Classification Schedule was amended effective November 1, 2007 with the reclassification of Richland Balsam Seep near Beechflat Creek [Index No. 2-79-28-3-2] to Class WL ~~UWL as defined in 15A NCAC 02B .0101~~ UWL. The Division of Water ~~Quality Resources~~ maintains a Geographic Information Systems data layer of the UWL.
- (q) ~~The Schedule of Classifications and Water Quality Standards for the Little Tennessee River Basin and Savannah River Drainage Area~~ Classification Schedule was amended July 1, 2009 with the reclassification of the watershed of the lower portion of the Horsepasture River [portion of Index Number 4-13-(12.5)] from a point approximately 0.60 miles downstream of N.C. 281 (Bohaynee Road) to the NC-SC state line from Class B Tr to Class B Tr ORW, and the watershed of the upper portion of the

Horsepasture River [Index Number 4-13-(0.5) and a portion of Index Number 4-13-(12.5)] from source to a point approximately 0.60 miles downstream of N.C. 281 (Bohaynee Road) to include only the ORW management strategy as represented by "+". The "+" symbol as used in this paragraph means that all undesignated waterbodies that are located within the watershed of the upper portion of Horsepasture River shall comply with Paragraph (e) of ~~Rule .0225~~ Rule .0225(c) of this Subchapter in order to protect the designated waters as per Rule .0203 of this Subchapter and to protect outstanding resource values found throughout the entire Horsepasture River watershed. Site-specific management strategies are outlined in ~~15A NCAC 02B .0225(e)(13)~~ Rule .0225(e)(13) of this Subchapter.

Authority G.S. 143-214.1; 143-215.1; 143-215.3(a)(1); S.L. 2005-97.

#### 15A NCAC 02B .0304 FRENCH BROAD RIVER BASIN

(a) ~~Effective February 1, 1976, the adopted classifications~~ Classifications assigned to the waters within the French Broad River Basin are set forth in the French Broad River Basin ~~Schedule of Classifications and Water Quality Standards~~ Classification Schedule, which may be inspected at the following places:

- (1) the Internet at ~~http://h2o.enr.state.nc.us/csu/~~ http://portal.ncdenr.org/web/wq/ps/csu/classifications; and
- (2) the North Carolina Department of ~~Environment and Natural Resources~~ Environmental Quality:
  - (A) Asheville Regional Office  
2090 US Highway 70  
Swannanoa, North Carolina ~~Carolina~~ and
  - (B) Division of Water ~~Quality Resources~~ Resources  
Central Office  
512 North Salisbury Street  
Raleigh, North Carolina.

(b) Unnamed Streams. Such streams entering Tennessee are classified "B."

(c) The French Broad River Basin ~~Schedule of Classifications and Water Quality Standards~~ Classification Schedule was amended effective:

- (1) September 22, 1976;
- (2) March 1, 1977;
- (3) August 12, 1979;
- (4) April 1, 1983;
- (5) August 1, 1984;
- (6) August 1, 1985;
- (7) February 1, 1986;
- (8) May 1, 1987;
- (9) August 1, 1990.

(d) The ~~Schedule of Classifications and Water Quality Standards~~ for the French Broad River Basin Classification Schedule was amended effective March 1, 1989 as follows:

- (1) Cataloochee Creek (Index No. 5-41) and all tributary waters were reclassified from Class C-trout and Class C to Class C-trout ORW and Class C ORW.

- (2) South Fork Mills River (Index No. 6-54-3) down to Queen Creek and all tributaries were reclassified from Class WS-I and Class WS-III-trout to Class WS-I ORW and Class WS-III-trout ORW.

(e) The ~~Schedule of Classifications and Water Quality Standards~~ for the French Broad River Basin Classification Schedule was amended effective October 1, 1989 as follows: Cane River (Index No. 7-3) from source to Bowlens Creek and all tributaries were reclassified from Class C trout and Class C to Class WS-III trout and Class WS-III.

(f) The ~~Schedule of Classifications and Water Quality Standards~~ for the French Broad River Basin Classification Schedule was amended effective January 1, 1990 as follows: North Toe River (Index No. 7-2) from source to Cathis Creek (Christ Branch) and all tributaries were reclassified from Class C trout and Class C to Class WS-III trout and Class WS-III.

(g) The ~~Schedule of Classifications and Water Quality Standards~~ for the French Broad 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 ~~Schedule of Classifications and Water Quality Standards~~ for the French Broad River Basin Classification Schedule was amended effective October 1, 1993 as follows: Reasonover Creek [Index No. 6-38-14-(1)] from source to Reasonover Lake Dam and all tributaries were reclassified from Class B Trout to Class WS-V and B Trout, and Reasonover Creek [Index No. 6-38-14-(4)] from Reasonover Lake Dam to Lake Julia Dam and all tributaries were reclassified from Class C Trout to Class WS-V Trout.

(i) The ~~Schedule of Classifications and Water Quality Standards~~ for the French Broad River Basin Classification Schedule was amended effective July 1, 1995 with the reclassification of Cane Creek [Index Nos. 6-57-(1) and 6-57-(9)] from its source to the French Broad River from Classes WS-IV and WS-IV Tr to Classes WS-V, WS-V Tr and WS-IV.

(j) The ~~Schedule of Classifications and Water Quality Standards~~ for the French Broad River Basin Classification Schedule was amended effective November 1, 1995 as follows: North Toe River [Index Numbers 7-2-(0.5) and 7-2-(37.5)] from source to a point 0.2 miles downstream of Banjo Branch, including tributaries, has been reclassified from Class WS-III, WS-III Trout and WS-III Trout CA (critical area) to Class WS-IV Trout, WS-IV, WS-IV Trout CA, and C Trout.

(k) The ~~Schedule of Classifications and Water Quality Standards~~ for the French Broad River Basin Classification Schedule was amended effective January 1, 1996 as follows: Stokely Hollow [Index Numbers 6-121.5-(1) and 6-121.5-(2)] from source to

mouth of French Broad River has been reclassified from Class WS-II and Class WS-II CA to Class C.

(l) ~~The Schedule of Classifications and Water Quality Standards for the French Broad River Basin~~ Classification Schedule was amended April 1, 1996 with the reclassification of the French Broad River [Index No. 6-(1)] from a point 0.5 miles downstream of Little River to Mill Pond Creek to Class WS-IV; French Broad River [Index No. 6-(51.5)] from a point 0.6 miles upstream of Mills River to Mills River to Class WS-IV CA (Critical Area), from Mills River to a point 0.1 miles upstream of Boring Mill Branch to Class C; and the Mills River [Index No. 6-54-(5)] was reclassified from City of Hendersonville water supply intake to a point 0.7 miles upstream of mouth of Mills River to Class WS-III, and from a point 0.7 miles upstream of mouth of Mills River to French Broad River to Class WS-III CA (Critical Area).

(m) ~~The Schedule of Classifications and Water Quality Standards for the French Broad River Basin~~ Classification Schedule was amended August 1, 1998 with the revision to the primary classification for portions of the French Broad River [Index No. 6-(38.5)] and the North Toe River 7-2-(10.5) from Class IV to Class C.

(n) ~~The Schedule of Classifications and Water Quality Standards for the French Broad River Basin~~ Classification Schedule was amended August 1, 1998 with the reclassification of Clear Creek [Index No. 6-55-(1)] from its source to Lewis Creek from Class C Tr to Class B Tr.

(o) ~~The Schedule of Classifications and Water Quality Standards for the French Broad River Basin~~ Classification Schedule was amended August 1, 2000 with the reclassification of Rough Creek [Index No. 5-8-4-(1)], including all tributaries, from its source to the Canton Reservoir from Class WS-I to Class WS-I Tr ORW.

(p) ~~The Schedule of Classifications and Water Quality Standards for the French Broad River Basin~~ Classification Schedule was amended August 1, 2002 with the revision to the primary classification for the French Broad River [Index No. 6-(1), 6-(27), 6-(47.5), 6-(52.5), and 6-(54.5)] including its four headwater forks' mainstems, watershed of tributary Davidson River, and watershed of tributary Bent Creek below Powhatan Dam, and the Nolichucky River [Index No. 7] including a lower portion of the North Toe River from Class C and Class WS-IV to Class B.

(q) ~~The Schedule of Classifications and Water Quality Standards for the French Broad River Basin~~ Classification Schedule was amended August 1, 2002 with the reclassification of the North Toe River [Index No. 7-2-(0.5)], including all tributaries, from source to a point 0.2 mile upstream of Pyatt Creek, from Class C Tr to Class WS-V Tr.

(r) ~~The Schedule of Classifications and Water Quality Standards for the French Broad River Basin~~ Classification Schedule was amended September 1, 2004 with the reclassification of a portion of Richland Creek [Index No. 5-16(1)], from source to a point approximately 11.2 miles from source (Boyd Avenue), from Class B to Class B Tr, and all tributaries to the portion of the creek referenced in this Paragraph from C, C HQW, and WS-I HQW, and WS-I HQW to C Tr, C HQW Tr, and WS-I HQW Tr, respectively, except Hyatt Creek [Index No. 5-16-6], Farmer Branch [Index No. 5-16-11], and tributaries already classified as Tr.

(s) ~~The Schedule of Classifications and Water Quality Standards for the French Broad River Basin~~ Classification Schedule was

amended effective November 1, 2007 with the reclassification of McClure's Bog near Gash Creek [Index No. 6-47] to Class WL UWL as defined in 15A NCAC 02B .0101 Rule .0202 of this Subchapter UWL. The North Carolina Division of Water Quality Resources maintains a Geographic Information Systems data layer of the UWL.

(t) ~~The Schedule of Classifications and Water Quality Standards for the French Broad River Basin~~ Classification Schedule was amended effective September 1, 2009 with the reclassification of the entire watershed of Big Laurel Creek (Index No. 6-112) from source to the French Broad River from Class C Tr to Class C ORW Tr.

(u) ~~The Schedule of Classifications and Water Quality Standards for the French Broad River Basin~~ Classification Schedule was amended effective September 1, 2009 with the reclassification of the entire watershed of Spring Creek [Index No. 6-118-(1) and 6-118-(27)] from source to the French Broad River from Class C Tr and Class C to Class C ORW Tr and Class C ORW.

(v) ~~The Schedule of Classifications and Water Quality Standards for the French Broad River Basin~~ Classification Schedule is amended December 1, 2011 with the reclassification of a portion of the French Broad River [Index No. 6-(54.5)] from the confluence of the Mills River to a point 0.2 miles downstream of the confluence of the Mills River from Class B to Class WS-IV&B CA.

*Authority G.S. 143-214.1; 143-215.1; 143-215.3(a)(1).*

#### **15A NCAC 02B .0305 WATAUGA RIVER BASIN**

(a) ~~The Watauga River Basin Schedule of Classifications and Water Quality Standards may be inspected at the following places:~~ Classifications assigned to the waters within the Watauga River Basin are set forth in the Watauga River Basin Classification Schedule, which may be inspected at the following places:

- (1) the Internet at <http://h2o.enr.state.nc.us/csu/>; <http://portal.ncdenr.org/web/wq/ps/csu/classifications>; and
- (2) the North Carolina Department of ~~Environment and Natural Resources:~~ Environmental Quality:
  - (A) Asheville Regional Office  
2090 US Highway 70  
Swannanoa, ~~Carolina~~ Carolina;
  - ~~(B) Division of Water Quality Central Office  
512 North Salisbury Street  
Raleigh, North Carolina.~~
  - (B) Winston-Salem Regional Office  
450 West Hanes Mill Road  
Winston-Salem, North Carolina; and
  - (C) Division of Water Resources Central Office  
512 North Salisbury Street  
Raleigh, North Carolina.

(b) Unnamed Streams. Such streams entering the State of Tennessee are classified "C."

(c) ~~The Watauga River Basin Schedule of Classifications and Water Quality Standards~~ Classification Schedule was amended effective:



- (1) August 12, 1979;
- (2) February 1, 1986;
- (3) October 1, 1987;
- (4) August 1, 1989;
- (5) August 1, 1990;
- (6) December 1, 1990;
- (7) April 1, 1992;
- (8) August 3, 1992;
- (9) February 1, 1993;
- (10) April 1, 1994;
- (11) August 1, 1998;
- (12) November 1, 2007.

(d) The ~~Schedule of Classifications and Water Quality Standards for the~~ Watauga River Basin Classification Schedule was amended effective July 1, 1989 as follows:

- (1) Dutch Creek (Index No. 8-11) was reclassified from Class C-trout to Class B-trout.
- (2) Pond Creek (Index No. 8-20-2) from water supply intake (located just above Tamarack Road) to Beech Creek and all tributary waters were reclassified from Class WS-III to C.

(e) The ~~Schedule of Classifications and Water Quality Standards for the~~ Watauga River Basin Classification Schedule was amended effective December 1, 1990 with the reclassification of the Watauga River from the US Highway 321 bridge to the North Carolina/Tennessee state line from Class C to Class B.

(f) The ~~Schedule of Classifications and Water Quality Standards for the~~ Watauga River Basin Classification Schedule was amended effective April 1, 1992 with the reclassification of Pond Creek from Classes WS-III and C to Classes WS-III Trout and C Trout.

(g) The ~~Schedule of Classifications and Water Quality Standards for the~~ Watauga 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 2B .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 ~~Schedule of Classifications and Water Quality Standards for the~~ Watauga River Basin Classification Schedule ~~has been was~~ amended effective February 1, 1993 with the reclassification of Boone Fork (Index No. 8-7) and all tributary waters from Classes C Tr HQW and C HQW to Classes C Tr ORW and C ORW.

(i) The ~~Schedule of Classifications and Water Quality Standards for the~~ Watauga River Basin Classification Schedule ~~has been was~~ amended effective April 1, 1994 with the reclassification of the Elk River from Peavine Branch to the North Carolina/Tennessee state line [Index No. 8-22-(3)] from Class C Tr to Class B Tr.

(j) The ~~Schedule of Classifications and Water Quality Standards for the~~ Watauga River Basin Classification Schedule ~~has been was~~ amended effective August 1, 1998 with the reclassification of East Fork Pond Creek from its source to the backwater of Santis Lake,

[Index No. 8-20-2-1.5] from Class WS-II Tr to Class WS-III Tr; the reclassification of West Fork Pond Creek (Santis Lake) [Index No. 8-20-2-1-(2)] from the backwaters of Santis Lake to Pond Creek from WS-II Tr CA to WS-III Tr CA; and the reclassification of the connecting stream of Lake Coffey [Index No. 8-20-2-2] from the dam at Lake Coffey to Pond Creek from WS-II Tr CA to C Tr.

(k) The ~~Schedule of Classifications and Water Quality Standards for the~~ Watauga River Basin Classification Schedule ~~has been was~~ amended effective November 1, 2007 with the reclassification of the Beech Creek Bog near Beech Creek [Index No. 8-20] to Class WL UWL as defined in 15A NCAC 02B .0101. Rule .0202 of this SubChapter UWL. The North Carolina Division of Water Quality Resources maintains a Geographic Information Systems data layer of the UWL.

*Authority G.S. 143-214.1; 143-215.1; 143-215.3(a)(1).*

### **15A NCAC 02B .0306 BROAD RIVER BASIN**

(a) ~~Effective February 1, 1976, the adopted classifications~~ Classifications assigned to the waters within the Broad River Basin are set forth in the Broad River Basin Schedule of Classifications and Water Quality Standards, Classification Schedule, which may be inspected at the following places:

- (1) the Internet at <http://portal.ncdenr.org/web/wq/ps/csu/classifications>; and
- (2) the North Carolina Department of ~~Environment and Natural Resources~~: Environmental Quality:
  - (A) Mooresville Regional Office  
610 East Center Avenue  
Suite 301  
Mooresville, North ~~Carolina~~ Carolina;
  - (B) Asheville Regional Office  
2090 US Highway 70  
Swannanoa, North ~~Carolina~~ Carolina;  
and
  - (C) Division of Water Resources  
Central Office  
512 North Salisbury Street  
Raleigh, North Carolina.

(b) Unnamed Streams. Such streams entering South Carolina are classified "C."

(c) The Broad River Basin ~~Schedule of Classifications and Water Quality Standards~~ Classification Schedule was amended effective:

- (1) March 1, 1977;
- (2) February 12, 1979;
- (3) August 12, 1979;
- (4) April 1, 1983;
- (5) February 1, 1986.

(d) The ~~Schedule of Classifications and Water Quality Standards for the~~ Broad 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.

(e) The ~~Schedule of Classifications and Water Quality Standards for the Broad River Basin~~ Classification Schedule was amended effective September 1, 1994 with the reclassification of the Second Broad River [Index No. 9-41-(0.5)] from its source to Roberson Creek including associated tributaries was reclassified from Class WS-V to Classes WS-V, WS-IV and WS-IV CA.

(f) The ~~Schedule of Classifications and Water Quality Standards for the Broad River Basin~~ Classification Schedule was amended effective August 1, 1998 with the revision to the primary classification for portions of the Broad River [Index No. 9-(23.5)] from Class WS-IV to Class C and Second Broad River [Index Nos. 9-41-(10.5) and 9-41-(14.5)] and First Broad River [Index No. 9-50-(11)] from Class WS-IV to Class WS-V.

(g) The ~~Schedule of Classifications and Water Quality Standards for the Broad River Basin~~ Classification Schedule was amended August 1, 2000 with the reclassification of the Green River [Index No. 9-29-(1)], including all tributaries, from its source to its mouth in Lake Summit at elevation 2011 from Class C Tr to Class B Tr.

(h) The ~~Schedule of Classifications and Water Quality Standards for the Broad River Basin~~ Classification Schedule was amended effective August 1, 2000 with the reclassification of Lake Montonia [Index No. 9-54-1-(1)], and all tributaries, from Class B to Class B HQW.

(i) The ~~Schedule of Classifications and Water Quality Standards for the Broad River Basin~~ Classification Schedule was amended effective April 1, 2001 with the reclassification of the Green River [Index No. 9-29-(1)], including all tributaries, from its source to the downstream side of the mouth of Rock Creek from Class B Tr to Class B Tr HQW.

(j) The ~~Schedule of Classifications and Water Quality Standards for the Broad River Basin~~ Classification Schedule was amended effective March 1, 2007 with the reclassification of the North Fork First Broad River (Index No. 9-50-4), including all tributaries, from its source to the First Broad River from Class C Tr to Class C Tr ORW.

(k) The ~~Schedule of Classifications and Water Quality Standards for the Broad River Basin~~ Classification Schedule was amended effective March 1, 2007 with the reclassification of a segment of the Broad River [Index No. 9-(25.5)] from a point 0.5 mile upstream of the City of Shelby proposed water supply intake to the City of Shelby proposed water supply intake from Class C to Class WS-IV CA, and from a point 0.5 mile upstream of the City of Shelby proposed water supply intake to a point approximately 0.3 mile downstream of its confluence with Cane Creek from Class C to Class WS-IV. The City of Shelby proposed water supply intake is to be placed on the Broad River at a point approximately one mile upstream of its confluence with the First Broad River.

(l) The ~~Schedule of Classifications and Water Quality Standards for the Broad River Basin~~ Classification Schedule was amended effective March 1, 2007 with the reclassification of a segment of the Broad River [Index No. 9-(25.5)] from a point 0.5 mile

upstream of the Town of Forest City proposed water supply intake to the Town of Forest City proposed water supply intake from Class C to Class WS-IV CA, and from a point 0.5 mile upstream of the Town of Forest City proposed water supply intake to a point approximately 0.2 mile downstream of Rutherford County SR 1145 (Town of Rutherfordton water supply intake) from Class C to Class WS-IV. The Town of Forest City proposed water supply intake is to be placed on the Broad River at a point approximately 0.4 mile downstream of McKinney Creek.

(m) The ~~Schedule of Classifications and Water Quality Standards for the Broad River Basin~~ Classification Schedule was amended effective September 1, 2014, in order to allow a water supply intake to be placed in Lake Adger by Polk County, as follows:

- (1) a portion of the Green River [Index No. 9-29-(33)], including tributaries, from the dam at Lake Adger to a point 0.35 mile downstream of Rash Creek from Class C to Class WS-IV CA. The CA extends 0.5 mile from and draining to the normal pool elevation of Lake Adger.
- (2) a portion of the Green River from a point 0.35 mile [Index No. 9-29-(33)], including tributaries, downstream of Rash Creek to a point 300 feet downstream of Laurel Branch from Class C to Class WS-IV. The PA extends 5.0 miles from and draining to the normal pool elevation of Lake Adger.

