

1 15A NCAC 02B .0601 is readopted as published in 32:21 NCR 1943 **with changes** as follows:

2
3 **15A NCAC 02B .0601 SITE SPECIFIC WATER QUALITY MANAGEMENT PLAN FOR THE GOOSE**
4 **CREEK WATERSHED (YADKIN PEE-DEE RIVER BASIN): PURPOSE**

5 **(a)** The Goose Creek watershed in the Yadkin Pee-Dee River Basin provides habitat for an aquatic animal species
6 that is listed as federally endangered by the U.S. Fish and Wildlife Service under the provisions of the Endangered
7 Species Act, 16 U.S.C. 1531-1544. Maintenance and recovery of the water quality conditions required to sustain and
8 recover the federally-listed endangered species **thereby** protects the biological integrity of the waters. The Goose
9 Creek watershed, which includes Goose Creek (Index # 13-17-18), Stevens Creek (Index # 13-17-18-1), Paddle
10 Branch (Index # 13-17-18-2), Duck Creek (~~Index # 13-17-18-3~~) (**Index # 13-17-18-3**), and all tributaries, shall be
11 protected by the site-specific management strategy described in Rules .0601 through ~~.0609~~ **.0608** of this Section.

12 **(b)** The purpose of the actions required by this site-specific management strategy is for the maintenance and recovery
13 of the water quality conditions required to sustain and recover the federally endangered Carolina heelsplitter
14 (*Lasmigona decorata*) species. Management of the streamside zones to stabilize streambanks and prevent
15 sedimentation are critical measures to restore water quality to sustain and enable recovery of the federally endangered
16 Carolina heelsplitter. Site-specific management strategies shall be implemented to:

- 17 (1) control stormwater for projects disturbing one acre or more of land as described in Rule ~~.0602~~ **.0602**
18 **of this Section;**
19 (2) control wastewater discharges as described in Rule ~~.0603~~ **.0603 of this Section;**
20 (3) control toxicity to streams supporting the Carolina heelsplitter as described in Rule ~~.0604~~ **.0604 of**
21 **this Section; and**
22 (4) maintain riparian buffers as described in Rules .0605 through ~~.0609~~ **.0608 of this Section.**

23
24 *History Note:* Authority G.S. 143-214.1; 143-215.3(a)(1); **143-215.3(c);** 143-215.8A;
25 Eff. January 1, ~~2009~~ **2009;**
26 Readopted Eff. June 1, 2019.

1 15A NCAC 02B .0602 is readopted with changes as published in 32:21 NCR 1943 with changes as follows:

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3 **15A NCAC 02B .0602 SITE SPECIFIC WATER QUALITY MANAGEMENT PLAN FOR THE GOOSE**
4 **CREEK WATERSHED (YADKIN PEE-DEE RIVER BASIN): STORMWATER**
5 **CONTROL REQUIREMENTS**

6 (a) Any new development activity that disturbs one acre or more of land within the Goose Creek watershed and will
7 result in addition of impervious surface add built-upon area shall control and treat the difference in the stormwater
8 runoff from the predevelopment and post-development conditions for the one-year, 24-hour storm, with ~~structural~~
9 stormwater ~~controls~~, control measures (SCMs), with the exception of NC Department of Transportation and NC
10 Turnpike Authority activities that shall be regulated in accordance with provisions of that agency's National Pollutant
11 Discharge Elimination System NPDES (NPDES) Stormwater Permit. Development and redevelopment shall
12 implement stormwater management measures that promote infiltration of flows and groundwater recharge for the
13 purpose of maintaining stream base flow or the delegated local government shall maintain a written explanation when
14 it is not practical to use infiltration methods.

15 (b) ~~Structural stormwater controls~~ SCMs shall ~~meet the following requirements:~~

- 16 (1) ~~Remove an 85 percent average annual amount of Total Suspended Solids;~~
17 (2) ~~Draw down the treatment volume no faster than 48 hours, but no slower than 120 hours, for detention~~
18 ~~ponds;~~
19 (3) ~~Discharge the storage volume at a rate equal or less than the pre-development discharge rate for the~~
20 ~~one year, 24 hour storm; and~~
21 (4) ~~Meet Design of Stormwater Management Measures set forth in 15A NCAC 02H .1008. meet the~~
22 relevant Minimum Design Criteria (MDC) set forth in 15A NCAC 02H .1050 through .1062.

23 (c) Local governments may submit a written request to the Commission for delegation authority to implement and
24 enforce the state's State's stormwater protection requirements of G.S. 143-214.7 and S.L. 2006-246 within their
25 jurisdiction. The written request shall be accompanied by information that shows:

- 26 (1) The local government has land use jurisdiction for the riparian buffer demonstrated by delineating
27 the local land use jurisdictional boundary on USGS 1:24,000 topographical map(s) or other finer
28 scale map(s);
29 (2) The local government has the administrative organization, staff, legal authority, financial financial,
30 and other resources necessary to implement and enforce the state's State's stormwater requirements
31 based on its size and projected amount of development;
32 (3) The local government has adopted ordinances, resolutions, or regulations necessary to establish and
33 maintain the state's State's stormwater requirements; and
34 (4) The local government has provided a plan to address violations with civil or criminal remedies and
35 actions actions, as well as remedies that shall restore buffer functions on violation sites and provide
36 a deterrent against the occurrence of future violations.

(d) Within 90 days after the Commission has received the request for delegation, the Commission shall notify the local government based on standards as set out in Paragraph (c) of this Rule whether it has been approved, approved with modifications, or denied.

(e) The Commission, upon determination that a delegated local authority is failing to implement or enforce the requirements in keeping with a delegation, shall notify the delegated local authority in writing of the local program's inadequacies, deficiencies. If the delegated local authority has not corrected the deficiencies within 90 days of receipt of the written notification, then the Commission shall rescind the delegation of authority to the local government and shall implement and enforce the state's stormwater requirements.

(f) ~~Limits of delegated local authority are as follows:~~ The Commission Division shall have jurisdiction to the exclusion of local governments to implement the state's stormwater protection requirements for the following types of activities:

- (1) Activities undertaken by the State;
- (2) Activities undertaken by the United States;
- (3) Activities undertaken by multiple jurisdictions; and
- (4) Activities undertaken by local units of local government.

(g) ~~Recordkeeping requirements are as follows:~~ Delegated local authorities shall maintain on-site records for a minimum of five years. ~~Delegated local authorities must~~ years and shall furnish a copy of these records to the Director within 30 days of receipt of a written request for the records, them. The Division of Water Quality ~~[Resources]~~ Energy, Mineral, and Land Resources shall inspect audit local stormwater programs to ensure that the programs are being implemented and enforced in keeping with an approved delegation.

History Note: Authority G.S. 143-214.1; 143-214.7; 143-215.3(a)(1); 143-215.3(a)(4); 143-215.8A; 143-214.7, S.L. 2006-246; Eff. February 1, 2009. Readopted Eff. June 1, 2019.

1 15A NCAC 02B .0604 is readopted as published in 32:21 NCR 1943 **with changes** as follows:

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3 **15A NCAC 02B .0604 SITE SPECIFIC WATER QUALITY MANAGEMENT PLAN FOR THE GOOSE**
4 **CREEK WATERSHED (YADKIN PEE-DEE RIVER BASIN); CONTROL**
5 **TOXICITY INCLUDING AMMONIA**

6 No activity that results in direct or indirect discharge **is shall be** allowed if it causes toxicity to the Carolina heelsplitter
7 (*Lasmigona decorata*) endangered mussel. For any direct or indirect discharge **that may that is determined by the**
8 **Division to** cause ammonia toxicity to the Carolina heelsplitter freshwater mussel, action shall be taken to reduce
9 ammonia (NH₃-N) inputs to achieve 0.5 milligrams per liter or less of total ammonia based on chronic toxicity defined
10 in ~~15A NCAC 02B .0202~~ Rule .0202 of this Subchapter. This level of total ammonia is based on ambient water
11 temperature equal to or greater than 25 degrees Celsius.

12
13 *History Note: Authority G.S. 143-214.1; 143-215.3(a)(1); 143-215.8A;*
14 *Eff. February 1, 2009.*
15 *Readopted Eff. June 1, 2019.*

1 15A NCAC 02B .0605 is readopted as published in 32:21 NCR 1943 **with changes** as follows:

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3 **15A NCAC 02B .0605 SITE SPECIFIC WATER QUALITY MANAGEMENT PLAN FOR THE GOOSE**
4 **CREEK WATERSHED (YADKIN PEE-DEE RIVER BASIN): RIPARIAN**
5 **BUFFER WIDTHS**

6 In ~~this~~ the Goose Creek watershed, ~~undisturbed~~ riparian buffers are required within 200 feet of waterbodies within the
7 100-Year Floodplain and within 100 feet of waterbodies that are not within the 100-Year Floodplain. The 100-Year
8 Floodplain is the one percent Annual Chance Floodplain as delineated by the North Carolina Floodplain Mapping
9 Program in the ~~Division of Emergency Management, Department of Public Safety.~~ **Division of Emergency Management, Department of Public Safety.** The riparian buffer shall consist
10 of a vegetated area that is undisturbed except for uses provided in Rule .0607 of this Section. ~~Within the buffer areas~~
11 ~~that are regulated by this Rule, redevelopment is allowed for residential structures and redevelopment of non-~~
12 ~~residential structures is allowed provided that less than an additional half acre is disturbed during the redevelopment~~
13 ~~activity for non residential structures. Redevelopment is defined in 15A NCAC 02H .1002(14). Exceptions to~~
14 ~~undisturbed forested riparian buffer requirements are set forth in Rule .0607 of this Section. Activities shall require~~
15 ~~stormwater control as required by Rule .0602 of this Section.~~

16
17 *History Note: Authority G.S. 143-214.1; 143-215.3(a)(1); 143-215.8A;*

18 *Eff. January 1, 2009.*

19 *Readopted Eff. [New Date]*

1 15A NCAC 02B .0606 is readopted with changes as published in 32:21 NCR 1943 with changes as follows:

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3 **15A NCAC 02B .0606 SITE SPECIFIC WATER QUALITY MANAGEMENT PLAN FOR THE GOOSE**
4 **CREEK WATERSHED (YADKIN PEE-DEE RIVER BASIN): ~~VARIANCE FOR~~**
5 **~~ACTIVITIES WITHIN RIPARIAN BUFFERS~~ AUTHORIZATION**
6 **CERTIFICATES**

7 (a) PURPOSE. ~~Persons~~ The following requirements shall apply to persons who wish to undertake uses designated as
8 allowable upon authorization, allowable with mitigation upon authorization, or allowable with exception ~~prohibited~~
9 within the protected riparian buffer area ~~may pursue a variance, as specified in Rule .0607 of this Section. Persons~~
10 ~~who wish to undertake forest harvesting beyond the requirements set forth in 15A NCAC 02B .0608 may pursue a~~
11 ~~variance.~~

12 (b) AUTHORIZATION CERTIFICATES. Persons who wish to undertake uses designated in Rule .0607 of this
13 Section as allowable upon authorization or allowable with mitigation upon authorization shall submit an application
14 requesting an Authorization Certificate from the Authority.

15 (1) The application shall specify:

16 (A) The name, [address] address, and phone number of the applicant;

17 (B) If the [property owner is different than the applicant,] applicant is not the property
18 owner(s), [specify] the name, [address] address, and phone number of the property owner;
19 [owner and provide authorization from the owner for the application;]

20 (C) If the applicant is a corporation, [the state in which it is domesticated, the name of its
21 principal officers,] the name and address of the North Carolina process agency, and the
22 name, [address] address, and phone number of the individual who is the authorized agent
23 of the corporation and [shall be primarily] responsible for [the conduct of] the activity for
24 which certification is [sought,] sought. The corporation must be authorized to do business
25 in NC;

26 (D) The nature of the activity to be conducted by the applicant;

27 (E) The location of the activity, including the jurisdiction;

28 (F) A map that is legible to the reviewer and of sufficient detail to [accurately] delineate the
29 boundaries of the land to be utilized in carrying out the activity, the location and dimensions
30 of any disturbance in riparian buffers associated with the activity, and the extent of riparian
31 buffers on the land;

32 (G) An explanation of why this plan for the activity cannot be practically accomplished,
33 reduced, [relocated] relocated, or reconfigured to avoid or better minimize disturbance to
34 the riparian buffer, preserve aquatic life and [habitat] habitat, and protect water quality;

35 (H) Plans for any best management practices proposed to be used to control the impacts
36 associated with the activity; and

- (1) For uses designated as allowable with mitigation upon authorization or allowable with exception, a mitigation proposal in accordance with Rule [.0704].0295 of this Subchapter.
- (2) The applicant shall ~~[certify]~~ demonstrate that the project meets all the following criteria: ~~[criteria for finding no practical alternatives:]~~
- (A) The basic project purpose cannot be practically accomplished in a manner that would avoid or better minimize disturbance, preserve aquatic life and habitat, and protect water quality;
- (B) The use cannot practically be reduced in size or density, reconfigured or redesigned to better minimize disturbance, preserve aquatic life and habitat, and protect water quality; and
- (C) Best management practices shall be used ~~[if necessary]~~ to minimize disturbance, preserve aquatic life and habitat, and protect water ~~[quality; and] quality.~~
- ~~[(D) — Why alternatives cannot be practically accomplished to avoid or minimize the disturbance.]~~
- (3) The Authority ~~[must]~~ shall consider whether the proposed impacts ~~[that]~~ may affect conditions required to sustain and recover the federally endangered Carolina heelsplitter (*Lasmigona decorata*).
- (4) ~~[Within 60 calendar days of receipt of a complete application package that addresses Subparagraph (b)(1) and (b)(2) of this Rule, the]~~ The Authority shall issue an Authorization Certificate. ~~[Certificate if the Authority makes a finding of "no practical alternatives" and the applicant also satisfies other applicable]~~ deny the application, or request additional information within 60 calendar days after receipt of an application that meets the requirements as described in Subparagraph (b)(1) through (b)(3) of this Rule. When the Authority requests additional information, the 60-day review period restarts upon receipt of all of the additional information requested by the Authority. Failure to ~~[act]~~ issue the Authorization Certificate, deny the application, or request additional information within 60 calendar days ~~[of receipt of a complete application]~~ shall be construed as ~~[a finding of "no practical alternatives" and]~~ issuance of an Authorization Certificate ~~[shall be issued]~~ by the Authority to the applicant unless one of the following occurs:
- (A) The applicant agrees, in writing, to a longer period;
- (B) The applicant fails to furnish information necessary for the Authority's decision;
- (C) The applicant refuses Authority staff access to its records or premises for the purpose of gathering information necessary for the Authority's decision; or
- (D) Information necessary for the Authority's decision is unavailable.
- (5) The Authority may attach conditions to the Authorization Certificate that ~~[support the purpose, spirit and intent of]~~ ensure compliance with the riparian buffer protection program.
- (6) Requests for appeals of Authorization Certificates issued by the Division shall be made pursuant to G.S. 150B. Request for appeals of Authorization Certificates issued by the delegated local authority shall be made ~~[to the appropriate Board of Adjustment under G.S. 153A 345 or G.S. 160A 388.]~~ pursuant to the local authority's ordinance.

1 (c) AUTHORIZATION CERTIFICATES WITH EXCEPTIONS. Persons who wish to undertake uses designated in
2 Rule .0607 of this Section as allowable with exception shall submit an application requesting an Authorization
3 Certificate with Exception. The ~~variance~~ Authorization Certificate with Exception review request procedure shall be
4 as follows:

5 (1) ~~For any variance request, the Division of Water Quality shall make a finding of fact as to whether~~
6 ~~the following requirements have been met: [An Authorization Certificate with Exception shall~~
7 ~~require that all of the following conditions are met:]- All of the following conditions must be met in~~
8 ~~order to qualify for an Authorization Certificate with Exception.~~

9 ~~(a)(A)~~ There are practical difficulties or unnecessary hardships that prevent compliance with the
10 ~~strict letter of the~~ riparian buffer protection requirements. ~~Practical difficulties or~~
11 ~~unnecessary hardships shall be evaluated in accordance with the following:~~

12 ~~(i)(B)~~ If the applicant complies with the provisions of the riparian buffer requirements, ~~he/she he~~
13 ~~or she~~ can secure no reasonable return from, nor make reasonable use of, ~~his/her his or her~~
14 property. Merely proving that the ~~variance~~ Authorization Certificate with Exception would
15 ~~permit allow~~ a greater profit from the property ~~is not~~ shall not be considered adequate
16 justification ~~for a variance.~~ for an Authorization Certificate with Exception. Moreover, the
17 ~~Division of Water Quality Authority~~ shall consider whether the ~~variance~~ Authorization
18 Certificate with Exception is the minimum possible deviation from the terms of the riparian
19 buffer requirements that will make reasonable use of the property possible.

20 ~~(ii) The hardship results from application of the buffer requirements to the property rather than from~~
21 ~~other factors such as deed restrictions or other hardship.~~

22 ~~(iii)(C)~~ The hardship is due to the physical nature of the applicant's property and is unique to the
23 applicant's property, such as its size, shape, or ~~topography,~~ such that compliance with
24 ~~provision of this Rule would not allow reasonable use of the property.~~ topography.

25 ~~(iv)(D)~~ The applicant did not cause the hardship by knowingly or unknowingly violating the buffer
26 ~~requirements.~~ hardship.

27 ~~(v) The applicant did not purchase the property after the effective date of this Rule, and then request~~
28 ~~a variance.~~

29 ~~(b)(E)~~ The ~~variance~~ requested Authorization Certificate with Exception is in harmony consistent
30 with the general spirit, purpose purpose. and intent of the State's riparian buffer protection
31 ~~requirements and preserves its spirit; and~~

32 ~~(c) In granting the variance, the public safety and welfare have been assured, water quality has been~~
33 ~~protected, and substantial justice has been done.~~ requirements, will protect water quality,
34 will secure public safety and welfare, and will preserve substantial justice.

35 (2) MINOR EXCEPTIONS. An Authorization Certificate with Minor Exception request pertains to
36 allowable with exception activities that are proposed to impact equal to or less than one-third of an
37 acre of riparian buffer.

(A) Authorization Certificate with Minor Exception requests shall be reviewed based on the criteria in Paragraph (b) and Subparagraph (c)(1) of this Rule.

(B) Within 60 calendar days of receipt of a complete application package that addresses Subparagraphs (b)(1), ~~(b)(2)~~ (b)(2), and (c)(1) of this Rule, the Authority shall issue an Authorization Certificate with Minor Exception if the Authority ~~[makes a finding]~~ determines that the criteria in Subparagraph (b)(2) and (c)(1) of this Rule have been met and the applicant satisfies other applicable requirements as described in Paragraph (b) and Subparagraph (c)(1) of this Rule. If the Authority determines that all of the requirements in Subparagraphs (b)(2) and (c)(1) of this Rule have not been met, the Authority shall issue a final decision denying the Authorization Certificate with Minor Exception.

(3) MAJOR EXCEPTIONS. ~~A variancee~~ An Authorization Certificate with Major Exception request pertains to any activity that is proposed to impact any portion allowable with exception activities that are proposed to impact greater than one-third of an acre of the riparian buffer. If the Division of Water Quality has determined that a major variance request meets the requirements in Item (1) of this Rule, then it

(A) Authorization Certificate with Major Exception requests shall be reviewed based on the criteria in Paragraph (b) and Subparagraph (c)(1) of this Rule.

(B) ~~shall prepare a preliminary finding~~ Within 60 calendar days of receipt of a complete application package that addresses Subparagraphs (b)(1), (b)(2) and (c)(1) of this Rule, the Authority shall prepare a preliminary finding as to whether the criteria in Subparagraphs ~~(b)(2)~~ (b)(2), and (c)(1) of this Rule have been met, and submit it to the Environmental Management Commission.

(C) Notice of each pending complete application for an Authorization Certificate with Major Exception, including the ~~[primary]~~ preliminary findings prepared by the Authority, shall be posted on the Division's website and sent to all individuals on the Mailing List, as described in 15A NCAC 02H .0503 (g), at least 30 calendar days prior to proposed final action by the Authority on the application. If the Authority is not the Division, then the Authority shall forward the required notice information to the Division for posting.

(D) Preliminary findings on variancee requests shall be reviewed by the Commission within 90 days after receipt by the Director. Requests for appeals of determinations that the requirements of Item (1) of this Rule have not been met shall be made to the Office of Administrative Hearings for determinations made by the Division of Water Quality or the appropriate Board of Adjustments under G.S. 160A 388 or G.S. 153A 345 for determinations made by the delegated local authority. The purpose of the Commission's review is to determine if it agrees Within 60 calendar days following the notice as described in Part (c)(3)(C) of this Rule, upon the Authority's determination that all of the requirements in ~~Item (1)~~ Subparagraphs (b)(2) and (c)(1) of this Rule have been met.

1 Requests for appeals of decisions made by the Commission shall be made to the Office of
2 Administrative Hearings. ~~met, the Authority shall issue an Authorization Certificate with~~
3 Major Exception. If the Authority determines that all of the requirements in Subparagraphs
4 (b)(2) and (c)(1) of this Rule have not been met, the Authority shall issue a final decision
5 denying the Authorization Certificate with Major Exception. The following actions shall
6 be taken depending on the Commission's decision on the major variance request:

- 7 (a) Upon the Commission's approval, the Division of Water Quality shall issue a final decision
8 granting the variance.
9 (b) Upon the Commission's approval with conditions or stipulations, the Division of Water
10 Quality shall issue a final decision, which includes these conditions or stipulations.
11 (c) Upon the Commission's denial, the Division of Water Quality shall issue a final decision
12 denying the variance.

13 [(3)] (4) The Authority may attach conditions to the Authorization Certificate with Exception that [support
14 the purpose, spirit and intent of] ensure compliance with the riparian buffer protection program.

15 [(4)] (5) Requests for appeals of Authorization Certificates with Exception issued by the Division shall be
16 made pursuant to G.S. 150B. Requests for appeals of Authorization Certificates with Exception
17 issued by the delegated local authority shall be made [to the appropriate Board of Adjustment under
18 G.S. 153A-345 or G.S. 160A-388.] pursuant to the local authority's ordinance.

19
20 History Note: Authority G.S. 143-214.1; 143-215.3(a)(1); 143-215.8A;
21 Eff. February 1, 2009.

22 Readopted Eff. [New Date] (The provisions of paragraph (b) of this Rule were previously codified
23 in 15A NCAC 02B .0607(e).)
24

1 15A NCAC 02B .0608 is readopted with changes as published in 32:21 NCR 1943 with changes as follows:

2
3 **15A NCAC 02B .0608 SITE SPECIFIC WATER QUALITY MANAGEMENT PLAN FOR THE GOOSE**
4 **CREEK WATERSHED (YADKIN PEE-DEE RIVER BASIN): MANAGE**
5 **ACTIVITIES WITHIN RIPARIAN BUFFERS: FOREST HARVESTING**
6 **REQUIREMENTS**

7 (a) PURPOSE. The following requirements shall apply ~~for~~ to all forest harvesting operations and practices forestry-
8 related land-disturbing activities ~~in the riparian areas.~~ subject to riparian buffer requirements under Rules .0601
9 through .0608 of this Section.

10 (b) REQUIREMENTS THROUGHOUT THE BUFFER. The following requirements shall apply:

- 11 (1) All forest harvest activities within the buffer shall comply with Forest [Practice] Practices
12 Guidelines Related to Water Quality as defined in 02 NCAC 60C;
- 13 ~~(1)(2)~~ (2) Logging decks and sawmill sites shall not be placed in the riparian buffer; buffer;
14 ~~(2)~~ Access roads and skid trails are prohibited except for temporary and permanent stream crossings
15 established in accordance with 15A NCAC 01H .0203. Temporary stream crossings shall be
16 permanently stabilized after any site disturbing activity is completed.
- 17 (3) Timber felling shall be directed away from the stream or water body; body;
- 18 (4) Skidding shall be directed away from the stream or water body and shall be done in a manner that
19 minimizes soil disturbance and prevents the creation of channels or ruts; ruts;
- 20 (5) Individual trees may be treated to maintain or improve their health, form form, or vigor; vigor;
- 21 (6) Harvesting of dead or infected trees or application of pesticides necessary to prevent or control
22 extensive tree pest and disease infestation is allowed, when approved by the Division of North
23 Carolina Forest Resources Service for a specific site in accordance with G.S. 113-60.4; G.S. 106-
24 920 through G.S. 106-926. A copy of the Division of Forest Resources approval must be provided
25 to the Division of Water Quality in accordance with Session Law 2001-404. The North Carolina
26 Forest Service must notify the Division of all approvals within 60 calendar days;
- 27 (7) Removal of individual trees that are in danger of causing damage to structures or human life is
28 allowed; allowed;
- 29 (8) Natural regeneration of forest vegetation and planting of trees, shrubs, or ground cover plants to
30 enhance the riparian buffer is allowed provided that the soil disturbance is minimized; minimized;
31 Plantings shall consist primarily of native species.
- 32 (9) High intensity prescribed Prescribed burns shall not be allowed; allowed when conducted for forest
33 management purposes; and
- 34 (10) Application of [One-time] fertilizer is not allowed except as necessary for permanent stabilization.
35 [to establish replanted vegetation shall be allowed. This only applies to the one time application of
36 fertilizer in the riparian buffer.] A one-time fertilizer application at agronomic rates in the riparian

1 buffer is allowed to establish replanted vegetation. No runoff from this one-time application in the
2 riparian buffer is allowed in the [applicable] surface water.

- 3 (11) ~~Broadcast application of fertilizer or herbicides to the adjacent forest stand shall be conducted so~~
4 ~~that the chemicals are not applied directly to or allowed to drift into the riparian buffer.~~

5 ~~(b)(c) SELECTIVE HARVEST. In the riparian buffer, forest vegetation shall be protected and maintained. Selective~~
6 ~~harvest as forest harvesting is allowed provided that: for below is allowed on forest lands that have a deferment for~~
7 ~~use value under forestry in accordance with G.S. 105-277.2 through G.S. 277.6 or on forest lands that have a forest~~
8 ~~management plan prepared or approved by a registered professional forester. Copies of either the approval of the~~
9 ~~deferment for use value under forestry or the forest management plan shall be produced upon request. For such forest~~
10 ~~lands, selective harvest is allowed in accordance with the following:~~

- 11 (1) The forest lands have a deferment for use value under forestry in accordance with G.S. 105-277.2
12 through 277.6 or the forest lands have a forest management plan prepared or approved by a
13 registered professional forester. Copies of either the approval of the deferment for use value under
14 forestry or the forest management plan shall be produced upon request by the North Carolina Forest
15 Service or the Division;

- 16 ~~(1)(2)~~ ~~Tracked or wheeled vehicles are not permitted within the first 50 feet the riparian buffer top of bank~~
17 ~~landward except at stream crossings designed, constructed and maintained in accordance with 15A~~
18 ~~NCAC 01H .0203. only used for the purpose of selective timber harvesting where there is no other~~
19 ~~practical alternative for removal of individual trees;~~

- 20 ~~(2)(3)~~ ~~Soil disturbing No tracked or wheeled vehicles shall be used to conduct site preparation activities~~
21 ~~are not allowed. activities;~~

- 22 ~~(3)(4)~~ ~~Trees shall be are removed in a manner that minimizes with the minimum disturbance to the soil~~
23 ~~and residual remaining vegetation. vegetation;~~

- 24 ~~(4)(5)~~ ~~The first 10 feet of the riparian buffer directly adjacent to the stream or waterbody shall be~~
25 ~~undisturbed. undisturbed, except for the removal of individual high value trees. The removal of~~
26 ~~individual high value [tress] trees shall only be allowed provided that no trees with exposed roots~~
27 ~~visible in the streambank are cut, unless they meet Subparagraphs (b)(6) or (b)(7) of this Rule;~~

- 28 ~~(5)(6)~~ ~~In the zone area from 10 feet to 50 feet of the riparian buffer, a maximum of 50 percent of the trees~~
29 ~~greater than five inches diameter breast height (dbh) (DBH) may be cut and removed. The reentry~~
30 ~~time for harvest shall be no more frequent than every 15 years, except on forest plantations as~~
31 ~~defined in 15A NCAC 02B .0233(e) 15A NCAC 02B [.0702,] .0610, where the reentry time shall~~
32 ~~be no more frequent than every five years. In either case, the trees remaining after harvest shall be~~
33 ~~as evenly spaced as possible. possible; and~~

- 34 ~~(6)(7)~~ ~~In the outer riparian buffer (landward of 50 feet), harvesting and regeneration of the forest stand is~~
35 ~~allowed shall be allowed, provided that sufficient ground cover is established and maintained to~~
36 ~~provide for diffusion and infiltration of surface runoff.~~

1 (d) EXCEPTIONS. Persons who wish to undertake forest harvesting operations or practices different from the
2 requirements set forth in this Rule may request an Authorization Certificate with Exception pursuant to Rule .0606 of
3 this Section.

4
5 *History Note: Authority G.S. 143-214.1; 143-215.3(a)(1); 143-215.8A;*
6 *Eff. February 1, 2009.*
7 *Readopted Eff. [New Date].*
8

1 15A NCAC 02B .0610 is adopted with changes as published in 32:21 NCR 1943 with changes as follows:

2
3 **15A NCAC 02B .0610 MANAGING ACTIVITIES WITHIN RIPARIAN BUFFERS: DEFINITIONS**

4 ~~[Unless the context indicates otherwise,]~~ For the purposes of this Section, the following words and phrases shall ~~[be~~
5 ~~interpreted as follows for the purposes of this Section:]~~ mean:

6 (1) "Airport Facilities" means all properties, facilities, buildings, structures, and activities that satisfy
7 or otherwise fall within the scope of one or more of the definitions or uses of the words or phrases
8 ~~["air navigation facility"],~~ "air navigation facility," ~~["airport"],~~ "airport," or "airport protection
9 privileges" under G.S. 63-1; the definition of "aeronautical facilities" in G.S. 63-79(1); the phrase
10 "airport facilities" as used in G.S. 159-48(b)(1); the phrase "aeronautical facilities" as defined in
11 G.S. 159-81 and G.S. 159-97; and the phrase "airport facilities and improvements" as used in Article
12 V, Section 13, of the North Carolina Constitution. The term shall include: ~~[Constitution, which~~
13 ~~shall include, without limitation, any and all of the following: airports, airport maintenance facilities,~~
14 ~~aeronautic industrial facilities that require direct access to the airfield, clear zones, drainage ditches,~~
15 ~~fields, hangars, landing lighting, airport and airport-related offices, parking facilities, related~~
16 ~~navigational and signal systems, runways, stormwater outfalls, terminals, terminal shops, and all~~
17 ~~appurtenant areas used or suitable for airport buildings or other airport facilities, and all appurtenant~~
18 ~~rights-of-way; restricted landing areas; any structures, mechanisms, lights, beacons, marks,~~
19 ~~communicating systems, or other instrumentalities or devices used or useful as an aid, or constituting~~
20 ~~an advantage or convenience to the safe taking off, navigation, and landing of aircraft, or the safe~~
21 ~~and efficient operation or maintenance of an airport or restricted landing area; easements through,~~
22 ~~or interests in, air space over land or water, interests in airport hazards outside the boundaries of~~
23 ~~airports or restricted landing areas, and other protection privileges, the acquisition or control of~~
24 ~~which is necessary to ensure safe approaches to the landing areas of airports and restricted landing~~
25 ~~areas, and the safe and efficient operation thereof and any combination of any or all of such~~
26 ~~facilities.]~~

27 (a) airports;

28 (b) airport maintenance facilities;

29 (c) aeronautic industrial facilities that require direct access to the airfield;

30 (d) clear zones;

31 (e) drainage ditches;

32 (f) fields;

33 (g) hangars;

34 (h) landing lighting;

35 (i) airport and airport-related offices;

36 (j) parking facilities;

37 (k) related navigational and signal systems;

(l) runways;

(m) stormwater outfalls;

(n) terminals;

(o) terminal shops;

(p) all appurtenant areas used or suitable for airport buildings or other airport facilities; and

(q) all appurtenant rights-of-way; restricted landing areas; any structures, mechanisms, lights, beacons, marks, communicating systems, or other instrumentalities or devices used or useful as an aid, or constituting an advantage or convenience to the safe taking off, navigation, and landing of aircraft, or the safe and efficient operation or maintenance of an airport or restricted landing area; easements through, or interests in, air space over land or water, interests in airport hazards outside the boundaries of airports or restricted landing areas, and other protection privileges, the acquisition or control of which is necessary to ensure safe approaches to the landing areas of airports and restricted landing areas, and the safe operation thereof and any combination of any or all of such facilities.

~~[Notwithstanding the foregoing, the]~~ The following shall not be included in the definition of "airport facilities":

(a) Satellite parking facilities;

(b) Retail and commercial development outside of the terminal area, such as rental car facilities; and

(c) Other secondary development, such as hotels, industrial facilities, free-standing offices and other similar buildings, so long as these facilities are not directly associated with the operation of the airport, and are not operated by a unit of government or special governmental entity such as an airport authority, in which case they are included in the definition of ~~"airport facilities".~~ "airport facilities."

(2) "Archaeological activities" means activities conducted by a Registered Professional Archaeologist (RPA).

(3) "Authority" means either the Division or a local government that has been delegated pursuant this Section to implement a riparian buffer program.

(4) "Bridge" means any spanning structure that begins and ends at the outer edge of the approach slabs and includes any support structures such as bents, pilings, footings, etc.

(5) "Built-upon area" means the ~~[same]~~ term as defined in G.S. 143-214.7(b2).

(6) "Channel" means a natural water-carrying trough cut vertically into low areas of the land surface by erosive action of concentrated flowing water or a ditch or canal excavated for the flow of water.

(7) "Coastal wetlands" means marshland as defined in G.S. 113-229.

(8) "Dam" means the ~~[same]~~ term as defined in G.S. 143-215.25.

(9) "DBH" means diameter at breast height of a tree measured at 4.5 feet above ground surface level.

(10) "Development" means the ~~[same]~~ term as defined in G.S. 143-214.7.

- (11) "Director" means the Director of the Division.
- (12) "Ditch or canal" means a man-made, open drainage way or channel other than a modified natural stream in or into which excess surface water or groundwater from land, stormwater runoff, or floodwaters flow either ephemerally, ~~intermittently~~ intermittently, or perennially. On the coastal plain, ditches are typically dug through inter-stream divide areas.
- (13) "Division" means the Division of Water Resources of the North Carolina Department of Environmental ~~Quality and its successors~~ Quality.
- (14) "Ephemeral stream" means a feature that carries only stormwater in direct response to precipitation with water flowing only during and shortly after ~~large~~ large precipitation events. An ephemeral stream may or may not have a well-defined channel, the aquatic bed is always above the perched or seasonal high water table, and stormwater runoff is the primary source of water. An ephemeral stream typically lacks the biological, hydrological, and physical characteristics commonly associated with the continuous or intermittent conveyance of water.
- (15) "Existing lot" in Randleman Lake watershed means a lot of two acres in size or less that was platted and recorded in the office of the appropriate county Register of Deeds prior to the effective date of a local ordinance or ordinances enforcing Rule .0724 of this Subchapter. For activities listed in Rule .0724 ~~(15)(12)(b)~~ (15)(12)(b) of this Subchapter, ~~'existing lot'~~ "existing lot" in the Randleman Lake watersheds means a lot of two acres in size or less that was platted and recorded in the office of the appropriate county Register of Deeds prior to April 1, 1999. "Existing lot" in the Neuse and Tar-Pamlico river basins means a lot of two acres in size or less that was platted and recorded in the office of the appropriate county Register of Deeds prior to August 1, 2000.
- (16) "Existing utility line maintenance corridor" means the portion of a utility right of way that was established as a permanent maintenance corridor prior to the effective date of the Rule, or was approved as a permanent maintenance corridor through an Authorization Certificate or Variance issued by the Authority, and in which the vegetation has been mowed, cut or otherwise maintained (e.g. can be mowed without a chainsaw or bush-hog), within the last 10 years.
- (17) "Fertilizer" means the ~~same~~ same term as defined in Rule .0202 of this Subchapter.
- (18) "Forest management plan" means the ~~same~~ same term as defined in G.S. 160A-458.5.
- (19) "Forest plantation" means an area of planted trees that may be conifers (pines) or hardwoods. On a forest plantation, the intended crop trees are planted rather than naturally regenerated from seed on the site, coppice (sprouting), or seed that is blown or carried into the site.
- (20) "Forest vegetation" means the ~~same~~ same term as defined in Rule .0202 of this Subchapter.
- (21) "Freshwater" means the ~~same~~ same term as defined in Rule .0202 of this Subchapter.
- (22) "Greenway / Hiking Trails" means pedestrian trails constructed of pervious and impervious surfaces and related structures including ~~[but not limited to]~~ [but not limited to] boardwalks, steps, rails, and signage, and that generally run parallel to the surface water.

- (23) "High value tree" means a tree that meets or exceeds the following standards: for pine species, 14-inch DBH or greater or 18-inch or greater stump diameter; or for non-pine species, 16-inch DBH or greater or 24-inch or greater stump diameter.
- (24) "Intermittent stream" means a well-defined channel that contains water for only part of the year, typically during winter and spring when the aquatic bed is below the perched or seasonal high water table. The flow may be ~~heavily~~ supplemented by stormwater runoff. An intermittent stream often lacks the biological and hydrological characteristics commonly associated with the continuous conveyance of water.
- (25) "Local government" means the ~~same~~ term as defined in Rule .0202 of this Subchapter.
- (26) "Modified natural stream" means an on-site channelization or relocation of a stream channel and subsequent relocation of the intermittent or perennial flow as evidenced by topographic alterations in the immediate watershed. A modified natural stream must have the typical biological, hydrological, and physical characteristics commonly associated with at least an intermittent conveyance of water.
- (27) "Natural drainageway" means any water course, channel, ~~ditch~~ ditch, or similar physiographic feature draining water from land to down gradient areas.
- (28) "Normal water level" means the water level within a pond, ~~lake~~ lake, or other type of impoundment, natural or man-made (including beaver ponds), at the elevation of the outlet structure or spillway (i.e., the elevation of the permanent pool). The normal water level ~~can often be~~ is typically identified by the lowest edge of the terrestrial vegetation.
- (29) "Perched water table" means ~~a saturated soil horizon or horizon subdivision, with free water surface periodically observed in a bore hole or shallow monitoring well, but generally above the normal water table, or may be identified by drainage mottles or redoximorphic features, and caused by a less permeable lower horizon.~~ the term as defined in 15A NCAC 18A .1935.
- (30) "Perennial stream" means a well-defined channel that contains water year round during a year of normal rainfall with the aquatic bed located below the perched or seasonal high water table for most of the year. Groundwater is the primary source of water for a perennial stream, but it also carries stormwater runoff. A perennial stream exhibits the typical biological, hydrological, and physical characteristics commonly associated with the continuous conveyance of water.
- (31) "Perennial waterbody" means a natural or man-made watershed that stores surface water permanently at depths sufficient to preclude growth of rooted plants, including lakes, ponds, sounds, non-stream estuaries and ocean.
- (32) "Perpendicular" means leading toward the nearest subject surface water at an angle between 75 and 105 degrees.
- (33) "Pruning" means the removal of dead tree or shrub branches or live tree or shrub branches with a diameter of less than four inches.

- (a) Pruning for Deciduous Trees: If pruning must be done on deciduous trees, then it ~~[should]~~ ~~shall~~ only be performed once a year during the dormant season or ~~[immediately]~~ following an "act of God" situation, such as a hurricane or ice storm that causes tree damage. Dead branches on trees ~~[can]~~ ~~may~~ be removed any time.
- (b) Pruning for Coniferous Trees: Conifers may be pruned any time of year. Dead branches on trees ~~[can]~~ ~~may~~ be removed any time.
- (c) Pruning for Shrubs: Shrubs may be pruned by selectively removing branches while maintaining the natural shape of the plant. Cutting the branches of a shrub down to its main trunk is not a selective removal of ~~[branches and could compromise the plant.]~~ ~~branches.~~
- (34) "Seasonal high water table" means ~~[the highest level that groundwater, at atmospheric pressure, reaches in the soil in most years. The seasonal high water table is usually detected by the mottling of the soil which results in mineral leaching.]~~ the term as defined in 15A NCAC 02H .1002.
- (35) "Streambank or shoreline stabilization" is the in-place stabilization of an eroding streambank or shoreline.
- (36) "Stormwater Control Measure" or "SCM," also known as "Best Management Practice" or "BMP," means the ~~[same]~~ ~~term~~ as defined in 15A NCAC 02H .1002.
- (37) "Stump diameter" means the diameter of a tree measured at six inches above the ground surface level.
- (38) "Temporary road" means a road constructed temporarily for access or to maintain public traffic during construction and is restored upon completion of construction.
- (39) "Transportation facility" means the existing road surface, road shoulders, fill slopes, ferry terminal fill areas, and constructed stormwater conveyances or drainage canals adjacent to and directly associated with the road.
- (40) "Tree" means a woody plant with a DBH equal to or exceeding five inches or a stump diameter exceeding six inches.
- (41) "Wetlands" means the same as defined in Rule .0202 of this Subchapter.

History Note: Authority G.S. 143-214.1; 143-214.7; 143-214.23; 143-214.23A; 143-215.3(a)(1); 143-215.8A; [143-214.1, 143-215.8A, 143-214.7, 143-214.23, 143-214.23A, 143-215.3(a)(1);] S.L. 1995, c. 572; S.L. 1999, c. 329; S.L. 2011, c. 394; S.L. 2012, c. 200; S.L. 2013, c. 413, S.L. 2015, c.246
Eff. DATE (The provisions of this Rule were previously codified in 15A NCAC 02B .0233(2), 15A NCAC 02B .0243(2), 15A NCAC 02B .0250(2) and 15A NCAC 02B .0259(2).)

1 15A NCAC 02B .0611 is adopted with changes as published in 32:21 NCR 1943 with changes as follows:

2
3 **15A NCAC 02B .0611** **MANAGING ACTIVITIES WITHIN RIPARIAN BUFFERS: AUTHORIZATION**
4 **CERTIFICATES**

5 (a) PURPOSE. The following requirements shall apply to persons who wish to undertake uses designated as allowable
6 upon authorization, allowable with mitigation upon authorization, or allowable with exception within the protected
7 riparian buffer area as specified in the applicable riparian buffer protection rule of this Section and Section .0700 of
8 this Subchapter.