*Authority G.S. 143-214.1; 143-215.1; 143-215.3(a)(1).*

#### **15A NCAC 02B .0307 NEW RIVER BASIN**

(a) ~~Effective February 1, 1976, the adopted classifications~~ Classifications assigned to the waters within the New River Basin are set forth in the New River Basin ~~Schedule of Classifications and Water Quality Standards~~, Classification Schedule, which may be inspected at the following places:

- (1) the Internet at <http://portal.ncdenr.org/web/wq/ps/csu/rules>; <http://portal.ncdenr.org/web/wq/ps/csu/classifications>; and
- (2) the North Carolina Department of ~~Environment and Natural Resources~~; Environmental Quality:
  - (A) Asheville Regional Office  
2090 US Highway 70  
Swannanoa, North Carolina;
  - (B) Winston-Salem Regional Office  
~~585 Waughtown Street~~ 450 West Hanes Mill Road  
Winston-Salem, North Carolina; and
  - (C) Division of Water Quality Resources  
Central Office  
512 North Salisbury Street  
Raleigh, North Carolina.

(b) Unnamed Streams. Such streams entering the State of Tennessee are classified "C."

(c) The New River Basin ~~Schedule of Classifications and Water Quality Standards~~ Classification Schedule was amended effective:

- (1) August 10, 1980 (see Paragraph (d) of this Rule);

- (2) April 1, 1983 (see Paragraph (e) of this Rule);
- (3) February 1, 1986 (see Paragraph (f) of this Rule);
- (4) August 1, 1989 (see Paragraph (g) of this Rule);
- (5) August 1, 1990 (see Paragraph (h) of this Rule);
- (6) August 3, 1992 (see Paragraph (i) of this Rule);
- (7) February 1, 1993 (see Paragraph (j) of this Rule);
- (8) August 1, 1998 (see Paragraph (k) of this Rule);
- (9) November 1, 2007 (see Paragraph (l) of this Rule);
- (10) December 1, 2010 (see Paragraph (m) of this Rule); and
- (11) July 3, 2012 (see Paragraph (n) of this Rule).

(d) The ~~Schedule of Classifications and Water Quality Standards for the New River Basin~~ Classification Schedule was amended effective August 10, 1980 as follows:

- (1) South Fork New River [Index No. 10-1-(1)] from the confluence of the Middle Fork South Fork New River and the East Fork South Fork New River to Winkler Creek was reclassified from Class C to Class A-II;
- (2) Middle Fork South Fork New River [Index Nos. 10-1-2-(6) and 10-1-2-(14)] from Brown Branch to the South Fork New River was reclassified from Class C and C Trout to Class A-II and A-II Trout;
- (3) East Fork South Fork New River [Index Nos. 10-1-3-(1) and 10-1-3-(7)] was reclassified from Class C and C Trout to Class A-II and A-II Trout; and
- (4) Winkler Creek [Index No. 10-1-4-(2) from Boone water supply intake dam to Watauga County SR 1549 and Flannery Fork [Index No. 10-1-4-3-(2)] from the dam at Camp Sky Ranch Bathing Lake to Winkler Creek were reclassified from Class C Trout to Class A-II Trout.

(e) The ~~Schedule of Classifications and Water Quality Standards for the New River Basin~~ Classification Schedule was amended effective April 1, 1983 as follows: Naked Creek [Index No. 10-1-32] was reclassified from Class C Trout to Class C.

(f) The ~~Schedule of Classifications and Water Quality Standards for the New River Basin~~ Classification Schedule was amended effective February 1, 1986 with the reclassification of all Class A-I and A-II streams to Class WS-I and WS-III in the New River Basin.

(g) The ~~Schedule of Classifications and Water Quality Standards for the New River Basin~~ Classification Schedule was amended effective August 1, 1989 as follows: South Fork New River [Index No. 10-1-(30)] from Dog Creek to New River and all tributary waters were reclassified from Class C-trout and Class C to Class B-trout and B.

(h) The ~~Schedule of Classifications and Water Quality Standards for the New River Basin~~ Classification Schedule was amended effective August 1, 1990 as follows:

- (1) New River [Index No. 10] from the confluence of the North and South Forks New River to the last point at which the New River crosses the

- (2) North Carolina/Virginia State line was reclassified from Class C to Class C HQW;
- (2) South Fork New River [Index Nos. 10-1-(14.5), 10-1-(26), 10-1-(30), and 10-1-(33.5)] from Elk Creek to the confluence of the New River and North Fork New River was reclassified from Class C, B and WS-III to Class C HQW, B HQW and WS-III HQW;
- (3) Howard Creek [Index Nos. 10-1-9-(1) and 10-1-9-(6)] from source to the South Fork New River was reclassified from Class WS-III Trout and C Trout to Class WS-III Trout HQW and C Trout HQW;
- (4) Big Horse Creek [Index No. 10-2-21-(5.5)] from North Carolina/Virginia State line to lower Ashe County SR 1361 bridge was reclassified from Class C Trout to Class C Trout HQW; and
- (5) Little River [Index No. 10-9-(11.5)] from N.C. Hwy. 18 bridge to the North Carolina/Virginia State line was reclassified from Class C to Class C HQW.

(i) The ~~Schedule of Classifications and Water Quality Standards for the New 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.

(j) The ~~Schedule of Classifications and Water Quality Standards for the New River Basin~~ Classification Schedule was amended effective February 1, 1993 as follows:

- (1) the South Fork New River (Index No. 10-1-33.5) from Dog Creek to the New River was reclassified from Class B HQW to Class B ORW;
- (2) the New River (Index No. 10) from the confluence of the North And South Fork New Rivers to the last point at which it crosses the North Carolina/Virginia State line was reclassified from Class C HQW to Class C ORW; and
- (3) Old Field Creek (Index No. 10-1-22) from Call Creek to the South Fork New River, and Call Creek (Index No. 10-1-22-1) from its source to Old Field Creek were reclassified from Class WS-IV Trout to Class WS-IV Trout ORW.

(k) The ~~Schedule of Classifications and Water Quality Standards for the New River Basin~~ Classification Schedule was amended effective August 1, 1998 with the revision to the primary classification for a portion of the South Fork New River [Index No. 10-1 (20.5)] from Class WS-IV to Class WS-V.

(l) The ~~Schedule of Classifications and Water Quality Standards for the New River Basin~~ Classification Schedule was amended effective November 1, 2007 with the reclassification of Bluff Mountain Fen near Buffalo Creek [Index No. 10-2-20] to Class WL UWL as defined in ~~15A NCAC 02B .0101 Rule .0202 of this Subchapter UWL~~. The North Carolina Division of Water Quality Resources maintains a Geographic Information Systems data layer of the UWL.

(m) The ~~Schedule of Classifications and Water Quality Standards for the New River Basin~~ Classification Schedule was amended effective December 1, 2010 with the reclassification of the North Fork New River [Index Nos. 10-2-(1), 10-2-(12)] and its tributaries from C+, C+ Trout and C Trout HQW to C ORW and C Trout ORW with the exception of the following:

- (1) Index Nos. 10-2-21-9, 10-2-21-(8), 10-2-(11) and 10-2-20 were reclassified from C+ and C Trout + to C HQW and C Trout HQW; and
- (2) Little Buffalo Creek and Claybank Creek (Index Nos. 10-2-20-1 and 10-2-20-1-1) did not qualify for the ORW or HQW designation; however, these waters shall be managed in the same way as the downstream designated HQW areas.

(n) The ~~Schedule of Classifications and Water Quality Standards for the New River Basin~~ Classification Schedule was amended effective July 3, 2012 as follows:

- (1) the portion of the South Fork New River [Index No. 10-1-(14.5)] from the Town of Boone's intake, located nearly 0.5 miles upstream of SR 1100, to 875 feet downstream of SR 1351 from C HQW to WS-IV CA HQW;
- (2) the portion of the South Fork New River [Index No. 10-1-(14.5)] from 875 feet downstream of SR 1351 to Elk Creek from C HQW to WS-IV HQW; and
- (3) the portion of the South Fork New River [Index No. 10-1-(3.5)] from Elk Creek to 1.75 miles upstream of SR 1351 from C+ to WS-IV +.

*Authority G.S. 143-214.1; 143-215.1; 143-215.3(a)(1).*

#### **15A NCAC 02B .0308 CATAWBA RIVER BASIN**

(a) ~~Effective February 1, 1976, the adopted classifications~~ Classifications assigned to the waters within the Catawba River Basin are set forth in the Catawba River Basin ~~Schedule of Classifications and Water Quality Standards~~, Classification Schedule, which may be inspected at the following places:

- (1) the Internet at <https://deq.nc.gov/river-basin-classification-schedule>; and
- (2) the North Carolina Department of Environmental Quality:
  - (A) Mooresville Regional Office  
610 East Center Avenue, Suite 301  
Mooresville, North Carolina;
  - (B) Asheville Regional Office  
2090 US Highway 70  
Swannanoa, North Carolina; and
  - (C) Division of Water Resources  
Central Office

512 North Salisbury Street  
Raleigh, North Carolina.

(b) Unnamed Streams. Such streams entering South Carolina are classified "C."

(c) The Catawba River Basin ~~Schedule of Classifications and Water Quality Standards~~ Classification Schedule was amended effective:

- (1) March 1, 1977 (see Paragraph (d) of this Rule);
- (2) August 12, 1979 (see Paragraph (e) of this Rule);
- (3) April 1, 1982 (see Paragraph (f) of this Rule);
- (4) January 1, 1985 (see Paragraph (g) of this Rule);
- (5) August 1, 1985 (see Paragraph (h) of this Rule);
- (6) February 1, 1986 (see Paragraph (i) of this Rule);
- (7) March 1, 1989 (see Paragraph (j) of this Rule);
- (8) May 1, 1989 (see Paragraph (k) of this Rule);
- (9) March 1, 1990 (see Paragraph (l) of this Rule);
- (10) August 1, 1990 (see Paragraph (m) of this Rule);
- (11) August 3, 1992 (see Paragraph (n) of this Rule);
- (12) April 1, 1994 (see Paragraph (o) of this Rule);
- (13) July 1, 1995 (see Paragraph (p) of this Rule);
- (14) September 1, 1996 (see Paragraph (q) of this Rule);
- (15) August 1, 1998 (see Paragraph (r) of this Rule);
- (16) April 1, 1999 (see Paragraph (s) of this Rule);
- (17) August 1, 2000 (see Paragraph (t) of this Rule);
- (18) August 1, 2004 (see Paragraph (u) of this Rule);
- (19) May 1, 2007 (see Paragraph (v) of this Rule);
- (20) September 1, 2010 (see Paragraph (w) of this Rule);
- (21) March 1, 2013 (see Paragraph (x) of this Rule); and
- (22) July 1, 2017 (see Paragraph (y) of this Rule).

(d) The ~~Schedule of Classifications and Water Quality Standards for the Catawba River Basin~~ Classification Schedule was amended effective March 1, 1977 as follows:

- (1) Torrence Branch (Index No. 11-136) from source to North Carolina-South Carolina State Line was reclassified from Class D to Class B; and
- (2) Edwards Branch (Index No. 11-137-8-2-1) from source to Brier Creek was reclassified from Class D to Class C.

(e) The ~~Schedule of Classifications and Water Quality Standards for the Catawba River Basin~~ Classification Schedule was amended effective August 12, 1979 as follows: Unnamed Tributary to Lower Little River (Robinette Creek)(Index No. 11-69-1.5) from source to Lower Little River was reclassified from Class C to Class B.

(f) The ~~Schedule of Classifications and Water Quality Standards for the Catawba River Basin~~ Classification Schedule was amended effective April 1, 1982 as follows:

- (1) Spainhour Creek (Index No. 11-39-3) from source to Lower Creek was reclassified from Class C (1) to Class C; and

- (2) Allen Creek (Index No. 11-129-5-7-2-4) from source to Maiden Creek was reclassified from Class C to Class A-II.

(g) ~~The Schedule of Classifications and Water Quality Standards for the Catawba River Basin Classification Schedule~~ was amended effective January 1, 1985 as follows: Catawba Creek from source to N.C. Highway 275 was reclassified from Class C(1) to Class C.

(h) ~~The Schedule of Classifications and Water Quality Standards for the Catawba River Basin Classification Schedule~~ was amended effective August 1, 1985 as follows:

- (1) Brier Creek (Index No. 11-137-8-2) from source to Little Sugar Creek was reclassified from Class C (1) to Class C;
- (2) Little Hope Creek (Index No. 11-137-8-3) from source to Little Sugar Creek was reclassified from Class C (1) to Class C; and
- (3) McMullen Creek (Index No. 11-137-9-5) from source to N.C. Highway 16 was reclassified from Class C (1) to Class C.

(i) ~~The Schedule of Classification and Water Quality Standards for the Catawba River Basin Classification Schedule~~ was amended effective February 1, 1986 with the reclassification of all A-I and A-II streams to WS-I and WS-III in the Catawba River Basin.

(j) ~~The Schedule of Classifications and Water Quality Standards for the Catawba River Basin Classification Schedule~~ was amended effective March 1, 1989 as follows:

Wilson Creek (Index No. 11-38-34) and all tributary waters were reclassified from Class B-trout and Class C-trout to Class B-trout ORW and Class C-trout ORW.

(k) ~~The Schedule of Classifications and Water Quality Standards for the Catawba River Basin Classification Schedule~~ was amended effective May 1, 1989 as follows:

- (1) Henry Fork [Index Nos. 11-129-1-(1) and 11-129-1-(2)] from source to Laurel Creek, including all tributaries, were reclassified from Class WS-I, C and C trout to Class WS-I ORW, C ORW and C trout ORW, except Ivy Creek and Rock Creek which will remain Class C trout and Class C; and
- (2) Jacob Fork [Index Nos. 11-129-2-(1) and 11-129-2-(4)] from source to Camp Creek, including all tributaries, were reclassified from Class WS-III trout and WS-III to WS-III trout ORW and WS-III ORW.

(l) ~~The Schedule of Classifications and Water Quality Standards for the Catawba River Basin Classification Schedule~~ was amended effective March 1, 1990 as follows:

- (1) Upper Creek [Index No. 11-35-2-(1)] from source to Timbered Branch including all tributaries except Timbered Branch (Index No. 11-35-2-9) was reclassified from Class C Trout to Class C Trout ORW; and
- (2) Steels Creek [Index No. 11-35-2-12(1)] from source to Little Fork and all tributaries was reclassified from Class C Trout to Class C Trout ORW.

(m) ~~The Schedule of Classifications and Water Quality Standards for the Catawba River Basin Classification Schedule~~ was amended effective August 1, 1990 as follows:

- (1) The classification for the portion of Mackey Creek [Index No. 11-15-(2)] from Marion Water Supply Intake to Laurel Fork was reclassified from Class C to Class C HQW;
- (2) Laurel Fork Creek [Index No. 11-15-3] from source to Mackey Creek was reclassified from Class C Tr to Class C Tr HQW;
- (3) Armstrong Creek [Index No. 11-24-14-(1)] from source to Bee Rock Creek was reclassified from Class WS-III Tr to Class WS-III Tr HQW;
- (4) Two segments of Linville River [Index Nos. 11-29-(16) and 11-29-(19)] were reclassified from Class B Tr and Class B to Class B Tr HQW and Class B HQW, respectively;
- (5) Upper Creek [Index No. 11-35-2-(8.5)] and its named tributaries were reclassified from Class C Tr to Class C Tr HQW;
- (6) Upper Creek (Clear Water Beach Lake) [Index No. 11-35-2-(10)] from Holly Spring Branch to Dam Clear Water Beach Lake was reclassified from Class B Tr to Class B Tr HQW;
- (7) Holly Spring Branch [Index No. 11-35-2-11] from source to Upper Creek was reclassified from Class C Tr to Class Tr HQW;
- (8) Steels Creek [Index No. 11-35-2-12-(5)] from Little Fork to a point 1.7 miles upstream from N.C. Highway 181 Bridge was reclassified from Class B Tr to Class B Tr HQW and Steels Creek [Index No. 11-35-2-12-(7)] from a point 1.7 miles upstream from N.C. Highway 181 bridge to Clear Water Beach Lake, Upper Creek was reclassified from Class B to Class B HQW;
- (9) Upper Creek [Index No. 11-35-2-(13)] from Dam at Clear Water Beach Lake to Warrior Fork was reclassified from Class WS-III Tr to Class WS-III Tr HQW;
- (10) The portion of Johns River [Index No. 11-38-(28)] from Wilson Creek to Rhodhiss Lake, Catawba River was reclassified from Class C to Class C HQW;
- (11) Mulberry Creek [Index No. 11-38-32-(1)] from source to Boone Fork and its tributaries Left Fork Mulberry Creek [Index No. 11-38-32-2], Right Fork Mulberry Creek [Index No. 11-38-32-3], Roaring Creek [Index No. 11-38-32-8] and Clark Branch [Index No. 11-38-32-10] were reclassified from Class C Tr to Class C Tr HQW;
- (12) Amos Creek [Index No. 11-38-32-4] and Mills Creek [Index No. 11-38-32-5] and their named tributaries were reclassified from Class C to Class C HQW;
- (13) Cane Branch [Index No. 11-38-32-6], Rush Branch [11-38-32-7] and Frankum Creek [11-38-32-9] and its named tributaries were reclassified from Class C to Class C HQW;

- (14) Mulberry Creek [Index No. 11-38-32-(11)] from Boone Branch to Dam at Mulberry Beach was reclassified from Class B to Class B HQW;
- (15) Boone Branch (Fork) [Index No. 11-38-32-12] and its named tributaries from source to Mulberry Creek were reclassified from Class B to Class B HQW;
- (16) Brown Branch [Index No. 11-38-32-13] and Moore Branch [Index No. 11-38-32-14] were reclassified from Class B to Class B HQW; and
- (17) Anderson Creek [Index No. 11-38-32-16] was reclassified from Class C to Class C HQW.

(n) ~~The Schedule of Classifications and Water Quality Standards for the~~ Catawba 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.

(o) ~~The Schedule of Classifications and Water Quality Standards for the~~ Catawba River Basin Classification Schedule was amended effective April 1, 1994 as follows:

- (1) Friday Lake (Index No. 11-125.5) from its source to Little Paw Creek was reclassified from Class C to Class B; and
- (2) The Linville River [Index No. 12-29-(1)] from Grandmother Creek to Linville Falls was reclassified from Class C Tr to Class B Tr.

(p) ~~The Schedule of Classifications and Water Quality Standards for the~~ Catawba River Basin Classification Schedule was amended effective July 1, 1995 with the reclassification of Clark Creek from a point 0.6 mile downstream of Catawba County SR 2014 to 0.4 mile upstream of Larkard Creek [Index No. 11-129-5-(4.5)], and Howards Creek from its source to 0.7 mile upstream of Lincoln County State Road 1200 [Index No. 11-129-4], including associated tributaries from Class WS-IV to Classes C and WS-IV.

(q) ~~The Schedule of Classifications and Water Quality Standards for the~~ Catawba River Basin Classification Schedule was amended effective September 1, 1996 as follows:

- (1) North Fork Catawba River [Index No. 11-24-(1)] from Laurel Branch to Armstrong Creek from Class C Tr to Class B Tr; and
- (2) Catawba River (Lake Hickory) from Rhodhiss dam to highway 321 [Index No. 11-(51)] from Class WS-IV CA to Class WS-IV B CA.

(r) ~~The Schedule of Classifications and Water Quality Standards for the~~ Catawba River Basin Classification Schedule was amended effective August 1, 1998 as follows:

- (1) The primary classification for portions of South Fork Catawba River [Index No. 11-129-(0.5)] and Hoyle Creek [Index No. 11-129-15-(1)]

was reclassified from Class WS-IV to Class WS-V;

- (2) Mill Creek [Index No. 11-7] from its source to Swannanoa Creek, including all tributaries, from Class C Tr to Class Tr HQW;
- (3) Toms Creek [Index Nos. 11-21-(1) and 11-21-(2)] from its source to Harris Creek, including all tributaries were reclassified from Class C Tr to Class Tr HQW; and
- (4) Harris Creek to McDowell County SR 1434, including all tributaries were reclassified from Class C to Class HQW.

(s) ~~The Schedule of Classifications and Water Quality Standards for the~~ Catawba River Basin Classification Schedule was amended effective April 1, 1999 as follows:

- (1) Portion of the Catawba River [Index Nos. 11-(27.5) and 11-(31)] from Class WS-IV B and WS-IV to Class WS-V B and WS-V;
- (2) Armstrong Creek [Index Nos. 11-24-14-(1), 11-24-14-(13.5) and 11-24-14-(14)], and all tributaries from Classes WS-II Tr, WS-II, WS-II CA and C Tr to Classes C Tr HQW and C HQW;
- (3) Lookout Shoals Lake from Oxford Dam to Island Creek [Index No. 11-(67)] from Class WS-V to Class WS-IV CA, from Island Creek to Elk Shoal Creek [Index No. 11-(70.5)] from Class WS-IV to Class WS-IV CA and from Elk Shoal Creek to a point one half mile upstream of Lookout Shoals Dam [Index No. 11-(72)] from Class WS-IV B to Class WS-IV B CA;
- (4) The classifications of tributary streams that are within five miles and draining to the normal pool elevation of Lookout Shoals Lake (Protected Area) have been revised to Class WS-IV; and
- (5) The classifications of tributary streams that are within one half mile and draining to the normal pool elevation of Lookout Shoals Lake (Critical Area) have been revised to Class WS-IV CA.

(t) ~~The Schedule of Classifications and Water Quality Standards for the~~ Catawba River Basin Classification Schedule was amended August 1, 2000 with the reclassification of Little Grassy Creek (Index No. 11-29-2), including all tributaries, from its source to the Linville River from Class C Tr to Class C Tr ORW.

(u) ~~The Schedule of Classifications and Water Quality Standards for the~~ Catawba River Basin Classification Schedule was amended August 1, 2004 with the reclassification of a segment of three surface waters, more specifically Henry Fork [11-129-1-(1)], Jerry Branch [11-129-1-3-(1)], and He Creek [11-129-1-4-(1)], from source to a formerly used City of Morganton Water Intake from Class WS-I ORW to Class WS-V ORW.

(v) ~~The Schedule of Classifications and Water Quality Standards for the~~ Catawba River Basin Classification Schedule was amended May 1, 2007 with the reclassification of the Catawba River [Index No. 11-(31.5)] from a point 0.6 mile upstream of Muddy Creek to a point 1.2 miles upstream of Canoe Creek from WS-IV to WS-IV Tr and Catawba River [Index No. 11-(32.3)] from a point 1.2 miles upstream of Canoe Creek to a point 0.7

mile upstream of Canoe Creek (Morganton water supply intake) from WS-IV CA to WS-IV Tr CA. Named and unnamed tributaries to this portion of the Catawba River are not classified as Trout. Between the last day of May and the first day of November the water quality standard for dissolved oxygen shall not be less than a daily average of 5.0 mg/l with a minimum instantaneous value of not less than 4.0 mg/l.

(w) ~~The Schedule of Classifications and Water Quality Standards for the Catawba River Basin Classification Schedule~~ was amended September 1, 2010 with the reclassification of the portion of the Catawba River [Index No. 11-(1)], from its source to the Left Prong Catawba River confluence, and its named tributaries, Chestnut Branch (Fork) [Index No. 11-2], Clover Patch Branch [Index No. 11-3], Youngs Fork Creek [Index No. 11-4], Spring Branch [Index No. 11-5], and Left Prong Catawba River [Index No. 11-6] from Class C Tr to Class C Tr HQW.

(x) ~~The Schedule of Classifications and Water Quality Standards for the Catawba River Basin Classification Schedule~~ was amended March 1, 2013 as follows:

- (1) the portion of Maiden Creek [Index No. 11-129-5-7-2-(1)] from source to a point 0.7 mile upstream from backwaters of Maiden Reservoir, and its named tributary, Bee Branch [Index No. 11-129-5-7-2-2], from Class WS-II HQW to WS-V;
- (2) the portion of Maiden Creek [Index No. 11-129-5-7-2-(2.5)] from a point 0.7 mile upstream from backwaters of Maiden Reservoir to dam at Maiden Reservoir from Class WS-II HQW CA to WS-V;
- (3) the portion of Allen Creek [Index No. 11-129-5-7-2-4-(1)] from source to a point 0.7 mile upstream of Maiden water supply intake from Class WS-II HQW to WS-V; and
- (4) the portion of Allen Creek [Index No. 11-129-5-7-2-4-(2)] from a point 0.7 mile upstream of Maiden water supply intake to Maiden water supply intake from Class WS-II HQW CA to WS-V.

(y) ~~The Schedule of Classifications and Water Quality Standards for the Catawba River Basin Classification Schedule~~ was amended July 1, 2017 as follows:

- (1) a portion of the Catawba River [Index No. 11-(23)], including tributaries, from Bridgewater Dam to North Fork Catawba River from Class WS-V & B to Class WS-IV CA & B, and a portion of the Catawba River [part of Index No. 11-(8)], including tributaries, from North Fork Catawba River to a point ~~0.75~~ 0.7 mile downstream of SR 1501 from Class C to Class WS-IV CA. The CA extends 0.5 mile from and draining to the normal pool elevation of Lake James.
- (2) a portion of the Catawba River [part of Index No. 11-(8)], including tributaries, from a point ~~0.75~~ 0.7 mile downstream of SR 1501 to a point ~~0.24~~ 0.2 mile upstream of ~~I-224~~ SR 1221 from Class C to Class WS-IV. The PA extends 5.0

miles from and draining to the normal pool elevation of Lake James.

*Authority G.S. 143-214.1; 143-215.1; 143-215.3(a)(1).*

#### **15A NCAC 02B .0309 YADKIN-PEE DEE RIVER BASIN**

(a) ~~The Yadkin-Pee Dee River Schedule of Classifications and Water Quality Standards may be inspected at the following places: Classifications assigned to the waters within the Yadkin-Pee Dee River Basin are set forth in the Yadkin River Basin Classification Schedule, which may be inspected at the following places:~~

- (1) the Internet at ~~http://h2o.enr.state.nc.us/csu/;~~ http://portal.ncdenr.org/web/wq/ps/csu/classifications; and
- (2) the North Carolina Department of ~~Environment and Natural Resources:~~ Environmental Quality:
  - (A) Mooresville Regional Office  
610 East Center Avenue, Suite 301  
Mooresville, North ~~Carolina~~ Carolina;
  - (B) Winston-Salem Regional Office  
~~585 Waughtown Street~~ 450 West Hanes Mill Road  
Winston-Salem, North ~~Carolina~~ Carolina;
  - (C) Fayetteville Regional Office  
Systel Building  
225 Green Street  
Suite 714  
Fayetteville, North ~~Carolina~~ Carolina;
  - (D) Asheville Regional Office  
2090 US Highway 70  
Swannanoa, North ~~Carolina~~ Carolina;
  - (E) Division of Water ~~Quality~~ Resources  
Central Office  
512 North Salisbury Street  
Raleigh, North Carolina.

(b) Unnamed Streams. Such streams entering Virginia are classified "C," and such streams entering South Carolina are classified "C".

(c) ~~The Yadkin-Pee Dee River Basin Schedule of Classifications and Water Quality Standards Classification Schedule~~ was amended effective:

- (1) February 12, 1979;
- (2) March 1, 1983;
- (3) August 1, 1985;
- (4) February 1, 1986;
- (5) October 1, 1988;
- (6) March 1, 1989;
- (7) January 1, 1990;
- (8) August 1, 1990;
- (9) January 1, 1992;
- (10) April 1, 1992;
- (11) August 3, 1992;
- (12) December 1, 1992;
- (13) April 1, 1993;
- (14) September 1, 1994;

- (15) August 1, 1995;
- (16) August 1, 1998;
- (17) April 1, 1999;
- (18) July 1, 2006;
- (19) September 1, 2006;
- (20) November 1, 2007.

(d) ~~The Schedule of Classifications and Water Quality Standard for the Yadkin-Pee Dee River Basin Classification Schedule~~ has been amended effective October 1, 1988 as follows:

- (1) Mitchell River [Index No. 12-62-(1)] from source to mouth of Christian Creek (North Fork Mitchell River) including all tributaries has been reclassified from Class B Tr to Class B Tr ORW.
- (2) Mitchell River [Index No. 12-62-(7)] from mouth of Christian Creek (North Fork Mitchell River) to Surry County SR 1315 including all tributaries has been classified from Class C Tr to C Tr ORW, except Christian Creek and Robertson Creek which will be reclassified from Class B Tr to Class B Tr ORW.
- (3) Mitchell River [Index No. 12-62-(12)] from Surry County SR 1315 to mouth of South Fork Mitchell River including all tributaries from Class C to Class C ORW.

(e) ~~The Schedule of Classifications and Water Quality Standard for the Yadkin-Pee Dee River Basin Classification Schedule~~ was amended effective March 1, 1989 as follows:

- (1) Elk Creek [Index Nos. 12-24-(1) and 12-24-(10)] and all tributary waters were reclassified from Class B-trout, Class C-trout and Class B to Class B-trout ORW, Class C-trout ORW and Class B ORW.

(f) ~~The Schedule of Classifications and Water Quality Standard for the Yadkin-Pee Dee River Basin Classification Schedule~~ was amended effective January 1, 1990 as follows: Barnes Creek (Index No. 13-2-18) was reclassified from Class C to Class C ORW.

(g) ~~The Schedule of Classifications and Water Quality Standard for the Yadkin-Pee Dee River Basin Classification Schedule~~ has been amended effective January 1, 1992 as follows:

- (1) Little River [Index Nos. 13-25-(10) and 13-25-(19)] from Suggs Creek to Densons Creek has been reclassified from Classes WS-III and C to Classes WS-III HQW and C HQW.
- (2) Densons Creek [Index No. 13-25-20-(1)] from its source to Troy's Water Supply Intake including all tributaries has been reclassified from Class WS-III to Class WS-III HQW.
- (3) Bridgers Creek (Index No. 13-25-24) from its source to the Little River has been reclassified from Class C to Class C HQW.

(h) ~~The Schedule of Classifications and Water Quality Standard for the Yadkin-Pee Dee River Basin Classification Schedule~~ was amended effective April 1, 1992 with the reclassification of the North Prong South Fork Mitchell River from Class C to Class C Trout.

(i) ~~The Schedule of Classifications and Water Quality Standard for the Yadkin-Pee Dee 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 2B .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.

(j) ~~The Schedule of Classifications and Water Quality Standard for the Yadkin-Pee Dee River Basin Classification Schedule~~ has been amended effective December 1, 1992 as follows:

- (1) Pike Creek (Index No. 12-46-1-2) was reclassified from Class C Tr to Class C Tr HQW;
- (2) Basin Creek (Index No. 12-46-2-2) was reclassified from Class C Tr to Class C Tr ORW;
- (3) Bullhead Creek (Index No. 12-46-4-2) was reclassified from Class C Tr to Class C Tr ORW;
- (4) Rich Mountain Creek (Index No. 12-46-4-2-2) was reclassified from Class Tr to Class C Tr ORW; and
- (5) Widows Creek (Index No. 12-46-4-4) was reclassified from Class C Tr HQW to Class C Tr ORW.

(k) ~~The Schedule of Classifications and Water Quality Standard for the Yadkin-Pee Dee River Basin Classification Schedule~~ has been amended effective September 1, 1994 as follows:

- (1) Lanes Creek [Index Nos. 13-17-40-(1) and 13-17-40-(10.5)] from its source to the Marshville water supply dam including tributaries was reclassified from Classes WS-II and WS-II CA to Class WS-V.
- (2) The South Yadkin River [Index Nos. 12-108-(9.7) and 12-108-(15.5)] from Iredell County SR 1892 to a point 0.7 mile upstream of the mouth of Hunting Creek including associated tributaries was reclassified from Classes WS-V, C and WS-IV to Classes WS-V, WS-IV, C and WS-IV CA.
- (3) The Yadkin River [Index Nos. 12-(53) and 12-(71)] from a point 0.3 mile upstream of the mouth of Elkin Creek (River) to the Town of King water supply intake including associated tributaries was reclassified from Classes C and WS-IV to Classes WS-IV and WS-IV CA.
- (4) The Yadkin River [Index Nos. 12-(80.5), 12-(81.5) and 12-(84.5)] from the Town of King water supply intake to the Davie County water supply intake reclassified from Classes C, B, WS-IV and WS-V to Classes WS-IV, WS-IV B and WS-IV CA.



(l) ~~The Schedule of Classifications and Water Quality Standard for the Yadkin-Pee Dee River Basin Classification Schedule has been~~ was amended effective August 1, 1995 as follows: Bear Creek [Index Nos. 12-108-18-(3), 12-108-18-(3.3)], Little Bear Creek (Index No. 12-108-18-2), and Blue Branch (Index No. 12-108-18-2-1) were reclassified from WS-II and WS-II CA (Critical Area) to C and WS-IV.

(m) ~~The Schedule of Classifications and Water Quality Standard for the Yadkin-Pee Dee River Basin Classification Schedule was~~ amended effective August 1, 1998 with the revision to the primary classification for portions of the Yadkin River [Index No. 12-(45)] from Class WS-IV to WS-V, Yadkin River [Index No. 12-(67.5)] from Class WS-IV to Class C, Yadkin River [Index Nos. 12-(93.5) and 12-(98.5)] from Class WS-IV to Class WS-V, South Yadkin River [Index No. 12-108-(12.5)] from Class WS-IV to Class WS-V, and South Yadkin River [Index Nos. 12-108-(19.5) and 12-108-(22)] from Class WS-IV to Class C.

(n) ~~The Schedule of Classifications and Water Quality Standard for the Yadkin-Pee Dee River Basin Classification Schedule was~~ amended effective April 1, 1999 with the reclassification of a portion of the Yadkin River [Index No. 12-(80.5)] from WS-IV CA to WS-IV. A portion of the Yadkin River 0.5 mile upstream of Bashavia Creek was reclassified from WS-IV to WS-IV CA. Bashavia Creek [Index Nos. 12-81-(0.5) and 12-81-(2)] was reclassified from WS-IV and WS-IV CA to Class C. Tributaries to Bashavia Creek were also reclassified to Class C. Portions of the Yadkin River [Index Nos. 12-(25.5) and 12-(27)] were reclassified from WS-IV to Class C and from WS-IV & B to Class B. Tributaries were reclassified from Class WS-IV to Class C. Supplemental classifications were not changed.

(o) ~~The Schedule of Classifications and Water Quality Standard for the Yadkin-Pee Dee River Basin Classification Schedule was~~ amended effective July 1, 2006 with the reclassification of a portion of the Uwharrie River. More specifically, Index No. 13-2-(25), Index No. 13-2-(17.5), and a portion of Index No. 13-2-(1.5) was reclassified from Class WS-IV CA, WS-IV, and C, to Class WS-IV B CA, WS-IV B, and B, respectively.

(p) ~~The Schedule of Classifications and Water Quality Standard for the Yadkin-Pee Dee River Basin Classification Schedule was~~ amended effective September 1, 2006 with the reclassification of a segment of the Yadkin River [portion of Index No. 12-(53)] from a point 0.3 mile upstream of the Town of Elkin proposed water supply intake to the Town of Elkin proposed water supply intake from C to WS-IV CA. The Town of Elkin proposed water supply intake is to be placed on the Yadkin River at a point directly above the mouth of Elkin Creek.

(q) ~~The Schedule of Classifications and Water Quality Standard for the Yadkin-Pee Dee River Basin Classification Schedule was~~ amended effective November 1, 2007 with the reclassifications as listed below, and the North Carolina Division of Water Quality Resources maintains a Geographic Information Systems data layer of these UWLs.

- (1) Black Ankle Bog near Suggs Creek [Index No. 13-25-12] was reclassified to Class WL ~~UWL as defined in 15A NCAC 02B .0101 UWL.~~
- (2) Pilot Mountain Floodplain Pool near Horne Creek [Index No. 12-75] was reclassified to Class WL ~~UWL as defined in 15A NCAC 02B .0101 UWL.~~

Authority G.S. 143-214.1; 143-215.1; 143-215.3(a)(1).

#### **15A NCAC 02B .0310 LUMBER RIVER BASIN**

(a) ~~The Lumber River Basin Schedule of Classifications and Water Quality Standards may be inspected at the following places:~~ Classifications assigned to the waters within the Lumber River Basin are set forth in the Lumber River Basin Classification Schedule, which may be inspected at the following places:

- (1) the Internet at ~~http://h2o.enr.state.nc.us/csu/;~~ http://portal.ncdenr.org/web/wq/ps/csu/classifications; and
- (2) the North Carolina Department of ~~Environment and Natural Resources;~~ Environmental Quality:
  - (A) Fayetteville Regional Office  
225 Green Street  
Systel Building Suite 714  
Fayetteville, North ~~Carolina~~ Carolina;
  - (B) Wilmington Regional Office  
127 Cardinal Drive Extension  
Wilmington, North ~~Carolina~~ Carolina; and
  - (C) Division of Water ~~Quality Resources~~  
Central Office  
512 North Salisbury Street  
Raleigh, North Carolina.

(b) Unnamed Streams. Such streams entering South Carolina are classified "C Sw".

(c) ~~The Lumber River Basin Schedule of Classification and Water Quality Standards~~ Classification Schedule was amended effective:

- (1) March 1, 1977;
- (2) December 13, 1979;
- (3) September 14, 1980;
- (4) April 12, 1981;
- (5) April 1, 1982;
- (6) February 1, 1986;
- (7) July 1, 1990;
- (8) August 1, 1990;
- (9) August 3, 1992;
- (10) September 1, 1996;
- (11) August 1, 2000;
- (12) November 1, 2007.

(d) ~~The Schedule of Classifications and Water Quality Standards for the Lumber River Basin Classification Schedule was~~ amended effective July 1, 1990 by the reclassification of Naked Creek (Index No. 14-2-6) from source to Drowning Creek including all tributaries from Class WS-III to Class WS-III ORW.

(e) ~~The Schedule of Classifications and Water Quality Standards for the Lumber 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.

(f) The ~~Schedule of Classifications and Water Quality Standards for the Lumber River Basin~~ Classification Schedule was amended effective September 1, 1996 by the reclassification of the Lumber River from 2.0 miles upstream of highway 401 to a point 0.5 mile upstream of Powell Branch [Index Nos. 14-(3), 14-(4), 14-(4.5), 14-(7) and 14-(10.3)] from Classes WS-IV Sw HQW, WS-IV Sw HQW CA and C Sw HQW to Classes WS-IV B Sw HQW, WS-IV B Sw HQW CA and B Sw HQW.

(g) The ~~Schedule of Classifications and Water Quality Standards for the Lumber River Basin~~ Classification Schedule was amended effective August 1, 2000 with the reclassification of Lake Waccamaw [Index No. 15-2] from Class B Sw to Class B Sw ORW.

(h) The ~~Schedule of Classifications and Water Quality Standards for the Lumber River Basin~~ Classification Schedule was amended effective November 1, 2007 with the reclassifications listed below, and the North Carolina Division of Water ~~Quality Resources~~ maintains a Geographic Information Systems data layer of these UWLs:

- (1) Waccamaw Natural Lake Shoreline near Lake Waccamaw [Index No. 15-2] was reclassified to Class WL ~~UWL as defined in 15A NCAC 02B .0101.~~ UWL.
- (2) Green Swamp Small Depression Pond near Royal Oak Swamp [Index No. 15-25-1-12] was reclassified to Class WL ~~UWL as defined in 15A NCAC 02B .0101.~~ UWL.
- (3) Old Dock Savanna near Gum Swamp Run [Index No. 15-6] was reclassified to Class WL ~~UWL as defined in 15A NCAC 02B .0101.~~ UWL.
- (4) Myrtle Head Savanna near Mill Branch [Index No. 15-7-7] was reclassified to Class WL ~~UWL as defined in 15A NCAC 02B .0101.~~ UWL.
- (5) Goosepond Bay near Big Marsh Swamp [Index No. 14-22-2] was reclassified to Class WL ~~UWL as defined in 15A NCAC 02B .0101.~~ UWL.
- (6) Antioch Bay near Raft Swamp [Index No. 14-10-(1)] was reclassified to Class WL ~~UWL as defined in 15A NCAC 02B .0101.~~ UWL.
- (7) Pretty Pond Bay near Big Marsh Swamp [Index No. 14-22-2] was reclassified to Class WL ~~UWL as defined in 15A NCAC 02B .0101.~~ UWL.
- (8) Dunahoe Bay near Big Marsh Swamp [Index No. 14-22-2] was reclassified to Class WL ~~UWL as defined in 15A NCAC 02B .0101.~~ UWL.
- (9) Hamby's Bay near Raft Swamp [Index No. 14-10-(1)] was reclassified to Class WL ~~UWL as defined in 15A NCAC 02B .0101.~~ UWL.
- (10) Oak Savanna Bay near Smith Branch [Index No. 14-10-3] was reclassified to Class WL ~~UWL as defined in 15A NCAC 02B .0101.~~ UWL.

- (11) Big Island Savanna near Driving Creek [Index No. 15-7-1] was reclassified to Class WL ~~UWL as defined in 15A NCAC 02B .0101.~~ UWL.