9 (b) AUTHORIZATION CERTIFICATES. Persons who wish to undertake uses designated in the applicable riparian
10 buffer protection rule of this Section as allowable upon authorization or allowable with mitigation upon authorization
11 shall submit an application requesting an Authorization Certificate from the Authority.

12 (1) The application shall specify:

13 (A) The name, [address] address, and phone number of the applicant;

14 (B) If the [property owner is different than the applicant,] applicant is not the property
15 owner(s), [specify] the name, [address] address, and phone number of the property [owner
16 and provide authorization from the owner for the application;] owner;

17 [(B)](C) If the applicant is a corporation, [the state in which it is domesticated, the name of its
18 principal officers,] the name and address of the North Carolina process agency, and the
19 name, [address] address, and phone number of the individual who is the authorized agent
20 of the corporation and [shall be primarily] responsible for [the conduct of] the activity for
21 which certification is sought; sought. The corporation must be authorized to do business
22 in NC;

23 [(C)](D) The nature of the activity to be conducted by the applicant;

24 [(D)](E) The location of the activity, including the jurisdiction;

25 [(E)](F) A map that is legible to the reviewer and of sufficient detail to [accurately] delineate the
26 boundaries of the land to be utilized in carrying out the activity, the location and dimensions
27 of any disturbance in riparian buffers associated with the activity, and the extent of riparian
28 buffers on the land;

29 [(F)](G) An explanation of why this plan for the activity cannot be practically accomplished,
30 reduced, [relocated] relocated, or reconfigured to avoid or better minimize disturbance to
31 the riparian buffer, preserve aquatic life and [habitat] habitat, and protect water quality;

32 [(G)](H) Plans for any best management practices proposed to be used to control the impacts
33 associated with the activity; and

34 [(H)](I) For uses designated as allowable with mitigation upon authorization or allowable with
35 exception, a mitigation proposal in accordance with Rule [.0704].0295 of this Subchapter.

36 (2) The applicant shall [certify] demonstrate that the project meets all the following [criteria for finding
37 "no practical alternatives";] criteria:

(A) The basic project purpose cannot be practically accomplished in a manner that would avoid or better minimize disturbance, preserve aquatic life and habitat, and protect water quality;

(B) The use cannot practically be reduced in size or density, reconfigured or redesigned to better minimize disturbance, preserve aquatic life and habitat, and protect water quality; and

(C) Best management practices shall be used if necessary to minimize disturbance, preserve aquatic life and habitat, and protect water quality.

~~[(D) — Why alternatives cannot be practically accomplished to avoid or minimize the disturbance.]~~

(3) ~~[Within 60 calendar days of receipt of a complete application package that addresses Subparagraphs (b)(1) and (b)(2) of this Rule, the]~~ The Authority shall issue an Authorization Certificate. ~~[Certificate if the Authority makes a finding of "no practical alternatives" and the applicant satisfies other applicable]~~ deny the application, or request additional information within 60 calendar days after receipt of an application that meets the requirements as described in Subparagraphs (b)(1) and (b)(2) of this Rule. When the Authority requests additional information, the 60-day review period restarts upon receipt of all of the additional information requested by the Authority. Failure to ~~[act]~~ issue the Authorization Certificate, deny the application, or request additional information within 60 calendar days ~~[of receipt of a complete application]~~ shall be construed as ~~[a finding of "no practical alternatives" and]~~ issuance of an Authorization Certificate ~~[shall be issued]~~ by the Authority to the applicant unless one of the following occurs:

(A) The applicant agrees, in writing, to a longer period;

(B) The applicant fails to furnish information necessary for the Authority's decision;

(C) The applicant refuses Authority staff access to its records or premises for the purpose of gathering information necessary for the Authority's decision; or

(D) Information necessary for the Authority's decision is unavailable.

(4) The Authority may attach conditions to the Authorization Certificate that ~~[support the purpose, spirit and intent of]~~ ensure compliance with the riparian buffer protection program.

(5) Requests for appeals of Authorization Certificates issued by the Division shall be made pursuant to G.S. 150B. Requests for appeals of Authorization Certificates issued by the delegated local authority shall be ~~[to the appropriate Board of Adjustment under G.S. 153A-345 or G.S. 160A-388.]~~ pursuant to the local authority's ordinance.

(c) AUTHORIZATION CERTIFICATES WITH EXCEPTION. Persons who wish to undertake uses designated in the applicable riparian buffer protection rule of this Section as allowable with exception shall submit an application requesting an Authorization Certificate with Exception. The Authorization Certificate with Exception review procedure shall be as follows:

(1) ~~[An Authorization Certificate with Exception shall require that all of the following conditions are met:]~~ All of the following conditions must be met in order to qualify for an Authorization Certificate with Exception:

- (A) There are practical difficulties or unnecessary hardships that prevent compliance with the riparian buffer protection requirements.
- (B) If the applicant complies with the provisions of this Rule, he or she can secure no reasonable return from, nor make reasonable use of, his or her property. Merely proving that the Authorization Certificate with Exception would allow a greater profit from the property shall not be considered adequate justification for an Authorization Certificate with Exception. Moreover, the Authority shall consider whether the Authorization Certificate with Exception is the minimum possible deviation from the terms of this Rule that shall make reasonable use of the property possible;
- (C) The hardship is due to the physical nature of the applicant's property, such as its size, shape, or topography;
- (D) The applicant did not cause the hardship;
- (E) The requested Authorization Certificate with Exception is ~~[in harmony]~~ consistent with the general spirit, ~~[purpose]~~ purpose, and intent of the State's riparian buffer protection requirements, will protect water quality, will secure public safety and welfare, and will preserve substantial justice.
- (2) MINOR EXCEPTIONS. An Authorization Certificate with Minor Exception request pertains to allowable with exception activities that are proposed to impact equal to or less than one-third of an acre of riparian buffer.
- (A) Authorization Certificate with Minor Exception requests shall be reviewed based on the criteria in Paragraph (b) and Subparagraph (c)(1) of this Rule.
- (B) Within 60 calendar days of receipt of a complete application package that addresses Subparagraphs (b)(1), ~~(b)(2)~~ (b)(2), and (c)(1) of this Rule, the Authority shall issue an Authorization Certificate with Minor Exception if the Authority ~~[makes a finding]~~ determines that the criteria in Subparagraph (b)(2) and (c)(1) of this Rule have been met and the applicant satisfies other applicable requirements as described in Paragraph (b) and Subparagraph (c)(1) of this Rule. If the Authority determines that all of the requirements in Subparagraphs (b)(2) and (c)(1) of this Rule have not been met, the Authority shall issue a final decision denying the Authorization Certificate with Minor Exception.
- (3) MAJOR EXCEPTIONS. An Authorization Certificate with Major Exception request pertains to allowable with exception activities that are proposed to impact greater than one-third of an acre of riparian buffer.
- (A) Authorization Certificate with Major Exception requests shall be reviewed based on the criteria in Paragraph (b) and Subparagraph (c)(1) of this Rule.
- (B) Within 60 calendar days of receipt of a complete application package that addresses Subparagraphs (b)(1), ~~(b)(2)~~ (b)(2), and (c)(1) of this Rule, the Authority shall prepare a

1 preliminary finding as to whether the criteria in Subparagraphs (b)(2) and (c)(1) of this
2 Rule have been met.

3 (C) Notice of each pending complete application for an Authorization Certificate with Major
4 Exception, including the preliminary finding prepared by the Authority, shall be posted on
5 the Division's website and sent to all individuals on the Mailing List, as described in 15A
6 NCAC 02H .0503(g), at least 30 calendar days prior to proposed final action by the
7 Authority on the application. If the Authority is not the Division, then the Authority shall
8 forward the required notice information to the Division for posting.

9 (D) Within 60 calendar days following the notice as described in Part (c)(3)(C) of this Rule,
10 upon the Authority's determination that all of the requirements in Subparagraphs (b)(2) and
11 (c)(1) of this Rule have been met, the Authority shall issue an Authorization Certificate
12 with Major Exception. If the Authority determines that all of the requirements in
13 Subparagraphs (b)(2) and (c)(1) of this Rule have not been met, the Authority shall issue a
14 final decision denying the Authorization Certificate with Major Exception.

15 (4) The Authority may attach conditions to the Authorization Certificate with Exception that [support
16 the purpose, spirit and intent of ensure compliance with the riparian buffer protection program.

17 (5) Requests for appeals of Authorization Certificates with Exception issued by the Division shall be
18 made pursuant to G.S. 150B. Requests for appeals of Authorization Certificates with Exception
19 issued by the delegated local authority shall be made [to the appropriate Board of Adjustment under
20 G.S. 153A-345 or G.S. 160A-388.] pursuant to the local authority's ordinance.

21
22 *History Note:* Authority G.S. 143-214.1; [143-215.8A;] 143-214.7; 143-214.23; 143-214.23A; 143-215.3(a)(1);
23 143-215.8A; S.L. 1995, c. 572; S.L. 1999, c. 329; S.L. 2011, c. 394; S.L. 2012, c. 200; S.L. 2013, c.
24 413; S.L. 2015, c.246
25 Eff. DATE (The provisions of this Rule were previously codified in 15A NCAC 02B .0233(8) & (9),
26 15A NCAC 02B .0243(8) & (9), 15A NCAC 02B .0250(11) & (12) and 15A NCAC 02B .0259(8) &
27 (9).)
28

1 15A NCAC 02B .0612 is adopted with changes as published in 32:21 NCR 1943 with changes as follows:

2
3 **15A NCAC 02B .0612 MANAGING ACTIVITIES WITHIN RIPARIAN BUFFERS: FOREST**
4 **HARVESTING REQUIREMENTS**

5 (a) PURPOSE. The following requirements shall apply to all forest harvesting operations and practices forestry-
6 related land-disturbing activities subject to riparian buffer requirements under rules of this Section and Section .0700
7 of this Subchapter, except for the Goose Creek Water Quality Management Plan [15A NCAC 02B .0605 to .0608].
8 Those Rules include: in the following River Basins and Watersheds:

- 9 (1) Catawba River Basin [15A NCAC 02B .0614]; as specified in 15A NCAC 02B .0614;
10 (2) Neuse River Basin [15A NCAC 02B .0714]; as specified in 15A NCAC 02B .0714;
11 (3) Randleman Lake Watershed [15A NCAC 02B .0724]; as specified in 15A NCAC 02B .0724; and
12 (4) Tar-Pamlico River Basin [15A NCAC 02B .0734]; as specified in 15A NCAC 02B .0734.

13 (b) REQUIREMENTS THROUGHOUT THE BUFFER. The following requirements shall apply:

- 14 (1) All forest harvest activities within the buffer shall comply with Forest [Practice] Practices
15 Guidelines Related to Water Quality as defined in 02 NCAC 60C;
16 (2) Logging decks and sawmill sites shall not be placed in the riparian buffer;
17 (3) Timber felling shall be directed away from the stream or waterbody;
18 (4) Skidding shall be directed away from the stream or water body and shall be done in a manner that
19 minimizes soil disturbance and prevents the creation of channels or ruts;
20 (5) Individual trees may be treated to maintain or improve their health, ~~form form~~, or vigor;
21 (6) Harvesting of dead or infected trees or application of pesticides as necessary to prevent or control
22 the spread of tree pest and disease infestation shall be allowed. These practices must be approved
23 by the North Carolina Forest Service for a specific [site.] site in accordance with G.S. 106-920
24 through G.S. 106-926. The North Carolina Forest Service must notify the Division of all approvals
25 within 60 calendar days;
26 (7) Removal of individual trees that are in danger of causing damage to structures or human life shall
27 be allowed;
28 (8) Natural regeneration of forest vegetation and planting of trees, shrubs, or ground cover plants to
29 enhance the riparian buffer shall be allowed provided that soil disturbance is minimized;
30 (9) Prescribed burns shall be allowed when conducted for forest management purposes; and
31 (10) [One time fertilizer application to establish replanted vegetation shall be allowed. This only applies
32 to the one time application of fertilizer in the riparian buffer.] A one-time fertilizer application at
33 agronomic rates in the riparian buffer is allowed to establish replanted vegetation. No runoff from
34 this one-time application in the riparian buffer is allowed in the [applicable] surface water.

35 (c) REQUIREMENTS IN ZONE 1 OF THE BUFFER. Selective forest harvesting is allowed [In] in Zone 1, as defined
36 by the applicable Rule of this Section, provided that:

- (1) The forest lands have a deferment for use value under forestry in accordance with G.S. 105-277.2 through 277.6 or the forest lands have a forest management plan prepared or approved by a registered professional forester. Copies of either the approval of the deferment for use value under forestry or the forest management plan shall be produced upon request by the North Carolina Forest Service or the Division;
- (2) Tracked or wheeled vehicles are only used for the purpose of selective timber harvesting where there is no other practical alternative for removal of individual trees;
- (2) No tracked or wheeled vehicles shall be used to conduct site preparation activities;
- (3) Trees ~~are~~ removed in a manner that minimizes ~~with the minimum~~ disturbance to the soil and remaining vegetation;
- (4) The first 10 feet of Zone 1 directly adjacent to the stream or waterbody shall be undisturbed, except for the removal of individual high value trees. The removal of individual high value trees shall only be allowed provided that no trees with exposed primary roots visible in the streambank are cut, unless they meet Subparagraphs (b)(6) or (b)(7) of this Rule; and
- (5) A maximum of 50 percent of the trees greater than five inches DBH may be cut and removed. The reentry time for harvest shall be no more frequent than every 15 years, except on forest plantations as defined in 15A NCAC 02B ~~-.0702-~~ .0610 where the reentry time shall be no more frequent than every five years. In either case, the trees remaining after harvest shall be as evenly spaced as possible.

(d) REQUIREMENTS IN ZONE 2 OF THE BUFFER. In Zone 2, harvesting and regeneration of the forest stand shall be allowed, provided that ~~sufficient~~ ground cover is ~~established and~~ maintained to provide for diffusion and infiltration of surface runoff.

(e) EXCEPTIONS. Persons who wish to undertake forest harvesting operations or practices different from the requirements set forth in this Rule may request an Authorization Certificate with Exception pursuant to Rule ~~-.0705-~~ .0611 of this Subchapter.

History Note: Authority G.S. ~~[143-214.1, 143-215.8A, 143-214.7, 143-214.23, 143-214.23A, 143-215.3(a)(1);]~~ 143-214.1; 143-214.7; 143-214.23; 143-214.23A; 143-215.3(a)(1); 143-215.8A; S.L. 1995, c. 572; S.L. 1999, c. 329; S.L. 2011, c. 394; S.L. 2012, c. 200; S.L. 2013, c. 413, S.L. 2015, c.246
Eff. DATE (The provisions of this Rule were previously codified in 15A NCAC 02B .0233(11), 15A NCAC 02B .0243(11), 15A NCAC 02B .0250(16) and 15A NCAC 02B .0259(11).)

1 15A NCAC 02B .0241 is readopted with changes as published in 32:21 NCR 1943 with changes as follows:

2
3 **15A NCAC 02B .0241 .0715 NEUSE RIVER BASIN: NUTRIENT SENSITIVE WATERS**
4 **MANAGEMENT STRATEGY: DELEGATION OF AUTHORITY FOR**
5 **THE PROTECTION AND MAINTENANCE OF EXISTING RIPARIAN**
6 **BUFFERS**

7 (a) PURPOSE. This Rule sets out the requirements for delegation of the responsibility for implementing and enforcing
8 the Neuse Basin ~~existing~~ riparian buffer protection program, as described in Rule ~~15A NCAC 2B .0233~~, .0714 of this
9 Section, to local governments.

10 (b) PROCEDURES FOR GRANTING ~~AND RESCINDING~~ DELEGATION. The Commission shall grant ~~and~~
11 ~~rescind~~ local government delegation of the Neuse River Basin Riparian Buffer Protection ~~requirements~~ requirements,
12 as described in Rule .0714 of this Section, according to the following ~~procedures~~ procedures:

13 (1) Local governments within the Neuse River Basin may submit a written request to the Commission
14 for authority to implement and enforce the ~~State's Neuse River Basin~~ riparian buffer protection
15 requirements within their ~~jurisdiction~~ jurisdiction by establishing a riparian buffer program to meet
16 the requirements of Rule .0714 of this Section. The written request to establish a riparian buffer
17 program shall ~~be accompanied by information that shows:~~ include the following:

18 (A) ~~The Documentation that the~~ local government has land use jurisdiction for the riparian
19 ~~buffer~~ buffer. This can be demonstrated by delineating the local land use jurisdictional
20 boundary on the USGS 1:24,000 topographical map(s) or other finer scale map(s);

21 (B) ~~The Documentation that the~~ local government has the administrative organization, staff,
22 legal authority, financial ~~[resources]~~ resources, and other resources necessary to implement
23 and enforce the ~~State's Neuse River Basin~~ riparian buffer protection requirements based on
24 its size and projected amount of development;

25 (C) The local government ~~has adopted~~ ordinances, resolutions, or regulations necessary to
26 establish ~~and maintain the State's riparian buffer protection requirements; and a riparian~~
27 buffer program [to] meet the requirements of Rule .0714 of this Section and G.S. 143-
28 214.23A;

29 (D) Documentation that the local government's riparian buffer program [complies] shall
30 comply with all requirements set forth in G.S. 143-214.23A; and

31 (D)(E) ~~The local government has provided a~~ A plan to address violations with appropriate site-
32 specific remedies and actions including, but not limited to, including civil or criminal
33 remedies that shall restore riparian buffer nutrient removal functions on violation sites and
34 provide a deterrent against the occurrence of future violations.

35 (2) Within 90 days after the Commission has received the request for delegation, the Commission shall
36 notify the local government whether it has been approved, approved with modifications, or denied.

(3) ~~The Commission, upon determination that a delegated local authority is failing to implement or enforce the Neuse Basin riparian buffer protection requirements in keeping with a request approved under Sub item (b)(2) of this Rule, shall notify the delegated local authority in writing of the local program's inadequacies. If the delegated local authority has not corrected the deficiencies within 90 days of receipt of the written notification, then the Commission shall rescind the delegation of authority to the local government and shall implement and enforce the State's riparian buffer protection requirements.~~

(4) ~~The Commission may delegate its duties and powers for granting and rescinding local government delegation of the State's riparian buffer protection requirements, in whole or in part, to the Director.~~

(c) APPOINTMENT OF A RIPARIAN BUFFER PROTECTION ADMINISTRATOR. Upon receiving delegation, local governments shall appoint a Riparian Buffer Protection ~~Administrator~~ Administrator(s) who shall coordinate the implementation and enforcement of the program. The ~~Administrator~~ Administrator(s) shall attend an initial training session by the Division and ~~subsequent annual training sessions.~~ be certified to make on-site determinations pursuant to G.S. 143-214.25A. The ~~Administrator~~ Administrator(s) shall ensure that local government ~~staffs~~ staff working directly with the program receive training to understand, ~~implement~~ implement, and enforce the ~~program.~~ program and are certified to make on-site determinations pursuant to G.S. 143-214.25A. At any time that a local government does not have ~~[a certified individual retained]~~ anyone on staff ~~certified~~ certified to make on-site determinations pursuant to G.S. 143-214.25A, ~~[they]~~ it shall ~~[immediately]~~ notify the Division within 30 calendar days and ~~[indicate]~~ provide a proposed schedule to secure a certified staff member. The local government shall coordinate with the Division to provide on-site determinations until a new certified staff member is secured by the local government.

(d) ~~PROCEDURES FOR USES WITHIN RIPARIAN BUFFERS THAT ARE ALLOWABLE UPON AUTHORIZATION AND ALLOWABLE WITH MITIGATION.~~ MITIGATION UPON AUTHORIZATION. Upon receiving delegation, local ~~authorities~~ governments shall review ~~proposed uses within the riparian buffer and issue approvals if the uses meet the State's riparian buffer protection requirements.~~ Delegated local authorities shall issue an Authorization Certificate for uses if the proposed use meets the State's riparian buffer protection requirements, or provides for appropriate mitigated provisions to the State's riparian buffer protection requirements. The Division may challenge a decision made by a delegated local authority for a period of 30 days after the Authorization Certificate is issued. If the Division does not challenge an Authorization Certificate within 30 days of issuance, then the delegated local authority's decision shall stand. ~~applications requesting an Authorization Certificate pursuant to the requirements set forth in Rule [0705].0611 of this Section.~~

(e) ~~VARIANCES. EXCEPTIONS.~~ After Upon receiving delegation, local governments shall review ~~variance requests, provide approvals for minor variance requests and make recommendations to the Commission for major variance requests pursuant to the State's riparian buffer protection program.~~ applications requesting an Authorization Certificate with Exception pursuant to the requirements set forth in Rule [0705].0611 of this Section.

(f) LIMITS OF DELEGATED LOCAL AUTHORITY. The ~~Commission~~ Division shall have jurisdiction to the exclusion of local governments to implement the State's riparian buffer protection requirements for the following types of activities:

- (1) Activities conducted under the authority of the State;
- (2) Activities conducted under the authority of the United States;
- (3) Activities conducted under the authority of multiple jurisdictions; ~~and~~
- (4) Activities conducted under the authority of ~~local~~ units of ~~local~~ ~~government~~; ~~government~~;
- (5) Forest harvesting activities described in Rule .0706, .0612 of this Section; and
- (6) Agricultural activities.

(g) RECORD-KEEPING REQUIREMENTS. Delegated ~~local authorities~~ ~~governments~~ shall maintain on-site records for a minimum of five ~~years.~~ ~~Delegated local authorities~~ ~~[governments]~~ ~~must~~ ~~years~~ ~~and shall~~ furnish a copy of these records to the ~~Director~~ Division within 30 ~~calendar~~ days of receipt of a written request for ~~the records.~~ ~~them.~~ ~~The Division shall inspect local riparian buffer protection programs to ensure that the programs are being implemented and enforced in keeping with a request approved under Sub item (b)(2) of this Rule.~~ Each delegated local authority's ~~governments~~ records shall include the following:

- (1) A copy of ~~variance~~ all Authorization Certificate with ~~[exception]~~ Exception requests;
- (2) The Findings on all ~~variance~~ Authorization Certificate with ~~[exception]~~ Exception ~~request's finding of fact; requests;~~
- (3) The ~~result~~ results of ~~the all~~ variance Authorization Certificate with ~~[exception]~~ Exception proceedings;
- (4) A record of complaints and action taken as a result of the ~~complaint;~~ complaints;
- (5) Records for on-site determinations as described in Rule .0714(4) of this Section; stream origin calls and stream ratings; and
- (6) Copies of all request requests for authorization, records approving ~~authorization~~ authorization. and Authorization Certificates.

(h) AUDITS OF LOCAL AUTHORITIES. The Division shall ~~[regularly]~~ regularly audit delegated local governments to ensure the local programs are being implemented and enforced in keeping with the requirements of this Rule and Rule .0714 of this Section. The audit shall consist of a review of all local government activities with regards to implementation of this Rule and Rule .0714 of this Section.

(i) PROCEDURES FOR RESCINDING DELEGATION. Upon determination by the Division that a delegated local government is failing to implement or enforce the Neuse Basin riparian buffer protection requirements in keeping with the request approved under ~~[Subparagraph (b)(4)]~~ Paragraph (b) of this Rule, the Commission shall notify the delegated local government in writing of the local program's ~~[inadequacies.]~~ deficiencies. If the delegated local government has not corrected the deficiencies within 90 calendar days of receipt of the written notification, then the Commission shall rescind the delegation of authority to the local government and the Division shall implement and enforce the Neuse River Basin riparian buffer protection requirements within their jurisdiction.

(j) DELEGATION. The Commission may delegate its duties and powers for granting and rescinding local government delegation of the Neuse River Basin riparian buffer protection requirements, in whole or in part, to the Director.

1 History Note: Authority 143-214.1; 143-214.7; [~~143-214.23, 143-214.23A,~~] 143-214.23; 143-214.23A; 143-
2 215.3(a)(1); 143-215.3(a)(4); 143B-282(d); S.L. 1998 c. 221
3 Eff. August 1, 2000, 2000;
4 Readoption Eff. [New Date]. (The provisions of this Rule were transferred from 15A NCAC 02B
5 .0241.)

1 15A NCAC 02B .0248 is readopted as published in 32:21 NCR 1943 **with changes** as follows:

2
3 **15A NCAC 02B .0248 .0720 RANDLEMAN LAKE WATER SUPPLY WATERSHED: NUTRIENT**
4 **MANAGEMENT STRATEGY STRATEGY: PURPOSE AND SCOPE**

5 (a) PURPOSE. The purpose of the Randleman nutrient strategy is to attain the designated uses of Randleman Lake.
6 All waters of the Randleman Lake (Deep River) water supply watershed are classified for water supply uses and
7 designated by the Environmental Management Commission as a Critical Water Supply Watershed pursuant to G.S.
8 143-214.5(b).

9 (b) SCOPE AND LIMITATION. The Randleman nutrient strategy rules require controls to reduce **significant**
10 nutrient sources throughout the Randleman Lake watershed. These Rules do not address sources for which there is
11 insufficient scientific knowledge to **base** support regulation. The Commission may undertake additional rulemaking
12 in the future or make recommendations to other rulemaking bodies **as deemed appropriate** to more fully address
13 nutrient sources to Randleman Lake.

14 (c) RULES ENUMERATED. The following ~~rules~~ rules, which together shall constitute the Randleman nutrient
15 strategy, shall be implemented for the entire drainage area upstream of the Randleman Lake Dam:

- 16 (1) ~~Rule .0249 of this Section for Wastewater Discharges,~~
17 (2) ~~Rule .0250 of this Section for Protection and Maintenance of Riparian Areas, and~~
18 (3) ~~Rule .0251 of this Section for Urban Stormwater Management.~~
19 (1) Rule .0721 of this Section for Urban Stormwater **Management.** **Management:**
20 (2) Rule .0722 of this Section for Wastewater Discharges; and
21 (3) Rule **[.0723] .0724** of this Section for Protection and Maintenance of Riparian Areas.

22 ~~(b)(d)~~ PENALTIES. Failure to meet the requirements of the Rules in this Section may result in the imposition of
23 enforcement measures as authorized by G.S. 143-215.6A (civil penalties), G.S. 143-215.6B (criminal penalties), and
24 G.S. 143-215.6C (injunctive relief).

25 *History Note: Authority G.S. 143-214.1; 143-214.5; 143-215.3(a)(1); 143-215.6A; 143-215.6B; 143-215.6C;*
26 *Eff. April 1, 1999;*
27 *Amended Eff. May 1, 2010;*
28 *Readopted Eff. [New Date]. (The provisions of this Rule were transferred from 15A NCAC 02B*
29 *.0248.)*
30

1 15A NCAC 02B .0251 is readopted as published in 32:21 NCR 1943 **with changes** as follows:

2
3 **15A NCAC 02B .0251 .0721 RANDLEMAN LAKE WATER SUPPLY WATERSHED: STORMWATER**
4 **REQUIREMENTS**

5 The following is the ~~urban~~ stormwater management strategy for the Randleman Lake watershed:

- 6 (1) IMPLEMENTING AUTHORITY. The requirements of this Rule shall be implemented by ~~All~~ local
7 governments that have land use authority within the Randleman Lake ~~watershed~~ watershed. ~~shall~~
8 ~~comply with stormwater management requirements as outlined in this Rule. Although the~~
9 ~~management requirements for the upper and the lower portions of the watershed are similar,~~
10 ~~additional density related stormwater requirements apply to the lower portion of this watershed that~~
11 ~~do not apply to the upper portion of the watershed. The upper portion of the watershed is defined as~~
12 ~~those waters and lands of the Deep River watershed which drain to the Oakdale Cotton Mill Dam.~~
13 ~~The lower portion of the watershed are those waters and lands of the Deep River upstream and~~
14 ~~draining to the Randleman Lake Dam, from the Oakdale Cotton Mill Dam to the Randleman Dam.~~
15 State agencies shall also comply with this Rule insofar as required by G.S. 143-214.5 and in
16 accordance with Rule .0622 of this Subchapter.
- 17 (2) ~~To meet the requirements of this Rule, the local governments with jurisdictions in the upper portion~~
18 ~~of the Randleman Reservoir watershed shall meet the state's rules for a WS IV classification as~~
19 ~~specified in 15A NCAC 2B .0104, .0202 and .0216, the conditions specified in their existing~~
20 ~~ordinances, the riparian area protection requirements of Rule .0250 of this Section, along with the~~
21 ~~stormwater planning requirements set forth in Sub Items (4), (5), and (6) of this Rule.~~
- 22 (3) ~~To meet the requirements of this Rule, local governments with jurisdictions in the lower portion of~~
23 ~~the Randleman Lake watershed shall meet the provisions of Sub Items (4), (5) and (6) of this Rule~~
24 ~~along with the following:~~
- 25 (a) ~~Within 270 days of the effective date of this Rule, the affected jurisdictions, in coordination~~
26 ~~with the Piedmont Triad Regional Water Authority, shall submit local water supply~~
27 ~~ordinances to the Environmental Management Commission for approval. The ordinances~~
28 ~~shall at least meet the state's minimum rules for a WS IV classification as specified in 15A~~
29 ~~NCAC 2B .0104, .0202 and .0216, except that the requirements of this Sub Item shall~~
30 ~~replace the nonpoint source requirements in 15A NCAC 2B .0216(3)(b) for the lower~~
31 ~~portion of the Randleman Lake watershed.~~
- 32 (b) ~~The local ordinances shall provide for review and approval of stormwater management~~
33 ~~plans for new developments to ensure that the following conditions can be met:~~
- 34 (i) ~~Stormwater pollution control criteria for the Randleman Lake watershed outside~~
35 ~~of critical area:~~
- 36 (A) ~~Low Density Option: For each development project, development~~
37 ~~density must 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. Stormwater runoff shall be transported primarily by vegetated conveyances. Conveyance system shall not include a discrete stormwater collection system as defined in 15A NCAC 2B .0202;

(B) ~~High Density Option: If new development exceeds the low density option requirements as stated in Sub Item (2)(b)(i) of this Rule, then engineered stormwater controls must be used to control runoff from the first inch of rainfall. Engineering controls may consist of wet detention ponds designed in accordance with 15A NCAC 2H .1000 or alternative stormwater management systems consisting of other treatment options, or a combination of options, that are approved by the Director of the Division of Water Quality in accordance with 15A NCAC 2B .0104(g). New residential and non residential development shall not exceed 50 percent built upon area, unless an alternative high density option is submitted to the Commission as part of the submittal of the local water supply watershed protection ordinance and determined by the Commission to provide equal or greater water quality protection in Randleman Reservoir and its tributaries;~~

(C) ~~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 Section;~~

(II) ~~buffers meet the minimum statewide water supply watershed protection requirements and those specified for the Randleman Lake watershed riparian areas in Rule .0250 of this Section;~~

(III) ~~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;~~

(IV) ~~areas of concentrated development are 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 by utilization of one of the methods provided in Sub Item 3(b)(i)(C)(VI) of this Rule;~~
- (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;~~
- (D) ~~If local governments choose the high density development option which 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;~~
- (E) ~~Impervious cover shall be minimized to the maximum extent practical through clustering, narrower and shorter paved areas (streets, driveways, sidewalks, cul de sacs, and parking lots), and spreading rooftop and other impervious area runoff over pervious areas. Land clearing during the construction process shall be limited to the maximum extent practical. The local government permit shall require recorded deed restrictions and protective covenants to ensure that development activities maintain the development consistent with the plans and specifications approved by the local governments;~~
- (F) ~~The project is in compliance with the riparian area protection requirements as specified in 15A NCAC 2B .0250 (Randleman Lake riparian area rule);~~
- (G) ~~No new development shall be allowed within 50 feet of waters affected by the Randleman riparian area rule 15A NCAC 2B .0250;~~
- (H) ~~New development meeting the high density option shall be located at least 100 feet from perennial waters as identified on topo or soil survey maps; however, within the area between 50 and 100 feet adjacent to the perennial water body, water dependent structures, or other structures, such as flag poles, signs and security lights, which result in only~~

diminimus 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, divert runoff away from surface waters and maximize the utilization of BMPs;

(I) 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 April 1, 1999 may be developed with new development projects and expansions to existing development of up to 70 percent built upon surface area in addition to the new development approved in compliance with the appropriate requirements of Sub Item (3)(b)(ii)(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 percent/70 percent land area to 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 to minimize water quality impacts;

(ii) Stormwater pollution control criteria for critical areas of the watershed:

(A) Low Density Option: Development density must be limited to either no more than one dwelling unit per two acres of single family detached residential development (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 shall be transported primarily 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)(ii) of this Rule, then engineered stormwater controls must 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) ~~No new permitted sites for land application of residuals or petroleum contaminated soils shall be allowed;~~
- (D) ~~No new landfills shall be allowed; and~~
- (E) ~~Sub Items (3)(b)(i)(C) - (H) of this Rule also apply to the critical area.~~

(2) SUBWATERSHEDS. For the purpose of this Rule, the Randleman Lake Watershed is divided into subwatersheds as follows:

- (a) the upper portion of the watershed is defined as those waters and lands of the Deep River watershed [which] that drain to the Oakdale-Cotton Mill Dam;
- (b) the lower portion of the watershed are those waters and lands of the Deep River upstream and draining to the Randleman Lake Dam, from the Oakdale-Cotton Mill Dam to the Randleman Dam;
- (c) Oak Hollow Lake subwatershed is defined as all land areas draining to Oak Hollow Lake;
- (d) High Point Lake subwatershed is defined as all land areas draining to High Point Lake, East Fork Deep River and West Fork Deep River from Oak Hollow Lake Dam; and
- (e) Deep River 1 subwatershed is defined as all land areas draining to the Deep River from High Point Lake Dam to Freeman Mill Dam.

~~(4)(3) COMPREHENSIVE STORMWATER MANAGEMENT PLANS. Within 12 months of the effective date of adoption of this Rule, all All local governments with jurisdictions jurisdiction in the Randleman Lake watershed shall develop implement and maintain comprehensive stormwater management plans and submit those plans to the Commission for review and approval. Comprehensive stormwater management plans meeting that meet or exceed the criteria set forth in Subparts (4)(a) through (4)(f) [Sub Items (3)(a) through (3)(f)] this Item of this Rule shall be approved. Rule. Within six months of the Commission's approval of the local plan, subject local governments shall adopt and implement their approved plan. Those Stormwater management plans shall include, but not be limited to, include the following:~~

- (a) ~~Evaluation~~ evaluation of existing land use within Oak Hollow Lake subwatershed, High Point Lake ~~subwatershed~~ subwatershed, and Deep River 1 subwatershed in the Randleman Lake watershed with recommendations that show how overall built-upon area (for existing and future development) for each subwatershed can be minimized and high intensity land uses can be targeted away from surface waters and sensitive receiving waters as defined by 15A NCAC 02H .0150. areas. ~~Oak Hollow Lake subwatershed is defined as all land areas draining to Oak Hollow Lake. High Point Lake subwatershed is defined as all land areas draining to High Point Lake, East Fork Deep River and West Fork Deep River from Oak Hollow Lake Dam. Deep River 1 subwatershed is defined as all land areas draining to the Deep River from High Point Lake Dam to Freeman Mill Dam. This evaluation shall be done by the local governments having jurisdiction in those watersheds, working in cooperation with the PTRWA; Piedmont Triad Regional Water Authority;~~

- (b) ~~Coordination~~ coordination between all affected jurisdictions to encourage their development in the existing urban areas. The planning effort shall include provisions for areas of contiguous open space to be protected through conservation easements or other long-term protection measures and provisions to direct infrastructure growth towards existing urban development corridors rather than to rural lands;
- (c) ~~Evaluation~~ evaluation of existing ordinances, municipal programs (maintenance, street cleaning, ~~etc.-) etc.~~), and other local policies to identify opportunities for stormwater quality ~~improvements~~ improvements, including reducing the amount of built-upon area that is required for uses such as parking, building setbacks, road ~~widths~~ widths, and cul-de-sacs. The evaluations shall consider development options such as multiple story buildings, mixed use to encourage pedestrian travel and mass ~~transit~~ transit, and an identification of municipal activities and procedures that may be modified to allow for stormwater pollution prevention opportunities;
- (d) ~~Implementation~~ implementation of watershed protection public education programs;
- (e) ~~Identification~~ identification and removal of illegal discharges; and
- (f) ~~Identification~~ identification of suitable locations for potential stormwater retrofits (such as riparian areas) that ~~could~~ may be funded by various sources.
- (5) ~~Local governments may submit a more stringent local stormwater management program plan. Local stormwater management programs and modifications to these programs shall be kept on file by the Division of Water Quality.~~
- (6) ~~If a local government fails to submit an acceptable local stormwater management program plan within the time frames established in this Rule or fails to properly implement an approved plan, then stormwater management requirements for existing and new urban areas within its jurisdiction shall be administered through the NPDES municipal stormwater permitting program per 15A NCAC 2H .0126 which shall include at a minimum:~~
- (a) ~~Subject local governments shall be required to develop and implement comprehensive stormwater management programs for both existing and new development.~~
- (b) ~~These stormwater management programs shall provide all components that are required of local government stormwater programs in this Rule.~~
- (c) ~~Local governments that are subject to an NPDES permit shall be covered by the permit for at least one permitting cycle (five years) before they are eligible to submit a revised local stormwater management component of their water supply watershed protection program for consideration and approval by the EMC.~~
- (4) RANDLEMAN LAKE WATERSHED ORDINANCES. Local governments with jurisdiction in the Randleman Lake watershed shall implement local ordinances that meet or exceed the provisions of Items (5) and (6) of this Rule in accordance with their location in the Randleman Lake watershed and in coordination with the Piedmont Triad Regional Water Authority. All revisions to these local

ordinances shall be submitted to the Commission for review and approval. Ordinances that meet or exceed the provisions of Items (5) and (6) of this Rule shall be approved by the Commission.

(5) REQUIREMENTS FOR THE UPPER PORTION OF THE WATERSHED. Local governments with jurisdiction in the upper portion of the Randleman Lake watershed shall adopt ordinances that meet or exceed the ~~[state's]~~ State's minimum rules for a Class WS-IV watershed as specified in 15A NCAC 02B .0216 ~~[(Fresh Surface Water Quality Standards for WS IV Waters)]~~ and 15A NCAC 02B .0620 through .0624 ~~[(Water Supply Watershed Protection Program)]~~ in addition to meeting the riparian area protection requirements of 15A NCAC 02B ~~-.0723.-~~ .0724.

(6) REQUIREMENTS FOR THE LOWER PORTION OF THE WATERSHED. Local governments with jurisdiction in the lower portion of the Randleman Lake watershed shall adopt ordinances that meet the riparian area protection requirements set forth in 15A NCAC 02B .0723. Local ordinances shall also meet or exceed the ~~[state's]~~ State's minimum requirements for a Class WS-IV watershed set forth in 15A NCAC 02B .0620 through .0624 except that the following requirements shall supersede the equivalent provisions of 15A NCAC 02B ~~-.0624.-~~ .0624. as specified:

(a) the following maximum allowable project densities and minimum lot sizes shall supersede the requirements of 15A NCAC 02B ~~-.0624(4)-~~ .0624(3) and shall apply to a project according to its relative location in the watershed (Critical Area versus Protected Area), its project density (low density versus high density), and the type of development (single-family detached residential versus all other types):

<u>Location in the Watershed</u>	<u>Maximum Allowable Project Density or Minimum Lot Size</u>		
	<u>Low Density Development</u>		<u>High Density Development</u>
	<u>Single-family detached residential</u>	<u>Non-residential and all other residential</u>	<u>All types</u>
<u>Critical Area</u>	<u>1 dwelling unit per 2 acres or 80,000 square foot lot or 6% built-upon area</u>	<u>6% built-upon area</u>	<u>6 to 30% built-upon area</u>
<u>Protected Area</u>	<u>1 dwelling unit per acre or 40,000 square foot lot or 12% built-upon area</u>	<u>12% built-upon area</u>	<u>12 to 50% built-upon area;</u>

(b) for high density development, the following vegetated setback requirements shall be in addition to the riparian area protection requirements set forth in 15A NCAC 02B .0723 and shall supersede the requirements of 15A NCAC 02B ~~-.0624(12)-~~ .0624(11):

- (i) vegetated setbacks for high density development shall be located at least 100 feet from perennial waterbodies and perennial streams indicated on the most recent versions of the United States Geological Survey (USGS) 1:24,000 scale (7.5 minute) quadrangle topographic maps, which [are] is herein incorporated by reference and are available at no cost at <http://www.usgs.gov/pubprod/>, or the most recent version of the published manuscript of the soil survey map that shows stream layers prepared by the Natural Resources Conservation Service of the United States Department of Agriculture, which are herein incorporated by reference and are available at no cost at <http://www.nrcs.usda.gov/wps/portal/nrcs/main/soils/survey/>;
- (ii) the width of a vegetated setback shall be measured horizontally from the normal pool elevation of impounded structures, from the top of bank of each side of streams or rivers, and from the mean high waterline of tidal waters, perpendicular to the shoreline;
- (iii) vegetated setbacks may be cleared or graded, but shall be replanted and maintained in grass or other vegetation; and
- (iv) no new built-upon area shall be allowed in the vegetated setback except for publicly-funded linear projects such as roads, greenways, and sidewalks, water dependent structures such as docks, and minimal footprint uses such as poles, signs, utility appurtenances, and security lights where it is not practical to locate the built-upon area elsewhere. Built-upon area associated with these uses shall be minimized and the channelization of stormwater runoff shall be avoided.
- (c) outside of the critical areas, as defined in 15A NCAC 02B .0202, a local government may submit an alternative high density option to the Commission as part of the submittal of the local water supply watershed protection ordinance in order to allow development to exceed 50 percent built-upon area. The alternative ordinance shall be approved by the Commission if the Commission determines that it provides equal or greater water quality protection to the Randleman Lake reservoir and its tributaries;
- (d) no new permitted sites for land application of residuals or petroleum contaminated soils shall be allowed in the critical areas; and
- (e) no new landfills shall be allowed in the critical areas.
- (7) Local governments shall have the option to develop more stringent local stormwater management plans and watershed ordinances. Local stormwater management programs and ordinances, and modifications to these programs and ordinances, shall be submitted to the Commission for review and approval and kept on file by the Division. The Commission shall approve the local stormwater management plans and watershed ordinances if they meet or exceed the requirements set forth in this Rule.