*Authority G.S. 143-214.1; 143-215.1; 143-215.3(a)(1).*

**15A NCAC 02B .0311 CAPE FEAR RIVER BASIN**

(a) ~~Effective February 1, 1976, the adopted classifications~~ Classifications assigned to the waters within the Cape Fear River Basin are set forth in the Cape Fear River Basin ~~Schedule of Classifications and Water Quality Standards,~~ Classification Schedule, which may be inspected at the following places:

- (1) the Internet at ~~http://portal.ncdenr.org/web/wq/ps/csu/rules;~~ http://portal.ncdenr.org/web/wq/ps/csu/classifications; and
- (2) the North Carolina Department of ~~Environment and Natural Resources;~~ Environmental Quality:
  - (A) Winston-Salem Regional Office  
~~585 Woughtown Street~~ 450 West Hanes Mill Road  
Winston-Salem, North ~~Carolina~~ Carolina;
  - (B) Fayetteville Regional Office  
225 Green Street  
Systel Building Suite 714  
Fayetteville, North ~~Carolina~~ Carolina;
  - (C) Raleigh Regional Office  
3800 Barrett Drive  
Raleigh, North ~~Carolina~~ Carolina;
  - (D) Washington Regional Office  
943 Washington Square Mall  
Washington, North ~~Carolina~~ Carolina;
  - (E) Wilmington Regional Office  
127 Cardinal Drive Extension  
Wilmington, North ~~Carolina~~ Carolina; and
  - (F) Division of Water ~~Quality Resources~~ Resources  
Central Office  
512 North Salisbury Street  
Raleigh, North Carolina.

(b) The Cape Fear River Basin ~~Schedule of Classification and Water Quality Standards~~ 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 ~~Schedule of Classifications and Water Quality Standards for 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 ~~Schedule of Classifications and Water Quality Standards for 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 ~~Schedule of Classifications and Water Quality Standards for 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 ~~Schedule of Classifications and Water Quality Standards for 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 ~~Schedule of Classifications and Water Quality Standards for 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 ~~Schedule of Classifications and Water Quality Standards for 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 ~~Schedule of Classifications and Water Quality Standards for 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 ~~Schedule of Classifications and Water Quality Standards for 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 ~~Schedule of Classifications and Water Quality Standards for 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 ~~Schedule of Classifications and Water Quality Standards for 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 ~~15A NCAC 02B .0248~~. Rule .0248 of this Subchapter.

(m) The ~~Schedule of Classifications and Water Quality Standards for 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 15A NCAC 02B .0215(3)(b)(i)(E)(Fresh Surface Water Quality Standards for Class WS-III Waters)~~, Rule .0215(3)(b)(i)(E) of this Subchapter, then that development is not subject to the stormwater requirements as described in ~~rule 15A NCAC 02H .1006 (Stormwater Requirements: High Quality Waters)~~. 15A NCAC 02H .1006.

(n) The ~~Schedule of Classifications and Water Quality Standards for 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 ~~Schedule of Classifications and Water Quality Standards for 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 ~~Quality 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 as defined in 15A NCAC 02B .0101. UWL.~~

- (2) Salters Lake Bay near Salters Lake [Index No. 18-44-4] was reclassified to Class WL ~~UWL as defined in 15A NCAC 02B .0101. UWL.~~
- (3) Jones Lake Bay near Jones Lake [Index No. 18-46-7-1] was reclassified to Class WL ~~UWL as defined in 15A NCAC 02B .0101. UWL.~~
- (4) Weymouth Woods Sandhill Seep near Mill Creek [18-23-11-(1)] was reclassified to Class ~~UWL as defined in 15A NCAC 02B .0101. UWL.~~
- (5) Fly Trap Savanna near Cape Fear River [Index No. 18-(71)] was reclassified to Class WL ~~UWL as defined in 15A NCAC 02B .0101. UWL.~~
- (6) Lily Pond near Cape Fear River [Index No. 18-(71)] was reclassified to Class WL ~~UWL as defined in 15A NCAC 02B .0101. UWL.~~
- (7) Grassy Pond near Cape Fear River [Index No. 18-(71)] was reclassified to Class WL ~~UWL as defined in 15A NCAC 02B .0101. UWL.~~
- (8) The Neck Savanna near Sandy Run Swamp [Index No. 18-74-33-2] was reclassified to Class WL ~~UWL as defined in 15A NCAC 02B .0101. UWL.~~
- (9) Bushy Lake near Turnbull Creek [Index No. 18-46] was reclassified to Class WL ~~UWL as defined in 15A NCAC 02B .0101. UWL.~~
- (10) Bushy Lake near Turnbull Creek [Index No. 18-46] was reclassified to Class WL ~~UWL as defined in 15A NCAC 02B .0101. UWL.~~

(p) The ~~Schedule of Classifications and Water Quality Standards for 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 ~~Schedule of Classifications and Water Quality Standards for 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 ~~15A NCAC 02B .0262 through .0273~~. Rules .0262 through .0273 of this Subchapter.

(r) The ~~Schedule of Classifications and Water Quality Standards for 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 ~~Schedule of Classifications and Water Quality Standards for 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 ~~Schedule of Classifications and Water Quality Standards for 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) The Cape Fear River Basin Classification Schedule was amended effective September 1, 2018 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.

*Authority G.S. 143-214.1; 143-215.1; 143-215.3(a)(1).*

#### **15A NCAC 02B .0312 WHITE OAK RIVER BASIN**

(a) ~~The White Oak River Basin Schedule of Classifications and Water Quality Standards may be inspected in the following places: Effective February 1, 1976, adopted classifications~~ Classifications assigned to the waters within the White Oak River Basin are set forth in the White Oak River Basin Classification Schedule, which may be inspected in the following places:

- (1) the ~~internet~~ Internet at ~~http://h2o.enr.state.nc.us/csu/;~~ http://portal.ncdenr.org/web/wq/ps/csu/classifications; and
- (2) the North Carolina Department of ~~Environment and Natural Resources~~ Environmental Quality:
  - (A) Washington Regional Office  
943 Washington Square Mall  
Washington, North Carolina;
  - (B) Wilmington Regional Office  
127 Cardinal Drive Extension  
Wilmington, North Carolina; and
  - (C) Division of Water ~~Quality~~ Resources  
Central Office  
512 North Salisbury Street  
Raleigh, North Carolina.

(b) The ~~White Oak River Basin Schedule of Classification and Water Quality Standards~~ Classification Schedule was amended effective:

- (1) December 13, 1979 see Paragraph (c);
- (2) June 1, 1988 see Paragraph (d);
- (3) January 1, 1990 see Paragraph (e);
- (4) August 1, 1990 see Paragraph (f);
- (5) August 1, 1991 see Paragraph (g);
- (6) June 1, 1992 see Paragraph (h);
- (7) December 1, 1992 see Paragraph (i);
- (8) November 1, 2007 see Paragraph (j);
- (9) July 1, 2011 see Paragraph (k).

(c) The ~~Schedule of Classifications and Water Quality Standards for the White Oak River Basin~~ Classification Schedule ~~has been~~ was amended effective December 13, 1979 with the reclassification of a portion of the White Oak River Restricted Area (Index No. 20-32) and a portion of the Newport River (Morehead City and Beaufort Harbors Restricted Area) [Index No. 21-(31)] from Class SC to Class SA.

(d) The ~~Schedule of Classifications and Water Quality Standards for the White Oak River Basin~~ Classification Schedule ~~has been~~ was amended effective June 1, 1988 with the reclassification of unnamed waters as follows:

- (1) a portion of the Roosevelt Natural Area Swamp, which drains to Bogue Sound (20-36), from Class SA to Class C Sw ORW.
- (2) another portion of the Roosevelt Natural Area Swamp, which drains to Bogue Sound (20-36), from Class SA to Class SA Sw ORW.

(e) The ~~Schedule of Classifications and Water Quality Standards for the White Oak River Basin~~ Classification Schedule ~~has been~~ was amended effective January 1, 1990 as follows:

- (1) Intracoastal Waterway (Index No. 19-39) from northeastern boundary of Cape Fear River Basin to Daybeacon No. 17 including all unnamed bays, guts, and channels, except Rogers Bay and Mill Creek and Intracoastal Waterway (Index No. 19-41) from the northeast mouth of Goose Creek to the southwest mouth of Queen Creek were reclassified from Class SA to Class SA ORW.
- (2) Bear Island ORW Area, which includes all waters within an area north of Bear Island defined by a line from the western most point on Bear Island to the northeast mouth of Goose Creek on the mainland, east to the southwest mouth of Queen Creek, then south to green marker No. 49, then northeast to the northern most point on Huggins Island, then southeast along the shoreline of Huggins Island to the southeastern most point of Huggins Island, then south to the northeastern most point on Dudley Island, then southwest along the shoreline of Dudley Island to the eastern tip of Bear Island to the western mouth of Foster Creek including Cow Channel were reclassified from Class SA to Class SA ORW.
- (3) Bogue Sound (including Intracoastal Waterway from White Oak River Basin to Beaufort

Inlet)(Index No. 20-36) from Bogue Inlet to a line across Bogue Sound from the southwest side of mouth of Gales Creek to Rock Point and all tributaries except Hunting Island Creek, Goose Creek, and Broad Creek were reclassified from Class SA to Class SA ORW.

- (4) Core Sound (Index No. 21-35-7) from northern boundary of White Oak River Basin (a line from Hall Point to Drum Inlet) to Back Sound and all tributaries except Atlantic Harbor Restricted Area, Nelson Bay, Jarrett Bay, Williston Creek, Wade Creek and Middens Creek were reclassified from Class SA to Class SA ORW.

- (5) Back Sound (Index No. 21-35) from a point on Shackleford Banks at lat. 34 degrees 40' 57" and long 76 degrees 37' 30" north to the western most point of Middle Marshes and along the northwest shoreline of Middle Marshes (to include all of Middle Marshes) to Rush Point on Harkers Island and along the southern shore of Harkers Island back to Core Sound and all tributaries were reclassified from Class SA to Class SA ORW.

(f) The ~~Schedule of Classifications and Water Quality Standards for the White Oak River Basin Classification Schedule~~ has been was amended effective August 1, 1990 with the reclassification of a portion of the White Oak River [Index No. 20-(1)] from Spring Branch to Hunters Creek from Class C to Class C HQW.

(g) The ~~Schedule of Classifications and Water Quality Standards for the White Oak River Basin Classification Schedule~~ was amended effective August 1, 1991 by adding the supplemental classification NSW (Nutrient Sensitive Waters) to all waters in the New River Drainage Area above a line running across the New River from Grey Point to a point of land approximately 2,200 yards downstream of the mouth of Duck Creek.

(h) The ~~Schedule of Classifications and Water Quality Standards for the White Oak River Basin Classification Schedule~~ was amended effective June 1, 1992 with the reclassification of Peletier Creek (Index No. 20-36-11) from its source to Bogue Sound from Class SA to Class SB with the requirement that no discharges be allowed.

(i) The ~~Schedule of Classifications and Water Quality Standards for the White Oak River Basin Classification Schedule~~ has been was amended effective December 1, 1992 with the reclassification of the Atlantic Harbor Restricted Area (Index No. 21-35-7-2) from Class SC to Class SA ORW.

(j) The ~~Schedule of Classifications and Water Quality Standards for the White Oak River Basin Classification Schedule~~ has been was amended effective November 1, 2007 with the reclassifications listed below, and the North Carolina Division of Water Quality Resources maintains a Geographic Information Systems data layer of these UWLs:

- (1) Theodore Roosevelt Maritime Swamp Forest near Roosevelt Natural Area Swamp [Index No. 20-36-9.5-(1)] was reclassified to Class WL ~~UWL as defined in 15A NCAC 02B .0101.~~ UWL.

- (2) Bear Island Maritime Wet Grassland near the Atlantic Ocean [Index No. 99-(4)] was reclassified to Class WL ~~UWL as defined in 15A NCAC 02B .0101.~~ UWL.

(k) The ~~Schedule of Classifications and Water Quality Standards for the White Oak River Basin Classification Schedule~~ has been was amended effective July 1, 2011 with the reclassification of a portion of Southwest Creek [Index No. 19-17-(0.5)] from a point approximately 0.5 mile upstream of Mill Run to Mill Run from Class C NSW to Class SC NSW, and another portion of Southwest Creek [Index No. 19-17-(6.5)] from Mill Run to New River from Class C HQW NSW to Class SC HQW NSW.

*Authority G.S. 143-214.1; 143-215.1; 143-215.3(a)(1).*

#### **15A NCAC 02B .0313 ROANOKE RIVER BASIN**

(a) ~~Effective February 1, 1976, the adopted classifications~~ Classifications assigned to the waters within the Roanoke River Basin are set forth in the Roanoke River Basin ~~Schedule of Classifications and Water Quality Standards, Classification Schedule,~~ Classification Schedule, which may be inspected at the following places:

- (1) the Internet at ~~http://h2o.enr.state.nc.us/csu/;~~ http://portal.ncdenr.org/web/wq/ps/csu/classifications; and
- (2) the North Carolina Department of ~~Environment and Natural Resources; Environmental Quality:~~ Environment and Natural Resources; Environmental Quality:
- (A) Raleigh Regional Office  
3800 Barrett Drive  
Raleigh, ~~Carolina~~ Carolina;
- (B) Washington Regional Office  
943 Washington Square Mall  
Washington, ~~Carolina~~ Carolina;
- (C) Winston-Salem Regional Office  
~~585 Woughtown Street Winston-Salem, 450 West Hanes Mill Road~~ North Carolina Carolina; and
- (D) Division of Water Quality Resources  
Regional Office  
512 North Salisbury Street  
Raleigh, North Carolina.

(b) Unnamed Streams. Such streams entering Virginia are classified "C", except that all backwaters of John H. Kerr Reservoir and the North Carolina portion of streams tributary thereto not otherwise named or described shall carry the classification "B," and all backwaters of Lake Gaston and the North Carolina portion of streams tributary thereto not otherwise named or described shall carry the classification "C and B".

(c) The Roanoke River Basin ~~Schedule of Classification and Water Quality Standards~~ Classification Schedule was amended effective:

- (1) May 18, 1977;  
(2) July 9, 1978;  
(3) July 18, 1979;  
(4) July 13, 1980;  
(5) March 1, 1983;  
(6) August 1, 1985;  
(7) February 1, 1986.

(d) The ~~Schedule of Classifications and Water Quality Standards for the Roanoke River Basin Classification Schedule~~ was

amended effective July 1, 1991 with the reclassification of Hyco Lake (Index No. 22-58) from Class C to Class B.

(e) ~~The Schedule of Classifications and Water Quality Standards for the Roanoke 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 2B .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.

(f) ~~The Schedule of Classifications and Water Quality Standards for the Roanoke River Basin Classification Schedule~~ was amended effective August 1, 1998 with the reclassification of Cascade Creek (Camp Creek) [Index No. 22-12] and its tributaries from its source to the backwaters at the swimming lake from Class B to Class B ORW, and reclassification of Indian Creek [index No. 22-13] and its tributaries from its source to Window Falls from Class C to Class C ORW.

(g) ~~The Schedule of Classifications and Water Quality Standards for the Roanoke River Basin Classification Schedule~~ was amended effective August 1, 1998 with the reclassification of Dan River and Mayo River WS-IV Protected Areas. The Protected Areas were reduced in size.

(h) ~~The Schedule of Classifications and Water Quality Standards for the Roanoke River Basin Classification Schedule~~ was amended effective April 1, 1999 as follows:

- (1) Hyco River, including Hyco Lake below elevation 410 [Index No. 22-58-(0.5)] was reclassified from Class B to Class WS-V B.
- (2) Mayo Creek (Maho Creek)(Mayo Reservoir) [Index No. 22-58-15] was reclassified from its source to the dam of Mayo Reservoir from Class C to Class WS-V.

(i) ~~The Schedule of Classifications and Water Quality Standards for the Roanoke River Basin Classification Schedule~~ was amended effective April 1, 2001 as follows:

- (1) Fullers Creek from source to a point 0.8 mile upstream of Yanceyville water supply dam [Index No. 22-56-4-(1)] was reclassified from Class WS-II to Class WS-III.
- (2) Fullers Creek from a point 0.8 mile upstream of Yanceyville water supply dam to Yanceyville water supply dam [Index No. 22-56-4-(2)] was reclassified from Class WS-II CA to Class WS-III CA.

(j) ~~The Schedule of Classifications and Water Quality Standards for the Roanoke River Basin Classification Schedule~~ was amended effective November 1, 2007 with the reclassification of Hanging Rock Hillside Seepage Bog near Cascade Creek [Index No. 22-12-(2)] to Class WL UWL as defined in 15A NCAC 02B .0101. Rule .0202 of this Subchapter UWL. The Division of Water Quality Resources maintains a Geographic Information Systems data layer of the UWL.

(k) ~~The Schedule of Classifications and Water Quality Standards for the Roanoke River Basin Classification Schedule~~ was amended effective July 3, 2012 as follows:

- (1) a portion of the Dan River [Index No. 22-(39)] (including tributaries) from the City of Roxboro's intake, located approximately 0.7 mile upstream of NC Highway 62, to a point approximately 0.5 mile upstream of the City of Roxboro's intake from Class C to Class WS-IV CA.
- (2) a portion of the Dan River [Index No. 22-(39)] (including tributaries) from a point approximately 0.5 mile upstream of the City of Roxboro's intake to the North Carolina-Virginia state line from Class C to Class WS-IV.

(l) ~~The Schedule of Classifications and Water Quality Standards for the Roanoke River Basin Classification Schedule~~ is amended effective January 1, 2013 as follows:

- (1) a portion of the Roanoke River [Index No. 23-(26)] (including tributaries) from the Martin County Regional Water And Sewer Authority's intake, located approximately 0.3 mile upstream of US 13/US 17, to a point approximately 0.5 mile upstream of the Martin County Regional Water And Sewer Authority's intake from Class C to Class WS-IV CA.
- (2) a portion of the Roanoke River [Index No. 23-(26)] (including tributaries) from a point approximately 0.5 mile upstream of the Martin County Regional Water And Sewer Authority's intake to a point approximately 1 mile downstream of Coniott Creek (Town Swamp) from Class C to Class WS-IV.

*Authority G.S. 143-214.1; 143-215.1; 143-215.3(a)(1).*

#### **15A NCAC 02B .0314 CHOWAN RIVER BASIN**

~~(a) Places where the schedule may be inspected:~~ Classifications assigned to the waters within the Chowan River Basin are set forth in the Chowan River Basin Classification Schedule, which may be inspected in the following places

- (1) ~~Clerk of Court:~~  
~~Bertie County~~  
~~Chowan County~~  
~~Gates County~~  
~~Hertford County~~  
~~Northampton County~~ the Internet at  
<http://portal.ncdenr.org/web/wq/ps/csu/classifications>; and
- (2) ~~the North Carolina Department of Environment, Health and Natural Resources:~~  
Environmental Quality:
  - (A) Raleigh Regional Office  
3800 Barrett Drive  
Raleigh, ~~North Carolina~~ North Carolina;
  - (B) Washington Regional Office  
1502 ~~North Market Street~~ 943 Washington Square Mall

(C) ~~Washington, North Carolina~~ North Carolina; and  
Division of Water Resources  
Central Office  
512 North Salisbury Street  
Raleigh, North Carolina.

(b) Unnamed Streams. Such streams entering Virginia are classified "C."

(c) All classifications assigned to the waters of the Chowan River Basin ~~and referenced in (a) of this Rule~~ are additionally classified as ~~nutrient sensitive waters (NSW)~~ Nutrient Sensitive Waters (NSW) in accordance with the provisions of Rule .0214 of this Subchapter.

(d) The Chowan River Basin ~~Schedule of Classification and Water Quality Standards~~ Classification Schedule was amended effective August 1, 1985.

*Authority G.S. 143-214.1; 143-215.1; 143-215.3(a)(1).*

**15A NCAC 02B .0315 NEUSE RIVER BASIN**

(a) ~~Effective February 1, 1976, the adopted classifications~~ Classifications assigned to the waters within the Neuse River Basin are set forth in the Neuse River Basin ~~Schedule of Classification and Water Quality Standards~~, Classification Schedule, which may be inspected at the following places:

- (1) the Internet at <http://portal.ncdenr.org/web/wq/ps/esu/rules>; <http://portal.ncdenr.org/web/wq/ps/esu/classifications>; and
- (2) the North Carolina Department of ~~Environment and Natural Resources~~ Environmental Quality:
  - (A) Raleigh Regional Office  
3800 Barrett Drive  
Raleigh, North Carolina;
  - (B) Washington Regional Office  
943 Washington Square Mall  
Washington, North Carolina;
  - (C) Wilmington Regional Office  
127 Cardinal ~~Drive~~ Drive Extension  
Wilmington, North ~~Carolina~~; Carolina; and
  - (D) Division of Water ~~Quality Resources~~  
Central Office  
512 North Salisbury Street  
Raleigh, North Carolina.

(b) The Neuse River Basin ~~Schedule of Classification and Water Quality Standards~~ Classification Schedule was amended effective:

- (1) March 1, 1977 see Paragraph (c) of this Rule;
- (2) December 13, 1979 see Paragraph (d) of this Rule;
- (3) September 14, 1980 see Paragraph (e) of this Rule;
- (4) August 9, 1981 see Paragraph (f) of this Rule;
- (5) January 1, 1982 see Paragraph (g) of this Rule;
- (6) April 1, 1982 see Paragraph (h) of this Rule;
- (7) December 1, 1983 see Paragraph (i) of this Rule;
- (8) January 1, 1985 see Paragraph (j) of this Rule;

- (9) August 1, 1985 see Paragraph (k) of this Rule;
- (10) February 1, 1986 see Paragraph (l) of this Rule;
- (11) May 1, 1988 see Paragraph (m) of this Rule;
- (12) July 1, 1988 see Paragraph (n) of this Rule;
- (13) October 1, 1988 see Paragraph (o) of this Rule;
- (14) January 1, 1990 see Paragraph (p) of this Rule;
- (15) August 1, 1990;
- (16) December 1, 1990 see Paragraph (q) of this Rule;
- (17) July 1, 1991 see Paragraph (r) of this Rule;
- (18) August 3, 1992;
- (19) April 1, 1994 see Paragraph (t) of this Rule;
- (20) July 1, 1996 see Paragraph (u) of this Rule;
- (21) September 1, 1996 see Paragraph (v) of this Rule;
- (22) April 1, 1997 see Paragraph (w) of this Rule;
- (23) August 1, 1998 see Paragraph (x) of this Rule;
- (24) August 1, 2002 see Paragraph (y) of this Rule;
- (25) July 1, 2004 see Paragraph (z) of this Rule;
- (26) November 1, 2007 see Paragraph (aa) of this Rule;
- (27) January 15, 2011 see Paragraph (bb) of this Rule; and
- (28) July 1, 2012 see Paragraph (cc) of this Rule.

(c) The ~~Schedule of Classifications and Water Quality Standards~~ for the Neuse River Basin Classification Schedule was amended effective March 1, 1977 with the a total of 179 streams in the Neuse River Basin reclassified from Class D to Class C.

(d) The ~~Schedule of Classifications and Water Quality Standards~~ for the Neuse River Basin Classification Schedule ~~has been was~~ amended effective December 13, 1979 as follows: Little River [Index No. 27-57-(21.5)] from source to the dam at Wake Forest Reservoir has been reclassified from Class A-II to Class A-II and B.

(e) The ~~Schedule of Classifications and Water Quality Standards~~ for the Neuse River Basin Classification Schedule ~~has been was~~ amended effective September 14, 1980 as follows: The Eno River from Durham County State Road 1003 to U.S Highway 501 [Index No. 27-2-(16)] was reclassified from Class C and B to Class A-II and B.

(f) The ~~Schedule of Classifications and Water Quality Standards~~ for the Neuse River Basin Classification Schedule was amended effective August 9, 1981 to remove the swamp water designation from all waters designated SA in the Neuse River Basin.

(g) The ~~Schedule of Classifications and Water Quality Standards~~ for the Neuse River Basin Classification Schedule ~~has been was~~ amended effective January 1, 1982 as follows: The Trent River from the mouth of Brice Creek to the Neuse River [Index No. 27-101-(39)] was reclassified from Class SC Sw to Class SB Sw.

(h) The ~~Schedule of Classifications and Water Quality Standards~~ for the Neuse River Basin Classification Schedule ~~has been was~~ amended effective April 1, 1982 as follows:

- (1) Longview Branch from source to Crabtree Creek [Index No. 27-33-(21)] was reclassified from Class C1 to Class C.
- (2) Watson Branch from source to Walnut Creek [Index No. 27-34-(8)] was reclassified from Class C1 to Class C.



(i) ~~The Schedule of Classifications and Water Quality Standards for the Neuse River Basin Classification Schedule~~ was amended effective December 1, 1983 to add the Nutrient Sensitive Waters classification to the entire river basin above Falls dam.

(j) ~~The Schedule of Classifications and Water Quality Standards for the Neuse River Basin Classification Schedule has been was~~ amended effective January 1, 1985 as follows: Nobel Canal from source to Swift Creek [Index No. 27-97-(2)] was reclassified from Class C1 to Class C.

(k) ~~The Schedule of Classifications and Water Quality Standards for the Neuse River Basin Classification Schedule has been was~~ amended effective August 1, 1985 as follows:

- (1) Southeast Prong Beaverdam Creek from source to Beaverdam Creek [Index No. 27-33-15(2)] was reclassified from Class C1 to Class C.
- (2) Pigeon House branch from source to Crabtree Creek [Index No. 27-33-(18)] was reclassified from Class C1 to Class C.
- (3) Rocky Branch from source to Pullen Road [Index No. 27-34-6-(1)] was reclassified from Class C1 to Class C.
- (4) Chavis Branch from source to Watson Branch [Index No. 27-37-8-1] was reclassified from Class C1 to Class C.

(l) ~~The Schedule of Classifications and Water Quality Standards for the Neuse River Basin Classification Schedule has been was~~ amended effective February 1, 1986 to reclassify all Class A-I and Class A-II streams in the Neuse River Basin to WS-I and WS-III.

(m) ~~The Schedule of Classifications and Water Quality Standards for the Neuse River Basin Classification Schedule~~ was amended effective May 1, 1988 to add the Nutrient Sensitive Waters classification to the waters of the Neuse River Basin below the Falls Lake dam.

(n) ~~The Schedule of Classifications and Water Quality Standards for the Neuse River Basin Classification Schedule has been was~~ amended effective July 1, 1988 as follows:

- (1) Smith Creek [Index No. 27-23-(1)] from source to the dam at Wake Forest Reservoir has been reclassified from Class WS-III to WS-I.
- (2) Little River [Index No. 27-57-(1)] from source to the N.C. Hwy. 97 Bridge near Zebulon including all tributaries has been reclassified from Class WS-III to WS-I.
- (3) An unnamed tributary to Buffalo Creek just upstream of Robertson's Pond in Wake County from source to Buffalo Creek including Leo's Pond has been reclassified from Class C to B.

(o) ~~The Schedule of Classifications and Water Quality Standards for the Neuse River Basin Classification Schedule has been was~~ amended effective October 1, 1988 as follows:

- (1) Walnut Creek (Lake Johnson, Lake Raleigh) [Index No. 27-34-(1)]. Lake Johnson and Lake Raleigh have been reclassified from Class WS-III to Class WS-III B.
- (2) Haw Creek (Camp Charles Lake)(Index No. 27-86-3-7) from the backwaters of Camp Charles Lake to dam at Camp Charles Lake has been reclassified from Class C to Class B.

(p) ~~The Schedule of Classifications and Water Quality Standards for the Neuse River Basin Classification Schedule has been was~~ amended effective January 1, 1990 as follows:

(1) Neuse-Southeast Pamlico Sound ORW Area which includes all waters within a line beginning at the southwest tip of Ocracoke Island, and extending north west along the Tar-Pamlico River Basin and Neuse River Basin boundary line to Lat. 35 degrees 06' 30", thence in a southwest direction to Ship Point and all tributaries, were reclassified from Class SA NSW to Class SA NSW ORW.

(2) Core Sound (Index No. 27-149) from northeastern limit of White Oak River Basin (a line from Hall Point to Drum Inlet) to Pamlico Sound and all tributaries, except Thorofare, John Day Ditch were reclassified from Class SA NSW to Class SA NSW ORW.

(q) ~~The Schedule of Classifications and Water Quality Standards for the Neuse River Basin Classification Schedule~~ was amended effective December 1, 1990 with the reclassification of the following waters as described in (1) through (3) of this Paragraph.

- (1) Northwest Creek from its source to the Neuse River (Index No. 27-105) from Class SC Sw NSW to Class SB Sw NSW;
- (2) Upper Broad Creek [Index No. 27-106-(7)] from Pamlico County SR 1103 at Lees Landing to the Neuse River from Class SC Sw NSW to Class SB Sw NSW; and
- (3) Goose Creek [Index No. 27-107-(11)] from Wood Landing to the Neuse River from Class SC Sw NSW to Class SB Sw NSW.

(r) ~~The Schedule of Classifications and Water Quality Standards for the Neuse River Basin Classification Schedule~~ was amended effective July 1, 1991 with the reclassification of the Bay River [Index No. 27-150-(1)] within a line running from Flea Point to the Hammock, east to a line running from Bell Point to Darby Point, including Harper Creek, Tempe Gut, Moore Creek and Newton Creek, and excluding that portion of the Bay River landward of a line running from Poorhouse Point to Darby Point from Classes SC Sw NSW and SC Sw NSW HQW to Class SA NSW.

(s) ~~The Schedule of Classifications and Water Quality Standards for the Neuse 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.

(t) ~~The Schedule of Classifications and Water Quality Standards for the Neuse River Basin Classification Schedule~~ was amended effective April 1, 1994 as follows:

- (1) Lake Crabtree [Index No. 27-33-(1)] was reclassified from Class C NSW to Class B NSW.
- (2) The Eno River from Orange County State Road 1561 to Durham County State Road 1003 [Index No. 27-10-(16)] was reclassified from Class WS-IV NSW to Class WS-IV B NSW.
- (3) Silver Lake (Index No. 27-43-5) was reclassified from Class WS-III NSW to Class WS-III B NSW.

(u) ~~The Schedule of Classifications and Water Quality Standards for the Neuse River Basin Classification Schedule~~ was amended effective July 1, 1996 with the reclassification of Austin Creek [Index Nos. 27-23-3-(1) and 27-23-3-(2)] from its source to Smith Creek from classes WS-III NSW and WS-III NSW CA to class C NSW.

(v) ~~The Schedule of Classifications and Water Quality Standards for the Neuse River Basin Classification Schedule~~ was amended effective September 1, 1996 with the reclassification of an unnamed tributary to Hannah Creek (Tuckers Lake) [Index No. 27-52-6-0.5] from Class C NSW to Class B NSW.

(w) ~~The Schedule of Classifications and Water Quality Standards for the Neuse River Basin Classification Schedule~~ was amended effective April 1, 1997 with the reclassification of the Neuse River (including tributaries) from mouth of Marks Creek to a point 1.3 miles downstream of Johnston County State Road 1908 to class WS-IV NSW and from a point 1.3 miles downstream of Johnston County State Road 1908 to the Johnston County Water Supply intake (located 1.8 miles downstream of Johnston County State Road 1908) to class WS-IV CA NSW [Index Nos. 27-(36) and 27-(38.5)].

(x) ~~The Schedule of Classifications and Water Quality Standards for the Neuse River Basin Classification Schedule~~ was amended effective August 1, 1998 with the revision of the Critical Area and Protected Area boundaries surrounding the Falls Lake water supply reservoir. The revisions to these boundaries are the result of the US Army Corps of Engineers raising the lake's normal pool elevation. The result of these revisions is the Critical and Protected Area boundaries (classifications) may extend further upstream than the current designations. The Critical Area for a WS-IV reservoir is defined as 0.5 miles and draining to the normal pool elevation. The Protected Area for a WS-IV reservoir is defined as 5 miles and draining to the normal pool elevation. The normal pool elevation of the Falls Lake reservoir has changed from 250.1 feet mean sea level (msl) to 251.5 feet msl.

(y) ~~The Schedule of Classifications and Water Quality Standards for the Neuse River Basin Classification Schedule~~ was amended effective August 1, 2002 with the reclassification of the Neuse River [portions of Index No. 27-(56)], including portions of its tributaries, from a point 0.7 mile downstream of the mouth of Coxes Creek to a point 0.6 mile upstream of Lenoir County proposed water supply intake from Class C NSW to Class WS-IV NSW and from a point 0.6 mile upstream of Lenoir County proposed water supply intake to Lenoir proposed water supply intake from Class C NSW to Class WS-IV CA NSW.

(z) ~~The Schedule of Classifications and Water Quality Standards for the Neuse River Basin Classification Schedule~~ was amended effective July 1, 2004 with the reclassification of the Neuse River (including tributaries in Wake County) [Index Nos. 27-(20.7), 27-

21, 27-21-1] from the dam at Falls Lake to a point 0.5 mile upstream of the Town of Wake Forest Water Supply Intake (former water supply intake for Burlington Mills Wake Finishing Plant) from Class C NSW to Class WS-IV NSW and from a point 0.5 mile upstream of the Town of Wake Forest proposed water supply intake to Town of Wake Forest proposed water supply intake [Index No. 27-(20.1)] from Class C NSW to Class WS-IV NSW CA. Fantasy Lake [Index No. 27 -57-3-1-1], a former rock quarry within a WS-II NSW water supply watershed, was reclassified from Class WS-II NSW to Class WS-II NSW CA.

(aa) ~~The Schedule of Classifications and Water Quality Standards for the Neuse River Basin Classification Schedule~~ was amended effective November 1, 2007 with the reclassification of the entire watershed of Deep Creek (Index No. 27-3-4) from source to Flat River from Class WS-III NSW to Class WS-III ORW NSW.

(bb) ~~The Schedule of Classifications and Water Quality Standards for the Neuse River Basin Classification Schedule~~ is amended effective January 15, 2011 with the reclassification of all Class C NSW waters and all Class B NSW waters upstream of the dam at Falls 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 Falls Watershed are within a designated Critical Water Supply Watershed and are subject to a special management strategy specified in ~~Rules 15A NCAC 02B .0275 through .0283~~; Rules .0275 through .0283 of this Subchapter.

(cc) ~~The Schedule of Classifications and Water Quality Standards for the Neuse River Basin Classification Schedule~~ is amended effective July 1, 2012 as follows:

- (1) Johnston County owned quarry near Little River [Index No. 27-57-(20.2)] from Class C NSW to Class WS-IV NSW CA. The Division of Water Quality Resources maintains a Geographic Information Systems data layer of this quarry;
- (2) a portion of the Neuse River [Index Number 27-(41.7)] from a point approximately 1.4 miles downstream of Gar Gut to a point approximately 1.7 miles upstream of Bawdy Creek from Class WS-V NSW to Class WS-IV NSW; and
- (3) a portion of the Neuse River [Index No. 27-(49.5)] from a point approximately 0.5 mile upstream of S.R. 1201 (Johnston County intake) to S.R. 1201 (Johnston County intake) from Class WS-IV NSW to Class WS-IV NSW CA.

*Authority G.S. 143-214.1; 143-215.1; 143-215.3(a)(1).*

#### **15A NCAC 02B .0316 TAR-PAMLICO RIVER BASIN**

(a) ~~The Tar Pamlico River Basin Schedule of Classifications and Water Quality Standards may be inspected at the following places:~~ Classifications assigned to the waters within the Tar-Pamlico River Basin are set forth in the Tar-Pamlico River Basin Classification Schedule, which may be inspected at the following places:

- (1) the ~~internet~~ Internet at <http://h2o.enr.state.nc.us/esu/>;

<http://portal.ncdenr.org/web/wq/ps/csu/classifications>; and

- (2) the North Carolina Department of ~~Environment and Natural Resources~~ Environmental Quality:

- (A) Raleigh Regional Office  
3800 Barrett Drive  
Raleigh, North ~~Carolina~~ Carolina;
- (B) Washington Regional Office  
943 Washington Square Mall  
Washington, North ~~Carolina~~ Carolina;  
and
- (C) Division of Water ~~Quality Resources~~  
Central Office  
512 North Salisbury Street  
Raleigh, North Carolina.

(b) Unnamed Streams. All drainage canals not noted in the schedule are classified "C Sw," except the main drainage canals to Pamlico Sound and its bays which are classified "SC."

(c) The Tar-Pamlico River Basin ~~Schedule of Classification and Water Quality Standards~~ Classification Schedule was amended effective:

- (1) March 1, 1977;
- (2) November 1, 1978;
- (3) June 8, 1980;
- (4) October 1, 1983;
- (5) June 1, 1984;
- (6) August 1, 1985;
- (7) February 1, 1986;
- (8) August 1, 1988;
- (9) January 1, 1990;
- (10) August 1, 1990;
- (11) August 3, 1992;
- (12) April 1, 1994;
- (13) January 1, 1996;
- (14) September 1, 1996;
- (15) October 7, 2003;
- (16) June 1, 2004;
- (17) November 1, 2007.

(d) The ~~Schedule of Classifications and Water Quality Standards for the Tar-Pamlico River Basin~~ Classification Schedule was amended effective August 1, 1988 as follows:

- (1) Tar River (Index No. 28-94) from a point 1.2 miles downstream of Broad Run to the upstream side of Tranters Creek from Class C to Class B.

(e) The ~~Schedule of Classifications and Water Quality Standards for the Tar-Pamlico River Basin~~ Classification Schedule was amended effective January 1, 1990 by the reclassification of Pamlico River and Pamlico Sound [Index No. 29-(27)] which includes all waters within a line beginning at Juniper Bay Point and running due south to Lat. 35° 18' 00", long. 76° 13' 20", thence due west to lat. 35° 18' 00", long 76° 20' 00", thence northwest to Shell Point and including Shell Bay, Swanquarter and Juniper Bays and their tributaries, but excluding the Blowout, Hydeland Canal, Juniper Canal and Quarter Canal were reclassified from Class SA and SC to SA ORW and SC ORW.

(f) The ~~Schedule of Classifications and Water Quality Standards for the Tar-Pamlico River Basin~~ Classification Schedule was amended effective January 1, 1990 by adding the supplemental

classification NSW (Nutrient Sensitive Waters) to all waters in the basin from source to a line across Pamlico River from Roos Point to Persimmon Tree Point.

(g) The ~~Schedule of Classifications and Water Quality Standards for the Tar-Pamlico 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 2B .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 ~~Schedule of Classifications and Water Quality Standards for the Tar-Pamlico River Basin~~ Classification Schedule was amended effective April 1, 1994 with the reclassification of Blounts Creek from Herring Run to Blounts Bay [Index No. 29-9-1-(3)] from Class SC NSW to Class SB NSW.

(i) The ~~Schedule of Classifications and Water Quality Standards for the Tar-Pamlico River Basin~~ Classification Schedule was amended effective January 1, 1996 with the reclassification of Tranters Creek [Index Numbers 28-103- (4.5), 28-103- (13.5), 28-103- (14.5) and 28-103- (16.5)] from a point 1.5 miles upstream of Turkey Swamp to the City of Washington's former auxiliary water supply intake, including tributaries, from Class WS-IV Sw NSW and Class WS-IV CA Sw NSW to Class C Sw NSW.

(j) The ~~Schedule of Classifications and Water Quality Standards for the Tar-Pamlico River Basin~~ Classification Schedule was amended effective September 1, 1996 with the addition of Huddles Cut (previously unnamed in the schedule) classified as SC NSW with an Index No. of 29-25.5.

(k) The ~~Schedule of Classifications and Water Quality Standards for the Tar-Pamlico River Basin~~ Classification Schedule was temporarily amended effective October 7, 2003 and permanently amended June 1, 2004 with the reclassification of a portion of Swift Creek [Index Number 28-78-(0.5)] and a portion of Sandy Creek [Index Number 28-78-1-(19)] from Nash County SR 1004 to Nash County SR 1003 from Class C NSW to Class C ORW NSW, and the waters that drain to these two creek portions to include only the ORW management strategy as represented by "+". The "+" symbol as used in this paragraph means that all undesignated waterbodies that drain to the portions of the two creeks referenced in this Paragraph shall comply with ~~Paragraph (c) of Rule .0225 of this Subchapter~~ Rule .0225 (c) of this Subchapter in order to protect the designated waters as per Rule .0203 of this Subchapter and to protect outstanding resource values found in the designated waters as well as in the undesignated waters that drain to the designated waters.

(l) The ~~Schedule of Classifications and Water Quality Standards for the Tar-Pamlico River Basin~~ Classification Schedule was amended effective November 1, 2007 with the reclassifications listed below, and the North Carolina Division of Water Quality Resources maintains a Geographic Information Systems data layer of these UWLs.

- (1) Goose Creek Tidal Freshwater Marsh along the confluence of Goose Creek [Index No. 29-33] and the Pamlico River [Index No. 29-(27)], along Flatty Creek [Index No. 29-11-4] a length of the Pamlico River shoreline [Index No. 29-(27)] was reclassified to Class WL ~~UWL as defined in 15A NCAC 02B .0101.~~ UWL.
- (2) Mallard Creek Tidal Freshwater Marsh along Mallard Creek [Index No. 29-13-(1)] 0.2 miles above its confluence with the Pamlico River to Class WL ~~UWL as defined in 15A NCAC 02B .0101.~~ UWL.

*Authority G.S. 143-214.1; 143-215.1; 143-215.3(a)(1).*

#### **15A NCAC 02B .0317 PASQUOTANK RIVER BASIN**

(a) ~~The Pasquotank River Basin Schedule of Classifications and Water Quality Standards may be inspected at the following places:~~ lassifications assigned to the waters within the Pasquotank River Basin are set forth in the Pasquotank River Basin Classification Schedule, which may be inspected at the following places:

- (1) the Internet at <http://h2o.enr.state.nc.us/csu/>; <http://portal.ncdenr.org/web/wq/ps/csu/classifications>; and
- (2) the North Carolina Department of ~~Environment and Natural Resources:~~ Environmental Quality:
  - (A) Washington Regional Office  
943 Washington Square Mall  
Washington, North Carolina ~~Carolina;~~ and
  - (B) Division of Water ~~Quality Resources~~  
Central Office  
512 North Salisbury Street  
Raleigh, North Carolina.