(8) If a local government fails to ~~[properly]~~ implement an approved plan, then stormwater management requirements for existing and new urban areas within its jurisdiction shall be administered through the NPDES municipal stormwater permitting program per 15A NCAC 02H .0126 which shall ~~[include at a minimum:]~~ include:

- (a) subject local governments shall be required to develop and implement comprehensive stormwater management programs for both existing and new development;
- (b) these stormwater management programs shall provide all components that are required of local government stormwater programs in this Rule; and
- (c) local governments that are subject to an NPDES permit shall be covered by the permit for at least one permitting cycle (five years) before they are eligible to submit a revised local stormwater management component of their water supply watershed protection program for consideration and approval by the Commission. Revised ordinances that meet or exceed the provisions of Items (5) and (6) of this Rule shall be approved by the Commission.

History Note: Authority G.S. 143-214.1; 143-214.5; 143-214.7; 143-215.1; 143-215.3(a)(1);
Eff. April 1, ~~1999~~, 1999;
Readopted Eff. [New Date]. (The provisions of this Rule were transferred from 15A NCAC 02B .0251.)

1 15A NCAC 02B .0249 is readopted as published in 32:21 NCR 1943 with changes as follows:

2
3 **15A NCAC 02B .0249 .0722 RANDLEMAN LAKE WATER SUPPLY WATERSHED: WASTEWATER**
4 **DISCHARGE REQUIREMENTS**

5 (a) The following is the National Pollutant Discharge Elimination System (NPDES) wastewater discharge
6 management strategy for the Randleman Lake watershed.

7 (b) For purposes of this Rule, permitted wastewater discharges means those facilities permitted to discharge domestic
8 wastewater or wastewaters containing ~~phosphorus:~~ phosphorus.

9 ~~(1) The City of High Point's Eastside facility [Point] East Side [Eastside Wastewater Treatment Plant~~
10 ~~(WWTP)] shall meet a total phosphorus concentration predicted to provide a level of water quality~~
11 ~~in the Randleman Lake which meets all designated uses of those waters.~~

12 ~~(2)(c)~~ There shall be no new or expanding permitted wastewater discharges in the watershed with the exception
13 that the City of High Point Eastside wastewater treatment plant [WWTP] Wastewater Treatment Plant may be allowed
14 to expand provided that any new permit contains concentration and mass limits predicted through water quality
15 modeling or other analysis that shows to the Director that discharges will ~~to~~ provide a level of water quality in the
16 Randleman Lake ~~which~~ that meets all designated uses of those waters.

17
18 *History Note: Authority G. S. 143-214.1; 143-214.5; 143-215.3(a)(1);*

19 *Eff. April 1, 1999. 1999;*

20 *Readopted Eff. [New Date]. (The provisions of this Rule were transferred from 15A NCAC 02B*
21 *.0249.)*
22

1 15A NCAC 02B .0261 is readopted with changes as published in 32:21 NCR 1943 with changes as follows:

2
3 **15A NCAC 02B .0261 .0735** **TAR-PAMLICO RIVER BASIN - NUTRIENT SENSITIVE WATERS**
4 **MANAGEMENT STRATEGY: DELEGATION OF AUTHORITY FOR**
5 **THE PROTECTION AND MAINTENANCE OF EXISTING RIPARIAN**
6 **BUFFERS**

7 This Rule sets out the ~~following~~ requirements for delegation of the responsibility for implementing and enforcing the
8 Tar-Pamlico River Basin riparian buffer protection program, as described in Rule ~~15A NCAC 2B .0259, .0734 of this~~
9 Section, to local governments:

10 (1) ~~PROCEDURES FOR GRANTING AND RESCINDING DELEGATION.~~ The Commission shall
11 grant ~~and rescind~~ local government delegation of the Tar-Pamlico River Basin Riparian Buffer
12 Protection requirements, as described in Rule ~~15A NCAC 2B .0259, .0734 of this Section~~ according
13 to the following ~~procedures.~~ procedures:

14 (a) Local governments within the Tar-Pamlico River Basin may submit a written request to
15 the Commission for authority to implement and enforce the Tar-Pamlico River Basin
16 riparian buffer protection requirements within their ~~jurisdiction.~~ jurisdiction by
17 establishing a riparian buffer program to meet the requirements of Rule .0734 of this
18 Section. The written request to establish a riparian buffer program shall ~~be accompanied~~
19 ~~by information which shows:~~ include the following:

20 (i) ~~The Documentation that the~~ local government has land use jurisdiction for the
21 riparian ~~buffer~~ buffer. This can be demonstrated by delineating the local land use
22 jurisdictional boundary on the USGS 1:24,000 topographical map(s) or other finer
23 scale map(s);

24 (ii) ~~The Documentation that the~~ local government has the administrative organization,
25 staff, legal authority, financial ~~[resources]~~ resources, and other resources
26 necessary to implement and enforce the Tar-Pamlico River Basin riparian buffer
27 protection requirements based on its size and projected amount of development;

28 (iii) The local government ~~has adopted~~ ordinances, resolutions, or regulations
29 necessary to establish ~~and maintain the Tar Pamlico Basin riparian buffer~~
30 ~~protection requirements; and a riparian buffer program [to]~~ meet the requirements
31 of Rule .0734 of this Section and G.S. 143-214.23A;

32 (iv) Documentation that the local government's riparian buffer program [complies]
33 shall comply with all requirements set forth in G.S. 143-214.23A; and

34 (iv)(v) ~~The local government has provided a~~ Δ plan to address violations with appropriate
35 site-specific remedies and actions including, but not limited to, including civil or
36 criminal remedies that shall restore riparian buffer nutrient removal functions on
37 violation sites and provide a deterrent against the occurrence of future violations.

- (b) Within 90 days after the Commission has received the request for delegation, the Commission shall notify the local government whether it has been approved, approved with modifications, or denied.
- ~~(e) The Commission, upon determination that a delegated local authority is failing to implement or enforce the Tar Pamlico Basin riparian buffer protection requirements in keeping with a request approved under Sub item (1)(b) of this Rule, shall notify the delegated local authority in writing of the local program's inadequacies. If the delegated local authority has not corrected the deficiencies within 90 days of receipt of the written notification, then the Commission shall rescind the delegation of authority to the local government and shall implement and enforce the Tar Pamlico Basin riparian buffer protection requirements.~~
- (d) The Commission may delegate its duties and powers for granting and rescinding local government delegation of the Tar Pamlico Basin riparian buffer protection requirements, in whole or in part, to the Director.

(2) APPOINTMENT OF A RIPARIAN BUFFER PROTECTION ADMINISTRATOR. Upon receiving delegation, local governments shall appoint a Riparian Buffer Protection Administrator Administrator(s) who shall coordinate the implementation and enforcement of the program. The Administrator Administrator(s) shall attend an initial training session by the Division and subsequent annual training sessions. be certified to make on-site determinations pursuant to G.S. 143-214.25A. The Administrator Administrator(s) shall ensure that local government staff ~~staffs~~ staff working directly with the program receive training to understand, implement implement, and enforce the ~~program.~~ program and are certified to make on-site determinations pursuant to G.S. 143-214.25A. [If a] At any time that a local government does not have anyone on staff certified to make on-site determinations pursuant to G.S. 143-214.25A, [they] it shall [immediately] notify the Division within 30 calendar days and [indicate] provide a proposed schedule to secure a certified staff member. The local government shall coordinate with the Division to provide on-site determinations until a new certified staff member is secured by the local government.

(3) PROCEDURES FOR USES WITHIN RIPARIAN BUFFERS THAT ARE ALLOWABLE UPON AUTHORIZATION AND ALLOWABLE WITH MITIGATION. MITIGATION UPON AUTHORIZATION. Upon receiving delegation, local ~~authorities~~ governments shall review ~~proposed uses within the riparian buffer and issue approvals if the uses meet the Tar Pamlico Basin riparian buffer protection requirements. Delegated local authorities shall issue an Authorization Certificate for uses if the proposed use meets the Tar Pamlico Basin riparian buffer protection requirements, or provides for appropriate mitigated provisions to the Tar Pamlico Basin riparian buffer protection requirements.~~ The Division may challenge a decision made by a delegated local authority for a period of 30 days after the Authorization Certificate is issued. If the Division does not challenge an Authorization Certificate within 30 days of issuance, then the delegated local

- 1 ~~authority's decision shall stand.~~ applications requesting an Authorization Certificate pursuant to the
2 requirements set forth in Rule ~~[.0705]~~ .0611 of this Section.
- 3 (4) ~~VARIANCES. EXCEPTIONS. After Upon~~ receiving delegation, local governments shall review
4 applications requesting an Authorization Certificate with Exception pursuant to the requirements set
5 forth in Rule ~~[.0705]~~ .0611 of this Section. ~~variance requests, provide approvals for minor variance~~
6 ~~requests and make recommendations to the Commission for major variance requests pursuant to the~~
7 ~~Tar-Pamlico Basin riparian buffer protection program.~~
- 8 (5) LIMITS OF DELEGATED LOCAL AUTHORITY. The ~~Commission Division~~ shall have
9 jurisdiction to the exclusion of local governments to implement the Tar-Pamlico ~~River~~ Basin
10 riparian buffer protection requirements for the following types of activities:
- 11 (a) Activities conducted under the authority of the State;
12 (b) Activities conducted under the authority of the United States;
13 (c) Activities conducted under the authority of multiple jurisdictions;
14 (d) Activities conducted under the authority of ~~local~~ units of ~~government.~~ ~~local~~ government;
15 (e) ~~Forest harvesting activities described in Rule [.0706]~~ .0612 of this Section; and
16 (f) ~~Agricultural activities.~~
- 17 (6) RECORD-KEEPING REQUIREMENTS. Delegated local ~~authorities~~ ~~governments~~ shall maintain
18 on-site records for a minimum of 5 ~~years.~~ ~~Delegated local~~ ~~authorities~~ ~~[governments]~~ ~~must~~ ~~years and~~
19 ~~shall~~ furnish a copy of these records to the ~~Director Division~~ within 30 ~~calendar~~ days of receipt of a
20 written request for ~~the records.~~ ~~them.~~ The Division shall inspect local riparian buffer protection
21 programs to ensure that the programs are being implemented and enforced in keeping with a request
22 approved under Sub item (1)(b) of this Rule. Each delegated local ~~authority's~~ ~~government's~~ records
23 shall include the following:
- 24 (a) A copy of ~~variance~~ ~~all~~ Authorization Certificate with ~~[exception]~~ ~~Exception~~ requests;
25 (b) ~~The Findings on all~~ ~~variance~~ Authorization Certificate with ~~[exception]~~ ~~Exception~~ request's
26 ~~finding of fact; requests;~~
27 (c) The ~~result~~ ~~results~~ of ~~the all~~ ~~variance~~ Authorization Certificate with ~~[exception]~~ ~~Exception~~
28 proceedings;
29 (d) A record of complaints and action taken as a result of the ~~complaint; complaints;~~
30 (e) Records for ~~on-site determinations as described in Rule .0734(4) of this Section; stream~~
31 ~~origin calls and stream ratings;~~ and
32 (f) Copies of ~~all~~ ~~request~~ ~~requests~~ for authorization, records approving ~~authorization~~
33 ~~authorization,~~ and Authorization Certificates.
- 34 (7) AUDITS OF LOCAL AUTHORITIES. The Division shall ~~[regularly]~~ audit delegated local
35 governments to ensure the local programs are being implemented and enforced in keeping with the
36 requirements of this Rule and Rule .0734 of this Section. ~~The audit shall consist of a review of all~~

1 local government activities with regards to implementation of this Rule and Rule .0734 of this
2 Section.

3 (8) PROCEDURES FOR RESCINDING DELEGATION. Upon determination by the Division that a
4 delegated local government is failing to implement or enforce the Tar-Pamlico River Basin riparian
5 buffer protection requirements in keeping with the request approved under Sub-Item (1)(b) of this
6 Rule, the Commission shall notify the delegated local government in writing of the local program's
7 [inadequacies.] deficiencies. If the delegated local government has not corrected the deficiencies
8 within 90 calendar days of receipt of the written notification, then the Commission shall rescind the
9 delegation of authority to the local government and the Division shall implement and enforce the
10 Tar-Pamlico River Basin riparian buffer protection requirements within their [jurisdiction]
11 jurisdiction.

12 (9) DELEGATION. The Commission may delegate its duties and powers for granting and rescinding
13 local government delegation of the Tar-Pamlico River Basin riparian buffer protection requirements,
14 in whole or in part, to the Director.

15
16 *History Note:* Authority G S. 143-214.1; 143-214.7; 143-214.23; 143-214.23A; 143-215.3(a)(1); 143-215.3(a)(4);
17 143-215.6A; 143-215.6B; 143-215.6C; 143B-282(d); S.L. 1999; c. 329, s. 7.1;
18 Temporary Adoption Eff. January 1, 2000;
19 Eff. August 1, 2000; 2000;
20 Readoption Eff. [New Date]. (The provisions of this Rule were transferred from 15A NCAC 02B
21 .0261.)
22

1 15A NCAC 02H .0501 is readopted with changes as published in 32:21 NCR 1943 as follows:

3 **SECTION .0500 - WATER QUALITY CERTIFICATION**

5 **15A NCAC 02H .0501 PURPOSE APPLICABILITY AND DEFINITIONS**

6 ~~(a) The provisions of this Section shall apply to all division regulatory, planning, resource management, liaison and~~
7 ~~financial aid determinations that affect surface waters and wetlands as defined by 15A NCAC 2B .0202. This Section~~
8 ~~shall only apply to specific activities which require state review after the effective date of this Rule and which require~~
9 ~~a Division determination concerning effects on surface waters or wetlands. Activities that are described in Section~~
10 ~~404(f)(1)(A) (F) of the Clean Water Act (33 U.S.C. 1344) are exempt from this Rule.~~

11 ~~(b)(a) These Rules outline~~ This Section outlines the application and review procedures for activities that require [state]
12 State water quality certifications (certifications) pursuant to Section 401 of the Clean Water Act (33 U.S.C. 1341).
13 Certifications are required whenever for a federally permitted or licensed activity including, but not limited to, the
14 construction or operation of facilities facilities, which may will result in a discharge into navigable waters. waters as
15 described in 33 CFR Part 323. The federal definition of navigable waters includes wetlands as defined at 33 CFR
16 328.3 and 40 CFR 230.3. Failure to obtain a required certification is enforceable by the Department pursuant to
17 Chapter 143, Article 21, Part 1.

18 ~~(e)(b) Water quality certifications~~ Certifications may be issued for individual activities (individual certifications) or
19 issued for specific types or groups of activities (general certifications):

- 20 (1) Individual certifications ~~are shall be~~ issued on a case-by-case basis ~~and using~~ the procedures outlined
21 in the following Rules ~~this Section.~~ [Section] are required for each individual certification.
22 (2) General certifications ~~are issued~~ may be developed by the Division and issued by the Director for
23 specific types or groups of activities that are similar in nature and considered to have minimal
24 impact. All activities that receive a ["Certificate of Coverage"] Certificate of Coverage under a
25 general certification from the Division shall be [deemed] covered under that general certification.
26 The ~~When~~ written approval is [specifically] required in the [General Certification,] general
27 certification, the application and review procedures for requesting concurrence a ["Certificate of
28 Coverage"] Certificate of Coverage under a general certification from the Division that the general
29 certification can be used for the proposed activity are the same as the procedures outlined in the
30 following Rules ~~this Section~~ for individual ~~certifications~~ certifications, unless specifically stated
31 otherwise in the general certification.

32 (c) The terms used in this Section shall be as defined in G.S. ~~143-212, 143-212 and~~ G.S. 143-213 and as follows:

- 33 (1) "Certification" means the [state] State water quality certification pursuant to Section 401 of the
34 Clean Water Act (33 U.S.C. 1341).
35 (2) "Class SWL wetland" means the term as defined at 15A NCAC 02B .0101.
36 (3) "Class UWL wetland" means the term as defined at 15A NCAC 02B .0101.

(4) "Cumulative impact" means environmental impacts resulting from incremental effects of an activity when added to other past, present, and reasonably foreseeable future ~~activities~~ activities, regardless of what entities undertake such other actions.

(5) "Department" means the Department of Environmental Quality and the Secretary of the Department of Environmental Quality.

~~(4)~~(6) "Director" means the Director of the Division.

~~(2)~~(7) "Division" means the Division of Water Resources of the North Carolina Department of Environmental Quality.

~~(4)~~ "Department" means the Department of Environmental Quality and the Secretary of the Department of Environmental Quality.

~~(3)~~ "Person" means as defined in G.S. 143-212(4).]

(8) "Secondary impact" means ~~actions, or actions directly linked to an activity, that may affect classified surface waters or wetlands that would not occur but for the proposed activity~~ indirect effects, which are caused by the action and are later in time or farther removed in distance, but are still reasonably foreseeable to the applicant or the Division.

~~(4)~~(9) "Wetland" means the term as defined in 15A NCAC 02B .0202.

~~(57)~~ "Cumulative impact" means environmental impacts resulting from incremental effects of an activity when added to other past, present, and reasonable foreseeable future activities regardless of what entities undertake such other actions.

~~(68)~~ "Class SWL wetland" means as defined at 15A NCAC 02B .0231.

~~(79)~~ "Class UWL wetland" means as defined at 15A NCAC 02B .0231.

~~(810)~~ "Secondary impact" means ~~actions, or actions directly linked to an activity, that may affect classified surface waters or wetlands that would not occur but for the proposed activity~~ indirect effects, which are caused by the action and are later in time or farther removed in distance, but are still reasonably foreseeable.]

History Note: Authority G.S. 143-211(c); 143-215.3(a)(1); 143-215.3(c); 143B-282(a)(1)(u); S.L 2017, c. 145, Section 2(b)

RRC Objection Eff. July 18, 1996 due to lack of statutory authority and ambiguity;
Eff. October 1, 1996.

Readopted Eff. June 1, 2019.

1 15A NCAC 02H .0502 is readopted with changes as published in 32:21 NCR 1943 as follows:

2
3 **15A NCAC 02H .0502 APPLICATION FILING APPLICATIONS**

4 (a) ~~Application for Certification.~~ **APPLICATION FOR CERTIFICATION.** Any person, as defined in Article 21,
5 Chapter 143, North Carolina General Statutes, person desiring-needing issuance of ~~the an~~ an state individual water
6 quality certification or ~~[certificate]~~ Certificate of ~~Coverage~~coverage under a general certification required by this
7 Section and Section 401 of the Federal Water Pollution Control Act as amended Clean Water Act ~~[(33 U.S.C. 1341)]~~
8 shall file with the Director, Director of the North Carolina Division of Water Quality (director), [Resources (Director),]
9 ~~at the office in~~ 1617 Mail Service Center, Raleigh, North Carolina, 27699-1617 or 512 N. Salisbury Street, Raleigh,
10 NC 27604, an original and six [three] copies of an one complete copy of an application for ~~certification~~ certification
11 or submit one complete copy of an application electronically via the following website:
12 https://edocs.deq.nc.gov/Forms/DWR_Wetlands_Online_Submittal_Page. ~~Submission of an application to the~~
13 ~~Division of Coastal Management for permits to develop in North Carolina's coastal area shall suffice as an application~~
14 ~~for certification.~~ The application ~~[must]~~shall be made on a form provided or approved by the Division or the U.S.
15 Army Corps of Engineers, available electronically via the following website: [https://deq.nc.gov/about/divisions/water-](https://deq.nc.gov/about/divisions/water-resources/water-quality-permitting/401-buffer-permitting-branch/application)
16 [resources/water-quality-permitting/401-buffer-permitting-branch/application](https://deq.nc.gov/about/divisions/water-resources/water-quality-permitting/401-buffer-permitting-branch/application). ~~[Engineers and]~~ The application shall
17 specify:include at a minimum the following:

- 18 (1) the date of application;
- 19 (2) the name, address, and phone number of the property owner; [owner or owners;] applicant. If the
20 applicant is not the property owner(s), [provide] the name, [address]address, and phone number of
21 the property owner(s):
- 22 (3) if the applicant is a corporation, the state in which it is domesticated, the name of its principal
23 officers, the name and address of the North Carolina process agency, and the name name, [address]
24 address, and phone number of the individual who shall be primarily responsible for the conduct of
25 the activity for which certification is sought; is the authorized agent of the corporation and
26 responsible for the activity for which certification is sought. The corporation must be [authorized]
27 registered with the NC Secretary of State's Office to [do]conduct business in NC;
- 28 (4) the nature of the activity to be conducted by applicant;
- 29 (5) whether the discharge has occurred or is proposed;
- 30 (6) the location of the discharge, stating the municipality, if applicable; the county; the drainage basin;
31 the name of the receiving waters; and the location of the point of discharge with regard to the
32 receiving waters;
- 33 (7) a description of the receiving waters, including type (creek, river, swamp, canal, lake, pondpond, or
34 estuary) if applicable; nature (fresh, brackishbrackish, or salt); and wetland classification;
- 35 (8) a description of the type of waste treatment facilitiesfacilities, if ~~applicable.~~ applicable; [and]
- 36 ~~(b)(9)~~ Maps. [MAPS.] There shall be attached to the application a map(s) or sketch(es) with a scale(s) and
37 a north arrow(s) that is legible to the reviewer and of sufficient detail to accurately ~~accurately~~ delineate the

boundaries of the lands owned or proposed to be utilized by the applicant in carrying out ~~its~~ the activity; the location, dimensions~~dimensions~~, and type of any structures erected or to be erected on ~~said~~the lands for use in connection with the activity; and the location and extent of the receiving ~~waters~~waters, including wetlands within the boundaries of ~~the said lands~~lands;

(10) an application fee as required by G.S. ~~143-215.3D(e)~~143-215.3D(e); and

(11) Applications shall be signed by the owner with title to the property, a person who has been authorized by the owner to apply for certification, or an entity with the power of eminent domain, a signature by the applicant for the federal permit or license or an agent authorized by the applicant. If an agent is signing for the applicant, an agent authorization letter must be provided. In signing the application, the applicant certifies that all information contained therein or in support thereof is true and correct to the best of their knowledge. [For corporations, partnerships, proprietors, or municipal, state or other public entity, the application shall be signed as follows:

(A) in the case of corporations, by a principal executive officer of at least the level of vice-president, or their authorized representative;

(B) in the case of a partnership or limited partnership, by a general partner;

(C) in the case of a sole proprietorship, by the proprietor; and

(D) in the case of a municipal, state or other public entity, by either a principal executive officer, ranking official or other duly authorized employee.]

(b) Submission of an application to the Division of Coastal Management for a permit to develop in North Carolina's coastal area in accordance with the rules of 15A NCAC 07J .0200 shall suffice as an application for a water quality certification or certificate of coverage under a general certification upon receipt by the [Division.]Division from the Division of Coastal Management.

(c) ~~Power to Request Additional Information.~~ [POWER TO REQUEST ADDITIONAL INFORMATION.] The ~~Director~~ Division may ~~request, request in writing,~~ and the applicant shall furnish, any additional information ~~that may be found necessary~~ to clarify the information provided in the application under Paragraph (a) of this Rule, or to complete the evaluation in Rule .0506 of this Section, for the proper consideration of the application. [The 60-day processing period required in Rule .0507 of this Section begins on the date the additional information is received by the Division.]

(d) ~~Omissions From Applications.~~ [OMISSIONS FROM APPLICATIONS.] If the applicant ~~considers~~ believes that it is not feasible or is unnecessary to furnish any portion of the information required by Paragraphs ~~(a) and (a), (b) and (c)~~ of this Rule, then the applicant shall submit a detailed statement explaining an explanation detailing the reasons for omission of ~~any such the~~ information. The final decision regarding the completeness of the application shall be made by the Division based [on] upon the information required in Paragraphs (a), (b) and ~~(c),~~ (c) of this Rule, and any explanation provided by the applicant regarding omitted information provided in this Paragraph.

(e) Investigations. [INVESTIGATIONS.] The Pursuant to G.S. 143-215.3(a)(2), the staff of the ~~Department of Environment, Health, and Natural Resources (department)~~ Division shall conduct such investigation as the ~~Director~~ Division deems necessary to clarify the information provided in the application under Paragraph (a) of this Rule or to

1 complete the evaluation in Rule .0506 of this Section. ~~necessary; [necessary]~~ and The applicant shall ~~cooperate in the~~
2 ~~investigation to the extent that it shall furnish necessary information,~~ allow the staff safe access to the lands and
3 facilities of the applicant and lend such assistance as shall be ~~reasonable.~~ [reasonable, reasonable for those places,
4 upon the presentation of credentials.

5 ~~(f) Who Must Sign Applications. The application shall be considered a "valid application" only if the application~~
6 ~~bears the signature of a responsible officer of the company, municipal official, partner or owner. This signature~~
7 ~~certifies that the applicant has title to the property, has been authorized by the owner to apply for certification or is a~~
8 ~~public entity and has the power of eminent domain. Said official in signing the application shall also certify that all~~
9 ~~information contained therein or in support thereof is true and correct to the best of his knowledge.~~

10 ~~(g) An application form may be obtained from the Division of Water Quality, the Division of Coastal Management,~~
11 ~~or the U.S. Army Corps of Engineers, Wilmington District, Regulatory Branch.~~

12
13 *History Note: Authority G.S. 143-211(c); 143-215.3(a)(1); ~~143-215(e)~~; 143-215.3(c); 143B-282(a)(1)(u);*
14 *Eff. February 1, 1976;*
15 *Amended Eff. December 1, 1984; January 1, 1979;*
16 *RRC Objection Eff. July 18, 1996 due to lack of statutory authority and ambiguity;*
17 *Recodified from 15A NCAC 2H .0501 Eff. October 1, 1996;*
18 *Amended Eff. October 1, 1996;*
19 *Readopted Eff. June 1, 2019*

1 15A NCAC 02H .0503 is readopted with changes as published in 32:21 NCR 1943 as follows:

2
3 **15A NCAC 02H .0503 PUBLIC NOTICE AND PUBLIC HEARING**

4 (a) ~~Notice by Publication.~~ PUBLIC NOTICE FOR GENERAL CERTIFICATIONS. The Division shall provide
5 public notice for proposed General Certifications. This notice shall be sent to all individuals on the mailing list ~~Mail~~
6 List described in Paragraph (g) of this Rule and posted on the Division's website:
7 [https://deq.nc.gov/about/divisions/water-resources/water-quality-permitting/401-buffer-permitting-branch/public-](https://deq.nc.gov/about/divisions/water-resources/water-quality-permitting/401-buffer-permitting-branch/public-notices)
8 notices. ~~website.~~ Notice shall be made at least 30 calendar days prior to ~~proposed final action~~ issuance of the
9 General Certification by the Division. Public ~~Notice~~ notice shall not be required for those activities covered by
10 Certificates of Coverage under a General Certification.

11 (b) ~~PUBLIC NOTICE FOR INDIVIDUAL CERTIFICATIONS.~~ Notice of each pending application for an
12 individual certification shall be ~~published one time in a newspaper having general circulation in the county in which~~
13 ~~the discharge will occur, or as provided in Paragraph (e) of this Rule.~~ sent to all individuals on the mailing list ~~Mail~~
14 List described in Paragraph (g) of this Rule and shall be posted on the Division's website. ~~Publication~~ Notice shall be
15 made at least ~~15~~ 30 calendar days prior to proposed final action by the ~~Director~~ Division ~~upon~~ on the application and
16 ~~not more than 20 days after acceptance of a completed application.~~

17 (b)(c) ~~Contents of Notice.~~ CONTENTS OF NOTICE FOR INDIVIDUAL CERTIFICATIONS. The notice shall set
18 ~~forth~~ forth:

- 19 (1) the name and address of the applicant;
20 (2) the action requested in the application;
21 (3) the nature and location of the discharge; and
22 (4) the proposed date of final action to be taken by the ~~Director~~ Division ~~upon~~ on the application.

23 The notice shall also state ~~that where~~ additional information is available online and on file with the Division.
24 ~~department~~ Division and ~~that the information~~ may be inspected ~~between 8:00 am and 5:00 pm, Monday through~~
25 ~~Friday.~~ at any time during normal working hours. ~~Copies of such information~~ Information on file shall be made
26 available upon request between 8:00 am and 5:00 pm, Monday through Friday, excluding State holidays, and copies
27 shall be made available upon payment of the cost thereof to the ~~department.~~ Division pursuant to G.S. 132-6.2.

28 (e) ~~(e)~~ (d) JOINT NOTICE. The public notice requirement for an ~~Individual Certification~~ individual certification
29 as described in Paragraph (b) of this Rule may ~~also~~ be satisfied by a joint notice with the Division of Coastal
30 Management (15A NCAC ~~77~~ 07J .0206) or the U.S. Army Corps of Engineers according to their established
31 procedures.

32 (d) ~~(c)~~ (e) REQUEST FOR A PUBLIC HEARING. Any person who desires a public hearing on a General Certification
33 or an ~~Individual Certification~~ individual certification application shall so request in writing to the Division at the
34 address listed in Rule .0502 of this Section. ~~Division.~~ The request must be received by the Division within 30 calendar
35 days following the Public Notice.

36 (d) ~~(f)~~ (f) NOTICE OF HEARING. If the Director determines that there is significant public interest
37 in holding a hearing should be held concerning the granting or denial of the application, hearing. based upon such

1 ~~factors as the reasons why a hearing was requested, the nature of the project, and the proposed impacts to waters of~~
2 ~~the State.~~ the Director Division shall publish notice of the hearing one time in a newspaper having general circulation
3 in the county in which the discharge will occur. ~~notify the applicant in writing that there will be a hearing. [by~~
4 ~~registered or certified mail, return receipt requested.]~~ The Division shall also provide notice of the hearing to all
5 individuals on the mailing list [Mailing List] as described in Paragraph (g) of this Rule and shall post the notice on the
6 Division's website. The notice shall be published at least 30 calendar days prior to the date of the hearing. The notice
7 shall state the time, ~~place~~ ~~place~~, and ~~nature~~ ~~format~~ of the hearing. ~~The notice can be combined with the notice required~~
8 ~~under Paragraph (c) of this Rule.~~ ~~[Such]~~ The hearing shall be held within 90 calendar days following date of
9 notification to the applicant. The record for each hearing held under this Paragraph shall remain open for a period of
10 30 calendar days after the public hearing ~~to receive public comments.~~
11 (e)(g) Water Quality Certification Mailing List. [MAILING LIST.] Any ~~person~~, person may request that he or she be
12 mailed ~~emailed~~ copies of all public notices required by this Rule. The Director Division shall add the ~~name~~ ~~email~~
13 ~~address~~ of any such person to a water quality certification mailing list ~~an email list~~ ~~erv~~ [Email Listserv] and shall mail
14 email copies of notices to all persons on the list.
15 (f) Payment of Costs of Public Notice. The applicant shall pay to the department the costs of advertising public notice
16 required by Paragraphs (a) and (d) of this Rule. Certification shall be withheld until such costs have been paid.
17 (h) [OTHER PUBLIC HEARINGS.] Any public hearing held pursuant to ~~for~~ this Rule may be coordinated with
18 other public hearings held by the Department ~~of Environmental Quality~~ or the U.S. Army Corps of Engineers.

19
20 History Note: Authority G.S. 143-211(c); 143-215.3(a)(1); 143-215.3(c); 143B-282(a)(1)(u);
21 Eff. February 1, 1976;
22 Amended Eff. December 1, 1984; September 1, 1984
23 RRC Objection Eff. July 18, 1996 due to lack of statutory authority and ambiguity;
24 Recodified from 15A NCAC 2H .0502 Eff. October 1, 1996;
25 Amended Eff. October 1, 1996;
26 Readopted Eff. June 1, 2019

1 15A NCAC 02H .0507 is readopted with changes as published in 32:21 NCR 1943 as follows:

3 **15A NCAC 02H .0507 ISSUANCE OF DECISION ON APPLICATION FOR CERTIFICATION**

4 (a) ~~Time Limit for Final Action on Certification Application.~~ [FINAL ACTION ON APPLICATION.] All
5 ~~applications for certification~~ The Director shall be granted issue the certification, or denied deny the application,
6 provide notice of hearing pursuant to Rule .0503 of this Section, or request additional information within 60 calendar
7 days after receipt of an [a complete] application for certification. [-electronically or] at the offices of the Director in
8 [1617 Mail Service Center,] Raleigh, North Carolina. [Carolina, 27699-1617.] When the Director requests additional
9 information, the 60-day review period restarts upon receipt of all of the additional information requested by the
10 Director. Failure to ~~take final action~~ issue the certification, deny the application, provide notice of hearing, or request
11 additional information within 60 calendar days shall result in a waiver of the certification requirement by the Director,
12 unless:

13 (1) The applicant agrees, in writing, to a longer period;

14 (2) ~~Final~~ The final decision is to be made pursuant to a public hearing;

15 ~~(3) Applicant [The applicant] fails to furnish information necessary to [for] the Director's decision;~~

16 ~~(4)(3) Applicant~~ The applicant refuses the staff access to its records or premises for the purpose of
17 gathering information necessary ~~to for~~ for the Director's decision or decision; or

18 ~~(5)(4) Information necessary to for the Director's decision is unavailable.~~

19 (b) ~~Time Limit for Final Action on Certification Application After Hearing.~~ [FINAL ACTION AFTER HEARING.]
20 ~~All applications for certification~~ The Director shall be granted issue the certification, or denied deny the [complete]
21 application, or request additional information [for certification] within 60 calendar days after following the close of
22 the record for the public hearing. Failure to take ~~final~~ action within 60 calendar days shall result in a waiver of the
23 certification requirement by the ~~Director~~ Director, unless ~~the applicant otherwise agrees in writing, or unless~~
24 ~~Subparagraph~~ Subparagraphs (a)(3), (a)(1), (3), or (4) (4), or (5) of this Rule shall apply.

25 (c) ~~Conditions of Certification.~~ [CONDITIONS OF CERTIFICATION.] Any certification issued pursuant to this
26 Rule Section may contain such conditions as the Director shall deem necessary to ~~insure~~ ensure compliance with
27 Sections 301, 302, 303, 306, and 307 of the Federal Clean Water Pollution Control Act [Amendments] and with [other
28 appropriate requirements of state] State water law. Amendments. [Section 401 of the Clean Water Act (33 U.S.C.
29 1341);] The conditions included in the certification shall become enforceable by the Department pursuant to Chapter
30 143, Article 21, Part 1 when the federal permit or license is issued.

31 (d) ~~Modification or Revocation of Certification~~ [MODIFICATION OR REVOCATION.] Modification or Revocation
32 of Certification:

33 (1) Any certification issued pursuant to this Rule Section ~~shall~~ may be subject to revocation or
34 modification by the Director for violation of conditions of Sections 301, 302, 303, 306, and/or 307 of
35 the Federal Clean Water Pollution Control Act Amendments [Amendments] or [state] State water
36 law.

(2) Any certification issued pursuant to this ~~Rule Section~~ shall may be subject to revocation or modification by the Director upon a determination that information contained in the application or presented in support thereof is incorrect or if the conditions under which the certification was made have changed.

(e) ~~Notification of Unapproved Application.~~ [NOTIFICATION OF FINAL ACTION.] The Division shall notify the applicant of the final action to issue or deny the application. In the event that the Director denies the application for certification or for any reason is unable to approve the application, the Director shall ~~so notify the applicant by certified or registered mail, return receipt requested, specifying in such notification~~ specify the reasons for the denial, denial or inability to approve; and a [approve.] A copy of the notification shall be ~~mailed sent~~ sent to the appropriate federal licensing or permitting agency and EPA.

(f) [CONTESTED CASE HEARING ADMINISTRATIVE REVIEW.] [An applicant whose certification is denied or granted subject to unacceptable conditions shall have the right to seek a contested case hearing pursuant to the provisions of G.S. 150B-23.] The issuance or denial is a final agency decision that is subject to administrative review pursuant to G.S. 150B-23.

History Note: Authority G.S. 143-211(c); 143-215.3(a)(1); 143-215.3(c); 143B-282 (a)(1)(u);
Eff. February 1, 1976;
Amended Eff. July 1, 1988; December 1, 1984;
RRC Objection Eff. July 18, 1996 due to lack of statutory authority and ambiguity;
Recodified from 15A NCAC 2H .0504 Eff. October 1, 1996;
Amended Eff. October 1, 1996;
Readopted Eff. June 1, 2019.

1 15A NCAC 02H .1301 is readopted with changes as published in 32:21 NCR 1943 as follows:

3 **SECTION .1300 – DISCHARGES TO ISOLATED WETLANDS AND ISOLATED WATERS**

5 **15A NCAC 02H .1301 SCOPE AND PURPOSE**

6 (a) The provisions of this Section shall apply to Division of Water ~~Quality~~ Resources (Division) regulatory and
7 resource management determinations regarding isolated wetlands and isolated classified surface waters. This Section
8 shall only apply to discharges resulting from activities that require ~~state~~State review after ~~the effective date of this~~
9 ~~Rule October 22, 2001~~ and ~~which that~~ require a Division determination concerning effects on isolated wetlands and
10 isolated classified surface waters. For the purpose of this Section, ~~discharge~~“discharge” shall be the deposition of
11 dredged or fill material ~~including but not limited to (e.g. fill, earth, construction debris, debris, and soil, soil, etc.).~~

12 (b) This Section outlines the application and review procedures for permitting of discharges into isolated wetlands
13 and isolated classified surface waters ~~which that~~ have been listed in 15A NCAC 02B .0300. If the ~~US~~ U.S. Army
14 Corps of Engineers or its designee determines that a particular water ~~or wetland~~ is ~~isolated and~~ not regulated under
15 Section 404 of the Clean Water Act, then discharges to that water or wetland shall be covered by this ~~Section (15A~~
16 ~~NCAC 02H .1301 – .1305).~~ Section. If the U.S. Army Corps of Engineers or its designee determines that a particular
17 wetland is not regulated under Section 404 of the Clean Water Act and that wetland is a Basin Wetland or Bog as
18 described in the North Carolina Wetland Assessment User Manual prepared by the North Carolina Wetland Functional
19 Assessment Team, version 4.1 October 2010 (available online at: [https://deq.nc.gov/about/divisions/water-](https://deq.nc.gov/about/divisions/water-resources/water-resources-data/water-quality-program-development/nwam-manual)
20 resources/water-resources-data/water-quality-program-development/nwam-manual), then discharges to that wetland
21 shall be covered by this Section. The Division shall verify the determination, [extent] extent, and location of isolated
22 wetlands and isolated classified surface waters using the U.S. Army Corps of Engineers Wetland Delineation Manual
23 (Technical Report Y-87-1) and subsequent regional supplements and the Division publication, Methodology for
24 Identification of Intermittent and Perennial Streams and Their Origins (v.4.11, 2010).

25 (c) Activities ~~which that~~ result in a discharge may be ~~deemed permitted~~ as described in Rule .1305(b) of this Section
26 or authorized by the issuance of either an ~~Individual Permit~~individual permit or a Certificate of Coverage to operate
27 under a ~~General Permit. [Permit:]~~general permit:

28 (1) Individual ~~Permits~~permits shall be issued on a case-by-case basis using the procedures outlined in
29 this Section. These Individual ~~Permits~~permits do not require approval by the U.S. Environmental
30 Protection Agency.

31 (2) ~~Certificates of Coverage for General Permits~~permits may be ~~issued~~ developed by the Division and
32 issued by the Director for types or groups of discharges resulting from activities that are similar in
33 nature and considered to have minimal impact. ~~General Permits include but are not limited to~~
34 ~~activities such as maintenance, utility lines, and road crossings. General Permits shall be given~~
35 ~~public notice at least 45 days before the proposed effective date of the General Permit. These~~
36 General ~~Permits~~permits do not require approval by the U.S. Environmental Protection Agency. All
37 activities that receive a [“Certificate of Coverage”] Certificate of Coverage under a [General

1 ~~Permit~~ general permit from the Division shall be ~~[deemed]~~ covered under that general permit. ~~[The]~~
2 When written approval is required in the general permit, the application and review procedures for
3 requesting a ~~"Certificate of Coverage"~~ Certificate of Coverage under a general permit from the
4 Division for the proposed activity are the same as the procedures outlined in this Section for
5 individual ~~[certifications,]~~ permits, ~~[unless specifically stated otherwise in the general permit.]~~
6 Individual Permits and Certificates of Coverage for General Permits shall be issued for a period of
7 five years after which time the Permit shall be void unless the discharge is complete or an extension
8 is granted as described in 15A NCAC 02H .1304(e).

9 (d) Discharges resulting from activities ~~which~~ that receive an ~~Individual Permit~~ individual permit or Certificate of
10 Coverage under a ~~General Permit~~ general permit pursuant to this Section shall not be considered to remove existing
11 uses of the isolated wetland or isolated surface waters.

12 (e) The following are exempt from this Section:

- 13 (1) Activities ~~that are~~ described in 15A NCAC 02B .0230;
- 14 (2) Discharges to ~~isolated;~~ isolated man-made ponds or isolated man-made ditches ~~except for those~~
15 ~~wetlands or waters constructed for compensatory mitigation or for on-site stormwater management;~~
16 management purposes;
- 17 (3) Discharges to any man-made isolated pond;
- 18 (4) Discharges to any wetland not regulated under Section 404 of the Clean Water Act that is not a
19 Basin Wetland or Bog as described in the North Carolina Wetland Assessment User Manual
20 prepared by the North Carolina Wetland Functional Assessment Team, version 4.1 October 2010
21 (available online at: [https://deq.nc.gov/about/divisions/water-resources/water-resources-](https://deq.nc.gov/about/divisions/water-resources/water-resources-data/water-quality-program-development/ncwam-manual)
22 data/water-quality-program-development/ncwam-manual);
- 23 ~~(3)~~ ~~(4)~~ (5) Discharges of treated effluent into isolated wetlands and isolated classified surface waters
24 resulting from activities ~~which~~ that receive NPDES Permits or State Non-Discharge Permits;
- 25 ~~(4)~~ ~~(5)~~ (6) Discharges for water dependent structures as defined in 15A NCAC 02B .0202(67); .0202;
26 and
- 27 ~~(5)~~ ~~(6)~~ (7) A discharge resulting from an activity if:
 - 28 (A) The discharge resulting from the activity requires a 401 Certification and 404 Permit and
29 these were issued prior to ~~the effective date of this Rule;~~ October 22, 2001;
 - 30 (B) The project requires a ~~state~~ State permit, such as landfills, NPDES discharges of treated
31 effluent, Non-Discharge Permits, land application of residuals and road construction
32 activities, that has begun construction or are under contract to begin construction and have
33 received all required ~~state~~ State permits prior to ~~the effective date of this Rule;~~ October 22,
34 2001;
 - 35 (C) The project is being conducted by the N.C. Department of Transportation and they have
36 completed 30% of the hydraulic design for the project prior to ~~the effective date of this~~
37 Rule; October 22, 2001; or

(D) The applicant has been authorized for a discharge into isolated wetlands or isolated waters for a project ~~which that~~ has established a Vested Right under North Carolina law prior to the effective date of this Rule: October 22, 2001.