(b) Unnamed Streams. All drainage canals not noted in the schedule are classified "C."

(c) ~~The Pasquotank River Basin Schedule of Classifications and Water Quality Standards~~ Classification Schedule was amended effective:

- (1) March 1, 1977;
- (2) May 18, 1977;
- (3) December 13, 1979;
- (4) January 1, 1985;
- (5) February 1, 1986;
- (6) January 1, 1990;
- (7) August 1, 1990;
- (8) August 3, 1992;
- (9) August 1, 1998;
- (10) August 1, 2000;
- (11) November 1, 2007.

(d) ~~The Schedule of Classifications and Water Quality Standards for the Pasquotank River Basin~~ Classification Schedule was amended effective January 1, 1990 by the reclassification of Alligator River [Index Nos. 30-16-(1) and 30-16-(7)] from source to U.S. Hwy. 64 and all tributaries except Swindells Canal, Florida Canal, New Lake, Fairfield Canal, Carters Canal, Dunbar Canal and Intracoastal Waterway (Pungo River - Alligator River

Canal) were reclassified from C Sw and SC Sw to C Sw ORW and SC Sw ORW.

(e) ~~The Schedule of Classifications and Water Quality Standards for the Pasquotank River Basin~~ Classification Schedule was amended effective August 1, 1990 as follows:

- (1) Croatan Sound [Index No. 30-20-(1)] from a point of land on the southern side of mouth of Peter Mashoes Creek on Dare County mainland following a line eastward to Northwest Point on Roanoke Island and then from Northwest Point following a line west to Reeds Point on Dare County mainland was reclassified from Class SC to Class SB.
- (2) Croatan Sound [Index No. 30-20-(1.5)] from Northwest Point on Roanoke Island following a line west to Reeds Point on Dare County mainland to William B. Umstead Memorial Bridge was reclassified from Class SC to Class SA.

(f) ~~The Schedule of Classifications and Water Quality Standards for the Pasquotank 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 2B .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.

(g) ~~The Schedule of Classifications and Water Quality Standards for the Pasquotank River Basin~~ Classification Schedule was amended effective August 1, 1998 with the revision to the primary classification for a portion of the Pasquotank River [Index No. 30-3-(1.7)] from Class WS-IV to Class WS-V.

(h) ~~The Schedule of Classifications and Water Quality Standards for the Pasquotank River Basin~~ Classification Schedule was amended effective August 1, 2000 with the reclassification of Lake Phelps [Index No. 30-14-4-6-1] from Class C Sw to Class B Sw ORW.

(i) ~~The Schedule of Classifications and Water Quality Standards for the Pasquotank River Basin~~ Classification Schedule was amended effective November 1, 2007 with the reclassifications listed below, and the North Carolina Division of Water ~~Quality Resources~~ maintains a Geographic Information Systems data layer of these UWLs.

- (1) Phelps Lake Natural Lake Shoreline near Phelps Lake [Index No. 30-14-4-6-1] was reclassified to Class WL ~~UWL as defined in 15A NCAC 02B .0101.~~ UWL.
- (2) Nags Head Woods near Buzzard Bay [Index No. 30-21-1] was reclassified to Class WL ~~UWL as defined in 15A NCAC 02B .0101.~~ UWL.

*Authority G.S. 143-214.1; 143-215.1; 143-215.3(a)(1).*

**CHAPTER 18 - ENVIRONMENTAL HEALTH**

**SUBCHAPTER 18C - WATER SUPPLIES**

**SECTION .1300 - OPERATION OF PUBLIC WATER SUPPLIES**

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*Notice is hereby given in accordance with G.S. 150B-21.2 that the Commission for Public Health intends to adopt the rule cited as 15A NCAC 18C .1305.*

**Link to agency website pursuant to G.S. 150B-19.1(c):**  
<https://deq.nc.gov/permits-regulations/rules-regulations/proposed-rules>

**Proposed Effective Date:** *October 1, 2018*

**Public Hearing:**

**Date:** *June 19, 2018*

**Time:** *10:00 a.m.*

**Location:** *Ground Floor Hearing Room, Archdale Building, 512 N. Salisbury Street, Raleigh, NC 27604*

**Reason for Proposed Action:** *The rule listed in the Register is new and was created pursuant to G.S. 130A-320. Emergency response and source water protection planning serves the public interest helping to protect public health. This proposed rule sets minimum standards for suppliers of water to assess threats and identify mitigation strategies in response to contamination and/or emergency events.*

**Comments may be submitted to:** *Rebecca Sadosky, 1634 Mail Service Center, Raleigh, NC 27699; email Rebecca.sadosky@ncdenr.gov*

**Comment period ends:** *July 16, 2018*

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

**Fiscal impact (check all that apply).**

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

**15A NCAC 18C .1305 SOURCE WATER PROTECTION PLANNING**

(a) In compliance with G.S. 130A-320, every supplier of water operating a public water system treating and furnishing water from a surface water source shall create and implement a Source Water Protection Plan (SWPP) based upon the following schedule:

- (1) Water systems that have a single source of supply and a source susceptibility rating of higher or moderate, as determined by the Department, shall create and implement a SWPP by January 1, 2020.
- (2) Water systems that have multiple sources of supply and any source susceptibility rating of higher, as determined by the Department, shall create and implement a SWPP by January 1, 2021.
- (3) All other water systems treating and furnishing water from surface water sources shall create and implement an SWPP by January 1, 2022.
- (4) Any public water system that begins treating and furnishing water from a surface water source on or after January 1, 2020 shall create and implement a SWPP that satisfies the requirements of this Rule prior to the commencement of its operations.

(b) Any public water system required to create and implement a SWPP in accordance with this Rule shall review and update their SWPP at three year intervals from the creation deadline specified in Paragraph (a) of this Rule.

(c) Each SWPP shall contain the following elements:

- (1) A list of potential contaminant sources (PCSs), both provided by the Department and identified by the water system, located in the following watershed areas as defined in 15A NCAC 02B .0212 - .0218:
  - (A) within the entire watershed for WS-I watersheds;
  - (B) within the critical area and 1,000 feet from perennial streambanks, or to the ridge line of the watershed, for WS-II and WS-III watersheds;
  - (C) within the critical area and 1,000 feet from perennial streambanks, or to the ridge line of the watershed, of the protected area for WS-IV watersheds;
  - (D) within ½ mile from the normal pool elevation in which the intake is located, or to the ridge line of the watershed, whichever comes first, for a reservoir within a WS-V watershed; and

- (E) within ½ mile upstream from and draining to the intake located directly in the stream or river, or to the ridge line of the watershed, whichever comes first, for a direct-stream intake within a WS-V watershed.
- (2) For community water systems, a contingency strategy that documents the system's planned response to an emergency event or contamination of its water source(s) that includes the following:
  - (A) identification and contact information of personnel responsible for emergency management, including water system, local, State, and federal emergency response personnel;
  - (B) identification of foreseeable natural and human-caused emergency events including water shortages and outages;
  - (C) description of the emergency response strategies for each identified shortage or outage event and each potential contamination event associated with PCSs identified and listed in Subparagraph (c)(1) of this Rule;
  - (D) standard operating procedures to close intakes and switch to an alternate intake during a contamination event, including procedures that outline exercises designed to practice closure and switching of the intake(s);
  - (E) description of public notification procedures; and
  - (F) identification and evaluation of all facilities and equipment that upon failure would result in a water outage or water quality violations.
- (3) For non-transient, non-community water systems, the contingency strategy shall contain the positions and phone numbers of responsible persons to contact in the event of an emergency, including water system, local, State, and federal emergency contacts.
- (4) An evaluation of a water system's ability to take the following actions:
  - (A) close its water intake(s) in the event of contamination, including a determination of the duration of time the water intake(s) can remain closed while maintaining positive water pressure within the distribution system;
  - (B) isolate or divert contaminated water from its surface water intake(s);
  - (C) reduce demand by implementing conservation measures during a contamination event; and
  - (D) meet demand via alternate sources of supply in the event of contamination or loss of its primary water source.
- (5) Verification of outreach efforts provided to the owners of the PCSs identified in Subparagraph (c)(1) of this Rule to raise awareness of the proximity of the drinking water intake(s) and provide emergency contact information for use during a contamination event.
- (6) A description of proactive activities and management strategies designed to protect the source(s) from contamination, including documentation of any voluntary source water protection activities that have been implemented by the water system.
- (7) Description of public awareness communication efforts that include the following:
  - (A) publication of the emergency and source water protection planning status, the next revision date, and a reference to this Rule in the community water system's annual Consumer Confidence Report, as required by 15A NCAC 18C .1538; and
  - (B) suppliers shall notify any other public water system to which the system is interconnected of the contingency strategy set forth in Subparagraph (c)(2) of this Rule. A description of this communication shall be maintained in the SWPP.
- (d) Each water system shall maintain and verify completion or revision of its SWPP as follows:
  - (1) A copy of the current SWPP shall remain onsite at each water treatment facility and be made available to personnel responsible for emergency management and operator(s) on duty at all times. The SWPP and all associated documentation regarding its creation and implementation shall be available for review by Section staff upon request.
  - (2) An authorized representative of the water system shall certify that a SWPP has been created and implemented, and that the water system's governing body has been advised of the SWPP creation and implementation. The certification shall be submitted to the Department by the deadline specified in Paragraph (a) of this Rule.
  - (3) An authorized representative of the water system shall certify that a SWPP has been revised and that the water system's governing body has been advised of the revision. The certification shall be submitted to the Department by the revision deadline specified in Paragraph (b) of this Rule.

Authority G.S. 130A-315; 130A-320(c).

☐ Approved by OSBM  
☒ No fiscal note required by G.S. 150B-21.4

**TITLE 21 – OCCUPATIONAL LICENSING BOARDS  
AND COMMISSIONS**

**CHAPTER 12 – LICENSING BOARD FOR GENERAL  
CONTRACTORS**

*Notice is hereby given in accordance with G.S. 150B-21.2 that the Licensing Board for General Contractors intends to amend the rules cited as 21 NCAC 12 .0205 and .0209.*

**Link to agency website pursuant to G.S. 150B-19.1(c):**  
[www.nclbgc.org](http://www.nclbgc.org)

**Proposed Effective Date:** September 1, 2018

**Public Hearing:**

**Date:** June 20, 2018

**Time:** 9:00 a.m.

**Location:** 5400 Creedmoor Road, Raleigh, NC 27612

**Reason for Proposed Action:**

21 NCAC 12 .0205 – *Inadvertently removed text during recent rule amendment process*

21 NCAC 12 .0209 – *Maintain compliance with assumed name statute*

**Comments may be submitted to:** Frank Wiesner, North Carolina Licensing Board for General Contractors, 5400 Creedmoor Road, Raleigh, NC 27612; phone (919) 571-4183; fax (919) 571-4703; email [Frank.Wiesner@nclbgc.org](mailto:Frank.Wiesner@nclbgc.org)

**Comment period ends:** July 16, 2018

**Procedure for Subjecting a Proposed Rule to Legislative**

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

**Fiscal impact (check all that apply).**

- ☐ State funds affected  
☐ Environmental permitting of DOT affected  
☐ Analysis submitted to Board of Transportation  
☐ Local funds affected  
☐ Substantial economic impact (≥\$1,000,000)

**SECTION .0200 - LICENSING REQUIREMENTS**

**21 NCAC 12 .0205 QUALIFIER**

(a) The qualifier for the applicant shall be a responsible managing employee, officer, or member of the personnel of the applicant, as described in G.S. 87-10. A person may serve as a qualifier for no more than two licenses. A qualifier's examination credentials shall archive if the qualifier does not serve as a qualifier for an active licensee for a period of four consecutive years. Any subsequent attempts to qualify for a license shall require the qualifier to earn a passing grade. Subject to the provisions of G.S. 150B and Section .0800 of these Rules, the Board may reject the application of an applicant seeking qualification by employment of a person who has already passed an examination if such person has previously served as qualifier for a licensee that has been disciplined by the Board.

(b) A licensee shall notify the Board in writing in the event a qualifier ceases to be connected with the licensee. The notice shall include the date on which the qualifier was last connected with the licensee and shall be submitted no later than 10 days after the date of separation. A qualifier shall also be required to notify the Board in writing in such circumstances. After such notice is filed with the Board in writing, or the Board determines that the qualifier is no longer connected with the licensee if there are no additional qualifiers for the licensee, the license shall remain in full force and effect for a period of 90 days from the termination date, and then becomes invalid unless a qualifier has transferred a valid examination credential to the licensee, as provided by G.S. 87-10.

(c) Persons associated with a firm or corporation may take the required examination on behalf of the firm or corporation as described in G.S. 87-10. A partner may take an examination on behalf of a partnership.

(d) "Responsible managing" as used in G.S. 87-10 shall describe a person who is engaged in the work of the applicant a minimum of 20 hours per week or a majority of the hours operated by the applicant, whichever is less.

(e) "Members of the personnel" as used in G.S. 87-10 shall describe a person who is a responsible managing employee of the applicant. A member of the personnel shall not be an independent contractor.

(f) An applicant or licensee may have more than one qualifier. If one person associated with the applicant fails, and another passes, the license will be granted to that applicant. A license will be issued only in the classification held by a qualifier who has passed an examination in that classification.

Authority G.S. 87-1; 87-4; 87-10; 87-11(a).

**SECTION .0200 - LICENSING REQUIREMENTS**

**21 NCAC 12 .0209 APPLICATION**

(a) Any application made pursuant to G.S. 87-10, shall be accompanied by a Certificate of Assumed Name ~~when filing is required with the Register of Deeds office in the county in which the applicant is to conduct its business, pursuant to G.S. 66-68.~~

filed in accordance with Chapter 66, Article 14A of the General Statutes. A copy of such certification must be provided with the application to the Board. Applications submitted to the Board on behalf of corporations, limited liability companies and partnerships must be accompanied by a copy of any documents (Articles of Incorporation, Certificate of Authority, etc.) required to be filed with the North Carolina Secretary of State's office.

(b) All licensees must comply with the requirements of G.S. ~~66-68~~ 66-71.4 and must notify the Board within 30 days of any change in the name in which the licensee is conducting business in the State of North Carolina.

~~(e) Applicants for license and licensees may use only one assumed name.~~

~~(d)(c)~~ No applicant or licensee shall use or adopt an assumed name used by any other licensee, or any name so similar to an assumed name used by another licensee that could confuse or mislead the public.

Authority G.S. 66-71.4; 87-1; 87-4; 87-10.

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## CHAPTER 20 – BOARD OF REGISTRATION FOR FORESTERS

*Notice is hereby given in accordance with G.S. 150B-21.2 and G.S. 150B-21.3A(c)(2)g. that the Board of Registration for Foresters intends to readopt with substantive changes the rule cited as 21 NCAC 20 .0104 and readopt without substantive changes the rule cited as 21 NCAC 20 .0103.*

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

**Link to agency website pursuant to G.S. 150B-19.1(c):** [www.ncbrf.org](http://www.ncbrf.org)

**Proposed Effective Date:** September 1, 2018

**Instructions on How to Demand a Public Hearing:** *(must be requested in writing within 15 days of notice): To demand a public hearing, interested parties should contact Jennifer Grantham by phone at (919) 847-5441 or email at [info@ncbrf.org](mailto:info@ncbrf.org).*

**Reason for Proposed Action:** *The State Board of Registration for Foresters is readopting these 2 rules in order to update and clarify language for procedures currently followed in activities of the Board.*

**Comments may be submitted to:** Jennifer Grantham, NCBRF, PO Box 27393, Raleigh, NC 27611

**Comment period ends:** July 16, 2018

**Procedure for Subjecting a Proposed Rule to Legislative Review:** If an objection is not resolved prior to the adoption of the

rule, a person may also submit written objections to the Rules Review Commission after the adoption of the Rule. If the Rules Review Commission receives written and signed objections after the adoption of the Rule in accordance with G.S. 150B-21.3(b2) from 10 or more persons clearly requesting review by the legislature and the Rules Review Commission approves the rule, the rule will become effective as provided in G.S. 150B-21.3(b1). The Commission will receive written objections until 5:00 p.m. on the day following the day the Commission approves the rule. The Commission will receive those objections by mail, delivery service, hand delivery, or facsimile transmission. If you have any further questions concerning the submission of objections to the Commission, please call a Commission staff attorney at 919-431-3000.

### Fiscal impact (check all that apply).

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

## SECTION .0100 - PURPOSE

### 21 NCAC 20 .0103 QUALIFICATIONS FOR REGISTRATION (READOPTION WITHOUT SUBSTANTIVE CHANGES)

### 21 NCAC 20 .0104 EXAMINATIONS

(a) ~~The comprehensive written exam required by Applicants meeting the requirements of G.S. 89B-9(a)(1), G.S. 89B-9(a)(1) shall take the called a Level 2 examination, examination that focuses on the practice of forestry in North Carolina and shall be offered twice annually. There is no limit to the number of times that an applicant may attempt the examination. North Carolina.~~

(b) ~~For applicants Applicants not meeting the education requirements in of G.S. 89B-9(a)(1), a comprehensive written exam, called shall take the Level 1 examination is required. The exam that tests the applicants' knowledge of forestry approximating that obtained through graduation from a four-year curriculum in forestry and focuses on the practice of forestry in North Carolina. The exam shall be offered twice annually. There is no limit to the number of times that an applicant may attempt the examination.~~

(c) The Board shall offer both the Level 1 and Level 2 examination twice annually.

~~(e)(d)~~ The Board shall notify applicants of the date, location, and time by certified mail, return receipt requested, not less than 30 60 days before the each scheduled examination, examination, as to the time and place of the examination. If the applicant fails to respond at least ten days prior to the date of the exam, it is assumed that the applicant does not plan to take the examination. The applicant's file shall then be considered inactive and no further action shall be initiated by the Board. The application fee shall be forfeited. Applicants must notify the Board at least 30 days prior to the exam date of his or her intent to take the exam.



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***PROPOSED RULES***

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~~(d)~~(e) The passing grade for registration ~~is~~ shall be 70 percent on any exam. The determination by the Board as to the score on each exam shall be final.

~~(e)~~(f) There is no limit to the number of times that an applicant may attempt the exam. Re-examination fees ~~are~~ shall be forty dollars (\$40.00) per examination.

*Authority G.S. 89B-6; 89B-9; 89B-12.*

*This Section contains information for the meeting of the Rules Review Commission April 19, 2018 at 1711 New Hope Church Road, RRC Commission Room, Raleigh, NC. Anyone wishing to submit written comment on any rule before the Commission should submit those comments to the RRC staff, the agency, and the individual Commissioners. Specific instructions and addresses may be obtained from the Rules Review Commission at 919-431-3000. Anyone wishing to address the Commission should notify the RRC staff and the agency no later than 5:00 p.m. of the 2<sup>nd</sup> business day before the meeting. Please refer to RRC rules codified in 26 NCAC 05.*

**RULES REVIEW COMMISSION MEMBERS****Appointed by Senate**

Jeff Hyde (1<sup>st</sup> Vice Chair)  
Robert A. Bryan, Jr.  
Margaret Currin  
Jeffrey A. Poley

**Appointed by House**

Garth Dunklin (Chair)  
Andrew P. Atkins  
Anna Baird Choi  
Paul Powell  
Jeanette Doran (2<sup>nd</sup> Vice Chair)

**COMMISSION COUNSEL**

Amber Cronk May (919)431-3074  
Amanda Reeder (919)431-3079  
Jason Thomas (919)431-3081

**RULES REVIEW COMMISSION MEETING DATES**

May 17, 2018 June 14, 2018  
July 19, 2018 August 16, 2018

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**RULES REVIEW COMMISSION MEETING****MINUTES*****April 19, 2018***

The Rules Review Commission met on Thursday, April 19, 2018, in the Commission Room at 1711 New Hope Church Road, Raleigh, North Carolina. Commissioners present were: Andrew Atkins, Bobby Bryan, Anna Baird Choi, Margaret Currin, Jeanette Doran, Garth Dunklin, Jeff Hyde, Jeff Poley, and Paul Powell.

Staff members present were Commission Counsels Amber Cronk May, Amanda Reeder, and Jason Thomas; and Julie Brincefield, Alex Burgos, and Dana McGhee.

The meeting was called to order at 10:02 a.m. with Chairman Dunklin presiding.

Chairman Dunklin read the notice required by G.S. 138A-15(e) and reminded the Commission members that they have a duty to avoid conflicts of interest and the appearances of conflicts of interest.

Chairman Dunklin informed the Commission that Jay Hemphill resigned from the Rules Review Commission to accept an appointment to the NC State Board of Elections and Ethics Enforcement.