(f) The terms used in this Section shall be as defined in ~~G.S. 143-212;~~ G.S. 143-212 and G.S. 143-213 and as follows:

(1) "Class SWL wetland" means the term as defined at 15A NCAC 02B .0101.

(2) "Class UWL wetland" means the term as defined at 15A NCAC 02B .0101.

(3) "Cumulative impact" means environmental impacts resulting from incremental effects of an activity when added to other past, present, and reasonably foreseeable future activities, regardless of what entities undertake such other actions.

(4) "Director" means the Director of the Division.

(5) "Division" means the Division of Water Resources of the North Carolina Department of Environmental Quality.

(6) "Secondary impact" means indirect effects, which are caused by the action and are later in time or farther removed in distance, but are still reasonably foreseeable to the applicant or the Division.

(7) "Wetland" means the term as defined in 15A NCAC 02B .0202.

~~[(1) "Director" means the Director of the Division.~~

~~(2) "Division" means the Division of Water Resources of the North Carolina Department of Environmental Quality.~~

~~(3) "Person" means as defined in G.S. 143-212(4).~~

~~(4) "Wetland" means as defined in 15A NCAC 02B .0202.~~

~~(5) "Cumulative impact" means environmental impacts resulting from incremental effects of an activity when added to other past, present, and reasonable foreseeable future activities regardless of what entities undertake such other actions.~~

~~(6) "Class SWL wetland" means as defined at 15A NCAC 02B .0231.~~

~~(7) "Class UWL wetland" means as defined at 15A NCAC 02B .0231.~~

~~(8) "Secondary impact" means actions, or actions directly linked to an activity, that may affect classified surface waters or wetlands that would not occur but for the proposed activity.~~

History Note: Authority G.S. 143-215.1(a)(6); 143-215.1(b)(3); 143-215.3(a)(1); 143-215.3(c); ~~[S.L. 2014, c. 120; S.L. 2015, c. 286]~~ S.L. 2014-120, Section 54; S.L. 2015-286, Section 4.18;

Codifier determined that findings did not meet criteria for temporary rule on September 26, 2001 and October 12, 2001;

Temporary Adoption Eff. October 22, 2001;

Eff. April 1, 2003.

Readopted Eff. June 1, 2019.

1 15A NCAC 02H .1302 is readopted as published in 32:21 NCR 1943 as follows:

2
3 **15A NCAC 02H .1302 APPLICATION PROCESS FILING APPLICATIONS**

4 (a) Application for a Permit. ~~[APPLICATION FOR A PERMIT.]~~ Any person, as defined in G.S. 143, Article 21,
5 person ~~desiring~~needing issuance of ~~a State Individual Permit~~ an individual permit or Certificate of Coverage under a
6 ~~General Permit~~general permit for discharges resulting from activities ~~which~~that affect isolated classified surface
7 waters or isolated wetlands shall file with the ~~Director of the North Carolina Division of Water Quality~~ [Resources]
8 ~~(Director); Director,~~ at 1617 Mail Service Center, Raleigh, North Carolina, 27699-1617, or 512 N Salisbury Street,
9 Raleigh, NC 27604, an original and ~~six~~ three ~~copies~~copy of an application for a ~~Permit~~. Permit or submit one
10 complete copy of an application ~~[electronically.]~~ electronically via the following website:
11 https://edocs.deq.nc.gov/Forms/DWR_Wetlands_Online_Submittal_Page. The application ~~[must]~~shall be made on a
12 form provided or approved by the ~~[Division and]~~ Division, available electronically via the following website:
13 [https://deq.nc.gov/about/divisions/water-resources/water-quality-permitting/401-buffer-permitting-](https://deq.nc.gov/about/divisions/water-resources/water-quality-permitting/401-buffer-permitting-branch/application)
14 [branch/application](https://deq.nc.gov/about/divisions/water-resources/water-quality-permitting/401-buffer-permitting-branch/application). The application shall specify: include at a minimum the following:

- 15 (1) the date of application;
- 16 (2) the name, address, and phone number of the property owner; ~~[owner or owners;]~~ applicant. If the
17 applicant is not the property owner(s), name, [address] address, and phone number of the property
18 owners(s);
- 19 (3) if the applicant is a corporation, the state in which it is domesticated, the name and address of the
20 North Carolina process agency, and the ~~name~~ name, [address] address, and phone number of the
21 individual who ~~shall be primarily responsible for the conduct of the discharge resulting from an~~
22 ~~activity for which a Permit is sought;~~ is the authorized agent of the corporation and responsible for
23 the activity for which certification is sought. The corporation must be registered with the NC
24 Secretary of State's Office to conduct business in NC;
- 25 (4) the nature of the ~~discharge~~discharge, including cumulative impacts to isolated and non-isolated
26 wetlands and isolated and non-isolated waters that cause or will cause a violation of downstream
27 water quality standards resulting from an activity to be conducted by the applicant;
- 28 (5) whether the discharge has occurred or is proposed;
- 29 (6) the location and extent of the discharge, stating the ~~applicable municipality, municipality, if [any],~~
30 applicable, the county; the drainage basin; the name of the nearest named surface waters; and the
31 location of the point of discharge with regard to the nearest named surface waters;
- 32 (7) an application fee as required by G.S. 143-215.3D, ~~143-215.3D(e) with a check or money order to~~
33 ~~be made payable to the North Carolina Division of Water Quality. [143-215.3D(e).]~~ If payment of
34 a fee is required for a 401 Water Quality Certification, then that fee shall suffice for this Rule; ~~and~~
35 (8) ~~the information requested in Subparagraphs (1) through (7) of this Rule must be provided on or~~
36 ~~attached to the most current version of the North Carolina Division of Water Quality Isolated~~
37 ~~Wetlands Notification application form.~~

1 (b)(8)(7) Maps. [MAPS.] There shall be attached to the application form a map(s) with scales and north
2 arrows that is legible to the reviewer and of sufficient detail to accurately delineate the boundaries
3 of the lands owned or proposed to be utilized by the applicant in carrying out the discharge; the
4 location, dimensions, and type of any structures that affect isolated wetlands or waters
5 for use in connection with the discharge; and the location and extent of the isolated waters
6 (preferably surveyed or located with Global Positioning System equipment) including wetlands
7 within the boundaries of said lands, lands; and

8 (9)(8) Applications shall be signed by the owner with title to the property, a person who has been
9 authorized by the owner to apply for certification, or an entity with the power of eminent domain, a
10 signature by the applicant or an agent authorized by the applicant. If an agent is signing for the
11 applicant, an agent authorization letter must be provided. In signing the application, the applicant
12 certifies that all information contained therein or in support thereof is true and correct to the best of
13 their knowledge. [For corporations, partnerships, proprietors, or municipal, state or other public
14 entity, the application shall be signed as follows:

15 (A) — in the case of corporations, by a principal executive officer of at least the level of vice-
16 president, or their authorized representative;

17 (B) — in the case of a partnership or limited partnership, by a general partner;

18 (C) — in the case of a sole proprietorship, by the proprietor; and

19 (D) — in the case of a municipal, state or other public entity, by either a principal executive
20 officer, ranking official or other duly authorized employee.]

21 (e)(b) Request For Additional Information. [POWER TO REQUEST ADDITIONAL INFORMATION.] The Director
22 Division may request, request in writing, writing within 60 days of receipt of an application and the applicant shall
23 furnish, any additional information that may be found necessary to clarify the information provided in the application
24 under Paragraph (a) of this Rule, or to complete the evaluation in Rule .1305 of this Section for the proper
25 consideration of the application. Incomplete applications shall be returned to the applicant. [The 60 day processing
26 period required in Rule .1304 of this Section begins on the date the additional information is received by the Division.]

27 (d)(c) Omissions From Applications. [OMISSIONS FROM APPLICATIONS.] If the applicant believes that it is not
28 feasible or is unnecessary to furnish any portion of the information required by Paragraphs (a), (b) and (e)(a) and (b)
29 of this Rule, then the applicant shall submit a detailed statement explaining an explanation detailing the reasons for
30 omission of any such the information. The final decision regarding the completeness of the application shall be made
31 by the Division of Water Quality based on upon the information required in Paragraphs (a), (a) and (b) and (e), (e)
32 of this Rule, and any explanation provided by the applicant regarding omitted information provided in this Paragraph.
33 Paragraph (e).

34 (e)(d) Investigations. [INVESTIGATIONS.] The Pursuant to G.S. 143-215.3(a)(2), the staff of the Department of
35 Environment and Natural Resources (Department) Division shall conduct such investigation as the Director Division
36 deems necessary and necessary to clarify the information provided in the application under Paragraph (a) of this Rule
37 or to complete the evaluation in Rule .1305 of this Section. [necessary.] The applicant shall cooperate in the

1 ~~investigation to the extent that it shall furnish necessary information,~~ allow the staff safe access to the lands and
2 facilities of the applicant and lend such assistance as shall be ~~reasonable.~~ [reasonable, reasonable for those places,
3 upon the presentation of credentials.

4 ~~(f) Who Must Sign Applications. The application shall be considered a "valid application" only if the application~~
5 ~~bears the signature of a responsible officer of the company, municipal official, partner or owner. This signature~~
6 ~~certifies that the applicant has title to the property, has been authorized by the owner to apply for a Permit or is a~~
7 ~~public entity and has the power of eminent domain. Said official in signing the application shall also certify that all~~
8 ~~information contained therein or in support thereof is true and correct to the best of his knowledge.~~

9 ~~(g) Applications for discharges to Isolated Wetlands and Waters must be made on forms provided or approved by the~~
10 ~~Division of Water Quality.~~

11 ~~(h)(f)(c) [OTHER APPLICATIONS.]~~ Other applications for permitting or certification by a Divisiondivision of
12 the Department of Environment and Natural Resources shall suffice for application for this Permit as long as the
13 application contains all of the information specified in ~~Paragraphs (a) and (b) of~~ this Rule and it is clearly specified
14 specifically requested to the Division by the applicant that authorization is sought under this Rule. This application
15 must be submitted by the applicant to the Division ~~of Water Quality~~ for review under this Permit.

16
17 *History Note: Authority G.S. 143-214.1; 143-215.1(a)(6); 143-215.3(a)(1);*
18 *Codifier determined that findings did not meet criteria for temporary rule on September 26, 2001*
19 *and October 12, 2001;*
20 *Temporary Adoption Eff. October 22, 2001;*
21 *Eff. April 1, 2003.*
22 *Readopted Eff. May 1, 2019.*
23

1 15A NCAC 02H .1303 is readopted as published in 32:21 NCR 1943 as follows:

2
3 **15A NCAC 02H .1303 PUBLIC NOTICE AND PUBLIC HEARING**

4 (a) ~~Notice of Publication.~~ **[PUBLIC NOTICE FOR GENERAL PERMITS.]** The Division shall provide public notice
5 for proposed ~~[General Permits.]~~ **general permits.** This notice shall be sent to all individuals on the **mailing list** ~~[Mailing~~
6 ~~List]~~ described in Paragraph (g) of this Rule and **posted** on the Division's **website:**
7 **[https://deq.nc.gov/about/divisions/water-resources/water-quality-permitting/401-buffer-permitting-branch/public-](https://deq.nc.gov/about/divisions/water-resources/water-quality-permitting/401-buffer-permitting-branch/public-notices)**
8 **[notices.](https://deq.nc.gov/about/divisions/water-resources/water-quality-permitting/401-buffer-permitting-branch/public-notices)** **[website.]** Notice shall be made at least 30 calendar days prior to ~~[proposed final action]~~ **issuance of the**
9 **general permit** by the Division. Public notice shall not be required for those activities covered by Certificates of
10 Coverage under a ~~[General Permit.]~~ **general permit.**

11 (b) ~~[PUBLIC NOTICE FOR INDIVIDUAL PERMITS.]~~ Within 30 days of receipt of a complete application, the
12 Director shall decide whether to issue a public notice for an Individual Permit for a project or whether the project is
13 eligible for a General Permit:

14 (1) ~~Individual Permit.~~ Notice of the Director's intent to issue or deny a **each pending complete**
15 application for an **Individual Permit** ~~individual permit~~ shall be ~~published one time in a newspaper~~
16 ~~having general circulation in the county in which the discharge will occur.~~ **sent** to all individuals
17 on the **mailing list** ~~[Mailing List]~~ described in Paragraph (g) of this Rule and shall be posted on the
18 Division's website. ~~Publication Notice~~ shall be made at least 30 calendar days prior to proposed final
19 action by the ~~Director~~ **Division** on the application. ~~The applicant shall pay to the Department the~~
20 ~~costs of advertising the public notice for an Individual Permit. The Permit shall not be issued until~~
21 ~~such costs have been paid as allowed under G.S. 143-215.3(a)(1e). A copy of this notice shall be~~
22 ~~sent to a subset of individuals on the Wetland Permit Mailing List described in Paragraph (d) of this~~
23 ~~Rule who request to be notified of these Permits.~~

24 (2) ~~General Permit.~~ The Division shall provide public notice for proposed General Permits. This notice
25 shall be sent to all individuals on the Wetland Permit Mailing List described in Paragraph (d) of this
26 Rule and in selected newspapers with general circulation in the geographic areas affected by the
27 proposed General Permit. Publication shall be made at least 30 days prior to proposed final action
28 by the Director.

29 (b)(c) ~~Contents of Notice.~~ **[CONTENTS OF NOTICE FOR INDIVIDUAL PERMITS.]** The notice shall set ~~forth~~ **forth:**

- 30 (1) the name and address of the applicant;
31 (2) the action requested in the application;
32 (3) the nature and location of the discharge; and
33 (4) the proposed date of final action to be taken by the ~~Director~~ **Division** on the application.

34 The notice shall also state where additional information is **available online and** on file with the **Division.** ~~Department~~
35 **[Division]** and may be inspected at any time during normal working hours. Copies of such information **Information** on
36 file shall be made available upon request **between 8:00 am and 5:00 pm, Monday through Friday, excluding State**

holidays, and copies shall be made available upon payment of the cost thereof to the Department. ~~Division.~~ Division pursuant to G.S. 132-6.2.

(d) ~~JOINT NOTICE.~~ This public notice requirement for an ~~Individual Permit~~ individual permit as described in Paragraph (b) of this Rule may be satisfied by a joint notice with the Division of Coastal Management (15A NCAC 07J .0206) or .0206, the U.S. Army Corps of Engineers according to their established ~~procedures~~ procedures, or by a joint notice by the Division for an ~~Individual Permit~~ individual permit in accordance with Rule .0503 of this Subchapter.

(e) ~~REQUEST FOR A PUBLIC HEARING.~~ Any person who desires a public hearing on an ~~Individual or a General Permit~~ general permit or an ~~Individual Permit~~ individual permit application shall so request in writing to the ~~Director~~ to the Division at the address listed in Rule .1302 of this Section. ~~Division.~~ The request must be received by the Division within 30 calendar days following the publication of the notice of intent. Public Notice.

(e)(f) Notice of Hearing. ~~NOTICE OF HEARING.~~ Within 30 days of receipt of a request for a public hearing, the Director shall decide whether a public hearing is necessary unless the applicant agrees in writing to an extension. If the Director determines that there is significant public interest in holding a hearing, based upon such factors as the reasons why a hearing was requested, the nature of the project, and the proposed impacts to waters of the State, the ~~Director~~ Division shall publish notice of the hearing ~~notify the applicant in writing that there will be a hearing.~~ ~~by registered or certified mail, return receipt requested.~~ The Division shall also ~~shall~~ one time in a newspaper having general circulation in the county in which the discharge will provide notice of the hearing to all individuals on the mailing list ~~Mailing List~~ as described in Paragraph (g) of this Rule and shall post the notice on the Division's website. occur. In any county in which there is more than one newspaper having general circulation in that county, the Director shall cause a copy of such notice to be published in as many newspapers having general circulation in the county as the Director in his discretion determines may be necessary to assure that such notice is generally available in the county. The notice shall be published at least 30 calendar days prior to the date of the hearing. The notice shall state the time, ~~place~~ place, and ~~nature~~ format of the hearing. The notice can be combined with the notice required under Paragraph (c) of this Rule. ~~Such~~ The hearing shall be held within 90 calendar days following date of notification to the applicant. The record for each hearing held under this Paragraph shall remain open for a period of 30 calendar ~~days.~~ days after the public hearing to receive public comments.

(d)(g) Wetland Permit Mailing List. ~~MAILING LIST.~~ Any person may request that he or she be ~~mailed~~ emailed copies of all public notices required by this Rule. The ~~Director~~ Division shall add the ~~name~~ email address of any such person to a Wetland Permit Mailing List ~~an email list~~ ~~serv~~ ~~Email Listserv~~ and shall mail copies of notices to all persons on the list, and follow procedures set forth in Rule .0503(g) of this Subchapter.

(e)(h) ~~OTHER PUBLIC HEARINGS.~~ If other public hearings are being held by Divisions of the Department of Environment and Natural Resources, then any Any public hearing held pursuant to ~~for~~ this Rule may be coordinated with those hearings; other public hearings held by the Department ~~of Environmental Quality~~ or the U.S. Army Corps of Engineers.

History Note: Authority G.S. 143-215.1(a)(6); 143-215.3(a)(1); 143-215.3(a)(1e); 143-215.3(c);

1 *Codifier determined that findings did not meet criteria for temporary rule on September 26, 2001*
2 *and October 12, 2001;*
3 *Temporary Adoption Eff. October 22, 2001;*
4 *Eff. April 1, 2003.*
5 *Readopted Eff. May 1, 2019.*
6

1 15A NCAC 02H .1304 is readopted as published in 32:21 NCR 1943 as follows:

2
3 **15A NCAC 02H .1304 DECISION ON APPLICATION FOR PERMITS OR CERTIFICATES OF**
4 **COVERAGE**

5 (a) ~~[FINAL ACTION ON APPLICATION.]~~ Not later than 60 days following the publication of the notice of intent
6 or decision to process the project under a General Permit, or within 90 days following a public hearing, the The
7 Director shall ~~issue, issue with modifications, issue~~ the permit or Certificate of Coverage, or deny the application,
8 ~~provide notice of hearing pursuant to Rule .1303 of this Section, or request additional information~~ within 60 calendar
9 days after receipt of the ~~application, complete Permit application or complete application for Certificate of Coverage,~~
10 ~~[Coverage electronically or at 1617 Mail Service Center, Raleigh, North Carolina, 27699-1617.]~~ When the Director
11 requests additional information, the 60-day review period restarts upon receipt of all of the additional information
12 requested by the Director. Failure to ~~take action~~ issue the permit or Certificate of Coverage, deny the application,
13 ~~provide notice of hearing, or request additional information~~ within 60 or 90 days, respectively, calendar days shall
14 result in the waiver of the permit requirement by the ~~Director, Director, unless:~~

15 (1) The applicant agrees, in writing, to a longer period;

16 (2) ~~[Final]~~ The final decision is to be made pursuant to a public hearing;

17 ~~[(3) — The applicant fails to furnish information necessary to the Director's decision;]~~

18 ~~[(4)]~~(3) The applicant refuses the staff access to its records or premises for the purpose of gathering
19 information necessary to the Director's decision; or

20 ~~[(5)]~~(4) Information necessary to the Director's decision ~~[is]~~ is unavailable.

21 (b) ~~[FINAL ACTION AFTER HEARING.]~~ The Director shall issue the permit or Certificate of Coverage, ~~[or]~~ deny
22 the ~~[complete Permit application or complete application for Certificate of Coverage]~~ application, or request additional
23 information within 60 calendar days following the close of the record for the public hearing. Failure to take action
24 within 60 calendar days shall result in the waiver of the permit requirement by the Director, unless Subparagraphs
25 (a)(1), (3), or (4) ~~[or (5)]~~ of this Rule apply.

26 (b)(c) ~~Conditions of Permit.~~ ~~[CONDITIONS OF PERMIT.]~~ Any Permit~~permit~~ or Certificate of Coverage issued
27 pursuant to this Section may contain such conditions as the Director shall deem necessary to ~~insure~~ ensure compliance
28 with this ~~Section~~Section, including written post-discharge notification to the Division.

29 (e)(d) ~~[MODIFICATION OR REVOCATION.]~~ Modification or Revocation of ~~Permit~~permit or Certificate of
30 Coverage:

31 (1) Any ~~Permit~~permit or Certificate of Coverage issued pursuant to this Section may be subject to
32 revocation or modification ~~by the Director~~~~[Division]~~ for violation of conditions of the ~~Permit~~permit
33 or Certificate of Coverage; and

34 (2) Any ~~Permit~~permit or Certificate of Coverage issued pursuant to this Section may be subject to
35 revocation or modification ~~by the Director~~~~[Division]~~ upon a determination that information
36 contained in the application or presented in support thereof is incorrect or if the Director finds that
37 the discharge has violated or may violate a downstream water quality standard.

1 ~~(d)(c)~~ Notification of Unapproved Application. ~~[NOTIFICATION OF FINAL ACTION.]~~ The Division shall notify
2 the applicant of the final action to issue or deny the application. In the event that the Director denies the application
3 for a Permit or Certificate of Coverage or for any reason is unable to approve the application, application, the Director
4 shall so notify the applicant by certified or registered mail, return receipt requested, specifying in such notification
5 specify the reasons for the denial, denial or inability to be approved. ~~[approve.]~~

6 ~~(f)[TERM OF PERMIT.]~~ Individual ~~[Permits]~~ permits and Certificates of Coverage for ~~[General Permits]~~ general
7 permits shall be issued for a period of five years, after which time the Permit shall be void, unless the discharge is
8 complete or an extension is granted pursuant to Paragraph (g) of this Rule. The permit shall become enforceable when
9 issued.

10 ~~(e)(g)[RENEWALS AND EXTENSIONS.]~~ Permit or Certificate of Coverage renewals shall require a new complete
11 application, application and payment of a fee to the Division of Water Quality ~~[Resources.]~~ unless the The applicant
12 may request requests and is granted an extension in writing which shall be granted that the Division grant an extension
13 before the permit expires. An extension may be granted by the Division based on the new complete application for a
14 time period not to exceed of one additional year, year, provided that the construction has commenced or is under contract
15 to commence, commence before the permit expires.

16 ~~(f)(h) Contested Case Hearing for Applicant. [CONTESTED CASE HEARING.]~~ An applicant whose Permit or
17 Certificate of Coverage is denied or granted subject to unacceptable conditions, ~~[conditions]~~ shall have the right to
18 seek a contested case hearing pursuant to the provisions of G.S. 143-215.1(e) ~~[143-215.1(e).]~~ by filing a petition under
19 G.S. 150B-23 within 30 calendar days after the Director notifies the applicant or permittee of its decision in writing.
20 ~~[150B-23.]~~ The issuance or denial is a final agency decision that is subject to administrative review pursuant to G.S.
21 150B-23.

22
23 History Note: Authority G.S. 143-215.1(a)(6); 143-215.1(b); 143-215.3(a)(1); 143-215.3(c);
24 Codifier determined that findings did not meet criteria for temporary rule on September 26, 2001
25 and October 12, 2001;
26 Temporary Adoption Eff. October 22, 2001;
27 Eff. April 1, 2003.
28 Readopted Eff. May 1, 2019.
29

1 15A NCAC 02H .1306 is adopted as published in 32:21 NCR 1943 with changes as follows:

2
3 **15A NCAC 02H .1306** **SOIL SERIES**

4 For purposes of implementing the ~~Rules~~ rules in this Section, the Natural Resources Conservation Service of the U.S.
5 Department of Agriculture have categorized soil series that occur in North Carolina as follows:

6 (1) Soil series in the Mountain Region shall include the following: Alarka, Anakeesta, Arkaqua, Ashe,
7 Balsam, Bandana, Biltmore, Braddock, Bradson, Brasstown, Breakneck, Brevard, Brownwood,
8 Buladean, Burton, Cades, Calvin, Cashiers, Cataloochee, Cataska, Chandler, Cheoah, Chester,
9 Chestnut, Chestoa, Chiltoskie, Cleveland, Clifffield, Clifford, Clifton, Clingman, Codorus, Colvard,
10 Comus, Cowee, Craggey, Crossnore, Cruso, Cullasaja, Cullowhee, Dellwood, Dillard, Dillsboro,
11 Ditney, Edneytown, Edneyville, Ela, Ellijay, Elsinboro, Evard, Fannin, Farner, Fontaflora, French,
12 Greenlee, Guyot, Harmiller, Hatboro, Hayesville, Heintooga, Hemphill, Hiwassee, Horsetrough,
13 Hunt Dale, Iotla, Jeffrey, Junaluska, Kanuga, Keener, Kinkora, Lauada, Leatherwood, Longhope,
14 Lonon, Lostcove, Luftee, Mars Hill, Maymead, Micaville, Nantahala, Nikwasi, Northcove,
15 Nowhere, Oconaluftee, Ostin, Oteen, Peaks, Pigeonroost, Pineola, Pinnacle, Plott, Porters, Pullback,
16 Rabun, Reddies, Rosman, Saluda, Santeetlah, Saunook, Sauratown, Shinbone, Skyuka, Smokemont,
17 Snowbird, Soco, Spivey, Statler, Stecoah, Suches, Swannanoa, Sylco, Sylva, Tanasee, Tate,
18 Thunder, Thurmont, Toccoa, Toecane, Toxaway, Transylvania, Trimont, Tsali, Tuckasegee,
19 Tusquitee, Unaka, Unicoi, Unison, Walnut, Watauga, Wayah, Wesser, Whiteoak, Whiteside, and
20 Zillicoa.

21 (2) Soil series in the Piedmont Region shall include the following: Alamance, Altavista, Appling,
22 Appomattox, Armenia, Ashlar, Augusta, Ayersville, Badin, Banister, Bannertown, Belews Lake,
23 Bentley, Betheria, Bethlehem, Biscoe, Brickhaven, Buncombe, Callison, Carbondon, Cartecay,
24 Casville, Cecil, Chewacla, Cid, Claycreek, Cliffside, Clover, Colfax, Congaree, Coronaca,
25 Creedmoor, Cullen, Dan River, Danripple, Davidson, Davie, Delila, Devotion, Dorian, Durham,
26 Elbert, Enon, Enott, Exway, Fairview, Georgeville, Goldston, Granville, Green Level, Grover,
27 Gwinnett, Halifax, Hallison, Haw River, Helena, Herndon, Hibriten, Hiwassee, Hornsboro, Hulett,
28 Iredell, Jackland, Kinkora, Kirksey, Lackstown, Leaksville, Lignum, Lloyd, Louisa, Louisburg,
29 Madison, Mandale, Masada, Mattaponi, Mayodan, McQueen, Meadowfield, Mecklenburg, Merry
30 Oaks, Misenheimer, Mocksville, Monacan, Moncure, Montonia, Mooshaunee, Nanford, Nason,
31 Nathalie, Oak Level, Oakboro, Orange, Ostin, Pacolet, Pactolus, Peakin, Peawick, Penhook,
32 Pfafftown, Picture, Pilot Mountain, Pinkston, Pinoka, Pittsboro, Poindexter, Polkton, Poplar Forest,
33 Rasalo, Rhodhiss, Rion, Riverview, Ronda, Rowan, Saw, Secrest, Sedgefield, Siloam, Skyuka,
34 Spartanburg, Spray, Spriggs, Starr, Stoneville, Stott Knob, Tarrus, Tatum, Tillery, Toast, Toccoa,
35 Tomlin, Totier, Turbeville, Tussahaw, Uwharrie, Vance, Wadesboro, Wake, Warne, Wate, Wateree,
36 Wedowee, Wehadkee, Westfield, White Store, Wickham, Wilkes, Winnsboro, Woolwine,
37 Worsham, Wynott, Yadkin, and Zion.

(3) Soil series in the Coastal Region shall include the following: Acredale, Ailey, Alaga, Alpin, Arapahoe, Argent, Augusta, Autryville, Aycock, Backbay, Ballahack, Barclay, Bayboro, Baymeade, Belhaven, Bertie, Betheria, Bibb, Bladen, Blaney, Blanton, Bohicket, Bojac, Bolling, Bonneau, Bragg, Brookman, Butters, Byars, Cainhoy, Candor, Cape Fear, Cape Lookout, Caroline, Carteret, Centenary, Chapanoke, Charleston, Chastain, Chenneby, Chesapeake, Chipley, Chowan, Conaby, Conetoe, Corolla, Cowarts, Coxville, Craven, Croatan, Currituck, Dare, Deloss, Delway, Dogue, Dorovan, Dothan, Dragston, Duckston, Dunbar, Duplin, Echaw, Emporia, Engelhard, Exum, Faceville, Foreston, Fork, Fortescue, Fripp, Fuquay, Gertie, Gilead, Goldsboro, Grantham, Grifton, Gritney, Gullrock, Hobonny, Hobucken, Hyde, Hydeland, Icaria, Invershiel, Johns, Johnston, Kalmia, Kenansville, Kinston, Kureb, Lakeland, Leaf, Lenoir, Leon, Liddell, Lillington, Longshoal, Lucy, Lumbee, Lynchburg, Lynn Haven, Mandarin, Mantachie, Marlboro, Marvyn, Masontown, Maxton, Mayodan, McColl, Meggett, Mooshaunee, Muckalee, Munden, Murville, Myatt, Nahunta, Nakina, Nankin, Nawney, Neeses, Newhan, Newholland, Nimmo, Nixonton, Noboco, Norfolk, Ocilla, Onslow, Orangeburg, Osier, Ousley, Pactolus, Pamlico, Pantego, Pasquotank, Paxville, Peakin, Pelion, Pender, Perquimans, Pettigrew, Plummer, Pocalla, Polawana, Ponzer, Portsmouth, Pungo, Rains, Rimini, Roanoke, Roper, Rumford, Rutlege, Scuppernong, Seabrook, Seagate, Shellbluff, Stallings, State, Stockade, Suffolk, Tarboro, Tetotum, Thursa, Toisnot, Tomahawk, Tomotley, Torhunta, Troup, Uchee, Valhalla, Varina, Vacluse, Wagram, Wahee, Wakulla, Wando, Wasda, Weeksville, Wilbanks, Winton, Woodington, Wrightsboro, Wysocking, Yaupon, Yeopim, and Yonges.

History Note: Authority G.S. 143-215.1(a)(6); 143-215.3(a)(1); 143-215.3(c); S.L. 2014- 120, Section 54; S.L. 2015-286, Section 4.18; Eff. June 1, 2019.



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 18, 2019

Jennifer Everett
Environmental Management Commission
Sent via email only to: Jennifer.Everett@ncdenr.gov

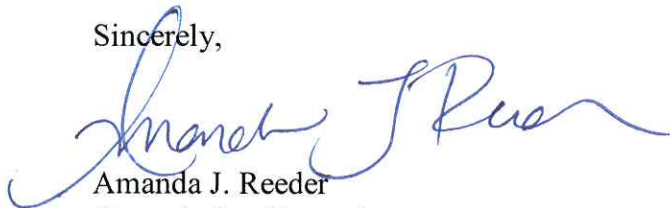
Re: Extension of the Period of Review for Rules 15A NCAC 02B .0601 - .0735; 02H .0501 - .0507 and .1301-.1306

Dear Ms. Everett:

At its meeting this morning, the Rules Review Commission extended the period of review for the above-captioned rules in accordance with G.S. 150B-21.10. They did so in response to a request from the agency to extend the period in order to allow the agency to address the Requests for Technical Changes and submit the rewritten rules at a later meeting.

Please respond to this letter pursuant to G.S. 150B-21.13. If you have any questions regarding the Commission's actions, please let me know.

Sincerely,



Amanda J. Reeder
Commission Counsel

cc: Karen Higgins, NC DEQ

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

REQUEST FOR TECHNICAL CHANGE

AGENCY: Emergency Management Commission

RULE CITATION: 15A NCAC 02B .0601

DEADLINE FOR RECEIPT: Friday, April 12, 2019

PLEASE NOTE: *This request may extend to several pages. Please be sure you have reached the end of the document.*

The Rules Review Commission staff has completed its review of this Rule prior to the Commission's next meeting. The Commission has not yet reviewed this Rule and therefore there has not been a determination as to whether the Rule will be approved. You may call our office to inquire concerning the staff recommendation.

In reviewing this Rule, the staff recommends the following technical changes be made:

Consider making this a two-paragraph Rule, with (a) being lines 5-11 and (b) being the rest.

On line 7, I take it "maintenance and recovery" are terms known to your regulated public?

On line 8, I suggest deleting "thereby"

On line 9-10, I take it your regulated public is familiar with Index Numbers?

On line 10, is this all tributaries to Duck Creek, or all tributaries to the Goose Creek Watershed? If it's the latter, I suggest you insert a comma after "(Index # 13-17-18-3)"

On lines 12 and 16, I am simply asking – you've already said "site-specific management strategy on line 11. Do you need to repeat it all three places?

On lines 14-15, what are "critical measures"? Does your regulated public know?

On line 15, what is "enable recovery"?

On line 15, do you need to repeat "federally endangered" given the language on line 13?

In the History Note, isn't G.S. 143-215.3(c) not also applicable?

And why are you citing to G.S. 143-215.8A? Is this planning as contemplated by that statute?

On line 25, please simply change the period after "2009" to a semicolon.

Please retype the rule accordingly and resubmit it to our office at 1711 New Hope Church Road, Raleigh, North Carolina 27609.

Amanda J. Reeder
Commission Counsel
Date submitted to agency: April 2, 2019

1 15A NCAC 02B .0601 is readopted as published in 32:21 NCR 1943 as follows:

2
3 **15A NCAC 02B .0601 SITE SPECIFIC WATER QUALITY MANAGEMENT PLAN FOR THE GOOSE**
4 **CREEK WATERSHED (YADKIN PEE-DEE RIVER BASIN): PURPOSE**

5 The Goose Creek watershed in the Yadkin Pee-Dee River Basin provides habitat for an aquatic animal species that is
6 listed as federally endangered by the U.S. Fish and Wildlife Service under the provisions of the Endangered Species
7 Act, 16 U.S.C. 1531-1544. Maintenance and recovery of the water quality conditions required to sustain and recover
8 the federally-listed endangered species thereby protects the biological integrity of the waters. The Goose Creek
9 watershed, which includes Goose Creek (Index # 13-17-18), Stevens Creek (Index # 13-17-18-1), Paddle Branch
10 (Index # 13-17-18-2), Duck Creek (Index # 13-17-18-3) and all tributaries, shall be protected by the site-specific
11 management strategy described in Rules .0601 through ~~.0609~~ .0608 of this Section.

12 The purpose of the actions required by this site-specific management strategy is for the maintenance and recovery of
13 the water quality conditions required to sustain and recover the federally endangered Carolina heelsplitter (*Lasmigona*
14 *decorata*) species. Management of the streamside zones to stabilize streambanks and prevent sedimentation are critical
15 measures to restore water quality to sustain and enable recovery of the federally endangered Carolina heelsplitter.
16 Site-specific management strategies shall be implemented to:

- 17 (1) control stormwater for projects disturbing one acre or more of land as described in Rule ~~.0602~~ .0602
18 of this Section;
19 (2) control wastewater discharges as described in Rule ~~.0603~~ .0603 of this Section;
20 (3) control toxicity to streams supporting the Carolina heelsplitter as described in Rule ~~.0604~~ .0604 of
21 this Section; and
22 (4) maintain riparian buffers as described in Rules .0605 through ~~.0609~~ .0608 of this Section.

23
24 *History Note: Authority G.S. 143-214.1; 143-215.3(a)(1); 143-215.8A;*
25 *Eff. January 1, 2009.*
26 *Readopted Eff. May 1, 2019.*

REQUEST FOR TECHNICAL CHANGE

AGENCY: Emergency Management Commission

RULE CITATION: 15A NCAC 02B .0602

DEADLINE FOR RECEIPT: Friday, April 12, 2019

The Rules Review Commission staff has completed its review of this Rule prior to the Commission's next meeting. The Commission has not yet reviewed this Rule and therefore there has not been a determination as to whether the Rule will be approved. You may call our office to inquire concerning the staff recommendation.

In reviewing this Rule, the staff recommends the following technical changes be made:

In (a), line 6, I take it "new development" is known to your regulated public?

On lines 6-7, what do you mean by "will result in the addition of"? Could you not say "add"?

On line 7, what is "control and treat"? Does your regulated public know?

On line 8, I see that "one year, 24-hour storm" is used in statute, so I am guessing your regulated public knows what that means?

On line 11, do you mean "development" and "redevelopment" as defined in G.S. 143-215.7(a1)?

In (c), line 24, please capitalize "State" if you mean NC. Please note the same change on line 30, 33, and Page 2, line 10.

In (c)(1), line 27, does your regulated public know what "USGS 1:24,000 topographical map(s) or other finer scale map(s)" means?

In (c)(2), line 29, should this say, "legal authority, and financial and other resources..."?

In (c)(3), who determines what is "necessary" here – the Commission pursuant to G.S. 143-215.5?

In (c)(4), line 35, consider inserting a comma after "actions"

In (d), what specific statute are you relying upon for this timeframe?

And I take it the request for delegation will contain what is in Paragraph (c)? If so, should you use the term "delegation" in Paragraph (c)?

In (e), what specific statutory authority are you relying upon to rescind the delegation? I thought it was G.S. 143-214.5, but I'm not sure that statute applies here.

On line 6, you say both "inadequacies" and "deficiencies" Are they the same thing? If so, I suggest using the same term for both.

Amanda J. Reeder
Commission Counsel
Date submitted to agency: April 2, 2019

In (f), line 9, why not delete "Limits of delegated local authority are as follows:" and just start the sentence "The Commission shall have exclusive authority to implement the State's stormwater protection...."

In (f)(4), what is a "local unit of government"?

In (g), line 15, I suggest you delete "Recordkeeping requirements are as follows:"

In the History Note, please put the citations in numerical order.

Also in the History Note, do you need to retain the citation to the Session Law?

Please retype the rule accordingly and resubmit it to our office at 1711 New Hope Church Road, Raleigh, North Carolina 27609.

Amanda J. Reeder
Commission Counsel
Date submitted to agency: April 2, 2019

1 15A NCAC 02B .0602 is readopted with changes as published in 32:21 NCR 1943 as follows:

2
3 **15A NCAC 02B .0602 SITE SPECIFIC WATER QUALITY MANAGEMENT PLAN FOR THE GOOSE**
4 **CREEK WATERSHED (YADKIN PEE-DEE RIVER BASIN): STORMWATER**
5 **CONTROL REQUIREMENTS**

6 (a) Any new development activity that disturbs one acre or more of land within the Goose Creek watershed and will
7 result in addition of impervious surface shall control and treat the difference in the stormwater runoff from the
8 predevelopment and post-development conditions for the one-year, 24-hour storm, with ~~structural~~ stormwater
9 ~~controls,~~ control measures (SCMs), with the exception of NC Department of Transportation and NC Turnpike
10 ~~Authority~~ activities that shall be regulated in accordance with provisions of that agency's National Pollutant Discharge
11 Elimination System NPDES (NPDES) Stormwater Permit. Development and redevelopment shall implement
12 stormwater management measures that promote infiltration of flows and groundwater recharge for the purpose of
13 maintaining stream base flow or the delegated local government shall maintain a written explanation when it is not
14 practical to use infiltration methods.

15 (b) ~~Structural stormwater controls~~ SCMs shall ~~meet the following requirements:~~

- 16 (1) ~~Remove an 85 percent average annual amount of Total Suspended Solids;~~
17 (2) ~~Draw down the treatment volume no faster than 48 hours, but no slower than 120 hours, for detention~~
18 ~~ponds;~~
19 (3) ~~Discharge the storage volume at a rate equal or less than the pre-development discharge rate for the~~
20 ~~one year, 24 hour storm; and~~
21 (4) ~~Meet Design of Stormwater Management Measures set forth in 15A NCAC 02H .1008. meet the~~
22 relevant Minimum Design Criteria (MDC) set forth in 15A NCAC 02H .1050 through .1062.

23 (c) Local governments may submit a written request to the Commission for authority to implement and enforce the
24 state's stormwater protection requirements of G.S. 143-214.7 and S.L. 2006-246 within their jurisdiction. The written
25 request shall be accompanied by information that shows:

- 26 (1) The local government has land use jurisdiction for the riparian buffer demonstrated by delineating
27 the local land use jurisdictional boundary on USGS 1:24,000 topographical map(s) or other finer
28 scale map(s);
29 (2) The local government has the administrative organization, staff, legal authority, financial and other
30 resources necessary to implement and enforce the state's stormwater requirements based on its size
31 and projected amount of development;
32 (3) The local government has adopted ordinances, resolutions, or regulations necessary to establish and
33 maintain the state's stormwater requirements; and
34 (4) The local government has provided a plan to address violations with civil or criminal remedies and
35 actions as well as remedies that shall restore buffer functions on violation sites and provide a
36 deterrent against the occurrence of future violations.

1 (d) Within 90 days after the Commission has received the request for delegation, the Commission shall notify the
2 local government based on standards as set out in Paragraph (c) of this Rule whether it has been approved, approved
3 with modifications, or denied.

4 (e) The Commission, upon determination that a delegated local authority is failing to implement or enforce the
5 requirements in keeping with a delegation, shall notify the delegated local authority in writing of the local program's
6 inadequacies. If the delegated local authority has not corrected the deficiencies within 90 days of receipt of the written
7 notification, then the Commission shall rescind the delegation of authority to the local government and shall implement
8 and enforce the state's stormwater requirements.

9 (f) Limits of delegated local authority are as follows: The Commission shall have jurisdiction to the exclusion of local
10 governments to implement the state's stormwater protection requirements for the following types of activities:

- 11 (1) Activities undertaken by the State;
- 12 (2) Activities undertaken by the United States;
- 13 (3) Activities undertaken by multiple jurisdictions; and
- 14 (4) Activities undertaken by local units of government.

15 (g) Recordkeeping requirements are as follows: Delegated local authorities shall maintain on-site records for a
16 minimum of five ~~years. Delegated local authorities must~~ years and shall furnish a copy of these records to the Director
17 within 30 days of receipt of a written request for ~~the records, them.~~ The Division of ~~Water Quality [Resources] Energy,~~
18 Mineral, and Land Resources shall ~~inspect~~ audit local stormwater programs to ensure that the programs are being
19 implemented and enforced in keeping with an approved delegation.

20
21 *History Note: Authority G.S. 143-214.1; 143-215.3(a)(1); 143-215.8A;143-214.7, S.L. 2006-246;*
22 *Eff. February 1, 2009.*
23 *Readopted Eff. May 1, 2019.*
24

1 15A NCAC 02B .0603 is readopted as published in 32:21 NCR 1943 as follows:

2
3 **15A NCAC 02B .0603 SITE SPECIFIC WATER QUALITY MANAGEMENT PLAN FOR THE GOOSE**
4 **CREEK WATERSHED (YADKIN PEE-DEE RIVER BASIN): WASTEWATER**
5 **CONTROL REQUIREMENTS**

6 No new National ~~Pollution~~ Pollutant Discharge Elimination System "NPDES" wastewater discharges or expansions
7 to existing discharges shall be permitted.

8
9 *History Note:* Authority G.S. 143-214.1; 143-215.3(a)(1); 143-215.8A;

10 *Eff. January 1, 2009.*

11 *Readopted Eff. May 1, 2019.*

REQUEST FOR TECHNICAL CHANGE

AGENCY: Emergency Management Commission

RULE CITATION: 15A NCAC 02B .0604

DEADLINE FOR RECEIPT: Friday, April 12, 2019

The Rules Review Commission staff has completed its review of this Rule prior to the Commission's next meeting. The Commission has not yet reviewed this Rule and therefore there has not been a determination as to whether the Rule will be approved. You may call our office to inquire concerning the staff recommendation.

In reviewing this Rule, the staff recommends the following technical changes be made:

On line 6, is the term "direct or indirect discharge" known to your regulated public?

On line 6, I suggest replacing "is" with "shall be"

On line 7, I am simply asking - do you need the scientific name here, when it's in Rule .0601?

On line 7, who will determine if the discharge may cause the toxicity to the Carolina heelsplitter?

On line 10, consider replacing "is" with "shall be"

Please retype the rule accordingly and resubmit it to our office at 1711 New Hope Church Road, Raleigh, North Carolina 27609.

Amanda J. Reeder
Commission Counsel
Date submitted to agency: April 2, 2019

1 15A NCAC 02B .0604 is readopted as published in 32:21 NCR 1943 as follows:

2
3 **15A NCAC 02B .0604 SITE SPECIFIC WATER QUALITY MANAGEMENT PLAN FOR THE GOOSE**
4 **CREEK WATERSHED (YADKIN PEE-DEE RIVER BASIN); CONTROL**
5 **TOXICITY INCLUDING AMMONIA**

6 No activity that results in direct or indirect discharge is allowed if it causes toxicity to the Carolina heelsplitter
7 (*Lasmigona decorata*) endangered mussel. For any direct or indirect discharge that may cause ammonia toxicity to
8 the Carolina heelsplitter freshwater mussel, action shall be taken to reduce ammonia (NH₃-N) inputs to achieve 0.5
9 milligrams per liter or less of total ammonia based on chronic toxicity defined in ~~15A NCAC 02B .0202~~ Rule .0202
10 of this Subchapter. This level of total ammonia is based on ambient water temperature equal to or greater than 25
11 degrees Celsius.

12
13 *History Note:* Authority G.S. 143-214.1; 143-215.3(a)(1); 143-215.8A;
14 Eff. February 1, 2009.
15 Readopted Eff. May 1, 2019.

REQUEST FOR TECHNICAL CHANGE

AGENCY: Emergency Management Commission

RULE CITATION: 15A NCAC 02B .0605

DEADLINE FOR RECEIPT: Friday, April 12, 2019

The Rules Review Commission staff has completed its review of this Rule prior to the Commission's next meeting. The Commission has not yet reviewed this Rule and therefore there has not been a determination as to whether the Rule will be approved. You may call our office to inquire concerning the staff recommendation.

In reviewing this Rule, the staff recommends the following technical changes be made:

On line 9, please confirm this is the correct agency name.

In the History Note, line 19, will this readoption become effective following the legislative review of Rule 02B .0607?

Please retype the rule accordingly and resubmit it to our office at 1711 New Hope Church Road, Raleigh, North Carolina 27609.

Amanda J. Reeder
Commission Counsel
Date submitted to agency: April 2, 2019

1 15A NCAC 02B .0605 is readopted as published in 32:21 NCR 1943 as follows:

2
3 **15A NCAC 02B .0605 SITE SPECIFIC WATER QUALITY MANAGEMENT PLAN FOR THE GOOSE**
4 **CREEK WATERSHED (YADKIN PEE-DEE RIVER BASIN); RIPARIAN**
5 **BUFFER WIDTHS**

6 In ~~this~~ the Goose Creek watershed, ~~undisturbed~~ riparian buffers are required within 200 feet of waterbodies within the
7 100-Year Floodplain and within 100 feet of waterbodies that are not within the 100-Year Floodplain. The 100-Year
8 Floodplain is the one percent Annual Chance Floodplain as delineated by the North Carolina Floodplain Mapping
9 Program in the Division of Emergency Management. The riparian buffer shall consist of a vegetated area that is
10 undisturbed except for uses provided in Rule .0607 of this Section. ~~Within the buffer areas that are regulated by this~~
11 ~~Rule, redevelopment is allowed for residential structures and redevelopment of non-residential structures is allowed~~
12 ~~provided that less than an additional half acre is disturbed during the redevelopment activity for non-residential~~
13 ~~structures. Redevelopment is defined in 15A NCAC 02H .1002(14). Exceptions to undisturbed forested riparian buffer~~
14 ~~requirements are set forth in Rule .0607 of this Section. Activities shall require stormwater control as required by Rule~~
15 ~~.0602 of this Section.~~

16
17 *History Note: Authority G.S. 143-214.1; 143-215.3(a)(1); 143-215.8A;*

18 *Eff. January 1, 2009.*

19 *Readopted Eff. [New Date].*

REQUEST FOR TECHNICAL CHANGE

AGENCY: Emergency Management Commission

RULE CITATION: 15A NCAC 02B .0606

DEADLINE FOR RECEIPT: Friday, April 12, 2019

The Rules Review Commission staff has completed its review of this Rule prior to the Commission's next meeting. The Commission has not yet reviewed this Rule and therefore there has not been a determination as to whether the Rule will be approved. You may call our office to inquire concerning the staff recommendation.

In reviewing this Rule, the staff recommends the following technical changes be made:

Throughout this Rule, do you need the all caps introductory statements, like "PURPOSE" in (a)?

In (b), line 14, and elsewhere you use this term, what is "Authority"? Is it the authority granting the certificates, which can be either the Division or the local government? Does your regulated public understand this? Is this the term as defined in Rule .0610?

In (b)(1)(A), line 16, please insert a comma after "address"

In (b)(1)(B), line 17, delete "specify" since you already said this on line 15.

In (b)(1)(C), line 19, what do you mean by "domesticated"?

On line 21, what is "primarily"?

In (b)(1)(F), line 25, define "sufficient" and "accurately"

In (b)(1)(G), line 28, and elsewhere you use the term, what is "practically"? Is it that it is not physically possible to do this? Does your regulated public understand this?

Line 29, what is "minimize"? Who determines this standard?

On line 30, please insert a comma after "habitat"

In (b)(2), lines 35-36, what are "practical alternatives"?

In (b)(2)(A), Page 2, line 1, what is "practically accomplished in a manner that would better minimize"?

In (b)(2)(C), line 5, who determines if this is necessary?

In (b)(2)(D), line 7, this language does not follow the language in (b)(2) on Page 1. "The applicant shall certify the project meets the following criteria...: Why the alternatives cannot..." I suggest stating here something akin to "Alternatives cannot be practically accomplished to avoid or minimize the disturbance, and a statement of why."

Amanda J. Reeder

Commission Counsel

Date submitted to agency: April 2, 2019

If (b)(3), line 8, I suggest replacing “must” with “shall”

In (b)(3), what are these conditions?

In (b)(4), line 10, make Subparagraph plural.

In (b)(4) and elsewhere you refer to using (b)(1) and (2) as a lodestar, but then (as on line 12) refer to the “applicable” parts of (b)(1) – how does this work? Isn’t it all applicable? Should there be an “applicable” on line 10, such as “that addresses the applicable portions of Subparagraphs...” (See also (c)(2)(B))

How does (b)(4) happen? Is this something within the control of the applicant?

In (b)(5), define “support the purpose, spirit, and intent of the riparian buffer protection program.”

In (b)(6), line 26, and in (c)(4), Page 5, line 8, G.S. 153A-345 was repealed. Please either update the citation (do you mean 153A-345.1?) or remove it altogether.

In (c)(1), why not state “All of the following conditions must be met in order to qualify for an Authorization Certificate with Exception:”

In (c)(1)(A), line 34, define “practical difficulties” and “unnecessary hardships”

In (c)(1)(B), Page 3, line 2, define “reasonable” both places.

On line 4, define “adequate”

In (c)(1)(E), this needs to be clarified. What do you mean by “harmony” here? And on line 23, what is “substantial justice”?

In (c)(2)(B), line 30, insert a comma after “(b)(2)”

In (c)(3)(B), Page 4, line 9, insert a comma after “(b)(2)”

On line 11, they won’t consider whether (b)(1) was met? Is this because it’s just the application?

In (c)(3)(C), line 14, what are the “primary findings”?

On Page 5, the Subparagraphs should be (c)(4) and (5).

In current (c)(3), lines 3-4, delete or define these concepts. And insert a comma after “spirit”

In the History Note, line 12, will this readoption become effective following the legislative review of Rule 02B .0607?

Please retype the rule accordingly and resubmit it to our office at 1711 New Hope Church Road, Raleigh, North Carolina 27609.

Amanda J. Reeder
Commission Counsel
Date submitted to agency: April 2, 2019

1 15A NCAC 02B .0606 is readopted with changes as published in 32:21 NCR 1943 as follows:

2
3 **15A NCAC 02B .0606 SITE SPECIFIC WATER QUALITY MANAGEMENT PLAN FOR THE GOOSE**
4 **CREEK WATERSHED (YADKIN PEE-DEE RIVER BASIN): ~~VARIANCE FOR~~**
5 **~~ACTIVITIES WITHIN RIPARIAN BUFFERS~~ AUTHORIZATION**
6 **CERTIFICATES**

7 (a) PURPOSE. Persons The following requirements shall apply to persons who wish to undertake uses designated as
8 allowable upon authorization, allowable with mitigation upon authorization, or allowable with exception ~~prohibited~~
9 ~~within the protected riparian buffer area may pursue a variance, as specified in Rule .0607 of this Section. Persons~~
10 ~~who wish to undertake forest harvesting beyond the requirements set forth in 15A NCAC 02B .0608 may pursue a~~
11 ~~variance.~~

12 (b) AUTHORIZATION CERTIFICATES. Persons who wish to undertake uses designated in Rule .0607 of this
13 Section as allowable upon authorization or allowable with mitigation upon authorization shall submit an application
14 requesting an Authorization Certificate from the Authority.

15 (1) The application shall specify:

16 (A) The name, address and phone number of the applicant;

17 (B) If the property owner is different than the applicant, specify the name, address and phone
18 number of the property owner and provide authorization from the owner for the application;

19 (C) If the applicant is a corporation, the state in which it is domesticated, the name of its
20 principal officers, the name and address of the North Carolina process agency, and the
21 name, address and phone number of the individual who shall be primarily responsible for
22 the conduct of the activity for which certification is sought;

23 (D) The nature of the activity to be conducted by the applicant;

24 (E) The location of the activity, including the jurisdiction;

25 (F) A map of sufficient detail to accurately delineate the boundaries of the land to be utilized
26 in carrying out the activity, the location and dimensions of any disturbance in riparian
27 buffers associated with the activity, and the extent of riparian buffers on the land;

28 (G) An explanation of why this plan for the activity cannot be practically accomplished,
29 reduced, relocated or reconfigured to avoid or better minimize disturbance to the riparian
30 buffer, preserve aquatic life and habitat and protect water quality;

31 (H) Plans for any best management practices proposed to be used to control the impacts
32 associated with the activity; and

33 (I) For uses designated as allowable with mitigation upon authorization or allowable with
34 exception, a mitigation proposal in accordance with Rule ~~[.0704]~~ .0295 of this Subchapter.

35 (2) The applicant shall certify that the project meets all the following criteria for finding no practical
36 alternatives:

- (A) The basic project purpose cannot be practically accomplished in a manner that would better minimize disturbance, preserve aquatic life and habitat, and protect water quality;
- (B) The use cannot practically be reduced in size or density, reconfigured or redesigned to better minimize disturbance, preserve aquatic life and habitat, and protect water quality;
- (C) Best management practices shall be used if necessary to minimize disturbance, preserve aquatic life and habitat, and protect water quality; and
- (D) Why alternatives cannot be practically accomplished to avoid or minimize the disturbance.
- (3) The Authority must consider the impacts that may affect conditions required to sustain and recover the federally endangered Carolina heelsplitter (*Lasmigona decorata*).
- (4) Within 60 calendar days of receipt of a complete application package that addresses Subparagraph (b)(1) and (b)(2) of this Rule, the Authority shall issue an Authorization Certificate if the Authority makes a finding of "no practical alternatives" and the applicant also satisfies other applicable requirements as described in Subparagraph (b)(1) through (b)(3) of this Rule. Failure to act within 60 calendar days of receipt of a complete application shall be construed as a finding of "no practical alternatives" and an Authorization Certificate shall be issued by the Authority to the applicant unless one of the following occurs:
- (A) The applicant agrees, in writing, to a longer period;
- (B) The applicant fails to furnish information necessary for the Authority's decision;
- (C) The applicant refuses Authority staff access to its records or premises for the purpose of gathering information necessary for the Authority's decision; or
- (D) Information necessary for the Authority's decision is unavailable.
- (5) The Authority may attach conditions to the Authorization Certificate that support the purpose, spirit and intent of the riparian buffer protection program.
- (6) Requests for appeals of Authorization Certificates issued by the Division shall be made pursuant to G.S. 150B. Request for appeals of Authorization Certificates issued by the delegated local authority shall be made to the appropriate Board of Adjustment under G.S. 153A-345 or G.S. 160A-388.
- (c) AUTHORIZATION CERTIFICATES WITH EXCEPTIONS. Persons who wish to undertake uses designated in Rule .0607 of this Section as allowable with exception shall submit an application requesting an Authorization Certificate with Exception. The ~~variance~~ Authorization Certificate with Exception review ~~request~~ procedure shall be as follows:
- (1) ~~For any variance request, the Division of Water Quality shall make a finding of fact as to whether the following requirements have been met: An Authorization Certificate with Exception shall require that all of the following conditions are met:~~
- ~~(A) There are practical difficulties or unnecessary hardships that prevent compliance with the strict letter of the riparian buffer protection requirements. Practical difficulties or unnecessary hardships shall be evaluated in accordance with the following:~~

- (B) If the applicant complies with the provisions of the riparian buffer requirements, ~~he/she~~ he or she can secure no reasonable return from, nor make reasonable use of, ~~his/her~~ his or her property. Merely proving that the ~~variance~~ Authorization Certificate with Exception would ~~permit~~ allow a greater profit from the property is not adequate justification ~~for a variance.~~ for an Authorization Certificate with Exception. Moreover, the ~~Division of Water Quality Authority~~ shall consider whether the ~~variance~~ Authorization Certificate with Exception is the minimum possible deviation from the terms of the riparian buffer requirements that will make reasonable use of the property possible.
- ~~(ii) The hardship results from application of the buffer requirements to the property rather than from other factors such as deed restrictions or other hardship.~~
- ~~(iii)(C) The hardship is due to the physical nature of the applicant's property and is unique to the applicant's property, such as its size, shape, or topography, such that compliance with provision of this Rule would not allow reasonable use of the property. topography.~~
- ~~(iv)(D) The applicant did not cause the hardship by knowingly or unknowingly violating the buffer requirements. hardship.~~
- ~~(v) The applicant did not purchase the property after the effective date of this Rule, and then request a variance.~~
- ~~(b)(E) The variance requested Authorization Certificate with Exception is in harmony with the general spirit, purpose and intent of the State's riparian buffer protection requirements and preserves its spirit; and~~
- ~~(e) In granting the variance, the public safety and welfare have been assured, water quality has been protected, and substantial justice has been done. requirements, will protect water quality, will secure public safety and welfare, and will preserve substantial justice.~~
- (2) MINOR EXCEPTIONS. An Authorization Certificate with Minor Exception request pertains to allowable with exception activities that are proposed to impact equal to or less than one-third of an acre of riparian buffer.
- (A) Authorization Certificate with Minor Exception requests shall be reviewed based on the criteria in Paragraph (b) and Subparagraph (c)(1) of this Rule.
- (B) Within 60 calendar days of receipt of a complete application package that addresses Subparagraphs (b)(1), (b)(2) and (c)(1) of this Rule, the Authority shall issue an Authorization Certificate with Minor Exception if the Authority makes a finding that the criteria in Subparagraph (b)(2) and (c)(1) of this Rule have been met and the applicant satisfies other applicable requirements as described in Paragraph (b) and Subparagraph (c)(1) of this Rule. If the Authority determines that all of the requirements in Subparagraphs (b)(2) and (c)(1) of this Rule have not been met, the Authority shall issue a final decision denying the Authorization Certificate with Minor Exception.

- (3) MAJOR EXCEPTIONS. A variance An Authorization Certificate with Major Exception request pertains to any activity that is proposed to impact any portion allowable with exception activities that are proposed to impact greater than one-third of an acre of the riparian buffer. If the Division of Water Quality has determined that a major variance request meets the requirements in Item (1) of this Rule, then it
- (A) Authorization Certificate with Major Exception requests shall be reviewed based on the criteria in Paragraph (b) and Subparagraph (c)(1) of this Rule.
- (B) shall prepare a preliminary finding Within 60 calendar days of receipt of a complete application package that addresses Subparagraphs (b)(1), (b)(2) and (c)(1) of this Rule, the Authority shall prepare a preliminary finding as to whether the criteria in Subparagraphs (b)(2) and (c)(1) of this Rule have been met, and submit it to the Environmental Management Commission.
- (C) Notice of each pending complete application for an Authorization Certificate with Major Exception, including the primary findings prepared by the Authority, shall be posted on the Division's website and sent to all individuals on the Mailing List, as described in 15A NCAC 02H .0503 (g), at least 30 calendar days prior to proposed final action by the Authority on the application.
- (D) Preliminary findings on variance requests shall be reviewed by the Commission within 90 days after receipt by the Director. Requests for appeals of determinations that the requirements of Item (1) of this Rule have not been met shall be made to the Office of Administrative Hearings for determinations made by the Division of Water Quality or the appropriate Board of Adjustments under G.S. 160A 388 or G.S. 153A 345 for determinations made by the delegated local authority. The purpose of the Commission's review is to determine if it agrees Within 60 calendar days following the notice as described in Part (c)(3)(C) of this Rule, upon the Authority's determination that all of the requirements in Item (1) Subparagraphs (b)(2) and (c)(1) of this Rule have been met. Requests for appeals of decisions made by the Commission shall be made to the Office of Administrative Hearings. met, the Authority shall issue an Authorization Certificate with Major Exception. If the Authority determines that all of the requirements in Subparagraphs (b)(2) and (c)(1) of this Rule have not been met, the Authority shall issue a final decision denying the Authorization Certificate with Major Exception. The following actions shall be taken depending on the Commission's decision on the major variance request:
- (a) Upon the Commission's approval, the Division of Water Quality shall issue a final decision granting the variance.
- (b) Upon the Commission's approval with conditions or stipulations, the Division of Water Quality shall issue a final decision, which includes these conditions or stipulations.

1 ~~(e) Upon the Commission's denial, the Division of Water Quality shall issue a final decision~~
2 ~~denying the variance.~~

3 (3) The Authority may attach conditions to the Authorization Certificate with Exception that support
4 the purpose, spirit and intent of the riparian buffer protection program.

5 (4) Requests for appeals of Authorization Certificates with Exception issued by the Division shall be
6 made pursuant to G.S. 150B. Requests for appeals of Authorization Certificates with Exception
7 issued by the delegated local authority shall be made to the appropriate Board of Adjustment under
8 G.S 153A-345 or G.S. 160A-388.

9
10 History Note: Authority G.S. 143-214.1; 143-215.3(a)(1); 143-215.8A;
11 Eff. February 1, 2009.

12 Readopted Eff. [New Date] (The provisions of paragraph (b) of this Rule were previously codified
13 in 15A NCAC 02B .0607(e).)

REQUEST FOR TECHNICAL CHANGE

AGENCY: Emergency Management Commission

RULE CITATION: 15A NCAC 02B .0608

DEADLINE FOR RECEIPT: Friday, April 12, 2019

The Rules Review Commission staff has completed its review of this Rule prior to the Commission's next meeting. The Commission has not yet reviewed this Rule and therefore there has not been a determination as to whether the Rule will be approved. You may call our office to inquire concerning the staff recommendation.

In reviewing this Rule, the staff recommends the following technical changes be made:

In (b)(1), line 11, I believe the name of the Subchapter is Forest Practices Guidelines Related to Water Quality.

In (b)(5), line 20, please insert a comma after "form"

On line 20, what is "vigor"?

In (b)(6), line 23, this law was recodified in 2011. Please update this citation with the new ones in G.S. 106-920 et. seq.

In (b)(8), line 30, what is "minimized"?

In (b)(10), it seems that the sentence on lines 34-35 is repeated on line 35-36. Why do you need it both places?

On line 37, what is "applicable"?

In (c), Page 2, line 3, what is "selective harvesting"?

In (c)(5), line 23, what are "high value trees"? Is the term as defined in Rule .0610?

Line 24, I believe you mean "trees" rather than "tress"

In (b)(6), line 29, this Rule does not exist. What did you mean to cross-reference?

In (b)(7), line 33, what is "sufficient"? Who determines this?

In the History Note, line 4, will this readoption become effective following the legislative review of Rule 02B .0607?

Please retype the rule accordingly and resubmit it to our office at 1711 New Hope Church Road, Raleigh, North Carolina 27609.

Amanda J. Reeder
Commission Counsel
Date submitted to agency: April 2, 2019

1 15A NCAC 02B .0608 is readopted with changes as published in 32:21 NCR 1943 as follows:

2
3 **15A NCAC 02B .0608 SITE SPECIFIC WATER QUALITY MANAGEMENT PLAN FOR THE GOOSE**
4 **CREEK WATERSHED (YADKIN PEE-DEE RIVER BASIN): MANAGE**
5 **ACTIVITIES WITHIN RIPARIAN BUFFERS: FOREST HARVESTING**
6 **REQUIREMENTS**

7 (a) PURPOSE. The following requirements shall apply ~~for~~ to all forest harvesting operations and practices forestry-
8 related land-disturbing activities ~~in the riparian areas.~~ subject to riparian buffer requirements under Rules .0601
9 through .0608 of this Section.

10 (b) REQUIREMENTS THROUGHOUT THE BUFFER. The following requirements shall apply:

- 11 (1) All forest harvest activities within the buffer shall comply with Forest Practice Guidelines Related
12 to Water Quality as defined in 02 NCAC 60C;
- 13 ~~(1)(2)~~ (2) Logging decks and sawmill sites shall not be placed in the riparian buffer; buffer;
14 ~~(2)~~ (2) Access roads and skid trails are prohibited except for temporary and permanent stream crossings
15 established in accordance with 15A NCAC 01H .0203. Temporary stream crossings shall be
16 permanently stabilized after any site disturbing activity is completed.
- 17 (3) Timber felling shall be directed away from the stream or water body; body;
- 18 (4) Skidding shall be directed away from the stream or water body and shall be done in a manner that
19 minimizes soil disturbance and prevents the creation of channels or ruts; ruts;
- 20 (5) Individual trees may be treated to maintain or improve their health, form or vigor; vigor;
- 21 (6) Harvesting of dead or infected trees or application of pesticides necessary to prevent or control
22 extensive tree pest and disease infestation is allowed, when approved by the Division of North
23 Carolina Forest Resources Service for a specific site in accordance with G.S. 113-60.4. A copy of
24 the Division of Forest Resources approval must be provided to the Division of Water Quality in
25 accordance with Session Law 2001-404. The North Carolina Forest Service must notify the Division
26 of all approvals within 60 calendar days;
- 27 (7) Removal of individual trees that are in danger of causing damage to structures or human life is
28 allowed; allowed;
- 29 (8) Natural regeneration of forest vegetation and planting of trees, shrubs, or ground cover plants to
30 enhance the riparian buffer is allowed provided that soil disturbance is minimized; minimized;
31 Plantings shall consist primarily of native species.
- 32 (9) High intensity prescribed Prescribed burns shall not be allowed; allowed when conducted for forest
33 management purposes; and
- 34 (10) Application of One-time fertilizer is not allowed except as necessary for permanent stabilization. to
35 establish replanted vegetation shall be allowed. This only applies to the one-time application of
36 fertilizer in the riparian buffer. No runoff from this one-time application in the riparian buffer is
37 allowed in the applicable surface water.

(11) Broadcast application of fertilizer or herbicides to the adjacent forest stand shall be conducted so that the chemicals are not applied directly to or allowed to drift into the riparian buffer.

~~(b)(c)~~ SELECTIVE HARVEST. In the riparian buffer, forest vegetation shall be protected and maintained. Selective harvest as forest harvesting is allowed provided that: for below is allowed on forest lands that have a deferment for use value under forestry in accordance with G.S. 105-277.2 through G.S. 277.6 or on forest lands that have a forest management plan prepared or approved by a registered professional forester. Copies of either the approval of the deferment for use value under forestry or the forest management plan shall be produced upon request. For such forest lands, selective harvest is allowed in accordance with the following:

- (1) The forest lands have a deferment for use value under forestry in accordance with G.S. 105-277.2 through 277.6 or the forest lands have a forest management plan prepared or approved by a registered professional forester. Copies of either the approval of the deferment for use value under forestry or the forest management plan shall be produced upon request by the North Carolina Forest Service or the Division;
- ~~(1)(2)~~ Tracked or wheeled vehicles are not permitted within the first 50 feet the riparian buffer top of bank landward except at stream crossings designed, constructed and maintained in accordance with 15A NCAC 01I-.0203; only used for the purpose of selective timber harvesting where there is no other practical alternative for removal of individual trees;
- ~~(2)(3)~~ Soil disturbing No tracked or wheeled vehicles shall be used to conduct site preparation activities are not allowed; activities;
- ~~(3)(4)~~ Trees shall be are removed in a manner that minimizes with the minimum disturbance to the soil and residual remaining vegetation; vegetation;
- ~~(4)(5)~~ The first 10 feet of the riparian buffer directly adjacent to the stream or waterbody shall be undisturbed. undisturbed, except for the removal of individual high value trees. The removal of individual high value tress shall only be allowed provided that no trees with exposed roots visible in the streambank are cut, unless they meet Subparagraphs (b)(6) or (b)(7) of this Rule;
- ~~(5)(6)~~ In the zone area from 10 feet to 50 feet of the riparian buffer, a maximum of 50 percent of the trees greater than five inches diameter breast height (dbh) may be cut and removed. The reentry time for harvest shall be no more frequent than every 15 years, except on forest plantations as defined in 15A NCAC 02B-.0233(e) 15A NCAC 02B-.0702, where the reentry time shall be no more frequent than every five years. In either case, the trees remaining after harvest shall be as evenly spaced as possible. possible; and
- ~~(6)(7)~~ In the outer riparian buffer (landward of 50 feet), harvesting and regeneration of the forest stand is allowed shall be allowed, provided that sufficient ground cover is maintained to provide for diffusion and infiltration of surface runoff.

(d) EXCEPTIONS. Persons who wish to undertake forest harvesting operations or practices different from the requirements set forth in this Rule may request an Authorization Certificate with Exception pursuant to Rule .0606 of this Section.

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2
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5

History Note: Authority G.S. 143-214.1; 143-215.3(a)(1); 143-215.8A;
Eff. February 1, 2009.
Readopted Eff. [New Date].

REQUEST FOR TECHNICAL CHANGE

AGENCY: Emergency Management Commission

RULE CITATION: 15A NCAC 02B .0610

DEADLINE FOR RECEIPT: Friday, April 12, 2019

The Rules Review Commission staff has completed its review of this Rule prior to the Commission's next meeting. The Commission has not yet reviewed this Rule and therefore there has not been a determination as to whether the Rule will be approved. You may call our office to inquire concerning the staff recommendation.

In reviewing this Rule, the staff recommends the following technical changes be made:

On line 4, where does the context indicate otherwise? And what do you mean by "interpreted"? Can you not say, "The following words and phrases shall mean:" and leave it at that?

Throughout this Rule, commas or periods that are part of a word being put into quotation marks (see line 8) need to be inside the quotation mark. Thus, "air navigation facility," "airport,"

In (1), this is a very long block of text. I suggest you end the sentence on line 12 with "Constitution." Then replace "which shall include, without limitation, any and all" with "The term shall include:" and then makes lines 12-25 a list.

On lines 20 and 24, define "efficient"

On line 25, delete "Notwithstanding the foregoing" and just begin the sentence "The"

In (8), Page 2, line 9, state "Dam" means the term as defined in..." Note the same change for Item (10)

In (12), line 15, insert a comma after "intermittently"

On line 16, what do you mean by "typically"?

In (13), line 18, what do you mean by "and its successors." I think this is likely unnecessary and should be deleted.

In (14), line 20, what are "large" precipitation events? Does your regulated public know?

On line 21, what is a "well-defined channel"? Does your regulated public know?

In (15), line 27, so that I'm clear – Rule .0724 is pending legislative review?

On line 28, put "existing lot" in quotes (double marks)

In (16), line 34, capitalize "Rule"

Amanda J. Reeder
Commission Counsel
Date submitted to agency: April 2, 2019

On lines 36 - 37, I don't understand how "has been maintained" make sense with "can be mowed"

In (19), Page 3, line 4, please insert "forest" before "plantation"

In (22), line 9, delete "but no limited to"

On lines 9-10, do you need the language "and that generally run parallel to the surface water."?

In (24), line 15, what is "typically"? On line 16, what is "heavily" an "often"? Does your regulated public know?

In (27), line 25, insert a comma after "ditch"

In (28), line 27, insert a comma after "lake"

On line 29, what is "can often"? What purpose does this sentence serve?

In (29), line 32, what is "generally"?

In (30), Page 4, line 1, what is "typical" here? Does your regulated public know?

In (33)(a), line 10, you will not use "should" in a Rule. Is this just guidance? If so, it must be removed from the Rule. If you intend to mandate something, then state it as "Pruning of deciduous trees shall only be performed..."

On line 11, what is "immediately"? Will your regulated public know?

On lines 13 and 15, replace "can" with "may"

On line 18, why do you need "and could compromise the plant"? Is this just guidance? If so, this does not belong in Rule.

In (34), line 20, what do you mean by "usually"?

In (38), line 28, what is "temporarily"?

On line 29, what is "restored"?

In the History Note, put all statutory citations in numerical order. And separate them by semicolons, not commas.

Do you need to retain the citations to Session Laws here?

In the History Note, line 12, will this readoption become effective following the legislative review of Rule 02B .0607?

And why do you have the recodification information here with the effective date?

Please retype the rule accordingly and resubmit it to our office at 1711 New Hope Church Road, Raleigh, North Carolina 27609.

Amanda J. Reeder
Commission Counsel
Date submitted to agency: April 2, 2019

1 15A NCAC 02B .0610 is adopted with changes as published in 32:21 NCR 1943 as follows:

2
3 **15A NCAC 02B .0610** **MANAGING ACTIVITIES WITHIN RIPARIAN BUFFERS: DEFINITIONS**

4 Unless the context indicates otherwise, the following words and phrases shall be interpreted as follows for the purposes
5 of this Section:

6 (1) "Airport Facilities" means all properties, facilities, buildings, structures, and activities that satisfy
7 or otherwise fall within the scope of one or more of the definitions or uses of the words or phrases
8 "air navigation facility", "airport", or "airport protection privileges" under G.S. 63-1; the definition
9 of "aeronautical facilities" in G.S. 63-79(1); the phrase "airport facilities" as used in G.S. 159-
10 48(b)(1); the phrase "aeronautical facilities" as defined in G.S. 159-81 and G.S. 159-97; and the
11 phrase "airport facilities and improvements" as used in Article V, Section 13, of the North Carolina
12 Constitution, which shall include, without limitation, any and all of the following: airports, airport
13 maintenance facilities, aeronautic industrial facilities that require direct access to the airfield, clear
14 zones, drainage ditches, fields, hangars, landing lighting, airport and airport-related offices, parking
15 facilities, related navigational and signal systems, runways, stormwater outfalls, terminals, terminal
16 shops, and all appurtenant areas used or suitable for airport buildings or other airport facilities, and
17 all appurtenant rights-of-way; restricted landing areas; any structures, mechanisms, lights, beacons,
18 marks, communicating systems, or other instrumentalities or devices used or useful as an aid, or
19 constituting an advantage or convenience to the safe taking off, navigation, and landing of aircraft,
20 or the safe and efficient operation or maintenance of an airport or restricted landing area; easements
21 through, or interests in, air space over land or water, interests in airport hazards outside the
22 boundaries of airports or restricted landing areas, and other protection privileges, the acquisition or
23 control of which is necessary to ensure safe approaches to the landing areas of airports and restricted
24 landing areas, and the safe and efficient operation thereof and any combination of any or all of such
25 facilities. Notwithstanding the foregoing, the following shall not be included in the definition of
26 "airport facilities":

27 (a) Satellite parking facilities;

28 (b) Retail and commercial development outside of the terminal area, such as rental car
29 facilities; and

30 (c) Other secondary development, such as hotels, industrial facilities, free-standing offices and
31 other similar buildings, so long as these facilities are not directly associated with the
32 operation of the airport, and are not operated by a unit of government or special
33 governmental entity such as an airport authority, in which case they are included in the
34 definition of "airport facilities".

35 (2) "Archaeological activities" means activities conducted by a Registered Professional Archaeologist
36 (RPA).

- (3) "Authority" means either the Division or a local government that has been delegated pursuant this Section to implement a riparian buffer program.
- (4) "Bridge" means any spanning structure that begins and ends at the outer edge of the approach slabs and includes any support structures such as bents, pilings, footings, etc.
- (5) "Built-upon area" means the same as defined in G.S. 143-214.7(b2).
- (6) "Channel" means a natural water-carrying trough cut vertically into low areas of the land surface by erosive action of concentrated flowing water or a ditch or canal excavated for the flow of water.
- (7) "Coastal wetlands" means marshland as defined in G.S. 113-229.
- (8) "Dam" means the same as defined in G.S. 143-215.25.
- (9) "DBH" means diameter at breast height of a tree measured at 4.5 feet above ground surface level.
- (10) "Development" means the same as defined in G.S. 143-214.7.
- (11) "Director" means the Director of the Division.
- (12) "Ditch or canal" means a man-made, open drainage way or channel other than a modified natural stream in or into which excess surface water or groundwater from land, stormwater runoff, or floodwaters flow either ephemeral, intermittently or perennially. On the coastal plain, ditches are typically dug through inter-stream divide areas.
- (13) "Division" means the Division of Water Resources of the North Carolina Department of Environmental Quality and its successors.
- (14) "Ephemeral stream" means a feature that carries only stormwater in direct response to precipitation with water flowing only during and shortly after large precipitation events. An ephemeral stream may or may not have a well-defined channel, the aquatic bed is always above the perched or seasonal high water table, and stormwater runoff is the primary source of water. An ephemeral stream typically lacks the biological, hydrological, and physical characteristics commonly associated with the continuous or intermittent conveyance of water.
- (15) "Existing lot" in Randleman Lake watershed means a lot of two acres in size or less that was platted and recorded in the office of the appropriate county Register of Deeds prior to the effective date of a local ordinance or ordinances enforcing Rule .0724 of this Subchapter. For activities listed in Rule .0724(15)(12)(b) of this Subchapter, 'existing lot' in the Randleman Lake watersheds means a lot of two acres in size or less that was platted and recorded in the office of the appropriate county Register of Deeds prior to April 1, 1999. "Existing lot" in the Neuse and Tar-Pamlico river basins means a lot of two acres in size or less that was platted and recorded in the office of the appropriate county Register of Deeds prior to August 1, 2000.
- (16) "Existing utility line maintenance corridor" means the portion of a utility right of way that was established as a permanent maintenance corridor prior to the effective date of the rule, or was approved as a permanent maintenance corridor through an Authorization Certificate or Variance issued by the Authority, and in which the vegetation has been mowed, cut or otherwise maintained (e.g. can be mowed without a chainsaw or bush-hog). within the last 10 years.

- (17) "Fertilizer" means the same as defined in Rule .0202 of this Subchapter.
- (18) "Forest management plan" means the same as defined in G.S. 160A-458.5.
- (19) "Forest plantation" means an area of planted trees that may be conifers (pines) or hardwoods. On a plantation, the intended crop trees are planted rather than naturally regenerated from seed on the site, coppice (sprouting), or seed that is blown or carried into the site.
- (20) "Forest vegetation" means the same as defined in Rule .0202 of this Subchapter.
- (21) "Freshwater" means the same as defined in Rule .0202 of this Subchapter.
- (22) "Greenway / Hiking Trails" means pedestrian trails constructed of pervious and impervious surfaces and related structures including but not limited to boardwalks, steps, rails, and signage, and that generally run parallel to the surface water.
- (23) "High value tree" means a tree that meets or exceeds the following standards: for pine species, 14-inch DBH or greater or 18-inch or greater stump diameter; or for non-pine species, 16-inch DBH or greater or 24-inch or greater stump diameter.
- (24) "Intermittent stream" means a well-defined channel that contains water for only part of the year, typically during winter and spring when the aquatic bed is below the perched or seasonal high water table. The flow may be heavily supplemented by stormwater runoff. An intermittent stream often lacks the biological and hydrological characteristics commonly associated with the continuous conveyance of water.
- (25) "Local government" means the same as defined in Rule .0202 of this Subchapter.
- (26) "Modified natural stream" means an on-site channelization or relocation of a stream channel and subsequent relocation of the intermittent or perennial flow as evidenced by topographic alterations in the immediate watershed. A modified natural stream must have the typical biological, hydrological, and physical characteristics commonly associated with at least an intermittent conveyance of water.
- (27) "Natural drainageway" means any water course, channel, ditch or similar physiographic feature draining water from land to down gradient areas.
- (28) "Normal water level" means the water level within a pond, lake or other type of impoundment, natural or man-made (including beaver ponds), at the elevation of the outlet structure or spillway (i.e., the elevation of the permanent pool). The normal water level can often be identified by the lowest edge of the terrestrial vegetation.
- (29) "Perched water table" means a saturated soil horizon or horizon subdivision, with free water surface periodically observed in a bore hole or shallow monitoring well, but generally above the normal water table, or may be identified by drainage mottles or redoximorphic features, and caused by a less permeable lower horizon.
- (30) "Perennial stream" means a well-defined channel that contains water year round during a year of normal rainfall with the aquatic bed located below the perched or seasonal high water table for most of the year. Groundwater is the primary source of water for a perennial stream, but it also carries

- stormwater runoff. A perennial stream exhibits the typical biological, hydrological, and physical characteristics commonly associated with the continuous conveyance of water.
- (31) "Perennial waterbody" means a natural or man-made watershed that stores surface water permanently at depths sufficient to preclude growth of rooted plants, including lakes, ponds, sounds, non-stream estuaries and ocean.
- (32) "Perpendicular" means leading toward the nearest subject surface water at an angle between 75 and 105 degrees.
- (33) "Pruning" means the removal of dead tree or shrub branches or live tree or shrub branches with a diameter of less than four inches.
- (a) Pruning for Deciduous Trees: If pruning must be done on deciduous trees, then it should only be performed once a year during the dormant season or immediately following an "act of God" situation, such as a hurricane or ice storm that causes tree damage. Dead branches on trees can be removed any time.
- (b) Pruning for Coniferous Trees: Conifers may be pruned any time of year. Dead branches on trees can be removed any time.
- (c) Pruning for Shrubs: Shrubs may be pruned by selectively removing branches while maintaining the natural shape of the plant. Cutting the branches of a shrub down to its main trunk is not a selective removal of branches and could compromise the plant.
- (34) "Seasonal high water table" means the highest level that groundwater, at atmospheric pressure, reaches in the soil in most years. The seasonal high water table is usually detected by the mottling of the soil which results in mineral leaching.
- (35) "Streambank or shoreline stabilization" is the in-place stabilization of an eroding streambank or shoreline.
- (36) "Stormwater Control Measure" or "SCM," also known as "Best Management Practice" or "BMP," means the same as defined in 15A NCAC 02H .1002.
- (37) "Stump diameter" means the diameter of a tree measured at six inches above the ground surface level.
- (38) "Temporary road" means a road constructed temporarily for access or to maintain public traffic during construction and is restored upon completion of construction.
- (39) "Transportation facility" means the existing road surface, road shoulders, fill slopes, ferry terminal fill areas, and constructed stormwater conveyances or drainage canals adjacent to and directly associated with the road.
- (40) "Tree" means a woody plant with a DBH equal to or exceeding five inches or a stump diameter exceeding six inches.
- (41) "Wetlands" means the same as defined in Rule .0202 of this Subchapter.

History Note: Authority G.S. 143-214.1, 143-215.8A, 143-214.7, 143-214.23, 143-214.23A, 143-215.3(a)(1); S.L. 1995, c. 572; S.L. 1999, c. 329; S.L. 2011, c. 394; S.L. 2012, c. 200; S.L. 2013, c. 413, S.L. 2015, c.246
Eff. DATE (The provisions of this Rule were previously codified in 15A NCAC 02B .0233(2), 15A NCAC 02B .0243(2), 15A NCAC 02B .0250(2) and 15A NCAC 02B .0259(2).)

REQUEST FOR TECHNICAL CHANGE

AGENCY: Emergency Management Commission

RULE CITATION: 15A NCAC 02B .0611

DEADLINE FOR RECEIPT: Friday, April 12, 2019

The Rules Review Commission staff has completed its review of this Rule prior to the Commission's next meeting. The Commission has not yet reviewed this Rule and therefore there has not been a determination as to whether the Rule will be approved. You may call our office to inquire concerning the staff recommendation.

In reviewing this Rule, the staff recommends the following technical changes be made:

Throughout this Rule, do you need the all caps introductory statements, like "PURPOSE" in (a)?

In (b)(1)(A), line 13, please insert a comma after "address"

In (b)(1)(B), line 14, delete "specify" since you already said this on line 12.