**APPROVAL OF MINUTES**

Chairman Dunklin asked for any discussion, comments, or corrections concerning the minutes of the March 15, 2018 meeting. There were none and the minutes were approved as distributed.

**FOLLOW UP MATTERS****Department of Revenue**

17 NCAC 05B .1105, .1108, .1110, .1406; 05C .0101, .0403; .0801, .0907, .1506, .1702; 05D .0109, and .0112 - All rules were unanimously approved.

**Building Code Council**

2018 Residential Code Tables N1102.1.2 and N1102.1.4; 2018 Energy Conservation Code Tables R402.12 and R402.1.4 – Pursuant to G.S. 150B-21.12(d), the rules were returned to the agency. No action was required by the Commission.

**LOG OF FILINGS (PERMANENT RULES)**

*Pre-Reviewed Rules*

**Industrial Commission**

All rules were unanimously approved.

**Wildlife Resources Commission**

All rules were unanimously approved.

**Department of Revenue**

All rules were unanimously approved.

**Department of Transportation/Division of Motor Vehicles**

The Commission objected to 19A NCAC 03D .0219 in accordance with G.S. 150B-21.10. The Commission unanimously objected to the rule for failure to comply with the APA, as the agency substantially changed the rule after publication in the NC Register. The Commission also objected to the rule based upon lack of statutory authority with Commissioners Atkins, Choi, and Currin voting against, because requiring certain records to be provided "immediately" in all circumstances was not authorized by G.S. 20-297, which requires that such records be "available for inspection by the Division within a reasonable period after being requested by the Division."

19A NCAC 03D .0237 was withdrawn at the request of the agency.

John Policastro, General Counsel to the NC Automobile Dealers Association, addressed the Commission.

John Congleton, with the Attorney General's Office and representing the agency, addressed the Commission.

Helen Landi, the rulemaking coordinator with the agency, addressed the Commission.

Following the vote on Rule 19A NCAC 03D .0219, Commissioner Bryan left the meeting and did not participate in the remainder of the meeting.

**Medical Board**

All rules were unanimously approved.

Prior to the review of the rules from the Medical Board, Commissioner Atkins recused himself and did not participate in any discussion or vote concerning the rules because of a conflict.

The chair called the meeting into a brief recess at 11:06 a.m.

The meeting resumed at 11:14 a.m.

*Non Pre-Reviewed Rules*

**Board of Agriculture**

All rules were unanimously approved with the following exception:

02 NCAC 09B .0135 was withdrawn at the request of the agency.

**Commission of Navigation and Pilotage for the Cape Fear River and Bar**

The Commission extended the period of review for these Rules in accordance with G.S. 150B-21.10. They did so to allow the agency to complete requested technical changes and submit the rewritten rules at a later meeting.

**Teachers' and State Employees' Retirement System Board of Trustees**

20 NCAC 02B .0405 was unanimously approved.

The Commission received over 10 letters of objection for 20 NCAC 02B .0405 requesting a delayed effective date and legislative review of the approved rule in accordance with G.S. 150B-21.3(b2).

Prior to the review of the rule from the Teachers' and State Employees' Retirement System Board of Trustees, Commissioner Poley recused himself and did not participate in any discussion or vote concerning the rule because of his law firm's client involvement.

Michael Crowell, attorney for Johnston, Wilkes, Union, and Cabarrus County Boards of Education, addressed the Commission.

Katie Cornetto, attorney for Dare, Pender, and Wilson County Boards of Education, addressed the Commission.

Sam Hayes, General Counsel to the Department of State Treasurer, addressed the Commission.

Sam Watts, Director of Policy with the Department of State Treasurer, addressed the Commission.

Christina Strickland, legal counsel to the Department of State Treasurer, addressed the Commission.

**Local Government Employees' Retirement System Board of Trustees**

20 NCAC 02C .0405 was unanimously approved.

Prior to the review of the rule from the Local Government Employees' Retirement System Board of Trustees, Commissioner Poley recused himself and did not participate in any discussion or vote concerning the rule because of his law firm's client involvement.

**Interpreter and Transliterator Licensing Board**

All rules were unanimously approved.

**Board of Nursing**

All rules were unanimously approved.

Prior to the review of the rules from the Board of Nursing, Commissioner Choi recused herself and did not participate in any discussion or vote concerning the rules because her law firm provides legal representation to the Board.

**Real Estate Commission**

All rules were unanimously approved.

Vice Chairman Hyde presided over the discussion and vote on the Real Estate Commission rules.

Prior to the review of the rules from the Real Estate Commission, Commissioner Dunklin recused himself and did not participate in any discussion or vote concerning the rules because he practices before the Real Estate Commission.

**EXISTING RULES REVIEW**

**Department of Natural and Cultural Resources**

07 NCAC 14 – The Commission unanimously approved the report as submitted by the agency.

07 NCAC 15 – The Commission unanimously approved the report as submitted by the agency.

**DHHS/Division of MH/DD/SAS**

10A NCAC 26C .0100, .0402, and .0500 – The Commission unanimously approved the report as submitted by the agency.

**DHHS/Commission for MH/DD/SAS**

10A NCAC 26C .0200, .0300, .0401, and .0600 - The Commission unanimously approved the report as submitted by the agency.

10A NCAC 27C – The Commission unanimously approved the report as submitted by the agency.

10A NCAC 28D – The Commission unanimously approved the report as submitted by the agency.

10A NCAC 28E - The Commission unanimously approved the report as submitted by the agency.

**Department of Insurance**

11 NCAC 12 - The Commission unanimously approved the report as submitted by the agency.

**Board of Electrolysis Examiners**

21 NCAC 19 – The Commission unanimously approved the report as submitted by the agency.

**DHHS/Medical Care Commission**

10A NCAC 13F - As reflected in the attached letter, the Commission voted to schedule readoption of the rules no later than November 30, 2024 pursuant to G.S. 150B-21.3A(d)(2).

Prior to the review of the proposed readoption date from DHHS/Medical Care Commission, Commissioner Atkins recused himself and did not participate in any discussion or vote concerning the proposed readoption date because of a conflict.

Prior to the review of the proposed readoption date from DHHS/Medical Care Commission, Commissioner Poley recused himself and did not participate in any discussion or vote concerning the proposed readoption date because of his law firm represents the Medical Care Commission from time to time.

**Social Services Commission**

10A NCAC 70M - As reflected in the attached letter, the Commission voted to schedule readoption of the rules no later than August 31, 2021 pursuant to G.S. 150B-21.3A(d)(2).

**Housing Finance Agency**

24 NCAC 01 - As reflected in the attached letter, the Commission voted to schedule readoption of the rule no later than January 31, 2019 pursuant to G.S. 150B-21.3A(d)(2).

Following the review of the readoption date for 24 NCAC 01, Commissioner Poley left the meeting and did not participate in the remainder of the meeting.

**Industrial Commission**

The Industrial Commission submitted a request for 04 NCAC 10 to be exempt from the periodic review during the current review cycle.

Pursuant to Rule 26 NCAC 05 .0209, the Commission held a public hearing to determine whether to grant the Industrial Commission's request. The Commission opened the hearing at 12:23 p.m.

There were no speakers.

The Commission voted to grant the request and amend Rule 26 NCAC 05 .0211 to remove 04 NCAC 10, with Commissioner Dunklin voting against.

The Commission closed the public hearing at 12:27 p.m.

**COMMISSION BUSINESS**

The Commission voted to reschedule the June 2018 Rules Review Commission meeting date. It has been rescheduled from June 21<sup>st</sup> to June 14<sup>th</sup>.

The Commission reviewed Bylaws revisions proposed by the Bylaws Subcommittee.

Following the review of the Bylaws revisions, Commissioner Powell left the meeting and did not-participate in the remainder of the meeting.

The Chair reminded the Commission of the Periodic Review and Expiration of Existing Rules Readoption Schedule.

Staff gave a brief presentation on the Supreme Court decision in the Ambulatory Surgical Center Association v. Industrial Commission.

The meeting adjourned at 12:42 p.m.

The next regularly scheduled meeting of the Commission is Thursday, May 17<sup>th</sup> at 10:00 a.m.

\_\_\_\_\_  
Alexander Burgos, Paralegal

\_\_\_\_\_  
Minutes approved by the Rules Review Commission:  
Garth Dunklin, Chair

DRAFT

**April 19, 2018**

Rules Review Commission  
Meeting  
Please Print Legibly

Name	Agency
Anita Mac Mullan	NCDA & CS, Food & Drug
Kendall Bourdon	NCIC
Carrie Rukman	NCWRC
Tamara Zmuda	NCDOJ
David Cobb	NCWRC
DAVID GRIFFIN	NCDCR
Katie Cornetto	Schwartz & Shaw, PLLC
Sam Mayer	NC DST
MICHAEL CROWELL	LAWLER, CARPENTER
M. Smallwood	WHL
John Green	NC DOT for NC I&T Lic. Bd.
Matt Sarchak	NCDOJ
Casey Howard	NCHFA
Carrie Hollis	OSBM
Wanda Long	NC Med Board
Marcus Vinison	NC Med Board
Melissa Vuotto	REC
Rob Patchett	REC
Doug Barrick	DTSR
Phil Frazier	DNCR
W. Denise Baker	pmH/DO/SAS

**April 19, 2018**

Rules Review Commission  
Meeting  
Please Print Legibly

Name	Agency
Loretta Peace-Bunch	NC DOT
Charlton Allen	NC Industrial Comm.
Nadine Pfeiffer	NC DHHS - DHSR
Ashley Snyder	Industrial Comm.
Joann Bunze	Notusky Reporting Service
Kaurafay	DST
Gray Rufford	NC DOR
William Young	NC DOR
Drew Marsh	NC DOT
Meredith Henderson	NCIC
MATTHEW NIES	NCDMV L+T
JOHN SEIBERT	NC DOR
John Policastro	NCADA
Helen Vandi	DOT
Hannah Jennigan	DOT
Shannon Gerger	DOA
Tien Cheng	NC DACS
Benton Withler	NC DACS
Jamie Kellen	NCDMV
CHUCK CHURCH	DMV
Hope Mozingo	DMV
Virginia Niehaus	DMV
Ana Grozan	OSBM





**STATE OF NORTH CAROLINA  
OFFICE OF ADMINISTRATIVE HEARINGS**

Mailing address:  
6714 Mail Service Center  
Raleigh, NC 27699-6714

Street address:  
1711 New Hope Church Rd  
Raleigh, NC 27609-6285

April 19, 2018

Nadine Pfeiffer, Rulemaking Coordinator  
Department of Health and Human Services  
Medical Care Commission  
2701 Mail Service Center  
Raleigh, North Carolina 27699-2701

Re: Readoption pursuant to G.S. 150B-21.3A(c)(2)g of **10A NCAC 13F**

Dear Ms. Pfeiffer:

Attached to this letter are the rules subject to readoption pursuant to the periodic review and expiration of existing rules as set forth in G.S. 150B-21.3A(c)(2)g. After consultation with your agency, this set of rules was discussed at the April 19, 2018 Rules Review Commission meeting regarding the scheduling of these rules for readoption. Pursuant to G.S. 150B-21.3A(d)(2), the rules identified on the attached printout shall be readopted by the agency no later than November 30, 2024.

If you have any questions regarding the Commission's action, please let me know.

Sincerely,

Amber May  
Commission Counsel

Administration  
919/431-3000  
fax: 919/431-3100

Rules Division  
919/431-3000  
fax: 919/431-3104

Judges and  
Assistants  
919/431-3000  
fax: 919/431-3100

Clerk's Office  
919/431-3000  
fax: 919/431-3100

Rules Review  
Commission  
919/431-3000  
fax: 919/431-3104

Civil Rights  
Division  
919/431-3036  
fax: 919/431-3103

An Equal Employment Opportunity Employer

**RRC DETERMINATION  
PERIODIC RULE REVIEW  
January 25, 2018  
APO Review: March 06, 2018  
Medical Care Commission  
Total: 43**

**RRC Determination: Necessary with substantive public interest**

<b>Rule</b>	<b>Determination</b>
<u>10A NCAC 13F .0203</u>	Necessary with substantive public interest
<u>10A NCAC 13F .0207</u>	Necessary with substantive public interest
<u>10A NCAC 13F .0214</u>	Necessary with substantive public interest
<u>10A NCAC 13F .0301</u>	Necessary with substantive public interest
<u>10A NCAC 13F .0302</u>	Necessary with substantive public interest
<u>10A NCAC 13F .0304</u>	Necessary with substantive public interest
<u>10A NCAC 13F .0305</u>	Necessary with substantive public interest
<u>10A NCAC 13F .0306</u>	Necessary with substantive public interest
<u>10A NCAC 13F .0307</u>	Necessary with substantive public interest
<u>10A NCAC 13F .0309</u>	Necessary with substantive public interest
<u>10A NCAC 13F .0311</u>	Necessary with substantive public interest
<u>10A NCAC 13F .0402</u>	Necessary with substantive public interest
<u>10A NCAC 13F .0403</u>	Necessary with substantive public interest
<u>10A NCAC 13F .0404</u>	Necessary with substantive public interest
<u>10A NCAC 13F .0405</u>	Necessary with substantive public interest
<u>10A NCAC 13F .0407</u>	Necessary with substantive public interest
<u>10A NCAC 13F .0501</u>	Necessary with substantive public interest
<u>10A NCAC 13F .0503</u>	Necessary with substantive public interest
<u>10A NCAC 13F .0601</u>	Necessary with substantive public interest
<u>10A NCAC 13F .0602</u>	Necessary with substantive public interest
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<u>10A NCAC 13F .0604</u>	Necessary with substantive public interest
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<u>10A NCAC 13F .0703</u>	Necessary with substantive public interest
<u>10A NCAC 13F .0704</u>	Necessary with substantive public interest
<u>10A NCAC 13F .0801</u>	Necessary with substantive public interest
<u>10A NCAC 13F .0802</u>	Necessary with substantive public interest
<u>10A NCAC 13F .0904</u>	Necessary with substantive public interest
<u>10A NCAC 13F .1006</u>	Necessary with substantive public interest
<u>10A NCAC 13F .1008</u>	Necessary with substantive public interest
<u>10A NCAC 13F .1010</u>	Necessary with substantive public interest

<u>10A</u>	<u>NCAC</u>	<u>13F</u>	<u>.1106</u>	Necessary with substantive public interest
<u>10A</u>	<u>NCAC</u>	<u>13F</u>	<u>.1206</u>	Necessary with substantive public interest
<u>10A</u>	<u>NCAC</u>	<u>13F</u>	<u>.1213</u>	Necessary with substantive public interest
<u>10A</u>	<u>NCAC</u>	<u>13F</u>	<u>.1304</u>	Necessary with substantive public interest
<u>10A</u>	<u>NCAC</u>	<u>13F</u>	<u>.1307</u>	Necessary with substantive public interest
<u>10A</u>	<u>NCAC</u>	<u>13F</u>	<u>.1601</u>	Necessary with substantive public interest
<u>10A</u>	<u>NCAC</u>	<u>13F</u>	<u>.1602</u>	Necessary with substantive public interest
<u>10A</u>	<u>NCAC</u>	<u>13F</u>	<u>.1603</u>	Necessary with substantive public interest
<u>10A</u>	<u>NCAC</u>	<u>13F</u>	<u>.1604</u>	Necessary with substantive public interest
<u>10A</u>	<u>NCAC</u>	<u>13F</u>	<u>.1605</u>	Necessary with substantive public interest



**STATE OF NORTH CAROLINA  
OFFICE OF ADMINISTRATIVE HEARINGS**

Mailing address:  
6714 Mail Service Center  
Raleigh, NC 27699-6714

Street address:  
1711 New Hope Church Rd  
Raleigh, NC 27609-6285

April 19, 2018

Belivia Spaulding, Rulemaking Coordinator  
Social Services Commission  
2402 Mail Service Center  
Raleigh, North Carolina 27699-2420

Re: Readoption pursuant to G.S. 150B-21.3A(c)(2)g of **10A NCAC 70M**

Dear Ms. Spaulding:

Attached to this letter are the rules subject to readoption pursuant to the periodic review and expiration of existing rules as set forth in G.S. 150B-21.3A(c)(2)g. After consultation with your agency, this set of rules was discussed at the April 19, 2018 Rules Review Commission meeting regarding the scheduling of these rules for readoption. Pursuant to G.S. 150B-21.3A(d)(2), the rules identified on the attached printout shall be readopted by the agency no later than August 31, 2021.

If you have any questions regarding the Commission's action, please let me know.

Sincerely,

A handwritten signature in black ink, appearing to read "Amber May", is written over a horizontal line.

Amber May  
Commission Counsel

Administration  
919/431-3000  
fax: 919/431-3100

Rules Division  
919/431-3000  
fax: 919/431-3104

Judges and  
Assistants  
919/431-3000  
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Clerk's Office  
919/431-3000  
fax: 919/431-3100

Rules Review  
Commission  
919/431-3000  
fax: 919/431-3104

Civil Rights  
Division  
919/431-3036  
fax: 919/431-3103

An Equal Employment Opportunity Employer

**RRC DETERMINATION  
PERIODIC RULE REVIEW  
December 14, 2017  
APO Review: January 09, 2018  
Social Services Commission  
Total: 15**

**RRC Determination: Necessary with substantive public interest**

<b>Rule</b>	<b>Determination</b>
<u>10A NCAC 70M .0201</u>	Necessary with substantive public interest
<u>10A NCAC 70M .0301</u>	Necessary with substantive public interest
<u>10A NCAC 70M .0302</u>	Necessary with substantive public interest
<u>10A NCAC 70M .0304</u>	Necessary with substantive public interest
<u>10A NCAC 70M .0401</u>	Necessary with substantive public interest
<u>10A NCAC 70M .0402</u>	Necessary with substantive public interest
<u>10A NCAC 70M .0403</u>	Necessary with substantive public interest
<u>10A NCAC 70M .0404</u>	Necessary with substantive public interest
<u>10A NCAC 70M .0405</u>	Necessary with substantive public interest
<u>10A NCAC 70M .0501</u>	Necessary with substantive public interest
<u>10A NCAC 70M .0502</u>	Necessary with substantive public interest
<u>10A NCAC 70M .0601</u>	Necessary with substantive public interest
<u>10A NCAC 70M .0602</u>	Necessary with substantive public interest
<u>10A NCAC 70M .0603</u>	Necessary with substantive public interest
<u>10A NCAC 70M .0604</u>	Necessary with substantive public interest



**STATE OF NORTH CAROLINA  
OFFICE OF ADMINISTRATIVE HEARINGS**

Mailing address:  
6714 Mail Service Center  
Raleigh, NC 27699-6700

Street address:  
1711 New Hope Church Rd  
Raleigh, NC 27609-6285

April 19, 2018

Patricia Amend, Rulemaking Coordinator  
Housing Finance Agency  
3508 Bush Street  
Raleigh, North Carolina 27609

Re: Readoption pursuant to G.S. 150B-21.3A(c)(2)g of **24 NCAC 01**

Dear Ms. Amend:

Attached to this letter is the rule subject to readoption pursuant to the periodic review and expiration of existing rules as set forth in G.S. 150B-21.3A(c)(2)g. After consultation with your agency, this rule was discussed at the April 19, 2018 Rules Review Commission meeting regarding the scheduling of this rule for readoption. Pursuant to G.S. 150B-21.3A(d)(2), the rule identified on the attached printout shall be readopted by the agency no later than January 31, 2019.

If you have any questions regarding the Commission's action, please let me know.