On line 16, this will be (b)(1)(C), not (B). Please rename the Parts that come after. .

On line 16, what do you mean by "domesticated"?

On line 18, insert a comma after "address"

Also on line 18, what is "primarily"?

In current (b)(1)(E), line 22, define "sufficient" and "accurately"

In current (b)(1)(F), line 25, and elsewhere you use the term, what is "practically"? Is it that it is not physically possible to do this? Does your regulated public understand this?

On line 26, insert a comma after "relocated"

Also on line 26, what is "minimize"? Who determines this standard?

On line 27, insert a comma after "habitat"

In current (b)(1)(H)), line 31, I do not see that Rule .0704 exists or is proposed to exist. Did you mean to change the cross-reference to Rule .0295, as you did in Rule .0606?

In (b)(2), lines 32-33, what are "practical alternatives"?

In (b)(2)(A), line 34, what is "practically accomplished in a manner that would better minimize"?

In (b)(2)(C), Page 2, line 1, who determines if this is necessary?

Amanda J. Reeder
Commission Counsel
Date submitted to agency: April 2, 2019

In (b)(2)(D), line 7, this language does not follow the language in (b)(2) on Page 1. "The applicant shall certify the project meets the following criteria...: Why the alternatives cannot..." I suggest stating here something akin to "Alternatives cannot be practically accomplished to avoid or minimize the disturbance, and a statement of why."

In (b)(3) and elsewhere you refer to using (b)(1) and (2) as a lodestar, but then (as on line 6) refer to the "applicable" parts of (b)(1) – how does this work? Isn't it all applicable? Should there be an "applicable" on line 4, such as "that addresses the applicable portions of Subparagraphs..." (See also (c)(2)(B))

How does (b)(3)(D) happen? Is this something within the control of the applicant?

In (b)(4), define "support the purpose, spirit, and intent of the riparian buffer protection program."

In (b)(5), line 20, and in (c)(5), Page 4, line 6, G.S. 153A-345 was repealed. Please either update the citation (do you mean 153A-345.1?) or remove it altogether.

In (c)(1), why not state "All of the following conditions must be met in order to qualify for an Authorization Certificate with Exception:"

In (c)(1)(A), line 27, define "practical difficulties" and "unnecessary hardships"

In (c)(1)(B), line 30, define "reasonable" both places.

On line 32, define "adequate"

In (c)(1)(E), Page 3, this needs to be clarified. What do you mean by "harmony" here? And on line 4, what is "substantial justice"?

In (c)(2)(B), line 11, insert a comma after "(b)(2)"

In (c)(3)(B), line 24, insert a comma after "(b)(2)"

On line 25, they won't consider whether (b)(1) was met? Is this because it's just the application?

On line 28, does this mean that if the Authority is not the Division, it will have to forward the preliminary findings to the Division for posting? Should this requirement be set forth in the Rule?

In (c)(4), Page 4, lines 1-2, delete or define these concepts. And insert a comma after "spirit"

In the History Note, line 12, will this readoption become effective following the legislative review of Rule 02B .0607?

In the History Note, put all statutory citations in numerical order. And separate them by semicolons, not commas.

Do you need to retain the citations to Session Laws here?

In the History Note, line 11, will this readoption become effective following the legislative review of Rule 02B .0607?

Amanda J. Reeder
Commission Counsel
Date submitted to agency: April 2, 2019

And why do you have the recodification information here with the effective date?

Please retype the rule accordingly and resubmit it to our office at 1711 New Hope Church Road, Raleigh, North Carolina 27609.

Amanda J. Reeder
Commission Counsel
Date submitted to agency: April 2, 2019

1 15A NCAC 02B .0611 is adopted with changes as published in 32:21 NCR 1943 as follows:

2
3 **15A NCAC 02B .0611** **MANAGING ACTIVITIES WITHIN RIPARIAN BUFFERS: AUTHORIZATION**
4 **CERTIFICATES**

5 (a) PURPOSE. The following requirements shall apply to persons who wish to undertake uses designated as allowable
6 upon authorization, allowable with mitigation upon authorization, or allowable with exception within the protected
7 riparian buffer area as specified in the applicable riparian buffer protection rule of this Section and Section .0700 of
8 this Subchapter.

9 (b) AUTHORIZATION CERTIFICATES. Persons who wish to undertake uses designated in the applicable riparian
10 buffer protection rule of this Section as allowable upon authorization or allowable with mitigation upon authorization
11 shall submit an application requesting an Authorization Certificate from the Authority.

12 (1) The application shall specify:

13 (A) The name, address and phone number of the applicant;

14 (B) If the property owner is different than the applicant, specify the name, address and phone
15 number of the property owner and provide authorization from the owner for the application;

16 (B) If the applicant is a corporation, the state in which it is domesticated, the name of its
17 principal officers, the name and address of the North Carolina process agency, and the
18 name, address and phone number of the individual who shall be primarily responsible for
19 the conduct of the activity for which certification is sought;

20 (C) The nature of the activity to be conducted by the applicant;

21 (D) The location of the activity, including the jurisdiction;

22 (E) A map of sufficient detail to accurately delineate the boundaries of the land to be utilized
23 in carrying out the activity, the location and dimensions of any disturbance in riparian
24 buffers associated with the activity, and the extent of riparian buffers on the land;

25 (F) An explanation of why this plan for the activity cannot be practically accomplished,
26 reduced, relocated or reconfigured to avoid or better minimize disturbance to the riparian
27 buffer, preserve aquatic life and habitat and protect water quality;

28 (G) Plans for any best management practices proposed to be used to control the impacts
29 associated with the activity; and

30 (H) For uses designated as allowable with mitigation upon authorization or allowable with
31 exception, a mitigation proposal in accordance with Rule .0704 of this Subchapter.

32 (2) The applicant shall certify that the project meets all the following criteria for finding "no practical
33 alternatives":

34 (A) The basic project purpose cannot be practically accomplished in a manner that would better
35 minimize disturbance, preserve aquatic life and habitat, and protect water quality;

36 (B) The use cannot practically be reduced in size or density, reconfigured or redesigned to
37 better minimize disturbance, preserve aquatic life and habitat, and protect water quality;

- (C) Best management practices shall be used if necessary to minimize disturbance, preserve aquatic life and habitat, and protect water quality; and
- (D) Why alternatives cannot be practically accomplished to avoid or minimize the disturbance.
- (3) Within 60 calendar days of receipt of a complete application package that addresses Subparagraphs (b)(1) and (b)(2) of this Rule, the Authority shall issue an Authorization Certificate if the Authority makes a finding of "no practical alternatives" and the applicant satisfies other applicable requirements as described in Subparagraphs (b)(1) and (b)(2) of this Rule. Failure to act within 60 calendar days of receipt of a complete application shall be construed as a finding of "no practical alternatives" and an Authorization Certificate shall be issued by the Authority to the applicant unless one of the following occurs:
- (A) The applicant agrees, in writing, to a longer period;
- (B) The applicant fails to furnish information necessary for the Authority's decision;
- (C) The applicant refuses Authority staff access to its records or premises for the purpose of gathering information necessary for the Authority's decision; or
- (D) Information necessary for the Authority's decision is unavailable.
- (4) The Authority may attach conditions to the Authorization Certificate that support the purpose, spirit and intent of the riparian buffer protection program.
- (5) Requests for appeals of Authorization Certificates issued by the Division shall be made pursuant to G.S. 150B. Requests for appeals of Authorization Certificates issued by the delegated local authority shall be made to the appropriate Board of Adjustment under G.S. 153A-345 or G.S. 160A-388.
- (c) AUTHORIZATION CERTIFICATES WITH EXCEPTION. Persons who wish to undertake uses designated in the applicable riparian buffer protection rule of this Section as allowable with exception shall submit an application requesting an Authorization Certificate with Exception. The Authorization Certificate with Exception review procedure shall be as follows:
- (1) An Authorization Certificate with Exception shall require that all of the following conditions are met:
- (A) There are practical difficulties or unnecessary hardships that prevent compliance with the riparian buffer protection requirements.
- (B) If the applicant complies with the provisions of this Rule, he or she can secure no reasonable return from, nor make reasonable use of, his or her property. Merely proving that the Authorization Certificate with Exception would allow a greater profit from the property shall not be considered adequate justification for an Authorization Certificate with Exception. Moreover, the Authority shall consider whether the Authorization Certificate with Exception is the minimum possible deviation from the terms of this Rule that shall make reasonable use of the property possible;
- (C) The hardship is due to the physical nature of the applicant's property, such as its size, shape, or topography;

1 (D) The applicant did not cause the hardship;

2 (E) The requested Authorization Certificate with Exception is in harmony with the general
3 spirit, purpose and intent of the State's riparian buffer protection requirements, will protect
4 water quality, will secure public safety and welfare, and will preserve substantial justice.

5 (2) MINOR EXCEPTIONS. An Authorization Certificate with Minor Exception request pertains to
6 allowable with exception activities that are proposed to impact equal to or less than one-third of an
7 acre of riparian buffer.

8 (A) Authorization Certificate with Minor Exception requests shall be reviewed based on the
9 criteria in Paragraph (b) and Subparagraph (c)(1) of this Rule.

10 (B) Within 60 calendar days of receipt of a complete application package that addresses
11 Subparagraphs (b)(1), (b)(2) and (c)(1) of this Rule, the Authority shall issue an
12 Authorization Certificate with Minor Exception if the Authority makes a finding that the
13 criteria in Subparagraph (b)(2) and (c)(1) of this Rule have been met and the applicant
14 satisfies other applicable requirements as described in Paragraph (b) and Subparagraph
15 (c)(1) of this Rule. If the Authority determines that all of the requirements in Subparagraphs
16 (b)(2) and (c)(1) of this Rule have not been met, the Authority shall issue a final decision
17 denying the Authorization Certificate with Minor Exception.

18 (3) MAJOR EXCEPTIONS. An Authorization Certificate with Major Exception request pertains to
19 allowable with exception activities that are proposed to impact greater than one-third of an acre of
20 riparian buffer.

21 (A) Authorization Certificate with Major Exception requests shall be reviewed based on the
22 criteria in Paragraph (b) and Subparagraph (c)(1) of this Rule.

23 (B) Within 60 calendar days of receipt of a complete application package that addresses
24 Subparagraphs (b)(1), (b)(2) and (c)(1) of this Rule, the Authority shall prepare a
25 preliminary finding as to whether the criteria in Subparagraphs (b)(2) and (c)(1) of this
26 Rule have been met.

27 (C) Notice of each pending complete application for an Authorization Certificate with Major
28 Exception, including the preliminary finding prepared by the Authority, shall be posted on
29 the Division's website and sent to all individuals on the Mailing List, as described in 15A
30 NCAC 02H .0503(g), at least 30 calendar days prior to proposed final action by the
31 Authority on the application.

32 (D) Within 60 calendar days following the notice as described in Part (c)(3)(C) of this Rule,
33 upon the Authority's determination that all of the requirements in Subparagraphs (b)(2) and
34 (c)(1) of this Rule have been met, the Authority shall issue an Authorization Certificate
35 with Major Exception. If the Authority determines that all of the requirements in
36 Subparagraphs (b)(2) and (c)(1) of this Rule have not been met, the Authority shall issue a
37 final decision denying the Authorization Certificate with Major Exception.

1 (4) The Authority may attach conditions to the Authorization Certificate with Exception that support
2 the purpose, spirit and intent of the riparian buffer protection program.

3 (5) Requests for appeals of Authorization Certificates with Exception issued by the Division shall be
4 made pursuant to G.S. 150B. Requests for appeals of Authorization Certificates with Exception
5 issued by the delegated local authority shall be made to the appropriate Board of Adjustment under
6 G.S. 153A-345 or G.S. 160A-388.

7
8 History Note: Authority G.S. 143-214.1; 143-215.8A; 143-214.7; 143-214.23; 143-214.23A; 143-215.3(a)(1);
9 S.L. 1995, c. 572; S.L. 1999, c. 329; S.L. 2011, c. 394; S.L. 2012, c. 200; S.L. 2013, c. 413; S.L.
10 2015, c.246
11 Eff. DATE (The provisions of this Rule were previously codified in 15A NCAC 02B .0233(8) & (9),
12 15A NCAC 02B .0243(8) & (9), 15A NCAC 02B .0250(11) & (12) and 15A NCAC 02B .0259(8) &
13 (9).)

REQUEST FOR TECHNICAL CHANGE

AGENCY: Emergency Management Commission

RULE CITATION: 15A NCAC 02B .0612

DEADLINE FOR RECEIPT: Friday, April 12, 2019

The Rules Review Commission staff has completed its review of this Rule prior to the Commission's next meeting. The Commission has not yet reviewed this Rule and therefore there has not been a determination as to whether the Rule will be approved. You may call our office to inquire concerning the staff recommendation.

In reviewing this Rule, the staff recommends the following technical changes be made:

In (b)(1), line 14, I believe the name of the Subchapter is Forest Practices Guidelines Related to Water Quality.

In (b)(4), lines 18-19, what is "in a manner that minimizes soil disturbance and prevents the creation of channels or ruts;"? Does your regulated public know?

In (b)(5), line 20, please insert a comma after "form"

On line 20, what is "vigor"?

In (b)(6), line 23, this law was recodified in 2011. Please update this citation with the new ones in G.S. 106-920 et. seq.

In (b)(8), line 30, what is "minimized"?

In (b)(10), it seems that the sentence on lines 30-31 just repeats the sentence on line 30. Why do you need it both places?

On line 32, what is "applicable"?

In (c), line 33, and elsewhere the term is used, what is "Zone 1"? Is this set forth in the specific rules in (a)(1) through (4)?

Also on line 33, what is "selective harvesting"?

And on line 33, please make "in" lowercase.

In (c)(5), Page 2, line 14, this Rule does not exist. What did you mean to cross-reference?

In (d), what is "Zone 2"?

In (e), line 20, I do not see that this Rule exists or is proposed to exist. What did you mean to cross-reference?

Amanda J. Reeder
Commission Counsel
Date submitted to agency: April 2, 2019

In the History Note, put all statutory citations in numerical order. And separate them by semicolons, not commas.

Do you need to retain the citations to Session Laws here?

In the History Note, line 26, will this readoption become effective following the legislative review of Rule 02B .0607?

And why do you have the recodification information here with the effective date?

Please retype the rule accordingly and resubmit it to our office at 1711 New Hope Church Road, Raleigh, North Carolina 27609.

Amanda J. Reeder
Commission Counsel
Date submitted to agency: April 2, 2019

1 15A NCAC 02B .0612 is adopted with changes as published in 32:21 NCR 1943 as follows:

2
3 **15A NCAC 02B .0612 MANAGING ACTIVITIES WITHIN RIPARIAN BUFFERS: FOREST**
4 **HARVESTING REQUIREMENTS**

5 (a) PURPOSE. The following requirements shall apply to all forest harvesting operations and practices forestry-
6 related land-disturbing activities subject to riparian buffer requirements under rules of this Section and Section .0700
7 of this Subchapter, except for the Goose Creek Water Quality Management Plan [15A NCAC 02B .0605 to .0608].
8 Those Rules include: in the following River Basins and Watersheds:

- 9 (1) Catawba River Basin [15A NCAC 02B .0614]; as specified in 15A NCAC 02B .0614;
10 (2) Neuse River Basin [15A NCAC 02B .0714]; as specified in 15A NCAC 02B .0714;
11 (3) Randleman Lake Watershed [15A NCAC 02B .0724]; as specified in 15A NCAC 02B .0724; and
12 (4) Tar-Pamlico River Basin [15A NCAC 02B .0734]; as specified in 15A NCAC 02B .0734.

13 (b) REQUIREMENTS THROUGHOUT THE BUFFER. The following requirements shall apply:

- 14 (1) All forest harvest activities within the buffer shall comply with Forest Practice Guidelines Related
15 to Water Quality as defined in 02 NCAC 60C;
16 (2) Logging decks and sawmill sites shall not be placed in the riparian buffer;
17 (3) Timber felling shall be directed away from the stream or waterbody;
18 (4) Skidding shall be directed away from the stream or water body and shall be done in a manner that
19 minimizes soil disturbance and prevents the creation of channels or ruts;
20 (5) Individual trees may be treated to maintain or improve their health, form or vigor;
21 (6) Harvesting of dead or infected trees or application of pesticides as necessary to prevent or control
22 the spread of tree pest and disease infestation shall be allowed. These practices must be approved
23 by the North Carolina Forest Service for a specific site. The North Carolina Forest Service must
24 notify the Division of all approvals within 60 calendar days;
25 (7) Removal of individual trees that are in danger of causing damage to structures or human life shall
26 be allowed;
27 (8) Natural regeneration of forest vegetation and planting of trees, shrubs, or ground cover plants to
28 enhance the riparian buffer shall be allowed provided that soil disturbance is minimized;
29 (9) Prescribed burns shall be allowed when conducted for forest management purposes; and
30 (10) One-time fertilizer application to establish replanted vegetation shall be allowed. This only applies
31 to the one-time application of fertilizer in the riparian buffer. No runoff from this one-time
32 application in the riparian buffer is allowed in the applicable surface water.

33 (c) REQUIREMENTS IN ZONE 1 OF THE BUFFER. Selective forest harvesting is allowed In Zone 1, as defined
34 by the applicable Rule of this Section, provided that:

- 35 (1) The forest lands have a deferment for use value under forestry in accordance with G.S. 105-277.2
36 through 277.6 or the forest lands have a forest management plan prepared or approved by a
37 registered professional forester. Copies of either the approval of the deferment for use value under

forestry or the forest management plan shall be produced upon request by the North Carolina Forest Service or the Division;

(2) Tracked or wheeled vehicles are only used for the purpose of selective timber harvesting where there is no other practical alternative for removal of individual trees;

(2) No tracked or wheeled vehicles shall be used to conduct site preparation activities;

(3) Trees are removed in a manner that minimizes with the minimum disturbance to the soil and remaining vegetation;

(4) The first 10 feet of Zone 1 directly adjacent to the stream or waterbody shall be undisturbed, except for the removal of individual high value trees. The removal of individual high value trees shall only be allowed provided that no trees with exposed primary roots visible in the streambank are cut, unless they meet Subparagraphs (b)(6) or (b)(7) of this Rule; and

(5) A maximum of 50 percent of the trees greater than five inches DBH may be cut and removed. The reentry time for harvest shall be no more frequent than every 15 years, except on forest plantations as defined in 15A NCAC 02B .0702 where the reentry time shall be no more frequent than every five years. In either case, the trees remaining after harvest shall be as evenly spaced as possible.

(d) REQUIREMENTS IN ZONE 2 OF THE BUFFER. In Zone 2, harvesting and regeneration of the forest stand shall be allowed, provided that sufficient ground cover is maintained to provide for diffusion and infiltration of surface runoff.

(e) EXCEPTIONS. Persons who wish to undertake forest harvesting operations or practices different from the requirements set forth in this Rule may request an Authorization Certificate with Exception pursuant to Rule .0705 of this Subchapter.

History Note: Authority G.S. 143-214.1, 143-215.8A, 143-214.7, 143-214.23, 143-214.23A, 143-215.3(a)(1); S.L. 1995, c. 572; S.L. 1999, c. 329; S.L. 2011, c. 394; S.L. 2012, c. 200; S.L. 2013, c. 413, S.L. 2015, c.246

Eff. DATE (The provisions of this Rule were previously codified in 15A NCAC 02B .0233(11), 15A NCAC 02B .0243(11), 15A NCAC 02B .0250(16) and 15A NCAC 02B .0259(11).)

REQUEST FOR TECHNICAL CHANGE

AGENCY: Emergency Management Commission

RULE CITATION: 15A NCAC 02B .0715

DEADLINE FOR RECEIPT: Friday, April 12, 2019

The Rules Review Commission staff has completed its review of this Rule prior to the Commission's next meeting. The Commission has not yet reviewed this Rule and therefore there has not been a determination as to whether the Rule will be approved. You may call our office to inquire concerning the staff recommendation.

In reviewing this Rule, the staff recommends the following technical changes be made:

On the Submission for Permanent Rule form, please put the updated citation in Box 2.

Throughout this Rule, do you need to retain the all caps introductory statements for each Paragraph?

In (b)(1)A, line 20, does your regulated public know what "USGS 1:24,000 topographical map(s) or other finer scale map(s)" means?

In (b)(1)B, line 22, should this say, "legal authority, and financial and other resources..."? If not, please insert a comma after "resources"

In (b)(1)C, either retain "has adopted" or on line 27, or delete the "to" after program on line 25.

In (b)(1)E, line 31, define "appropriate"

On line 32, delete "but not limited to"

In (c), Page 2, line 15, insert a comma after "implement"

On line 17, replace "they" with "it"

On line 18, define "immediately"

On line 18, what do you mean by "indicate"? Don't you mean "provide"?

In (d), line 30, and (e), line 34, I do not see that Rule .0705 exists or is proposed to exist. What did you mean to cite to?

In (f), line 35, why not state "The Division shall have exclusive authority to implement the State's stormwater protection...."

And what authority are you relying upon for the Division, rather than the Commission, to do this? Is it G.S. 143-215.3(a)(4)?

Amanda J. Reeder
Commission Counsel
Date submitted to agency: April 2, 2019

In (f)(4), Page 3, what is a “local unit of government”?

In (f)(5), line 5, what are these? And I do not see that Rule .0706 exists. What did you mean to cite to?

In (f)(6), what are “agricultural activities”?

In (g)(6), line 21, insert a copy after “approving authorization”

In (h), line 23, define “regularly”

Why do you need the sentence on lines 25-26? Isn’t this addressed by the sentence on lines 23-25?

In (i), line 29, you are proposing to delete (b)(4) of this Rule. What do you intend to cite to? Is it (b)(2)?

On line 30, you refer to “inadequacies” but on line 31, you use “deficiencies” Should this be the same term both places?

In (j), what is the authority for this delegation? Is it G.S. 143-215.3(a)(4)? If so, I suggest you either add that here or add it to the History Note.

In the History Note, Page 4, please separate the citations using semicolons, not commas.

What part of SL 2015-246 are you citing to? Is it Section 13.1? Why do you need this citation for this Rule?

On line 4, I take it the Rule will become effective following legislative review of Rule 02B .0233/.0714?

Also on line 4, why is this transfer language here? Is this where the language has been placed in other transfers?

Please retype the rule accordingly and resubmit it to our office at 1711 New Hope Church Road, Raleigh, North Carolina 27609.

Amanda J. Reeder
Commission Counsel
Date submitted to agency: April 2, 2019

1 15A NCAC 02B .0241 is readopted with changes as published in 32:21 NCR 1943 as follows:

2
3 **15A NCAC 02B .0241 .0715 NEUSE RIVER BASIN: NUTRIENT SENSITIVE WATERS**
4 **MANAGEMENT STRATEGY: DELEGATION OF AUTHORITY FOR**
5 **THE PROTECTION AND MAINTENANCE OF EXISTING RIPARIAN**
6 **BUFFERS**

7 (a) PURPOSE. This Rule sets out the requirements for delegation of the responsibility for implementing and enforcing
8 the Neuse Basin ~~existing~~ riparian buffer protection program, as described in Rule ~~15A NCAC 2B .0233~~, .0714 of this
9 Section, to local governments.

10 (b) PROCEDURES FOR GRANTING ~~AND RESCINDING~~ DELEGATION. The Commission shall grant ~~and~~
11 ~~rescind~~ local government delegation of the Neuse River Basin Riparian Buffer Protection ~~requirements~~ requirements,
12 as described in Rule .0714 of this Section, according to the following ~~procedures~~ procedures:

13 (1) Local governments within the Neuse River Basin may submit a written request to the Commission
14 for authority to implement and enforce the ~~State's Neuse River Basin~~ riparian buffer protection
15 requirements within their ~~jurisdiction~~ jurisdiction by establishing a riparian buffer program to meet
16 the requirements of Rule .0714 of this Section. The written request to establish a riparian buffer
17 program shall be accompanied by information that shows: include the following:

18 (A) ~~The Documentation that the~~ local government has land use jurisdiction for the riparian
19 ~~buffer~~ buffer. This can be demonstrated by delineating the local land use jurisdictional
20 boundary on the USGS 1:24,000 topographical map(s) or other finer scale map(s);

21 (B) ~~The Documentation that the~~ local government has the administrative organization, staff,
22 legal authority, financial resources and other resources necessary to implement and enforce
23 the ~~State's Neuse River Basin~~ riparian buffer protection requirements based on its size and
24 projected amount of development;

25 (C) The local government ~~has adopted~~ ordinances, resolutions, or regulations necessary to
26 establish ~~and maintain the State's riparian buffer protection requirements; and a riparian~~
27 buffer program to meet the requirements of Rule .0714 of this Section and G.S. 143-
28 214.23A;

29 (D) Documentation that the local government's riparian buffer program [complies] shall
30 comply with all requirements set forth in G.S. 143-214.23A; and

31 (D)(E) ~~The local government has provided a~~ A plan to address violations with appropriate
32 remedies and actions including, but not limited to, civil or criminal remedies that shall
33 restore riparian buffer nutrient removal functions on violation sites and provide a deterrent
34 against the occurrence of future violations.

35 (2) Within 90 days after the Commission has received the request for delegation, the Commission shall
36 notify the local government whether it has been approved, approved with modifications, or denied.

(3) ~~The Commission, upon determination that a delegated local authority is failing to implement or enforce the Neuse Basin riparian buffer protection requirements in keeping with a request approved under Sub item (b)(2) of this Rule, shall notify the delegated local authority in writing of the local program's inadequacies. If the delegated local authority has not corrected the deficiencies within 90 days of receipt of the written notification, then the Commission shall rescind the delegation of authority to the local government and shall implement and enforce the State's riparian buffer protection requirements.~~

(4) ~~The Commission may delegate its duties and powers for granting and rescinding local government delegation of the State's riparian buffer protection requirements, in whole or in part, to the Director.~~

(c) APPOINTMENT OF A RIPARIAN BUFFER PROTECTION ADMINISTRATOR. Upon receiving delegation, local governments shall appoint a Riparian Buffer Protection ~~Administrator~~ Administrator(s) who shall coordinate the implementation and enforcement of the program. The ~~Administrator~~ Administrator(s) shall attend an initial training session by the Division and ~~subsequent annual training sessions.~~ be certified to make on-site determinations pursuant to G.S. 143-214.25A. The ~~Administrator~~ Administrator(s) shall ensure that local government ~~staffs~~ staff working directly with the program receive training to understand, implement and enforce the ~~program.~~ program and are certified to make on-site determinations pursuant to G.S. 143-214.25A. At any time that a local government does not have a certified individual retained on staff to make on-site determinations pursuant to G.S. 143-214.25A, they shall immediately notify the Division and indicate a proposed schedule to secure a certified staff member. The local government shall coordinate with the Division to provide on-site determinations until a new certified staff member is secured by the local government.

(d) ~~PROCEDURES FOR USES WITHIN RIPARIAN BUFFERS THAT ARE ALLOWABLE UPON AUTHORIZATION AND ALLOWABLE WITH MITIGATION. MITIGATION UPON AUTHORIZATION.~~ Upon receiving delegation, local ~~authorities~~ governments shall review ~~proposed uses within the riparian buffer and issue approvals if the uses meet the State's riparian buffer protection requirements. Delegated local authorities shall issue an Authorization Certificate for uses if the proposed use meets the State's riparian buffer protection requirements, or provides for appropriate mitigated provisions to the State's riparian buffer protection requirements. The Division may challenge a decision made by a delegated local authority for a period of 30 days after the Authorization Certificate is issued. If the Division does not challenge an Authorization Certificate within 30 days of issuance, then the delegated local authority's decision shall stand.~~ applications requesting an Authorization Certificate pursuant to the requirements set forth in Rule .0705 of this Section.

(e) ~~VARIANCES. EXCEPTIONS.~~ After Upon receiving delegation, local governments shall review ~~variance requests, provide approvals for minor variance requests and make recommendations to the Commission for major variance requests pursuant to the State's riparian buffer protection program.~~ applications requesting an Authorization Certificate with Exception pursuant to the requirements set forth in Rule .0705 of this Section.

(f) LIMITS OF DELEGATED LOCAL AUTHORITY. The ~~Commission~~ Division shall have jurisdiction to the exclusion of local governments to implement the State's riparian buffer protection requirements for the following types of activities:

- (1) Activities conducted under the authority of the State;
- (2) Activities conducted under the authority of the United States;
- (3) Activities conducted under the authority of multiple jurisdictions; ~~and~~
- (4) Activities conducted under the authority of local units of ~~government~~ government;
- (5) Forest harvesting activities described in Rule .0706 of this Section; and
- (6) Agricultural activities.

(g) RECORD-KEEPING REQUIREMENTS. Delegated local ~~authorities~~ governments shall maintain on-site records for a minimum of five ~~years~~ years. Delegated local ~~authorities~~ governments ~~must~~ must ~~years and shall~~ years and shall furnish a copy of these records to the ~~Director~~ Division within 30 ~~calendar~~ calendar days of receipt of a written request for ~~the records, them~~ the records, them. ~~The Division shall inspect local riparian buffer protection programs to ensure that the programs are being implemented and enforced in keeping with a request approved under Sub item (b)(2) of this Rule. Each delegated local authority's~~ governments records shall include the following:

- (1) A copy of ~~variance~~ all Authorization Certificate with ~~[exception]~~ Exception requests;
- (2) ~~The Findings on all~~ variance Authorization Certificate with ~~[exception]~~ Exception ~~request's finding of fact; requests;~~
- (3) The ~~result~~ results of ~~the all~~ variance Authorization Certificate with ~~[exception]~~ Exception proceedings;
- (4) A record of complaints and action taken as a result of the ~~complaint; complaints;~~
- (5) Records for on-site determinations as described in Rule .0714(4) of this Section; stream origin calls and stream ratings; and
- (6) Copies of all request requests for authorization, records approving authorization and Authorization Certificates.

(h) AUDITS OF LOCAL AUTHORITIES. The Division shall regularly audit delegated local governments to ensure the local programs are being implemented and enforced in keeping with the requirements of this Rule and Rule .0714 of this Section. The audit shall consist of a review of all local government activities with regards to implementation of this Rule and Rule .0714 of this Section.

(i) PROCEDURES FOR RESCINDING DELEGATION. Upon determination by the Division that a delegated local government is failing to implement or enforce the Neuse Basin riparian buffer protection requirements in keeping with the request approved under Subparagraph (b)(4) of this Rule, the Commission shall notify the delegated local government in writing of the local program's inadequacies. If the delegated local government has not corrected the deficiencies within 90 calendar days of receipt of the written notification, then the Commission shall rescind the delegation of authority to the local government and the Division shall implement and enforce the Neuse River Basin riparian buffer protection requirements within their jurisdiction.

(j) DELEGATION. The Commission may delegate its duties and powers for granting and rescinding local government delegation of the Neuse River Basin riparian buffer protection requirements, in whole or in part, to the Director.

1 *History Note:* *Authority 143-214.1; 143-214.7; 143-214.23, 143-214.23A, 143-215.3(a)(1); S.L. 1998 c. 221; S.L.*
2 *2015 c. 246*
3 *Eff. August 1, 2000.*
4 *Readoption Eff. [New Date]. (The provisions of this Rule were transferred from 15A NCAC 02B*
5 *.0241.)*

REQUEST FOR TECHNICAL CHANGE

AGENCY: Emergency Management Commission

RULE CITATION: 15A NCAC 02B .0720

DEADLINE FOR RECEIPT: Friday, April 12, 2019

The Rules Review Commission staff has completed its review of this Rule prior to the Commission's next meeting. The Commission has not yet reviewed this Rule and therefore there has not been a determination as to whether the Rule will be approved. You may call our office to inquire concerning the staff recommendation.

In reviewing this Rule, the staff recommends the following technical changes be made:

On the Submission for Permanent Rule form, please put the updated citation in Box 2.

Throughout this Rule, do you need to retain the all caps introductory statements for each Paragraph?

What is the purpose of Paragraph (b)?

Assuming you need to retain it:

On line 9, define "significant nutrient sources"

On lines 10-11, define "insufficient scientific knowledge"

On line 12, deemed appropriate by whom?

In (c)(3), I do not see this Rule exists or is proposed to exist. What did you intend to cite?

In the History Note, line 28, I take it the Rule will become effective following legislative review of Rule 02B .0250/.0724?

Also on line 28, why is this transfer language here? Is this where the language has been placed in other transfers?

Please retype the rule accordingly and resubmit it to our office at 1711 New Hope Church Road, Raleigh, North Carolina 27609.

Amanda J. Reeder
Commission Counsel
Date submitted to agency: April 2, 2019

1 15A NCAC 02B .0248 is readopted as published in 32:21 NCR 1943 as follows:

2
3 **15A NCAC 02B ~~.0248~~ .0720 RANDLEMAN LAKE WATER SUPPLY WATERSHED: NUTRIENT**
4 **~~MANAGEMENT STRATEGY~~ STRATEGY: PURPOSE AND SCOPE**

5 (a) PURPOSE. The purpose of the Randleman nutrient strategy is to attain the designated uses of Randleman Lake.
6 All waters of the Randleman Lake (Deep River) water supply watershed are classified for water supply uses and
7 designated by the Environmental Management Commission as a Critical Water Supply Watershed pursuant to G.S.
8 143-214.5(b).

9 (b) SCOPE AND LIMITATION. The Randleman nutrient strategy rules require controls to reduce significant nutrient
10 sources throughout the Randleman Lake watershed. These Rules do not address sources for which there is insufficient
11 scientific knowledge to base regulation. The Commission may undertake additional rulemaking in the future or make
12 recommendations to other rulemaking bodies as deemed appropriate to more fully address nutrient sources to
13 Randleman Lake.

14 (c) RULES ENUMERATED. The following ~~rules~~ rules, which together shall constitute the Randleman nutrient
15 strategy, shall be implemented for the entire drainage area upstream of the Randleman Lake Dam:

- 16 (1) ~~Rule .0249 of this Section for Wastewater Discharges,~~
17 (2) ~~Rule .0250 of this Section for Protection and Maintenance of Riparian Areas, and~~
18 (3) ~~Rule .0251 of this Section for Urban Stormwater Management.~~
19 (1) Rule .0721 of this Section for Urban Stormwater Management.
20 (2) Rule .0722 of this Section for Wastewater Discharges; and
21 (3) Rule .0723 of this Section for Protection and Maintenance of Riparian Areas.

22 ~~(b)(d)~~ PENALTIES. Failure to meet the requirements of the Rules in this Section may result in the imposition of
23 enforcement measures as authorized by G.S. 143-215.6A (civil penalties), G.S. 143-215.6B (criminal penalties), and
24 G.S. 143-215.6C (injunctive relief).

25 *History Note: Authority G.S. 143-214.1; 143-214.5; 143-215.3(a)(1); 143-215.6A; 143-215.6B; 143-215.6C;*
26 *Eff. April 1, 1999;*
27 *Amended Eff. May 1, 2010;*
28 *Readopted Eff. [New Date]. (The provisions of this Rule were transferred from 15A NCAC 02B*
29 *.0248.)*
30

REQUEST FOR TECHNICAL CHANGE

AGENCY: Emergency Management Commission

RULE CITATION: 15A NCAC 02B .0721

DEADLINE FOR RECEIPT: Friday, April 12, 2019

The Rules Review Commission staff has completed its review of this Rule prior to the Commission's next meeting. The Commission has not yet reviewed this Rule and therefore there has not been a determination as to whether the Rule will be approved. You may call our office to inquire concerning the staff recommendation.

In reviewing this Rule, the staff recommends the following technical changes be made:

On the Submission for Permanent Rule form, please put the updated citation in Box 2.

Just so I'm clear – on line 5, did you want to retain “urban” here?

In (2)(a), Page 5, line 8, please replace “which” with “that”

In (3), line 19, what is “comprehensive stormwater management plans”?

On line 22, replace “Sub-Items (3)(a) through (3)(f)” with “this Item”

On lines 24-25, delete “but not limited to”

In (3)(A), line 27, please insert a comma after “subwatershed”

On line 30, what are “sensitive areas”? Does your regulated public know?

In (3)(b), Page 6, line 1, what do you mean by “encourage”?

In (3)(c), line 7, please insert a comma after “etc.)”

On line 7, what do you mean by “identify”?

On line 8, please insert a comma after “improvements”

On line 9, please insert a comma after “widths”

On line 11, please insert a comma after “transit”

In (3)(f), line 17, replace “could” with “may”

In (4), line 35, and elsewhere you use the phrase, what authority are you relying upon for “meet or exceed” this Rule?

In (5), Page 7, line 5, please capitalize “State’s”

Amanda J. Reeder
Commission Counsel

Date submitted to agency: April 2, 2019

On line 8, I do not see that Rule .02B .0723 exists or is proposed to exist. What rule did you mean to cite to?

In (6), line 12, please capitalize "State's"

On line 13, please insert a comma after ".0624"

In (6)(a), line 16, did you mean to cite to .0624(3)?

In (6)(b), line 24, did you mean to cite to .0624(6)?

In (6)(b)(i), Page 8, line 8, I believe "are" should be "is" since you are incorporating the map (singular)

In (6)(c), line 23, what are "critical areas"? Does your regulated public know?

On line 27, how will the Commission decide this – in a hearing?

In (7), what specific authority are you relying upon for this provision?

On line 35, upon what basis will the Commission approve or deny this?

In (8), line 36, define "properly"

On Page 9, line 2, do you need to retain "at a minimum"?

In (8)(a), what is a "comprehensive stormwater management program"?

In (8)(c), line 10, what shall this approval be based upon, and how – in a hearing?

In the History Note, line 13, please replace the period after "1999" with a semicolon.

On line 14, I take it the Rule will become effective following legislative review of Rule 02B .0250/.0724?

Also on line 14, why is this transfer language here? Is this where the language has been placed in other transfers?

Please retype the rule accordingly and resubmit it to our office at 1711 New Hope Church Road, Raleigh, North Carolina 27609.

Amanda J. Reeder
Commission Counsel
Date submitted to agency: April 2, 2019

1 15A NCAC 02B .0251 is readopted as published in 32:21 NCR 1943 as follows:

2
3 **15A NCAC 02B .0251 .0721 RANDLEMAN LAKE WATER SUPPLY WATERSHED: STORMWATER**
4 **REQUIREMENTS**

5 The following is the ~~urban~~ stormwater management strategy for the Randleman Lake watershed:

- 6 (1) IMPLEMENTING AUTHORITY. The requirements of this Rule shall be implemented by ~~All~~ local
7 governments that have land use authority within the Randleman Lake ~~watershed~~ watershed. ~~shall~~
8 ~~comply with stormwater management requirements as outlined in this Rule. Although the~~
9 ~~management requirements for the upper and the lower portions of the watershed are similar,~~
10 ~~additional density related stormwater requirements apply to the lower portion of this watershed that~~
11 ~~do not apply to the upper portion of the watershed. The upper portion of the watershed is defined as~~
12 ~~those waters and lands of the Deep River watershed which drain to the Oakdale Cotton Mill Dam.~~
13 ~~The lower portion of the watershed are those waters and lands of the Deep River upstream and~~
14 ~~draining to the Randleman Lake Dam, from the Oakdale Cotton Mill Dam to the Randleman Dam.~~
15 State agencies shall also comply with this Rule insofar as required by G.S. 143-214.5 and in
16 accordance with Rule .0622 of this Subchapter.
- 17 (2) ~~To meet the requirements of this Rule, the local governments with jurisdictions in the upper portion~~
18 ~~of the Randleman Reservoir watershed shall meet the state's rules for a WS IV classification as~~
19 ~~specified in 15A NCAC 2B .0104, .0202 and .0216, the conditions specified in their existing~~
20 ~~ordinances, the riparian area protection requirements of Rule .0250 of this Section, along with the~~
21 ~~stormwater planning requirements set forth in Sub Items (4), (5), and (6) of this Rule.~~
- 22 (3) ~~To meet the requirements of this Rule, local governments with jurisdictions in the lower portion of~~
23 ~~the Randleman Lake watershed shall meet the provisions of Sub Items (4), (5) and (6) of this Rule~~
24 ~~along with the following:~~
- 25 (a) ~~Within 270 days of the effective date of this Rule, the affected jurisdictions, in coordination~~
26 ~~with the Piedmont Triad Regional Water Authority, shall submit local water supply~~
27 ~~ordinances to the Environmental Management Commission for approval. The ordinances~~
28 ~~shall at least meet the state's minimum rules for a WS IV classification as specified in 15A~~
29 ~~NCAC 2B .0104, .0202 and .0216, except that the requirements of this Sub Item shall~~
30 ~~replace the nonpoint source requirements in 15A NCAC 2B .0216(3)(b) for the lower~~
31 ~~portion of the Randleman Lake watershed.~~
- 32 (b) ~~The local ordinances shall provide for review and approval of stormwater management~~
33 ~~plans for new developments to ensure that the following conditions can be met:~~
- 34 (i) ~~Stormwater pollution control criteria for the Randleman Lake watershed outside~~
35 ~~of critical area:~~
- 36 (A) ~~Low Density Option: For each development project, development~~
37 ~~density must be limited to either no more than one dwelling unit per acre~~

1 of single family detached residential development (or 40,000 square foot
2 lot excluding roadway right of way) or 12 percent built upon area for all
3 other residential and non residential development. Stormwater runoff
4 shall be transported primarily by vegetated conveyances. Conveyance
5 system shall not include a discrete stormwater collection system as
6 defined in 15A NCAC 2B .0202;

7 (B) High Density Option: If new development exceeds the low density
8 option requirements as stated in Sub Item (2)(b)(i) of this Rule, then
9 engineered stormwater controls must be used to control runoff from the
10 first inch of rainfall. Engineering controls may consist of wet detention
11 ponds designed in accordance with 15A NCAC 2H .1000 or alternative
12 stormwater management systems consisting of other treatment options,
13 or a combination of options, that are approved by the Director of the
14 Division of Water Quality in accordance with 15A NCAC 2B .0104(g).
15 New residential and non residential development shall not exceed 50
16 percent built upon area, unless an alternative high density option is
17 submitted to the Commission as part of the submittal of the local water
18 supply watershed protection ordinance and determined by the
19 Commission to provide equal or greater water quality protection in
20 Randleman Reservoir and its tributaries;

21 (C) Cluster development shall be allowed on a project by project basis as
22 follows:

23 (I) overall density of the project meets associated density or
24 stormwater control requirements of this Section;

25 (II) buffers meet the minimum statewide water supply watershed
26 protection requirements and those specified for the Randleman
27 Lake watershed riparian areas in Rule .0250 of this Section;

28 (III) built upon areas are designed and located to minimize
29 stormwater runoff impact to the receiving waters, minimize
30 concentrated stormwater flow, maximize the use of sheet flow
31 through vegetated areas, and maximize the flow length through
32 vegetated areas;

33 (IV) areas of concentrated development are located in upland areas
34 and away, to the maximum extent practicable, from surface
35 waters and drainageways;

- (V) ~~remainder of tract to remain in vegetated or natural state by utilization of one of the methods provided in Sub Item 3(b)(i)(C)(VI) of this Rule;~~
- (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;~~
- (D) ~~If local governments choose the high density development option which 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;~~
- (E) ~~Impervious cover shall be minimized to the maximum extent practical through clustering, narrower and shorter paved areas (streets, driveways, sidewalks, cul de sacs, and parking lots), and spreading rooftop and other impervious area runoff over pervious areas. Land clearing during the construction process shall be limited to the maximum extent practical. The local government permit shall require recorded deed restrictions and protective covenants to ensure that development activities maintain the development consistent with the plans and specifications approved by the local governments;~~
- (F) ~~The project is in compliance with the riparian area protection requirements as specified in 15A NCAC 2B .0250 (Randleman Lake riparian area rule);~~
- (G) ~~No new development shall be allowed within 50 feet of waters affected by the Randleman riparian area rule 15A NCAC 2B .0250;~~
- (H) ~~New development meeting the high density option shall be located at least 100 feet from perennial waters as identified on topo or soil survey maps; however, within the area between 50 and 100 feet adjacent to the perennial water body, water dependent structures, or other structures, such as flag poles, signs and security lights, which result in only~~

diminimus 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, divert runoff away from surface waters and maximize the utilization of BMPs;

(I) 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 April 1, 1999 may be developed with new development projects and expansions to existing development of up to 70 percent built upon surface area in addition to the new development approved in compliance with the appropriate requirements of Sub Item (3)(b)(ii)(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 percent/70 percent land area to 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 to minimize water quality impacts;

(ii) Stormwater pollution control criteria for critical areas of the watershed:

(A) Low Density Option: Development density must be limited to either no more than one dwelling unit per two acres of single family detached residential development (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 shall be transported primarily 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)(ii) of this Rule, then engineered stormwater controls must 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) ~~No new permitted sites for land application of residuals or petroleum contaminated soils shall be allowed;~~
- (D) ~~No new landfills shall be allowed; and~~
- (E) ~~Sub Items (3)(b)(i)(C) (H) of this Rule also apply to the critical area.~~

(2) SUBWATERSHEDS. For the purpose of this Rule, the Randleman Lake Watershed is divided into subwatersheds as follows:

- (a) the upper portion of the watershed is defined as those waters and lands of the Deep River watershed which drain to the Oakdale-Cotton Mill Dam;
- (b) the lower portion of the watershed are those waters and lands of the Deep River upstream and draining to the Randleman Lake Dam, from the Oakdale-Cotton Mill Dam to the Randleman Dam;
- (c) Oak Hollow Lake subwatershed is defined as all land areas draining to Oak Hollow Lake;
- (d) High Point Lake subwatershed is defined as all land areas draining to High Point Lake, East Fork Deep River and West Fork Deep River from Oak Hollow Lake Dam; and
- (e) Deep River 1 subwatershed is defined as all land areas draining to the Deep River from High Point Lake Dam to Freeman Mill Dam.

~~(4)(3) COMPREHENSIVE STORMWATER MANAGEMENT PLANS. Within 12 months of the effective date of adoption of this Rule, all~~ All local governments with jurisdiction in the Randleman Lake watershed shall develop implement and maintain comprehensive stormwater management plans and submit those plans to the Commission for review and approval. Comprehensive stormwater management plans meeting that meet or exceed the criteria set forth in Subparts (4)(a) through (4)(f) Sub-Items (3)(a) through (3)(f) of this Rule shall be approved. Rule. Within six months of the Commission's approval of the local plan, subject local governments shall adopt and implement their approved plan. Those Stormwater management plans shall include, but not be limited to, the following:

- (a) ~~Evaluation~~ evaluation of existing land use within Oak Hollow Lake subwatershed, High Point Lake subwatershed and Deep River 1 subwatershed in the Randleman Lake watershed with recommendations that show how overall built-upon area (for existing and future development) for each subwatershed can be minimized and high intensity land uses can be targeted away from surface waters and sensitive areas. ~~Oak Hollow Lake subwatershed is defined as all land areas draining to Oak Hollow Lake. High Point Lake subwatershed is defined as all land areas draining to High Point Lake, East Fork Deep River and West Fork Deep River from Oak Hollow Lake Dam. Deep River 1 subwatershed is defined as all land areas draining to the Deep River from High Point Lake Dam to Freeman Mill Dam.~~ This evaluation shall be done by the local governments having jurisdiction in those watersheds, working in cooperation with the ~~PTRWA;~~ Piedmont Triad Regional Water Authority;

- (b) ~~Coordination~~ coordination between all affected jurisdictions to encourage their development in the existing urban areas. The planning effort shall include provisions for areas of contiguous open space to be protected through conservation easements or other long-term protection measures and provisions to direct infrastructure growth towards existing urban development corridors rather than to rural lands;
- (c) ~~Evaluation~~ evaluation of existing ordinances, municipal programs (maintenance, street cleaning, etc.) and other local policies to identify opportunities for stormwater quality improvements including reducing the amount of built-upon area that is required for uses such as parking, building setbacks, road widths and cul-de-sacs. The evaluations shall consider development options such as multiple story buildings, mixed use to encourage pedestrian travel and mass transit and an identification of municipal activities and procedures that may be modified to allow for stormwater pollution prevention opportunities;
- (d) ~~Implementation~~ implementation of watershed protection public education programs;
- (e) ~~Identification~~ identification and removal of illegal discharges; and
- (f) ~~Identification~~ identification of suitable locations for potential stormwater retrofits (such as riparian areas) that could be funded by various sources.
- (5) ~~Local governments may submit a more stringent local stormwater management program plan. Local stormwater management programs and modifications to these programs shall be kept on file by the Division of Water Quality.~~
- (6) ~~If a local government fails to submit an acceptable local stormwater management program plan within the time frames established in this Rule or fails to properly implement an approved plan, then stormwater management requirements for existing and new urban areas within its jurisdiction shall be administered through the NPDES municipal stormwater permitting program per 15A NCAC 2H .0126 which shall include at a minimum:~~
- (a) ~~Subject local governments shall be required to develop and implement comprehensive stormwater management programs for both existing and new development.~~
- (b) ~~These stormwater management programs shall provide all components that are required of local government stormwater programs in this Rule.~~
- (c) ~~Local governments that are subject to an NPDES permit shall be covered by the permit for at least one permitting cycle (five years) before they are eligible to submit a revised local stormwater management component of their water supply watershed protection program for consideration and approval by the EMC.~~
- (4) RANDLEMAN LAKE WATERSHED ORDINANCES. Local governments with jurisdiction in the Randleman Lake watershed shall implement local ordinances that meet or exceed the provisions of Items (5) and (6) of this Rule in accordance with their location in the Randleman Lake watershed and in coordination with the Piedmont Triad Regional Water Authority. All revisions to these local

ordinances shall be submitted to the Commission for review and approval. Ordinances that meet or exceed the provisions of Items (5) and (6) of this Rule shall be approved by the Commission.

(5) REQUIREMENTS FOR THE UPPER PORTION OF THE WATERSHED. Local governments with jurisdiction in the upper portion of the Randleman Lake watershed shall adopt ordinances that meet or exceed the state's minimum rules for a Class WS-IV watershed as specified in 15A NCAC 02B .0216 (Fresh Surface Water Quality Standards for WS-IV Waters) and 15A NCAC 02B .0620 through .0624 (Water Supply Watershed Protection Program) in addition to meeting the riparian area protection requirements of 15A NCAC 02B .0723.

(6) REQUIREMENTS FOR THE LOWER PORTION OF THE WATERSHED. Local governments with jurisdiction in the lower portion of the Randleman Lake watershed shall adopt ordinances that meet the riparian area protection requirements set forth in 15A NCAC 02B .0723. Local ordinances shall also meet or exceed the state's minimum requirements for a Class WS-IV watershed set forth in 15A NCAC 02B .0620 through .0624 except that the following requirements shall supersede the equivalent provisions of 15A NCAC 02B .0624 as specified:

(a) the following maximum allowable project densities and minimum lot sizes shall supersede the requirements of 15A NCAC 02B .0624(4) and shall apply to a project according to its relative location in the watershed (Critical Area versus Protected Area), its project density (low density versus high density), and the type of development (single-family detached residential versus all other types):

<u>Location in the Watershed</u>	<u>Maximum Allowable Project Density or Minimum Lot Size</u>		
	<u>Low Density Development</u>		<u>High Density Development</u>
	<u>Single-family detached residential</u>	<u>Non-residential and all other residential</u>	<u>All types</u>
<u>Critical Area</u>	<u>1 dwelling unit per 2 acres or 80,000 square foot lot or 6% built-upon area</u>	<u>6% built-upon area</u>	<u>6 to 30% built-upon area</u>
<u>Protected Area</u>	<u>1 dwelling unit per acre or 40,000 square foot lot or 12% built-upon area</u>	<u>12% built-upon area</u>	<u>12 to 50% built-upon area;</u>

(b) for high density development, the following vegetated setback requirements shall be in addition to the riparian area protection requirements set forth in 15A NCAC 02B .0723 and shall supersede the requirements of 15A NCAC 02B .0624(12):

- (i) vegetated setbacks for high density development shall be located at least 100 feet from perennial waterbodies and perennial streams indicated on the most recent versions of the United States Geological Survey (USGS) 1:24,000 scale (7.5 minute) quadrangle topographic maps, which are herein incorporated by reference and are available at no cost at <http://www.usgs.gov/pubprod/>, or the most recent version of the published manuscript of the soil survey map that shows stream layers prepared by the Natural Resources Conservation Service of the United States Department of Agriculture, which are herein incorporated by reference and are available at no cost at <http://www.nrcs.usda.gov/wps/portal/nrcs/main/soils/survey/>;
- (ii) the width of a vegetated setback shall be measured horizontally from the normal pool elevation of impounded structures, from the top of bank of each side of streams or rivers, and from the mean high waterline of tidal waters, perpendicular to the shoreline;
- (iii) vegetated setbacks may be cleared or graded, but shall be replanted and maintained in grass or other vegetation; and
- (iv) no new built-upon area shall be allowed in the vegetated setback except for publicly-funded linear projects such as roads, greenways, and sidewalks, water dependent structures such as docks, and minimal footprint uses such as poles, signs, utility appurtenances, and security lights where it is not practical to locate the built-upon area elsewhere. Built-upon area associated with these uses shall be minimized and the channelization of stormwater runoff shall be avoided.
- (c) outside of the critical areas, a local government may submit an alternative high density option to the Commission as part of the submittal of the local water supply watershed protection ordinance in order to allow development to exceed 50 percent built-upon area. The alternative ordinance shall be approved by the Commission if the Commission determines that it provides equal or greater water quality protection to the Randleman Lake reservoir and its tributaries;
- (d) no new permitted sites for land application of residuals or petroleum contaminated soils shall be allowed in the critical areas; and
- (e) no new landfills shall be allowed in the critical areas.
- (7) Local governments shall have the option to develop more stringent local stormwater management plans and watershed ordinances. Local stormwater management programs and ordinances, and modifications to these programs and ordinances, shall be submitted to the Commission for review and approval and kept on file by the Division.
- (8) If a local government fails to properly implement an approved plan, then stormwater management requirements for existing and new urban areas within its jurisdiction shall be administered through

1 the NPDES municipal stormwater permitting program per 15A NCAC 02H .0126 which shall
2 include at a minimum:

- 3 (a) subject local governments shall be required to develop and implement comprehensive
4 stormwater management programs for both existing and new development;
5 (b) these stormwater management programs shall provide all components that are required of
6 local government stormwater programs in this Rule; and
7 (c) local governments that are subject to an NPDES permit shall be covered by the permit for
8 at least one permitting cycle (five years) before they are eligible to submit a revised local
9 stormwater management component of their water supply watershed protection program
10 for consideration and approval by the Commission.

11
12 *History Note: Authority G.S. 143-214.1; 143-214.5; 143-214.7; 143-215.1; 143-215.3(a)(1);*
13 *Eff. April 1, 1999.*

14 Readopted Eff. [New Date]. (The provisions of this Rule were transferred from 15A NCAC 02B
15 .0251.)
16

REQUEST FOR TECHNICAL CHANGE

AGENCY: Emergency Management Commission

RULE CITATION: 15A NCAC 02B .0722

DEADLINE FOR RECEIPT: Friday, April 12, 2019

The Rules Review Commission staff has completed its review of this Rule prior to the Commission's next meeting. The Commission has not yet reviewed this Rule and therefore there has not been a determination as to whether the Rule will be approved. You may call our office to inquire concerning the staff recommendation.

In reviewing this Rule, the staff recommends the following technical changes be made:

On the Submission for Permanent Rule form, please put the updated citation in Box 2.

How does this Rule work with Rule .0721(8)?

In (1), line 9, and (2), line 13, who will predict this? Based upon what? How will this prediction be communicated?

On line 10, please replace "which" with "that"

In (2), line 12, do you mean "shall" rather than "may"? If not, then under what circumstances that the concentrations and mass limits will meet the requirements set forth in the Rule but will not be allowed to permit or expand it?

On line 14, replace "which" with "that"

On line 18, I take it the Rule will become effective following legislative review of Rule 02B .0250/.0724?

Also on line 18, why is this transfer language here? Is this where the language has been placed in other transfers?

Please retype the rule accordingly and resubmit it to our office at 1711 New Hope Church Road, Raleigh, North Carolina 27609.

Amanda J. Reeder
Commission Counsel
Date submitted to agency: April 2, 2019

1 15A NCAC 02B .0249 is readopted as published in 32:21 NCR 1943 as follows:

2
3 **15A NCAC 02B ~~.0249~~ .0722 RANDLEMAN LAKE WATER SUPPLY WATERSHED: WASTEWATER**
4 **DISCHARGE REQUIREMENTS**

5 The following is the National Pollutant Discharge Elimination System (NPDES) wastewater discharge management
6 strategy for the Randleman Lake watershed. For purposes of this Rule, permitted wastewater discharges means those
7 facilities permitted to discharge domestic wastewater or wastewaters containing phosphorus:

8 (1) The City of High Point ~~s Eastside facility~~ Point East Side Eastside Wastewater Treatment Plant
9 (WWTP) shall meet a total phosphorus concentration predicted to provide a level of water quality
10 in the Randleman Lake which meets all designated uses of those waters.

11 (2) There shall be no new or expanding permitted wastewater discharges in the watershed with the
12 exception that the City of High Point Eastside ~~wastewater treatment plant~~ WWTP may be allowed
13 to expand provided that any new permit contains concentration and mass limits predicted to provide
14 a level of water quality in the Randleman Lake which meets all designated uses of those waters.

15
16 *History Note:* Authority G. S. 143-214.1; 143-214.5; 143-215.3(a)(1);
17 *Eff. April 1, ~~1999~~. 1999;*
18 *Readopted Eff. [New Date]. (The provisions of this Rule were transferred from 15A NCAC 02B*
19 *.0249.)*
20

REQUEST FOR TECHNICAL CHANGE

AGENCY: Emergency Management Commission

RULE CITATION: 15A NCAC 02B .0735

DEADLINE FOR RECEIPT: Friday, April 12, 2019

The Rules Review Commission staff has completed its review of this Rule prior to the Commission's next meeting. The Commission has not yet reviewed this Rule and therefore there has not been a determination as to whether the Rule will be approved. You may call our office to inquire concerning the staff recommendation.

In reviewing this Rule, the staff recommends the following technical changes be made:

On the Submission for Permanent Rule form, please put the updated citation in Box 2.

Why isn't this Rule formatted like Rule .0715? Is the difference between Paragraphs there and Items here intentional?

On line 8, should this be "Tar-Pamlico River Basin" to mirror the language in (1)(a), line 15?

Throughout this Rule, do you need to retain the all caps introductory statements for each Item?

In (1)(a)(i), line 22, does your regulated public know what "USGS 1:24,000 topographical map(s) or other finer scale map(s)" means?

In (1)(a)(ii), line 25, should this say, "legal authority, and financial and other resources..."? If not, please insert a comma after "resources"

In (1)(a)(iii), either retain "has adopted" or on line 28, or delete the "to" after "program" on line 30.

In (1)(a)(v), line 34, define "appropriate"

On line 35, delete "but not limited to"

In (2), Page 2, line 21, insert a comma after "implement"

On line 24, replace "they" with "it"

Also on line 24, define "immediately"

On line 24, what do you mean by "indicate"? Don't you mean "provide"?

In (3), Page 3, line 2, and (4), line 5, I do not see that Rule .0705 exists or is proposed to exist. What did you mean to cite to?

In (5), line 8, why not state "The Division shall have exclusive authority to implement the State's stormwater protection...."

Amanda J. Reeder
Commission Counsel
Date submitted to agency: April 2, 2019

And what authority are you relying upon for the Division, rather than the Commission, to do this? Is it G.S. 143-215.3(a)(4)?

On line 9, should it read "Tar-Pamlico River Basin"?

In (5)(d), line 14 what is a "local unit of government"?

In (5)(e), line 15, what are these? And I do not see that Rule .0706 exists. What did you mean to cite to?

In (5)(f), line 16, what are "agricultural activities"?

In (6)(f), line 32, insert a copy after "approving authorization"

In (7), line 34, define "regularly"

Why do you need the sentence on lines 36 through Page 4, line 2? Isn't this addressed by the sentence on lines 34-36?

In (8), line 4, should this be "Tar-Pamlico River Basin"?

On line 7, you refer to "inadequacies" but on that same line, you use "deficiencies" Should this be the same term both places?

In (9), what is the authority for this delegation? Is it G.S. 143-215.3(a)(4)? If so, I suggest you either add that here or add it to the History Note.

In the History Note, do you need to retain the citation to the Session Law?

On line 18, please change the period after "2000" to a semicolon.

On line 19, I take it the Rule will become effective following legislative review of Rule 02B .0259/.0734?

Also on line 19, why is this transfer language here? Is this where the language has been placed in other transfers?

Please retype the rule accordingly and resubmit it to our office at 1711 New Hope Church Road, Raleigh, North Carolina 27609.

1 15A NCAC 02B .0261 is readopted with changes as published in 32:21 NCR 1943 as follows:

2
3 **15A NCAC 02B .0261 .0735** **TAR-PAMLICO RIVER BASIN - NUTRIENT SENSITIVE WATERS**
4 **MANAGEMENT STRATEGY: DELEGATION OF AUTHORITY FOR**
5 **THE PROTECTION AND MAINTENANCE OF EXISTING RIPARIAN**
6 **BUFFERS**

7 This Rule sets out the ~~following~~ requirements for delegation of the responsibility for implementing and enforcing the
8 Tar-Pamlico Basin riparian buffer protection program, as described in Rule ~~15A NCAC 2B .0259~~, .0734 of this
9 Section, to local governments:

10 (1) ~~PROCEDURES FOR GRANTING AND RESCINDING DELEGATION.~~ The Commission shall
11 grant ~~and rescind~~ local government delegation of the Tar-Pamlico River Basin Riparian Buffer
12 Protection requirements, as described in Rule ~~15A NCAC 2B .0259~~, .0734 of this Section according
13 to the following ~~procedures~~, procedures:

14 (a) Local governments within the Tar-Pamlico River Basin may submit a written request to
15 the Commission for authority to implement and enforce the Tar-Pamlico River Basin
16 riparian buffer protection requirements within their ~~jurisdiction~~, jurisdiction by
17 establishing a riparian buffer program to meet the requirements of Rule .0734 of this
18 Section. The written request to establish a riparian buffer program shall ~~be accompanied~~
19 ~~by information which shows~~, include the following:

20 (i) ~~The Documentation that the~~ local government has land use jurisdiction for the
21 riparian ~~buffer~~ buffer. This can be demonstrated by delineating the local land use
22 jurisdictional boundary on the USGS 1:24,000 topographical map(s) or other finer
23 scale map(s);

24 (ii) ~~The Documentation that the~~ local government has the administrative organization,
25 staff, legal authority, financial resources and other resources necessary to
26 implement and enforce the Tar-Pamlico River Basin riparian buffer protection
27 requirements based on its size and projected amount of development;

28 (iii) The local government ~~has adopted~~ ordinances, resolutions, or regulations
29 necessary to establish ~~and maintain the Tar Pamlico Basin riparian buffer~~
30 ~~protection requirements; and~~ a riparian buffer program to meet the requirements
31 of Rule .0734 of this Section and G.S. 143-214.23A;

32 (iv) Documentation that the local government's riparian buffer program [complies]
33 shall comply with all requirements set forth in G.S. 143-214.23A; and

34 (iv)(v) ~~The local government has provided a~~ Δ plan to address violations with appropriate
35 remedies and actions including, but not limited to, civil or criminal remedies that
36 shall restore riparian buffer nutrient removal functions on violation sites and
37 provide a deterrent against the occurrence of future violations.

- (b) Within 90 days after the Commission has received the request for delegation, the Commission shall notify the local government whether it has been approved, approved with modifications, or denied.
- ~~(e) The Commission, upon determination that a delegated local authority is failing to implement or enforce the Tar Pamlico Basin riparian buffer protection requirements in keeping with a request approved under Sub item (1)(b) of this Rule, shall notify the delegated local authority in writing of the local program's inadequacies. If the delegated local authority has not corrected the deficiencies within 90 days of receipt of the written notification, then the Commission shall rescind the delegation of authority to the local government and shall implement and enforce the Tar Pamlico Basin riparian buffer protection requirements.~~
- ~~(d) The Commission may delegate its duties and powers for granting and rescinding local government delegation of the Tar Pamlico Basin riparian buffer protection requirements, in whole or in part, to the Director.~~

(2) APPOINTMENT OF A RIPARIAN BUFFER PROTECTION ADMINISTRATOR. Upon receiving delegation, local governments shall appoint a Riparian Buffer Protection Administrator Administrator(s) who shall coordinate the implementation and enforcement of the program. The Administrator Administrator(s) shall attend an initial training session by the Division and subsequent annual training sessions. be certified to make on-site determinations pursuant to G.S. 143-214.25A. The Administrator Administrator(s) shall ensure that local government ~~staff~~ staffs working directly with the program receive training to understand, implement and enforce the ~~program.~~ program and are certified to make on-site determinations pursuant to G.S. 143-214.25A. If a local government does not have anyone on staff certified to make on-site determinations pursuant to G.S. 143-214.25A, they shall immediately notify the Division and indicate a proposed schedule to secure a certified staff member. The local government shall coordinate with the Division to provide on-site determinations until a new certified staff member is secured by the local government.

(3) PROCEDURES FOR USES WITHIN RIPARIAN BUFFERS THAT ARE ALLOWABLE UPON AUTHORIZATION AND ALLOWABLE WITH MITIGATION. MITIGATION UPON AUTHORIZATION. Upon receiving delegation, local ~~authorities~~ governments shall review ~~proposed uses within the riparian buffer and issue approvals if the uses meet the Tar Pamlico Basin riparian buffer protection requirements. Delegated local authorities shall issue an Authorization Certificate for uses if the proposed use meets the Tar Pamlico Basin riparian buffer protection requirements, or provides for appropriate mitigated provisions to the Tar Pamlico Basin riparian buffer protection requirements.~~ The Division may challenge a decision made by a delegated local authority for a period of 30 days after the Authorization Certificate is issued. If the Division does not challenge an Authorization Certificate within 30 days of issuance, then the delegated local

authority's decision shall stand. applications requesting an Authorization Certificate pursuant to the requirements set forth in Rule .0705 of this Section.

- (4) ~~VARIANCES. EXCEPTIONS. After Upon~~ receiving delegation, local governments shall review applications requesting an Authorization Certificate with Exception pursuant to the requirements set forth in Rule .0705 of this Section. ~~variance requests, provide approvals for minor variance requests and make recommendations to the Commission for major variance requests pursuant to the Tar-Pamlico Basin riparian buffer protection program.~~

- (5) LIMITS OF DELEGATED LOCAL AUTHORITY. The ~~Commission~~ Division shall have jurisdiction to the exclusion of local governments to implement the Tar-Pamlico Basin riparian buffer protection requirements for the following types of activities:

- (a) Activities conducted under the authority of the State;
- (b) Activities conducted under the authority of the United States;
- (c) Activities conducted under the authority of multiple jurisdictions;
- (d) Activities conducted under the authority of local units of ~~government, government;~~
- (e) Forest harvesting activities described in Rule .0706 of this Section; and
- (f) Agricultural activities.

- (6) RECORD-KEEPING REQUIREMENTS. Delegated local ~~authorities~~ governments shall maintain on-site records for a minimum of 5 ~~years. Delegated local authorities [governments] must years and shall~~ furnish a copy of these records to the ~~Director~~ Division within 30 calendar days of receipt of a written request for ~~the records, them.~~ The Division shall inspect local riparian buffer protection programs to ensure that the programs are being implemented and enforced in keeping with a request approved under Sub item (1)(b) of this Rule. Each delegated local ~~authority's~~ government's records shall include the following:

- (a) A copy of ~~variance~~ all Authorization Certificate with ~~[exception]~~ Exception requests;
- (b) The Findings on all variance Authorization Certificate with ~~[exception]~~ Exception request's finding-of-fact; requests;
- (c) The ~~result~~ results of ~~the all~~ variance Authorization Certificate with ~~[exception]~~ Exception proceedings;
- (d) A record of complaints and action taken as a result of the ~~complaint; complaints;~~
- (e) Records for on-site determinations as described in Rule .0734(4) of this Section; stream origin calls and stream ratings; and
- (f) Copies of all request requests for authorization, records approving authorization and Authorization Certificates.

- (7) AUDITS OF LOCAL AUTHORITIES. The Division shall regularly audit delegated local governments to ensure the local programs are being implemented and enforced in keeping with the requirements of this Rule and Rule .0734 of this Section. The audit shall consist of a review of all

1 local government activities with regards to implementation of this Rule and Rule .0734 of this
2 Section.

- 3 (8) PROCEDURES FOR RESCINDING DELEGATION. Upon determination by the Division that a
4 delegated local government is failing to implement or enforce the Tar-Pamlico Basin riparian buffer
5 protection requirements in keeping with the request approved under Sub-Item (1)(b) of this Rule,
6 the Commission shall notify the delegated local government in writing of the local program's
7 inadequacies. If the delegated local government has not corrected the deficiencies within 90 calendar
8 days of receipt of the written notification, then the Commission shall rescind the delegation of
9 authority to the local government and the Division shall implement and enforce the Tar-Pamlico
10 River Basin riparian buffer protection requirements within their jurisdiction
- 11 (9) DELEGATION. The Commission may delegate its duties and powers for granting and rescinding
12 local government delegation of the Tar-Pamlico River Basin riparian buffer protection requirements,
13 in whole or in part, to the Director.

14
15 *History Note: Authority G S. 143-214.1; 143-214.7; 143-215.3(a)(1); 143-215.6A; 143-215.6B; 143-215.6C;*
16 *143B-282(d); S.L. 1999; c. 329, s. 7.1;*
17 *Temporary Adoption Eff. January 1, 2000;*
18 *Eff. August 1, 2000.*
19 *Readoption Eff. [New Date]. (The provisions of this Rule were transferred from 15A NCAC 02B*
20 *.0261.)*
21

REQUEST FOR TECHNICAL CHANGE

AGENCY: Emergency Management Commission

RULE CITATION: 15A NCAC 02H .0501

DEADLINE FOR RECEIPT: Friday, April 12, 2019

PLEASE NOTE: *This request may extend to several pages. Please be sure you have reached the end of the document.*

The Rules Review Commission staff has completed its review of this Rule prior to the Commission's next meeting. The Commission has not yet reviewed this Rule and therefore there has not been a determination as to whether the Rule will be approved. You may call our office to inquire concerning the staff recommendation.

In reviewing this Rule, the staff recommends the following technical changes be made:

The name of the rule is not within the RRC purview; however, I suggest you rename this Rule "Applicability and Definitions"

In (a), line 11, if "state" means "NC" then please capitalize the term. Please note the same for (c)(1), line 32.

On line 13, delete "but not limited to,"

On line 14, who will determine if this "may" discharge?

On line 16, so that I'm clear – the "required" certification is as set forth in federal law?

In (b)(1), line 20, please replace "are" with "shall be"

Also on line 20, do you mean shall be issued on a case-by-case basis, based upon the procedures set forth in the Rules? If not, what will be considered in addition to these Rules?

In (b)(2), line 22, what do you mean by "developed by the Division"? Will this be done in Rule? If not, what authority are you relying upon to do so outside of rulemaking?

On lines 23-24, what is "minimal impact"? Does your regulated public know?

On line 24, what is a "Certificate of Coverage"? Does your regulated public know?

On line 25, "deemed" by whom?

On line 26, what is "specifically"? And how will this requirement be determined?

On line 26, why is "General Certification" capitalized here? It is not on lines 25 and 27.

In (c), line 31, please state "G.S. 143-212 and 143-213 and as follows:"

Amanda J. Reeder
Commission Counsel

Date submitted to agency: March 29, 2019

Please alphabetize the terms in (c)(1) through (10).

Also, please entirely strike the number and parenthesis and add a new one. For example ~~(4)~~ (2)

In (c)(4), Page 2, line 1, I note that "Department" is defined in G.S. 143-212, but it does not include the Secretary. Is it your intent for the term to refer to the Department and Secretary combined, such that all references to "Department" includes both?

In (c)(5), you've already said you're using the definitions in G.S. 143-212. Why do you need to restate it here?

In (c)(7), line 6, do you mean "reasonably"?

And foreseeable to whom? And who determines what is reasonable?

Line 6, please insert a comma after "activities"

In (c)(8) and (9), I do not see these terms defined in Rule 15A NCAC 02B .0231. Did you mean to reference a different rule?

In (c)(10), line 13, reasonably foreseeable to whom?

In the History Note, line 15, I do not understand the citation to S.L. 2017-145. Is it for Section 2(b)? If so, please cite to it as S.L. 201-145, Section 2(b).

Please retype the rule accordingly and resubmit it to our office at 1711 New Hope Church Road, Raleigh, North Carolina 27609.

1 15A NCAC 02H .0501 is readopted with changes as published in 32:21 NCR 1943 as follows:

2
3 **SECTION .0500 - WATER QUALITY CERTIFICATION**
4

5 **15A NCAC 02H .0501 PURPOSE APPLICABILITY**

6 ~~(a) The provisions of this Section shall apply to all division regulatory, planning, resource management, liaison and~~
7 ~~financial aid determinations that affect surface waters and wetlands as defined by 15A NCAC 2B .0202. This Section~~
8 ~~shall only apply to specific activities which require state review after the effective date of this Rule and which require~~
9 ~~a Division determination concerning effects on surface waters or wetlands. Activities that are described in Section~~
10 ~~404(f)(1)(A) (F) of the Clean Water Act (33 U.S.C. 1344) are exempt from this Rule.~~

11 ~~(b)(a) These Rules outline~~ This Section outlines the application and review procedures for activities that require state
12 water quality certifications (certifications) pursuant to Section 401 of the Clean Water Act (33 U.S.C. 1341).
13 Certifications are required whenever for a federally permitted or licensed activity including, but not limited to, the
14 construction or operation of facilities facilities, which may will result in a discharge into navigable waters. waters as
15 described in 33 CFR Part 323. The federal definition of navigable waters includes wetlands as defined at 33 CFR
16 328.3 and 40 CFR 230.3. Failure to obtain a required certification is enforceable by the Department pursuant to
17 Chapter 143, Article 21, Part 1.

18 ~~(e)(b) Water quality certifications~~ Certifications may be issued for individual activities (individual certifications) or
19 issued for specific types or groups of activities (general certifications):

- 20 (1) Individual certifications are issued on a case-by-case basis and the procedures outlined in ~~the~~
21 ~~following Rules~~ this Section are required for each individual certification.
- 22 (2) General certifications ~~are issued~~ may be developed by the Division and issued by the Director for
23 specific types or groups of activities that are similar in nature and considered to have minimal
24 impact. All activities that receive a "Certificate of Coverage" under a general certification from the
25 Division shall be deemed covered under that general certification. The When written approval is
26 specifically required in the General Certification, the application and review procedures for
27 requesting ~~concurrence~~ a "Certificate of Coverage" under a general certification from the Division
28 that the general certification can be used for the proposed activity are the same as the procedures
29 outlined in the following Rules this Section for individual certifications certifications, unless
30 specifically stated otherwise in the general certification.

31 (c) The terms used in this Section shall be as defined in G.S. 143-212, G.S. 143-213 and as follows:

- 32 (1) "Certification" means the state water quality certification pursuant to Section 401 of the Clean Water
33 Act (33 U.S.C. 1341).
- 34 ~~(2)~~ "Director" means the Director of the Division.
- 35 ~~(23)~~ "Division" means the Division of Water Resources of the North Carolina Department of
36 Environmental Quality.

1 (4) "Department" means the Department of Environmental Quality and the Secretary of the Department
2 of Environmental Quality.

3 (35) "Person" means as defined in G.S. 143-212(4).

4 (46) "Wetland" means as defined in 15A NCAC 02B .0202.

5 (57) "Cumulative impact" means environmental impacts resulting from incremental effects of an activity
6 when added to other past, present, and reasonable foreseeable future activities regardless of what
7 entities undertake such other actions.

8 (68) "Class SWL wetland" means as defined at 15A NCAC 02B .0231.

9 (79) "Class UWL wetland" means as defined at 15A NCAC 02B .0231.

10 (810) "Secondary impact" means ~~[actions, or actions directly linked to an activity, that may affect~~
11 ~~classified surface waters or wetlands that would not occur but for the proposed activity]~~ indirect
12 effects, which are caused by the action and are later in time or farther removed in distance, but are
13 still reasonably foreseeable.

14
15 History Note: Authority G.S. 143-211(c); 143-215.3(a)(1); 143-215.3(c); 143B-282(a)(1)(u); S.L 2017, c. 145
16 RRC Objection Eff. July 18, 1996 due to lack of statutory authority and ambiguity;
17 Eff. October 1, 1996.
18 Readopted Eff. May 1, 2019.

REQUEST FOR TECHNICAL CHANGE

AGENCY: Emergency Management Commission

RULE CITATION: 15A NCAC 02H .0502

DEADLINE FOR RECEIPT: Friday, April 12, 2019

The Rules Review Commission staff has completed its review of this Rule prior to the Commission's next meeting. The Commission has not yet reviewed this Rule and therefore there has not been a determination as to whether the Rule will be approved. You may call our office to inquire concerning the staff recommendation.

In reviewing this Rule, the staff recommends the following technical changes be made:

In (a), (c), (d), and (e), why do you have the all caps introductory statements? Do you need to retain them?

In (a), line 6, please note my earlier question regarding "certificate of coverage" And why is it not capitalized here, but is in Rule .0501?

On line 7, I am simply asking – do you need to cite to both 401 of the Clean Water Act and the official citation, 33 U.S.C. 1341?

On line 8, you do not need to say "(Director)" as you've already defined the term.

On line 10, what is "complete"? Is it containing everything in (a)(1) through (11)? Or what is contemplated by Paragraph (d)?

On line 14, consider replacing "must" with "shall"

On line 15, how will the applicant know the Army Corp of Engineers approved the form?

And I take it the Division form contains what is in the Rule?

On line 15, do you need to retain "at minimum"? Are you trying to account for the additional information that may be requested in Paragraph (c)?

In (a)(2), line 18, delete "provide" and just state "owner(s), the name, address, and phone number"

And please insert a comma after "address"

In (a)(3), line 21, please insert a comma after "address"

On line 24, what is "authorized" here?

In (a)(7), line 30, insert a comma after "pond"

On line 31, insert a comma after "brackish"

Amanda J. Reeder
Commission Counsel

Date submitted to agency: March 29, 2019

In (a)(8), line 32, please insert a comma after “facilities”

In (a)(9), line 34, what is “sufficient” and “accurately”?

On line 36, replace “said” with “the”

On Page 2, line 1, insert a comma after “waters”

In (b), line 19, what “Division” are you referring to? If you mean the Division of Water Resources as the term is defined in Rule .0501, how does the Division receive this?

In (c), line 22, who will find this “necessary for the proper consideration” and based upon what?

In (d), line 26, define “detailed”

On line 26, replace “any such” with “the”

On line 27, replace “on” with “upon”

On line 28, please insert “of this Rule,” after “(c)”

Are you relying upon G.S. 143B-215.3(a)(2) for the authority for this investigation?

On line 31, how will the Division deem this necessary?

On line 33, what is “safe” and “reasonable”?

Please retype the rule accordingly and resubmit it to our office at 1711 New Hope Church Road, Raleigh, North Carolina 27609.

1 15A NCAC 02H .0502 is readopted with changes as published in 32:21 NCR 1943 as follows:

2
3 **15A NCAC 02H .0502 APPLICATION FILING APPLICATIONS**

4 (a) ~~Application for Certification.~~ **APPLICATION FOR CERTIFICATION.** Any ~~person, as defined in Article 21,~~
5 ~~Chapter 143, North Carolina General Statutes,~~ person ~~desiring needing~~ issuance of ~~the an state individual water~~
6 ~~quality certification or certificate of coverage under a general certification required by~~ this Section and Section 401 of
7 ~~the Federal Water Pollution Control Act as amended~~ Clean Water Act (33 U.S.C. 1341) shall file with the Director of
8 the North Carolina Division of Water ~~Quality (director),~~ Resources (Director), at ~~the office in~~ 1617 Mail Service
9 Center, Raleigh, North Carolina, 27699-1617 or 512 N. Salisbury Street, Raleigh, NC 27604, ~~an original and six~~
10 ~~[three] copies of an one complete copy of an~~ application for ~~certification.~~ certification or submit one complete copy
11 of an application electronically via the following website:
12 https://edocs.deq.nc.gov/Forms/DWR_Wetlands_Online_Submittal_Page. ~~Submission of an application to the~~
13 ~~Division of Coastal Management for permits to develop in North Carolina's coastal area shall suffice as an application~~
14 ~~for certification.~~ The application must be made on a form provided or approved by the Division or the U.S. Army
15 Corps of Engineers and shall ~~specify include at minimum the following:~~

- 16 (1) the date of application;
- 17 (2) the name, address, and phone number of the ~~property owner;~~ [owner or owners;] applicant. If the
18 applicant is not the property owner(s), provide the name, address and phone number of the property
19 owner(s):
- 20 (3) if the applicant is a corporation, the state in which it is domesticated, the name of its principal
21 officers, the name and address of the North Carolina process agency, and the ~~name~~ name, address
22 and phone number of the individual who ~~shall be primarily responsible for the conduct of the activity~~
23 for which certification is sought; is the authorized agent of the corporation and responsible for the
24 activity for which certification is sought. The corporation must be authorized to do business in NC;
- 25 (4) the nature of the activity to be conducted by applicant;
- 26 (5) whether the discharge has occurred or is proposed;
- 27 (6) the location of the discharge, stating the municipality, if applicable; the county; the drainage basin;
- 28 the name of the receiving waters; and the location of the point of discharge with regard to the
- 29 receiving waters;
- 30 (7) a description of the receiving waters, including type (creek, river, swamp, canal, lake, pond or
- 31 estuary) if applicable; nature (fresh, brackish or salt); and wetland classification;
- 32 (8) a description of the type of waste treatment facilities if applicable. applicable; [and]
- 33 ~~(b)(9) Maps. [MAPS.] There shall be attached to the application~~ a map(s) or sketch(es) with a scale(s) and
34 a north arrow(s) and of sufficient detail to accurately delineate the boundaries of the lands owned
35 or proposed to be utilized by the applicant in carrying out ~~its~~ the activity; the location, dimensions
36 and type of any structures erected or to be erected on said lands for use in connection with the

activity; and the location and extent of the receiving waters including wetlands within the boundaries of said ~~lands, lands~~;

(10) an application fee as required by G.S. ~~143-215.3D(e); 143-215.3D(e); and~~

(11) ~~[Applications shall be signed by the owner with title to the property, a person who has been authorized by the owner to apply for certification, or an entity with the power of eminent domain.] a signature by the applicant for the federal permit or license or an agent authorized by the applicant. If an agent is signing for the applicant, an agent authorization letter must be provided. In signing the application, the applicant certifies that all information contained therein or in support thereof is true and correct to the best of their knowledge. [For corporations, partnerships, proprietors, or municipal, state or other public entity, the application shall be signed as follows:~~

~~(A) — in the case of corporations, by a principal executive officer of at least the level of vice-president, or their authorized representative;~~

~~(B) — in the case of a partnership or limited partnership, by a general partner;~~

~~(C) — in the case of a sole proprietorship, by the proprietor; and~~

~~(D) — in the case of a municipal, state or other public entity, by either a principal executive officer, ranking official or other duly authorized employee.]~~

(b) Submission of an application to the Division of Coastal Management for a permit to develop in North Carolina's coastal area in accordance with the rules of 15A NCAC 07J .0200 shall suffice as an application for a water quality certification or certificate of coverage under a general certification upon receipt by the Division.

(c) ~~Power to Request Additional Information.~~ POWER TO REQUEST ADDITIONAL INFORMATION. The ~~Director~~ Division may ~~request, request in writing,~~ and the applicant shall furnish, any additional information that may be found necessary for the proper consideration of the application. ~~[The 60 day processing period required in Rule .0507 of this Section begins on the date the additional information is received by the Division.]~~

(d) ~~Omissions From Applications.~~ OMISSIONS FROM APPLICATIONS. If the applicant ~~considers~~ believes that it is not feasible or is unnecessary to furnish any portion of the information required by Paragraphs ~~(a) and (a), (b) and (c)~~ of this Rule, then the applicant shall submit a detailed statement explaining the reasons for omission of any such information. The final decision regarding the completeness of the application shall be made by the Division based on the information required in Paragraphs (a), (b) and (c), and any explanation provided by the applicant regarding omitted information provided in this Paragraph.