Sincerely,

Amber May  
Commission Counsel

cc: Casey Howard

Administration  
919/431-3000  
fax: 919/431-3100

Rules Division  
919/431-3000  
fax: 919/431-3104

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919/431-3000  
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Division  
919/431-3036  
fax: 919/431-3103

An Equal Employment Opportunity Employer

**RRC DETERMINATION  
PERIODIC RULE REVIEW  
July 20, 2017  
APO Review: September 23, 2017  
North Carolina Housing Finance Agency  
Total: 1**

**RRC Determination: Necessary with substantive public interest**

<b>Rule</b>	<b>Determination</b>
<u>24</u> <u>NCAC 01N .0204</u>	Necessary with substantive public interest

**LIST OF APPROVED PERMANENT RULES**

**April 19, 2018 Meeting**

**AGRICULTURE, BOARD OF**

<u>Adoptions by Reference</u>	02 NCAC	09B	.0116
<u>Defining Establishment</u>	02 NCAC	09B	.0134

**INDUSTRIAL COMMISSION**

<u>Computation of Time and Notice by the Commission</u>	04 NCAC	10A	.0107
<u>Purpose and Applicability of the Rules</u>	04 NCAC	10M	.0101
<u>Definitions</u>	04 NCAC	10M	.0102
<u>Waiver of Rules</u>	04 NCAC	10M	.0103
<u>First Prescription of Medication for Pain in an Acute Phase</u>	04 NCAC	10M	.0201
<u>Prescription of Medication for Pain in an Acute Phase Fol...</u>	04 NCAC	10M	.0202
<u>Prescription of Medication for Pain in a Chronic Phase</u>	04 NCAC	10M	.0203
<u>Co-Prescription of Opioid Antagonist</u>	04 NCAC	10M	.0301
<u>Nonpharmacological Treatment for Pain</u>	04 NCAC	10M	.0401
<u>Treatment for Substance Use Disorder Involving a Targeted...</u>	04 NCAC	10M	.0501

**WILDLIFE RESOURCES COMMISSION**

<u>Possession of Certain Species of Wildlife Resources</u>	15A NCAC	10B	.0123
<u>Bear</u>	15A NCAC	10B	.0202
<u>Deer (White Tailed)</u>	15A NCAC	10B	.0203
<u>Rabbits</u>	15A NCAC	10B	.0207
<u>Pheasant (Nonnative Varieties)</u>	15A NCAC	10B	.0211
<u>Foxes (Gray and Red)</u>	15A NCAC	10B	.0212
<u>American Alligator</u>	15A NCAC	10B	.0224
<u>Public Mountain Trout Waters</u>	15A NCAC	10C	.0205
<u>Black Bass</u>	15A NCAC	10C	.0305
<u>Trout</u>	15A NCAC	10C	.0316
<u>Manner of Taking Nongame Fishes: Purchase and Sale</u>	15A NCAC	10C	.0401
<u>Taking Nongame Fishes for Bait or Personal Consumption</u>	15A NCAC	10C	.0402
<u>Hunting on Game Lands</u>	15A NCAC	10D	.0103
<u>Fishing on Game Lands</u>	15A NCAC	10D	.0104

**REVENUE, DEPARTMENT OF**

<u>Investment In Subsidiary</u>	17 NCAC	05B	.1105
<u>Exclusion Provision Limited To Indebtedness Owed</u>	17 NCAC	05B	.1108
<u>Reciprocal Indebtedness Between Affiliates</u>	17 NCAC	05B	.1110
<u>Investment Base Property Included</u>	17 NCAC	05B	.1406
<u>Domestic And Foreign Corporations Required To File</u>	17 NCAC	05C	.0101
<u>US Obligations</u>	17 NCAC	05C	.0403
<u>In General</u>	17 NCAC	05C	.0801
<u>Numerator of Payroll Factor</u>	17 NCAC	05C	.0907
<u>Corporations Apportioning Their Net Income</u>	17 NCAC	05C	.1506
<u>Apportionable Income or Nonapportionable Income</u>	17 NCAC	05C	.1702
<u>Request for Alternative Apportionment Formula</u>	17 NCAC	05D	.0109
<u>Who Shall Attend the Conference</u>	17 NCAC	05D	.0112



<u>Completing a Return</u>	17 NCAC	06B	.0104
<u>General</u>	17 NCAC	06B	.3501
<u>Partnership Returns</u>	17 NCAC	06B	.3503
<u>NonResident Partners</u>	17 NCAC	06B	.3513
<u>Income Tax Return for Estates and Trusts</u>	17 NCAC	06B	.3716
<u>Additional Withholding Allowances</u>	17 NCAC	06C	.0124

**TEACHERS' AND STATE EMPLOYEES' RETIREMENT SYSTEM BOARD OF TRUSTEES**

<u>Anti-Pension Spiking Contribution-Based Benefit Cap Facto...</u>	20 NCAC	02B	.0405
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**LOCAL GOVERNMENT EMPLOYEES' RETIREMENT SYSTEM BOARD OF TRUSTEES**

<u>Anti-Pension Spiking Contribution-Based Benefit Cap Facto...</u>	20 NCAC	02C	.0405
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**INTERPRETER AND TRANSLITERATOR LICENSING BOARD**

<u>Renewal of a Provisional License</u>	21 NCAC	25	.0205
<u>Continuing Education Requirements</u>	21 NCAC	25	.0501

**MEDICAL BOARD**

<u>Reporting Criteria</u>	21 NCAC	32M	.0117
<u>Definition of Consultation for Prescribing Targeted Contr...</u>	21 NCAC	32M	.0118
<u>Prescriptive Authority</u>	21 NCAC	32S	.0212
<u>Definition of Consultation for Prescribing Targeted Contr...</u>	21 NCAC	32S	.0225

**NURSING, BOARD OF**

<u>Reporting Criteria</u>	21 NCAC	36	.0815
<u>Definition of Consultation for Prescribing Controlled Sub...</u>	21 NCAC	36	.0816

**REAL ESTATE COMMISSION**

<u>Advertising</u>	21 NCAC	58A	.0105
<u>Delivery of Instruments</u>	21 NCAC	58A	.0106
<u>Retention of Records</u>	21 NCAC	58A	.0108
<u>Broker-In-Charge</u>	21 NCAC	58A	.0110
<u>Residential Property and Owners' Association Disclosure S...</u>	21 NCAC	58A	.0114
<u>License Renewal</u>	21 NCAC	58A	.0503
<u>Reinstatement of a License</u>	21 NCAC	58A	.0505
<u>Licensing of Persons Licensed in Another Jurisdiction</u>	21 NCAC	58A	.0511
<u>Continuing Education Requirement</u>	21 NCAC	58A	.1702
<u>Continuing Education for License Activation</u>	21 NCAC	58A	.1703
<u>Continuing Education Required of Nonresident Brokers</u>	21 NCAC	58A	.1711
<u>Applicability</u>	21 NCAC	58A	.2101
<u>Renewal of Time Share Project Registration</u>	21 NCAC	58B	.0103
<u>Definitions</u>	21 NCAC	58G	.0103
<u>Prelicensing and Postlicensing Roster Reporting</u>	21 NCAC	58H	.0211
<u>Renewal of Sponsor Approval</u>	21 NCAC	58H	.0404

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**RRC Determination  
Periodic Rule Review  
April 19, 2018  
Necessary with substantive public interest**

<b>Natural and Cultural Resources, Department of</b>	<u>11 NCAC 12 .0514</u>	<u>21 NCAC 19 .0204</u>
<u>07 NCAC 14B .0401</u>	<u>11 NCAC 12 .1501</u>	<u>21 NCAC 19 .0403</u>
<u>07 NCAC 14B .0504</u>	<u>11 NCAC 12 .1502</u>	<u>21 NCAC 19 .0408</u>
<u>07 NCAC 14B .0602</u>	<u>11 NCAC 12 .1503</u>	<u>21 NCAC 19 .0409</u>
<u>07 NCAC 14B .0605</u>	<u>11 NCAC 12 .1504</u>	<u>21 NCAC 19 .0410</u>
<u>07 NCAC 14B .0606</u>	<u>11 NCAC 12 .1505</u>	<u>21 NCAC 19 .0412</u>
<u>07 NCAC 14B .0607</u>	<u>11 NCAC 12 .1506</u>	<u>21 NCAC 19 .0501</u>
<u>07 NCAC 15 .0104</u>	<u>11 NCAC 12 .1507</u>	<u>21 NCAC 19 .0601</u>
<u>07 NCAC 15 .0105</u>	<u>11 NCAC 12 .1508</u>	<u>21 NCAC 19 .0602</u>
<u>07 NCAC 15 .0401</u>	<u>11 NCAC 12 .1509</u>	<u>21 NCAC 19 .0608</u>
<u>07 NCAC 15 .0504</u>	<u>11 NCAC 12 .1803</u>	<u>21 NCAC 19 .0613</u>
<u>07 NCAC 15 .0603</u>		<u>21 NCAC 19 .0619</u>
	<b>Electrolysis Examiners, Board of</b>	<u>21 NCAC 19 .0701</u>
	<u>21 NCAC 19 .0201</u>	<u>21 NCAC 19 .0702</u>
<b>Insurance, Department of</b>	<u>21 NCAC 19 .0202</u>	<u>21 NCAC 19 .0703</u>
<u>11 NCAC 12 .0321</u>	<u>21 NCAC 19 .0203</u>	

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**RRC Determination  
Periodic Rule Review  
April 19, 2018  
Necessary without substantive public interest**

<b>Natural and Cultural Resources, Department of</b>	<u>07 NCAC 15 .0701</u>	<b>Mental Health, Commission for</b>
<u>07 NCAC 14A .0101</u>	<u>07 NCAC 15 .0702</u>	<u>10A NCAC 26C .0601</u>
<u>07 NCAC 14B .0101</u>	<u>07 NCAC 15 .0703</u>	<u>10A NCAC 26C .0602</u>
<u>07 NCAC 14B .0102</u>	<u>07 NCAC 15 .0704</u>	<u>10A NCAC 26C .0603</u>
<u>07 NCAC 14B .0202</u>		<u>10A NCAC 26C .0604</u>
<u>07 NCAC 14B .0302</u>	<b>HHS - Mental Health, Division of</b>	<u>10A NCAC 26C .0605</u>
<u>07 NCAC 14B .0304</u>	<u>10A NCAC 26C .0101</u>	<u>10A NCAC 26C .0606</u>
<u>07 NCAC 14B .0402</u>	<u>10A NCAC 26C .0102</u>	<u>10A NCAC 27C .0101</u>
<u>07 NCAC 14B .0403</u>	<u>10A NCAC 26C .0103</u>	<u>10A NCAC 27C .0102</u>
<u>07 NCAC 14B .0404</u>	<u>10A NCAC 26C .0104</u>	<u>10A NCAC 28D .0101</u>
<u>07 NCAC 14B .0501</u>	<u>10A NCAC 26C .0105</u>	<u>10A NCAC 28D .0102</u>
<u>07 NCAC 14B .0503</u>		<u>10A NCAC 28D .0103</u>
<u>07 NCAC 14B .0505</u>	<b>Mental Health, Commission for</b>	<u>10A NCAC 28D .0104</u>
<u>07 NCAC 14B .0601</u>	<u>10A NCAC 26C .0201</u>	<u>10A NCAC 28D .0105</u>
<u>07 NCAC 14B .0604</u>	<u>10A NCAC 26C .0202</u>	<u>10A NCAC 28D .0106</u>
<u>07 NCAC 15 .0107</u>	<u>10A NCAC 26C .0203</u>	<u>10A NCAC 28D .0201</u>
<u>07 NCAC 15 .0201</u>	<u>10A NCAC 26C .0204</u>	<u>10A NCAC 28D .0202</u>
<u>07 NCAC 15 .0203</u>	<u>10A NCAC 26C .0205</u>	<u>10A NCAC 28D .0203</u>
<u>07 NCAC 15 .0301</u>	<u>10A NCAC 26C .0301</u>	<u>10A NCAC 28D .0204</u>
<u>07 NCAC 15 .0402</u>	<u>10A NCAC 26C .0302</u>	<u>10A NCAC 28D .0205</u>
<u>07 NCAC 15 .0403</u>	<u>10A NCAC 26C .0303</u>	<u>10A NCAC 28D .0206</u>
<u>07 NCAC 15 .0404</u>	<u>10A NCAC 26C .0401</u>	<u>10A NCAC 28D .0207</u>
<u>07 NCAC 15 .0501</u>		<u>10A NCAC 28D .0208</u>
<u>07 NCAC 15 .0502</u>	<b>HHS - Mental Health, Division of</b>	<u>10A NCAC 28D .0209</u>
<u>07 NCAC 15 .0503</u>	<u>10A NCAC 26C .0402</u>	<u>10A NCAC 28D .0210</u>
<u>07 NCAC 15 .0505</u>	<u>10A NCAC 26C .0501</u>	<u>10A NCAC 28D .0301</u>
<u>07 NCAC 15 .0506</u>	<u>10A NCAC 26C .0502</u>	<u>10A NCAC 28D .0302</u>
<u>07 NCAC 15 .0507</u>	<u>10A NCAC 26C .0503</u>	<u>10A NCAC 28D .0401</u>
<u>07 NCAC 15 .0602</u>	<u>10A NCAC 26C .0504</u>	<u>10A NCAC 28D .0402</u>
<u>07 NCAC 15 .0605</u>		<u>10A NCAC 28D .0403</u>
		<u>10A NCAC 28D .0404</u>

10A NCAC 28E .0101  
10A NCAC 28E .0102  
10A NCAC 28E .0103  
10A NCAC 28E .0104

**Insurance, Department of**

11 NCAC 12 .0101  
11 NCAC 12 .0201  
11 NCAC 12 .0204  
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11 NCAC 12 .1107  
11 NCAC 12 .1201

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**RULES REVIEW COMMISSION**

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11 NCAC 12 .1202  
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11 NCAC 12 .1804  
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11 NCAC 12 .1902  
11 NCAC 12 .1903

**Electrolysis Examiners, Board of**  
21 NCAC 19 .0101

21 NCAC 19 .0102  
21 NCAC 19 .0103  
21 NCAC 19 .0104  
21 NCAC 19 .0205  
21 NCAC 19 .0301  
21 NCAC 19 .0302  
21 NCAC 19 .0303  
21 NCAC 19 .0404  
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21 NCAC 19 .0406  
21 NCAC 19 .0407  
21 NCAC 19 .0411  
21 NCAC 19 .0603  
21 NCAC 19 .0604  
21 NCAC 19 .0605  
21 NCAC 19 .0609  
21 NCAC 19 .0610  
21 NCAC 19 .0612  
21 NCAC 19 .0622  
21 NCAC 19 .0704

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**RRC Determination  
Periodic Rule Review  
April 19, 2018  
Unnecessary**

**Natural and Cultural Resources,  
Department of**

07 NCAC 14A .0103  
07 NCAC 14A .0104  
07 NCAC 14C .0101  
07 NCAC 14C .0102  
07 NCAC 14C .0103  
07 NCAC 14C .0104  
07 NCAC 15 .0103  
07 NCAC 15 .0601

07 NCAC 15 .0604  
07 NCAC 15 .0606

**Insurance, Department of**  
11 NCAC 12 .0331

**Electrolysis Examiners, Board of**  
21 NCAC 19 .0606  
21 NCAC 19 .0607  
21 NCAC 19 .0611

21 NCAC 19 .0614  
21 NCAC 19 .0615  
21 NCAC 19 .0617  
21 NCAC 19 .0618  
21 NCAC 19 .0620  
21 NCAC 19 .0621

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**CONTESTED CASE DECISIONS**

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*This Section contains a listing of recently issued Administrative Law Judge decisions for contested cases that are non-confidential. Published decisions are available for viewing on the OAH website at <http://www.ncoah.com/hearings/decisions/>. If you are having problems accessing the text of the decisions online or for other questions regarding contested cases or case decisions, please contact the Clerk's office by email: [oah.clerks@oah.nc.gov](mailto:oah.clerks@oah.nc.gov) or phone 919-431-3000.*

**OFFICE OF ADMINISTRATIVE HEARINGS**

**Chief Administrative Law Judge**  
JULIAN MANN, III

**Senior Administrative Law Judge**  
FRED G. MORRISON JR.

**ADMINISTRATIVE LAW JUDGES**

Melissa Owens Lassiter  
Don Overby  
J. Randall May  
David Sutton

A. B. Elkins II  
Selina Malherbe  
J. Randolph Ward  
Stacey Bawtinheimer

Year	Code	Number	Date Decision Filed	Petitioner		Respondent	ALJ
				<b><u>PUBLISHED</u></b>			
16	CPS	11434	3/27/2018	Genet Asresaha	v.	NC Crime Victims Compensation Commission	Ward
17	CPS	06734	3/26/2018	Yolondia K Rainey	v.	NC Crime Victims Compensation Commission	Malherbe
17	DHR	02681; 06270	3/5/2018	Alexandria Tolbert	v.	Division of Child Development and Early Education- Dept of Health & Human Services; Division of Child Development and Early Education and Human Services	May
17	DHR	04021	3/2/2018	Joy Kids Ventures, LLC, as operator of Kids Place Academy ID# 60003303 and Henry Emezie	v.	NC Department of Health and Human Services, Division of Child Development and Early Education	Lassiter
17	DOJ	04366	3/29/2018	James Henry Williams	v.	NC Criminal Justice Education and Training Standards Commission	Lassiter
17	DOJ	05433	3/1/2018	James Lee Strickland	v.	NC Criminal Justice Education and Training Standards Commission	Elkins
17	DOJ	07169	3/14/2018	Andre Christopher Allen	v.	North Carolina Alarm Systems Licensing Board	Overby
18	DOJ	00855	3/6/2018; 3/8/2018	Kathy Annette Broom	v.	NC Private Protective Services Board	Ward
				<b><u>UNPUBLISHED</u></b>			
17	CPS	08128	3/9/2018	Sallie Ruth Newton	v.	NC Crime Victims Compensation Commission	Sutton
18	CPS	00033	3/6/2018	Joseph William Penland	v.	OAH Victim Services Compensation Commission	Sutton

**CONTESTED CASE DECISIONS**

16	CSE	10688	3/19/2018	Christopher S Brunson	v.	NC Department of Health and Human Services, Division of Social Services, Child Support Enforcement	Elkins
16	CSE	11669	3/19/2018	Gregory Hugh Leng	v.	NC Department of Health and Human Services, Division of Social Services, Child Support Enforcement	Elkins
16	CSE	11798	3/19/2018	Randy L Thomas	v.	NC Department of Health and Human Services, Division of Social Services, Child Support Enforcement	Elkins
17	CSE	02942	3/19/2018	Sandra H Freeman	v.	NC Department of Health and Human Services, Division of Social Services, Child Support Enforcement Section	Elkins
17	CSE	06915	3/13/2018	Kenneth Wilson	v.	NC Department of Health and Human Services, Division of Social Services, Child Support Enforcement	Lassiter
17	CSE	07237	3/20/2018	Norma Russell	v.	NC Department of Health and Human Services, Division of Social Services, Child Support Enforcement	May
17	CSE	07322	3/13/2018	Salifou S Mamar	v.	NC Department of Health and Human Services, Division of Social Services, Child Support Enforcement Section	Lassiter
17	CSE	07372	3/19/2018	Jamall S Curry	v.	NC Department of Health and Human Services, Division of Social Services, Child Support Enforcement Section	May
17	CSE	07378	3/13/2018	James L Meden	v.	NC Department of Health and Human Services, Division of Social Services, Child Support Enforcement Section	Overby
17	CSE	07534	3/13/2018	John M Brittingham	v.	North Carolina Department of Health and Human Services, Division of Social Services, Child Support Enforcement Section	Lassiter
17	CSE	07535	3/13/2018	Jeremy D Powell	v.	NC Department of Health and Human Services, Division of Social Services, Child Support Enforcement Section	Overby
17	CSE	08093	3/5/2018	Ijnanya A Boney	v.	NC Department of Health and Human Services, Division of Social Services, Child Support Enforcement Section	May
17	CSE	08129	3/21/2018; 3/22/2018	Gregory Hugh Leng	v.	NC Child Support Agency	Bawtinheimer
18	CSE	00561	3/13/2018	Lawrence Thrash	v.	NC Department of Health and Human Services, Division of Social Services, Child Support Enforcement Section	Lassiter
18	CSE	00626	3/13/2018	Terrell A Murray	v.	NC Department of Health and Human Services, Division of Social Services, Child Support Enforcement Section	Overby
18	CSE	00678	3/8/2018	Renelda S Stewart	v.	NC Department of Health and Human Services, Division of Social Services, Child Support Enforcement Section	Bawtinheimer
17	DCS	07158	3/14/2018	Emilee Mroz Morrison (formerly Emilee Ann Mroz)	v.	NC Department of Health and Human Services, Division of Social Services, Child Support Enforcement	May
17	DHR	07344	3/22/2018	Mesca Locklear	v.	NC Department of Health and Human Services	Overby

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**CONTESTED CASE DECISIONS**

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17	DHR	08543	3/8/2018	Darleen Kotey DeCarlos Davis	v.	Division of Health Service Regulation, Adult Care Licensure Section	Malherbe
17	DHR	08739	3/7/2018	Growing Well Childcare Center Nina S Lassiter/Assistant Director	v.	NC Department of Health and Human Services, Division of Child Development and Early Education	Overby
18	DHR	00313	3/28/2018	NDC Academy	v.	Division of Child Development and Early Education	Ward
18	DHR	00416	3/13/2018	Kendra Bell	v.	DHSS	Overby
18	DHR	00597	3/27/2018	Angela Michelle Jenkins	v.	NC Department of Health and Human Services, Division of Health Service Regulation	Malherbe
18	DHR	00631	3/28/2018	Valerie R Davis	v.	Department of Health and Human Services, Division of Health Service Regulation	May
17	DOJ	08231	3/26/2018	Angelica Weber	v.	NC Sheriffs Education and Training Standards Commission	Ward
18	EHR	00231	3/20/2018	Allen G Dial	v.	NC Department of Environmental Quality	Ward