(e) ~~Investigations.~~ INVESTIGATIONS. The staff of the ~~Department of Environment, Health, and Natural Resources (department)~~ Division shall conduct such investigation as the ~~Director~~ Division deems ~~necessary; necessary, and The~~ applicant shall ~~cooperate in the investigation to the extent that it shall furnish necessary information,~~ allow the staff safe access to the lands and facilities of the applicant and lend such assistance as shall be ~~reasonable, reasonable, upon the presentation of credentials.~~

(f) ~~Who Must Sign Applications.~~ The application shall be considered a "valid application" only if the application bears the signature of a responsible officer of the company, municipal official, partner or owner. This signature certifies that the applicant has title to the property, has been authorized by the owner to apply for certification or is a

1 ~~public entity and has the power of eminent domain. Said official in signing the application shall also certify that all~~
2 ~~information contained therein or in support thereof is true and correct to the best of his knowledge.~~

3 ~~(g) An application form may be obtained from the Division of Water Quality, the Division of Coastal Management,~~
4 ~~or the U.S. Army Corps of Engineers, Wilmington District, Regulatory Branch.~~

5
6 *History Note: Authority G.S. 143-211(c); 143-215.3(a)(1); ~~143-215(e)~~; 143-215.3(c); 143B-282(a)(1)(u);*
7 *Eff. February 1, 1976;*
8 *Amended Eff. December 1, 1984; January 1, 1979;*
9 *RRC Objection Eff. July 18, 1996 due to lack of statutory authority and ambiguity;*
10 *Recodified from 15A NCAC 2H .0501 Eff. October 1, 1996;*
11 *Amended Eff. October 1, 1996;*
12 *Readopted Eff. May 1, 2019*

REQUEST FOR TECHNICAL CHANGE

AGENCY: Emergency Management Commission

RULE CITATION: 15A NCAC 02H .0503

DEADLINE FOR RECEIPT: Friday, April 12, 2019

The Rules Review Commission staff has completed its review of this Rule prior to the Commission's next meeting. The Commission has not yet reviewed this Rule and therefore there has not been a determination as to whether the Rule will be approved. You may call our office to inquire concerning the staff recommendation.

In reviewing this Rule, the staff recommends the following technical changes be made:

So that I'm clear, this Rule addresses the public notice and hearing provisions in 33 USC 1341(a)(1)?

Do you need to retain the introductory statements for each Paragraph?

In (a), line 5, and elsewhere the term is used, why is "Mailing List" capitalized?

On line 6, and elsewhere the website is mentioned, do you have that url in another Rule? If not, does your regulated public know where to find it?

On line 7, action by the Division for what? I note that I (b), line 13, you say "on the application."

Also on line 7, why is "Notice" capitalized? Why isn't it "Public notice"?

In (c), I suggest you break the language on lines 16-17 as a list.

"The notice shall set forth:

- (1) the name ... applicant;*
- (2) the action... application;*
- (3) the nature... discharge; and*
- (4) the proposed... application.*

The notice shall also state...

On line 19, what are "normal working hours"?

I recommend moving Paragraph (d) to after (e). That way, the Rule is organized as notice and then hearings.

In (d), line 22, what is an "Individual Certification"?

Also on line 22, will the individuals know what the address is to ask for the hearing?

In (f), line 27, what is "significant public interest"? How does the Director determine whether it meets this standard?

Amanda J. Reeder
Commission Counsel

Date submitted to agency: March 29, 2019

On line 33, please insert a comma after "place"

Also on line 33, what do you mean by "nature"?

On line 34, please replace "Such" with "the"

In (g), Page 2, line 3, why is "Email Listserv" capitalized?

What is the purpose of Paragraph (h)?

Please retype the rule accordingly and resubmit it to our office at 1711 New Hope Church Road, Raleigh, North Carolina 27609.

Amanda J. Reeder
Commission Counsel
Date submitted to agency: March 29, 2019

1 15A NCAC 02H .0503 is readopted with changes as published in 32:21 NCR 1943 as follows:

2
3 **15A NCAC 02H .0503 PUBLIC NOTICE AND PUBLIC HEARING**

4 (a) ~~Notice by Publication.~~ PUBLIC NOTICE FOR GENERAL CERTIFICATIONS. The Division shall provide
5 public notice for proposed General Certifications. This notice shall be sent to all individuals on the Mailing List
6 described in Paragraph (g) of this Rule and posted on the Division's website. Notice shall be made at least 30 calendar
7 days prior to proposed final action by the Division. Public Notice shall not be required for those activities covered by
8 Certificates of Coverage under a General Certification.

9 (b) PUBLIC NOTICE FOR INDIVIDUAL CERTIFICATIONS. Notice of each pending application for an individual
10 certification shall be ~~published one time in a newspaper having general circulation in the county in which the discharge~~
11 ~~will occur, or as provided in Paragraph (e) of this Rule.~~ sent to all individuals on the Mailing List described in
12 Paragraph (g) of this Rule and shall be posted on the Division's website. ~~Publication Notice~~ shall be made at least 45
13 30 calendar days prior to proposed final action by the ~~Director~~ Division ~~upon on~~ the application and not more than 20
14 days after acceptance of a completed application.

15 (b)(c) ~~Contents of Notice.~~ CONTENTS OF NOTICE FOR INDIVIDUAL CERTIFICATIONS. The notice shall set
16 forth the name and address of the applicant; the action requested in the application; the nature and location of the
17 discharge; and the proposed date of final action to be taken by the ~~Director~~ Division ~~upon on~~ the application. The
18 notice shall also state ~~that where~~ additional information is on file with the ~~department~~ Division and that the information
19 may be inspected at any time during normal working hours. Copies of such information on file shall be made available
20 upon request and upon payment of the cost thereof to the ~~department.~~ Division pursuant to G.S. 132-6.2.

21 (d) REQUEST FOR A PUBLIC HEARING. Any person who desires a public hearing on a General Certification or
22 an Individual Certification application shall so request in writing to the Division. The request must be received by the
23 Division within 30 calendar days following the Public Notice.

24 (e)(e) JOINT NOTICE. The public notice requirement for an Individual Certification as described in Paragraph (b)
25 of this Rule may ~~also~~ be satisfied by a joint notice with the Division of Coastal Management (15A NCAC ~~74~~ 07J
26 .0206) or the U.S. Army Corps of Engineers according to their established procedures.

27 (d)(f) ~~Notice of Hearing.~~ NOTICE OF HEARING. If the Director determines that there is significant public interest
28 in holding a hearing should be held concerning the granting or denial of the application, hearing, the ~~Director~~ Division
29 shall ~~publish notice of the hearing one time in a newspaper having general circulation in the county in which the~~
30 ~~discharge will occur.~~ notify the applicant in writing that there will be a hearing. [by registered or certified mail, return
31 receipt requested.] The Division shall also provide notice of the hearing to all individuals on the Mailing List as
32 described in Paragraph (g) of this Rule and shall post the notice on the Division's website. The notice shall be published
33 at least 30 calendar days prior to the date of the hearing. The notice shall state the time, place and nature of the hearing.
34 The notice can be combined with the notice required under Paragraph (c) of this Rule. Such hearing shall be held
35 within 90 calendar days following date of notification to the applicant. The record for each hearing held under this
36 Paragraph shall remain open for a period of 30 calendar days after the public hearing to receive public comments.

1 ~~(e)(g) Water Quality Certification Mailing List. MAILING LIST.~~ Any ~~person,~~ person may request that he or she be
2 ~~mailed~~ emailed copies of all public notices required by this Rule. The ~~Director~~ Division shall add the name-email
3 address of any such person to a ~~water quality certification mailing list~~ an Email Listserv and shall ~~mail~~ email copies
4 of notices to all persons on the list.

5 ~~(f) Payment of Costs of Public Notice. The applicant shall pay to the department the costs of advertising public notice~~
6 ~~required by Paragraphs (a) and (d) of this Rule. Certification shall be withheld until such costs have been paid.~~

7 (h) OTHER PUBLIC HEARINGS. Any public hearing held pursuant to [fer] this Rule may be coordinated with other
8 public hearings held by the Department of Environmental Quality or the U.S. Army Corps of Engineers.

9
10 *History Note:* Authority G.S. 143-211(c); 143-215.3(a)(1); 143-215.3(c); 143B-282(a)(1)(u);
11 *Eff. February 1, 1976;*
12 *Amended Eff. December 1, 1984; September 1, 1984*
13 *RRC Objection Eff. July 18, 1996 due to lack of statutory authority and ambiguity;*
14 *Recodified from 15A NCAC 0 2H .0502 Eff. October 1, 1996;*
15 *Amended Eff. October 1, 1996;*
16 *Readopted Eff. May 1, 2019*

REQUEST FOR TECHNICAL CHANGE

AGENCY: Emergency Management Commission

RULE CITATION: 15A NCAC 02H .0504

DEADLINE FOR RECEIPT: Friday, April 12, 2019

The Rules Review Commission staff has completed its review of this Rule prior to the Commission's next meeting. The Commission has not yet reviewed this Rule and therefore there has not been a determination as to whether the Rule will be approved. You may call our office to inquire concerning the staff recommendation.

In reviewing this Rule, the staff recommends the following technical changes be made:

On the Submission for Permanent Rule, please check "Repealed through Readoption"

Please retype the rule accordingly and resubmit it to our office at 1711 New Hope Church Road, Raleigh, North Carolina 27609.

Amanda J. Reeder
Commission Counsel
Date submitted to agency: March 29, 2019

1 15A NCAC 02H .0504 is repealed through readoption as published in 32:21 NCR 1943 as follows:

2
3 **15A NCAC 02H .0504 HEARING**

4
5 *History Note: Authority G.S. 143-215.3(a)(1); 143-215.3(c); 143B-282(1)(u);*
6 *Eff. February 1, 1976;*
7 *Amended Eff. July 1, 1988; December 1, 1984;*
8 *RRC Objection Eff. July 18, 1996 due to lack of statutory authority and ambiguity;*
9 *Recodified from 15A NCAC 2H .0503 Eff. October 1, 1996;*
10 *Amended Eff. October 1, 1996.*
11 *Repealed Eff. May 1, 2019*

REQUEST FOR TECHNICAL CHANGE

AGENCY: Emergency Management Commission

RULE CITATION: 15A NCAC 02H .0507

DEADLINE FOR RECEIPT: Friday, April 12, 2019

The Rules Review Commission staff has completed its review of this Rule prior to the Commission's next meeting. The Commission has not yet reviewed this Rule and therefore there has not been a determination as to whether the Rule will be approved. You may call our office to inquire concerning the staff recommendation.

In reviewing this Rule, the staff recommends the following technical changes be made:

Please note my earlier inquiries regarding the all caps introductory statements for each Paragraph.

In (a), line 4, please remove the underlining from [FINAL] assuming you intend to delete it.

In (a)(2), please begin the clause with "The"

In (a)(3), will this not be addressed by the request for additional information on line 6?

In (a)(5), how will this happen? It seems like this information will be outside the applicant's control – is that correct?

In (c), so that I'm clear – is the certification like a permit, such that there are case-by-case requirements?

On lines 26-27, do you not want to include a citation here? Or is this how the Act is known to your regulated public?

On line 27, what is "appropriate"?

On line 28, if "state" means "NC" then please capitalize the term.

In (d), lines 31-32, there is no need to restate this. If you want to keep the all caps statement, then why not just state "MODIFICATON OR REVOCATION OF CERTIFICATION:"?

In (d)(1), line 35, please capitalize "State"

In (d)(2), line 36, do you mean to retain "shall"? If not, then what do you mean by "may"? When would the Director not revoke or modify the certification upon determining that the information was incorrect or the conditions have changed?

In (d)(2), Page 2, line 1, please insert a "the" before conditions.

Amanda J. Reeder
Commission Counsel
Date submitted to agency: March 29, 2019

In (e), lines 4-5, what is the difference between being unable to approve the application versus denying the application?

If the application is "unable to be approved" is that subject to Paragraph (f)?

On line 7, I take it the "appropriate" agency will be known to your regulated public?

In the History Note, line 20, please insert a period after "2019" You do not have to show this as a change – simply do it.

Please retype the rule accordingly and resubmit it to our office at 1711 New Hope Church Road, Raleigh, North Carolina 27609.

Amanda J. Reeder
Commission Counsel
Date submitted to agency: March 29, 2019

1 15A NCAC 02H .0507 is readopted with changes as published in 32:21 NCR 1943 as follows:

2
3 **15A NCAC 02H .0507 ~~ISSUANCE OF~~ DECISION ON APPLICATION FOR CERTIFICATION**

4 (a) ~~Time Limit for Final Action on Certification Application.~~ **[FINAL] ACTION ON APPLICATION.** All
5 ~~applications for certification~~ The Director shall be granted issue the certification, or denied deny the application,
6 provide notice of hearing pursuant to Rule .0503 of this Section, or request additional information within 60 calendar
7 days after receipt of an [a complete] application for certification. [-electronically or] at the offices of the Director in
8 [1617 Mail Service Center,] Raleigh, North Carolina. [Carolina, 27699-1617.] When the Director requests additional
9 information, the 60-day review period restarts upon receipt of all of the additional information requested by the
10 Director. Failure to ~~take final action~~ issue the certification, deny the application, provide notice of hearing, or request
11 additional information within 60 calendar days shall result in a waiver of the certification requirement by the Director,
12 unless:

- 13 (1) The applicant agrees, in writing, to a longer period;
14 (2) Final decision is to be made pursuant to a public hearing;
15 (3) ~~Applicant~~ The applicant fails to furnish information necessary ~~to~~ for the Director's decision;
16 (4) ~~Applicant~~ The applicant refuses the staff access to its records or premises for the purpose of
17 gathering information necessary ~~to~~ for the Director's decision or;
18 (5) Information necessary ~~to~~ for the Director's decision is unavailable.

19 (b) ~~Time Limit for Final Action on Certification Application After Hearing.~~ **[FINAL] ACTION AFTER HEARING.**
20 ~~All applications for certification~~ The Director shall be granted issue the certification, or denied deny the [complete]
21 application, or request additional information [for certification] within 60 calendar days after following the close of
22 the record for the public hearing. Failure to take ~~final~~ action within 60 calendar days shall result in a waiver of the
23 certification requirement by the ~~Director~~ Director, unless ~~the applicant otherwise agrees in writing, or unless~~
24 ~~Subparagraph~~ Subparagraphs (a)(3), (a)(1), (3), (4), or (5) of this Rule shall apply.

25 (c) ~~Conditions of Certification.~~ **CONDITIONS OF CERTIFICATION.** Any certification issued pursuant to this ~~Rule~~
26 Section may contain such conditions as the Director shall deem necessary to ~~insure~~ ensure compliance with Sections
27 301, 302, 303, 306, and 307 of the Federal Water Pollution Control Act Amendments and with other appropriate
28 requirement of state law. Amendments. [Section 401 of the Clean Water Act (33 U.S.C. 1341).] The conditions
29 included in the certification shall become enforceable by the Department pursuant to Chapter 143, Article 21, Part 1
30 when the federal permit or license is issued.

31 (d) ~~Modification or Revocation of Certification~~ **MODIFICATION OR REVOCATION.** Modification or Revocation
32 of Certification:

- 33 (1) Any certification issued pursuant to this ~~Rule~~ Section ~~shall~~ may be subject to revocation or
34 modification by the Director for violation of conditions of 301, 302, 303, 306, and 307 of the Federal
35 Water Pollution Control Act ~~Amendments.~~ Amendments or state law.
36 (2) Any certification issued pursuant to this ~~Rule~~ Section ~~shall~~ may be subject to revocation or
37 modification by the Director upon a determination that information contained in the application or

presented in support thereof is incorrect or if conditions under which the certification was made have changed.

(e) ~~Notification of Unapproved Application.~~ NOTIFICATION OF FINAL ACTION. The Division shall notify the applicant of the final action to issue or deny the application. In the event that the Director denies the application for certification or for any reason is unable to approve the application, the Director shall ~~so notify the applicant by certified or registered mail, return receipt requested, specifying in such notification~~ specify the reasons for the denial or inability to approve; and ~~a~~ approve. A copy of the notification shall be ~~mailed~~ sent to the appropriate federal licensing or permitting agency and EPA.

(f) ~~[CONTESTED CASE HEARING]~~ ADMINISTRATIVE REVIEW. ~~[An applicant whose certification is denied or granted subject to unacceptable conditions shall have the right to seek a contested case hearing pursuant to the provisions of G.S. 150B-23.]~~ The issuance or denial is a final agency decision that is subject to administrative review pursuant to G.S. 150B-23.

History Note: Authority G.S. 143-211(c); 143-215.3(a)(1); 143-215.3(c); 143B-282(a)(1)(u);
Eff. February 1, 1976;
Amended Eff. July 1, 1988; December 1, 1984;
RRC Objection Eff. July 18, 1996 due to lack of statutory authority and ambiguity;
Recodified from 15A NCAC 2H .0504 Eff. October 1, 1996;
Amended Eff. October 1, 1996;
Readopted Eff. May 1, 2019

REQUEST FOR TECHNICAL CHANGE

AGENCY: Emergency Management Commission

RULE CITATION: 15A NCAC 02H .1301

DEADLINE FOR RECEIPT: Friday, April 12, 2019

PLEASE NOTE: *This request may extend to several pages. Please be sure you have reached the end of the document.*

The Rules Review Commission staff has completed its review of this Rule prior to the Commission's next meeting. The Commission has not yet reviewed this Rule and therefore there has not been a determination as to whether the Rule will be approved. You may call our office to inquire concerning the staff recommendation.

In reviewing this Rule, the staff recommends the following technical changes be made:

In (a), line 8, please capitalize "State"

On line 9, replace "which" with "that"

On line 10, consider putting "discharge" in quotes since you are defining it.

On line 11, delete "but not limited to" and insert a comma after "debris"

In (b), lines 18-20, you are using this internal document because it was mandated to be used pursuant to S.L. 2015-286, Section 4.18(a), correct?

On line 21, please insert a comma after "extent"

On lines 23-24, what is this document? Are the contents exempt from rulemaking under G.S. 150B-2(8a)(h)?

In (c), line 25, replace "which" with "that"

On line 26, what is a "Certificate of Coverage"? Does your regulated public know? And why is the term capitalized?

In (c)(2), line 31, what do you mean by "developed by the Division"? Will this be done in Rule? If not, what authority are you relying upon to do so outside of rulemaking?

On line 33, what is "minimal impact"? Does your regulated public know?

On line 37, and Page 2, lines 1-2, why is the term "Certificate of Coverage" in quotation marks here?

Also on line 37, "deemed" by whom?

Amanda J. Reeder
Commission Counsel
Date submitted to agency: March 29, 2019

On Page 2, line 1, why is "general permit" not capitalized here?

On line 4, this will be in the permit and not a rule?

In (d), line 7, change "which" with "that"

In (e)(2), line 12, please be consistent with commas and either insert or don't insert a comma behind each "isolated"

In (e)(3), do you need to retain this in light of the language in (e)(2)? Is this to ensure compliance with S.L. 2015-286, Section 4.18(a)?

In (e)(5), line 22, please replace "which" with "that"

In (e)(6), line 23, insert an "and" at the end of the line.

In (e)(7)(B), lines 27 and 30, please capitalize "State" if you mean "NC"

On line 29, do you still need "are under contract to begin construction" since this applies to anything prior to 18 years ago? Or is this retained for historical purposes?

In (e)(7)(D), line 35, please replace "which" with "that"

Also on line 35, what is a "Vested Right"?

In (f), line 37, please state "G.S. 143-212 and 143-213 and as follows:"

Please alphabetize the terms in (f)(1) through (8) on Page 3.

In (f)(3), you've already said you're using the definitions in G.S. 143-212. Why do you need to restate it here?

In (f)(5), line 7, do you mean "reasonably"?

And foreseeable to whom? And who determines what is reasonable?

Line 7, please insert a comma after "activities"

In (c)(6) and (7), I do not see these terms defined in Rule 15A NCAC 02B .0231. Did you mean to reference a different rule?

In (f)(8), who determines it "may" affect the surface waters or wetlands?

In the History Note, please refer to the Session Laws as "S.L.2014-120, Section 54; S.L. 2015-286, Section 4.18;"

And please insert an Effective Date on line 19.

Please retype the rule accordingly and resubmit it to our office at 1711 New Hope Church Road, Raleigh, North Carolina 27609.

Amanda J. Reeder
Commission Counsel
Date submitted to agency: March 29, 2019

1 15A NCAC 02H .1301 is readopted with changes as published in 32:21 NCR 1943 as follows:

2
3 **SECTION .1300 – DISCHARGES TO ISOLATED WETLANDS AND ISOLATED WATERS**
4

5 **15A NCAC 02H .1301 SCOPE AND PURPOSE**

6 (a) The provisions of this Section shall apply to Division of Water ~~Quality Resources~~ (Division) regulatory and
7 resource management determinations regarding isolated wetlands and isolated classified surface waters. This Section
8 shall only apply to discharges resulting from activities that require state review after ~~the effective date of this Rule~~
9 October 22, 2001 and which require a Division determination concerning effects on isolated wetlands and isolated
10 classified surface waters. For the purpose of this Section, discharge shall be the deposition of dredged or fill material
11 including but not limited to fill, earth, construction debris and soil.

12 (b) This Section outlines the application and review procedures for permitting of discharges into isolated wetlands
13 and isolated classified surface waters ~~which that~~ have been listed in 15A NCAC 02B .0300. If the ~~US~~ U.S. Army
14 Corps of Engineers or its designee determines that a particular water ~~or wetland~~ is ~~isolated and~~ not regulated under
15 Section 404 of the Clean Water Act, then discharges to that water or wetland shall be covered by this ~~Section (15A~~
16 ~~NCAC 02H .1301 – .1305).~~ Section. If the U.S. Army Corps of Engineers or its designee determines that a particular
17 wetland is not regulated under Section 404 of the Clean Water Act and that wetland is a Basin Wetland or Bog as
18 described in the North Carolina Wetland Assessment User Manual prepared by the North Carolina Wetland Functional
19 Assessment Team, version 4.1 October 2010 (available online at: [https://deq.nc.gov/about/divisions/water-](https://deq.nc.gov/about/divisions/water-resources/water-resources-data/water-quality-program-development/nwam-manual)
20 resources/water-resources-data/water-quality-program-development/nwam-manual), then discharges to that wetland
21 shall be covered by this Section. The Division shall verify the determination, extent and location of isolated wetlands
22 and isolated classified surface waters using the U.S. Army Corps of Engineers Wetland Delineation Manual (Technical
23 Report Y-87-1) and subsequent regional supplements and the Division publication, Methodology for Identification of
24 Intermittent and Perennial Streams and Their Origins (v.4.11, 2010).

25 (c) Activities which result in a discharge may be deemed permitted as described in Rule .1305(b) of this Section or
26 authorized by the issuance of either an Individual Permit or a Certificate of Coverage to operate under a General
27 Permit. Permit:

28 (1) Individual Permits shall be issued on a case-by-case basis using the procedures outlined in this
29 Section. These Individual Permits do not require approval by the U.S. Environmental Protection
30 Agency.

31 (2) ~~Certificates of Coverage for~~ General Permits may be ~~issued~~ developed by the Division and issued
32 by the Director for types or groups of discharges resulting from activities that are similar in nature
33 and considered to have minimal impact. ~~General Permits include but are not limited to activities~~
34 ~~such as maintenance, utility lines, and road crossings. General Permits shall be given public notice~~
35 ~~at least 45 days before the proposed effective date of the General Permit. These General Permits do~~
36 ~~not require approval by the U.S. Environmental Protection Agency. All activities that receive a~~
37 "Certificate of Coverage" under a General Permit from the Division shall be deemed covered under

1 that general permit. The application and review procedures for requesting a "Certificate of
2 Coverage" under a general permit from the Division for the proposed activity are the same as the
3 procedures outlined in this Section for individual certifications, unless specifically stated otherwise
4 in the general permit. Individual Permits and Certificates of Coverage for General Permits shall be
5 issued for a period of five years after which time the Permit shall be void unless the discharge is
6 complete or an extension is granted as described in 15A NCAC 02H .1304(e).

7 (d) Discharges resulting from activities which receive an Individual Permit or Certificate of Coverage under a General
8 Permit pursuant to this Section shall not be considered to remove existing uses of the isolated wetland or isolated
9 surface waters.

10 (e) The following are exempt from this Section:

- 11 (1) Activities ~~that are~~ described in 15A NCAC 02B .0230;
- 12 (2) Discharges to isolated, man-made ponds or isolated man-made ditches ~~except for those wetlands or~~
13 ~~waters constructed for compensatory mitigation or for on-site stormwater management;~~
14 management purposes;
- 15 (3) Discharges to any man-made isolated pond;
- 16 (4) Discharges to any wetland not regulated under Section 404 of the Clean Water Act that is not a
17 Basin Wetland or Bog as described in the North Carolina Wetland Assessment User Manual
18 prepared by the North Carolina Wetland Functional Assessment Team, version 4.1 October 2010
19 (available online at: [https://deq.nc.gov/about/divisions/water-resources/water-resources-](https://deq.nc.gov/about/divisions/water-resources/water-resources-data/water-quality-program-development/newam-manual)
20 data/water-quality-program-development/newam-manual);
- 21 (3)(4)(5) Discharges of treated effluent into isolated wetlands and isolated classified surface waters
22 resulting from activities which receive NPDES Permits or State Non-Discharge Permits;
- 23 (4) (5)(6) Discharges for water dependent structures as defined in 15A NCAC 02B .0202(67); .0202;
- 24 (5) (6)(7) A discharge resulting from an activity if:
 - 25 (A) The discharge resulting from the activity requires a 401 Certification and 404 Permit and
26 these were issued prior to ~~the effective date of this Rule;~~ October 22, 2001;
 - 27 (B) The project requires a state permit, such as landfills, NPDES discharges of treated effluent,
28 Non-Discharge Permits, land application of residuals and road construction activities, that
29 has begun construction or are under contract to begin construction and have received all
30 required state permits prior to ~~the effective date of this Rule;~~ October 22, 2001;
 - 31 (C) The project is being conducted by the N.C. Department of Transportation and they have
32 completed 30% of the hydraulic design for the project prior to ~~the effective date of this~~
33 Rule; October 22, 2001; or
 - 34 (D) The applicant has been authorized for a discharge into isolated wetlands or isolated waters
35 for a project which has established a Vested Right under North Carolina law prior to ~~the~~
36 effective date of this Rule. October 22, 2001.

37 (f) The terms used in this Section shall be as defined in G.S. 143-212, G.S. 143-213 and as follows:

- (1) "Director" means the Director of the Division.
- (2) "Division" means the Division of Water Resources of the North Carolina Department of Environmental Quality.
- (3) "Person" means as defined in G.S. 143-212(4).
- (4) "Wetland" means as defined in 15A NCAC 02B .0202.
- (5) "Cumulative impact" means environmental impacts resulting from incremental effects of an activity when added to other past, present, and reasonable foreseeable future activities regardless of what entities undertake such other actions.
- (6) "Class SWL wetland" means as defined at 15A NCAC 02B .0231.
- (7) "Class UWL wetland" means as defined at 15A NCAC 02B .0231.
- (8) "Secondary impact" means actions, or actions directly linked to an activity, that may affect classified surface waters or wetlands that would not occur but for the proposed activity.

History Note: Authority G.S. 143-215.1(a)(6); 143-215.3(a)(1); 143-215.3(c); S.L. 2014, c. 120; S.L. 2015, c. 286
Codifier determined that findings did not meet criteria for temporary rule on September 26, 2001
and October 12, 2001;
Temporary Adoption Eff. October 22, 2001;
Eff. April 1, 2003.
Readopted Eff. [New Date].

REQUEST FOR TECHNICAL CHANGE

AGENCY: Emergency Management Commission

RULE CITATION: 15A NCAC 02H .1302

DEADLINE FOR RECEIPT: Friday, April 12, 2019

The Rules Review Commission staff has completed its review of this Rule prior to the Commission's next meeting. The Commission has not yet reviewed this Rule and therefore there has not been a determination as to whether the Rule will be approved. You may call our office to inquire concerning the staff recommendation.

In reviewing this Rule, the staff recommends the following technical changes be made:

In (a), (c), (d), (e), and (f), why do you have the all caps introductory statements? Do you need to retain them?

In (a), line 5, please note my earlier question regarding "certificate of coverage."

On line 6, replace "which" with "that"

On line 7, you do not need to say "(Director)" as you've already defined the term.

On line 8, what do you mean by "complete"? Is it providing everything set forth in this Rule?

On line 9, consider replacing "must" with "shall"

I note that (a)(1) through (9) do not match the edits you made to 02H .0502. Is this intentional?

In (a)(3), line 13, what do you mean by "domesticated"?

On line 14, insert a comma after "address"

In (a)(4), line 17, this is not the correct way to insert a comma.

In (a)(6), line 21, what is the "applicable municipality"? Should it be "municipality, if any"?

In (a)(7), line 25, which fee in this statute is applicable? Does your regulated public know?

In (a)(8), line 30, why is "MAPS" capitalized?

On line 31, what is "sufficient" and "accurately"?

On line 32, insert a comma after "dimensions"

On line 34, what do you mean by "preferably"? If you are not requiring this, then either use "may" or remove the language in parenthesis from the Rule.

Amanda J. Reeder
Commission Counsel

Date submitted to agency: March 29, 2019

In (a)(9), Page 2, lines 3 and 8, capitalize "State"

In (a)(9)(D), line 9, insert a comma after "official"

Also on line 9, what is a "duly authorized employee"? Is it up the entity to decide?

On line 10, this should be Paragraph (b). Please rename all subsequent paragraphs, as well.

In current (c), line 12, who will find this "necessary for the proper consideration" and based upon what?

In (d), line 16, insert a comma after "(b)"

On line 17, define "detailed"

On line 17, replace "any such" with "the"

On line 18, replace "on" with "upon"

On line 19, insert a comma after "(b)"

In (e), are you relying upon G.S. 143B-215.3(a)(2) for the authority for this investigation?

On line 22, how will the Division deem this necessary?

On line 24, what is "safe" and "reasonable"?

In (f), wherever you use the term "Division" but you do not mean the Division of Water Resources, you may want to not capitalize the term to avoid confusion. Otherwise, I think you need to spell out "Division of Water Resources" here wherever you intend to refer to that Division.

On lines 33-34, please update the Department name.

On line 35, define "clearly"

On line 35, what "Division" do you mean?

On line 36, submitted by whom?

Please retype the rule accordingly and resubmit it to our office at 1711 New Hope Church Road, Raleigh, North Carolina 27609.

1 15A NCAC 02H .1302 is readopted as published in 32:21 NCR 1943 as follows:

2
3 **15A NCAC 02H .1302 APPLICATION PROCESS FILING APPLICATIONS**

4 (a) ~~Application for a Permit.~~ APPLICATION FOR A PERMIT. Any person, as defined in G.S. 143, Article 21, person
5 desiring issuance of a State Individual Permit or Certificate of Coverage under a General Permit for discharges
6 resulting from activities which affect isolated classified surface waters or isolated wetlands shall file with the Director
7 of the North Carolina Division of Water ~~Quality Resources~~ (Director), at 1617 Mail Service Center, Raleigh, North
8 Carolina, 27699-1617, an original and ~~six~~ three copies of an application for a ~~Permit.~~ Permit or submit one complete
9 copy of an application electronically. The application must be made on a form provided or approved by the Division
10 and shall specify:

- 11 (1) the date of application;
- 12 (2) the name, address, and phone number of the property ~~owner;~~ owner or owners;
- 13 (3) if the applicant is a corporation, the state in which it is domesticated, the name and address of the
14 North Carolina process agency, and the ~~name~~ name, address and phone number of the individual
15 who shall be primarily responsible for the conduct of the discharge resulting from an activity for
16 which a Permit is sought;
- 17 (4) the nature of the discharge, including cumulative impacts to isolated and non-isolated wetlands and
18 isolated and non-isolated waters that cause or will cause a violation of downstream water quality
19 standards resulting from an activity to be conducted by the applicant;
- 20 (5) whether the discharge has occurred or is proposed;
- 21 (6) the location and extent of the discharge, stating the applicable municipality, the county; the drainage
22 basin; the name of the nearest named surface waters; and the location of the point of discharge with
23 regard to the nearest named surface waters;
- 24 (7) an application fee as required by G.S. 143-215.3D(e) ~~with a check or money order to be made~~
25 ~~payable to the North Carolina Division of Water Quality.~~ 143-215.3D(e). If payment of a fee is
26 required for a 401 Water Quality Certification, then that fee shall suffice for this Rule; ~~and~~
- 27 (8) ~~the information requested in Subparagraphs (1) through (7) of this Rule must be provided on or~~
28 ~~attached to the most current version of the North Carolina Division of Water Quality Isolated~~
29 ~~Wetlands Notification application form.~~
- 30 ~~(b)(8)~~ Maps. MAPS. There shall be attached to the application form a map(s) with scales and north arrows
31 and of sufficient detail to accurately delineate the boundaries of the lands owned or proposed to be
32 utilized by the applicant in carrying out the discharge; the location, dimensions and type of any
33 structures that affect isolated wetlands or waters for use in connection with the discharge; and the
34 location and extent of the isolated waters (preferably surveyed or located with Global Positioning
35 System equipment) including wetlands within the boundaries of said ~~lands.~~ lands; and
- 36 (9) Applications shall be signed by the owner with title to the property, a person who has been
37 authorized by the owner to apply for certification, or an entity with the power of eminent domain.

1 In signing the application, the applicant certifies that all information contained therein or in support
2 thereof is true and correct to the best of their knowledge. For corporations, partnerships, proprietors,
3 or municipal, state or other public entity, the application shall be signed as follows:

4 (A) in the case of corporations, by a principal executive officer of at least the level of vice-
5 president, or their authorized representative;

6 (B) in the case of a partnership or limited partnership, by a general partner;

7 (C) in the case of a sole proprietorship, by the proprietor; and

8 (D) in the case of a municipal, state or other public entity, by either a principal executive
9 officer, ranking official or other duly authorized employee.

10 ~~(c) Request For Additional Information.~~ POWER TO REQUEST ADDITIONAL INFORMATION. ~~The Director~~
11 ~~Division may request, request in writing, writing within 60 days of receipt of an application and the applicant shall~~
12 ~~furnish, any additional information that may be found necessary for the proper consideration of the application.~~
13 ~~Incomplete applications shall be returned to the applicant. The 60-day processing period required in Rule .1304 of this~~
14 ~~Section begins on the date the additional information is received by the Division.~~

15 ~~(d) Omissions From Applications.~~ OMISSIONS FROM APPLICATIONS. If the applicant believes that it is not
16 feasible or is unnecessary to furnish any portion of the information required by Paragraphs (a), (b) and (c) of this Rule,
17 ~~then the~~ applicant shall submit a detailed statement explaining the reasons for omission of any such information. The
18 final decision regarding the completeness of the application shall be made by the Division ~~of Water Quality~~ based on
19 the information required in Paragraphs (a), (b) and ~~(e); (c) of this Rule,~~ and any explanation provided by the applicant
20 regarding omitted information provided in ~~this Paragraph. Paragraph (e).~~

21 ~~(e) Investigations.~~ INVESTIGATIONS. The staff of the ~~Department of Environment and Natural Resources~~
22 ~~(Department) Division~~ shall conduct such investigation as the ~~Director Division~~ deems ~~necessary and necessary.~~ The
23 applicant shall ~~cooperate in the investigation to the extent that it shall furnish necessary information,~~ allow the staff
24 ~~safe~~ access to the lands and facilities of the applicant and lend such assistance as shall be ~~reasonable.~~ reasonable, upon
25 the presentation of credentials.

26 ~~(f) Who Must Sign Applications.~~ ~~The application shall be considered a "valid application" only if the application~~
27 ~~bears the signature of a responsible officer of the company, municipal official, partner or owner. This signature~~
28 ~~certifies that the applicant has title to the property, has been authorized by the owner to apply for a Permit or is a~~
29 ~~public entity and has the power of eminent domain. Said official in signing the application shall also certify that all~~
30 ~~information contained therein or in support thereof is true and correct to the best of his knowledge.~~

31 ~~(g) Applications for discharges to Isolated Wetlands and Waters must be made on forms provided or approved by the~~
32 ~~Division of Water Quality.~~

33 ~~(h)(f)~~ OTHER APPLICATIONS. Other applications for permitting or certification by a Division of the Department
34 of Environment and Natural Resources shall suffice for application for this Permit as long as the application contains
35 all of the information specified in ~~Paragraphs (a) and (b) of this Rule~~ and it is clearly specified to the Division by the
36 applicant that authorization is sought under this Rule. This application must be submitted to the Division ~~of Water~~
37 Quality for review under this Permit.

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History Note: Authority G.S. 143-214.1; 143-215.1(a)(6); 143-215.3(a)(1);
Codifier determined that findings did not meet criteria for temporary rule on September 26, 2001
and October 12, 2001;
Temporary Adoption Eff. October 22, 2001;
Eff. April 1, 2003.
Readopted Eff. May 1, 2019.

REQUEST FOR TECHNICAL CHANGE

AGENCY: Emergency Management Commission

RULE CITATION: 15A NCAC 02H .1303

DEADLINE FOR RECEIPT: Friday, April 12, 2019

The Rules Review Commission staff has completed its review of this Rule prior to the Commission's next meeting. The Commission has not yet reviewed this Rule and therefore there has not been a determination as to whether the Rule will be approved. You may call our office to inquire concerning the staff recommendation.

In reviewing this Rule, the staff recommends the following technical changes be made:

So that I'm clear, this Rule addresses the public notice and hearing provisions mandated by what statutes?

Do you need to retain the introductory statements for each Paragraph?

In (a), line 5, and elsewhere the term is used, why is "Mailing List" capitalized?

On line 6, and elsewhere the website is mentioned, do you have that url in another Rule? If not, does your regulated public know where to find it?

On line 7, action by the Division for what? I note that I (b), line 16, you say "on the application."

In (b), line 12, what is "complete"?

In (c), I suggest you break the language on lines 27-29 as a list.

"The notice shall set forth:

- (1) the name ... applicant;*
- (2) the action... application;*
- (3) the nature... discharge; and*
- (4) the proposed... application.*

The notice shall also state...

On lines 30-31, what are "normal working hours"?

On lines 31-32, what are these costs? I suggest you use the language from Rule .0503 here.

In (d), line 34, insert a comma after ".0206)," and delete the "or" after it.

On line 35, insert a comma after "procedures"

In (e), Page 2, line 2, will the individuals know what the address is to ask for the hearing?

Amanda J. Reeder
Commission Counsel
Date submitted to agency: March 29, 2019

In (f), line 6, what is “significant public interest”? How does the Director determine whether it meets this standard?

On line 7, I am just asking – you will use certified mail here but not in Rule .0503?

On line 14, please insert a comma after “place”

On line 14, what do you mean by “nature”?

Also on line 14, please replace “Such” with “the”

On line 16, why is this open? If it's to accept public comments like you said in Rule .0503, you may want to state that here.

In (g), line 19, why is “Email Listserv” capitalized?

What is the purpose of Paragraph (h)?

Please retype the rule accordingly and resubmit it to our office at 1711 New Hope Church Road, Raleigh, North Carolina 27609.

Amanda J. Reeder
Commission Counsel
Date submitted to agency: March 29, 2019

1 15A NCAC 02H .1303 is readopted as published in 32:21 NCR 1943 as follows:

2
3 **15A NCAC 02H .1303 PUBLIC NOTICE AND PUBLIC HEARING**

4 (a) ~~Notice of Publication.~~ PUBLIC NOTICE FOR GENERAL PERMITS. The Division shall provide public notice
5 for proposed General Permits. This notice shall be sent to all individuals on the Mailing List described in Paragraph
6 (g) of this Rule and on the Division's website. Notice shall be made at least 30 calendar days prior to proposed final
7 action by the Division. Public notice shall not be required for those activities covered by Certificates of Coverage
8 under a General Permit.

9 (b) PUBLIC NOTICE FOR INDIVIDUAL PERMITS. ~~Within 30 days of receipt of a complete application, the~~
10 ~~Director shall decide whether to issue a public notice for an Individual Permit for a project or whether the project is~~
11 ~~eligible for a General Permit.~~

12 (1) ~~Individual Permit.~~ Notice of the Director's intent to issue or deny a each pending complete
13 application for an Individual Permit shall be published one time in a newspaper having general
14 circulation in the county in which the discharge will occur. sent be to all individuals on the Mailing
15 List described in Paragraph (g) of this Rule and shall be posted on the Division's website. Publication
16 Notice shall be made at least 30 calendar days prior to proposed final action by the Director Division
17 on the application. The applicant shall pay to the Department the costs of advertising the public
18 notice for an Individual Permit. The Permit shall not be issued until such costs have been paid as
19 allowed under G.S. 143-215.3(a)(1e). A copy of this notice shall be sent to a subset of individuals
20 on the Wetland Permit Mailing List described in Paragraph (d) of this Rule who request to be
21 notified of these Permits.

22 (2) General Permit. ~~The Division shall provide public notice for proposed General Permits. This notice~~
23 ~~shall be sent to all individuals on the Wetland Permit Mailing List described in Paragraph (d) of this~~
24 ~~Rule and in selected newspapers with general circulation in the geographic areas affected by the~~
25 ~~proposed General Permit. Publication shall be made at least 30 days prior to proposed final action~~
26 ~~by the Director.~~

27 (b)(c) ~~Contents of Notice.~~ CONTENTS OF NOTICE FOR INDIVIDUAL PERMITS. The notice shall set forth the
28 name and address of the applicant; the action requested in the application; the nature and location of the discharge;
29 and the proposed date of final action to be taken by the ~~Director~~ Division on the application. The notice shall also state
30 where additional information is on file with the ~~Department~~ Division and may be inspected at any time during normal
31 working hours. Copies of such information on file shall be made available upon request and upon payment of the cost
32 thereof to the ~~Department.~~ Division.

33 (d) JOINT NOTICE. This public notice requirement for an Individual Permit as described in Paragraph (b) of this
34 Rule may be satisfied by a joint notice with the Division of Coastal Management (15A NCAC 07J .0206) or the U.S.
35 Army Corps of Engineers according to their established procedures or by a joint notice by the Division for an
36 Individual Certification in accordance with Rule .0503 of this Subchapter.

1 (e) REQUEST FOR A PUBLIC HEARING. Any person who desires a public hearing on ~~an Individual or a General~~
2 ~~Permit or an Individual Permit~~ application shall so request in writing to the ~~Director~~ Division. The request must be
3 received by the Division within 30 calendar days following the ~~publication of the notice of intent.~~ Public Notice.

4 ~~(e)(f) Notice of Hearing.~~ NOTICE OF HEARING. Within 30 days of receipt of a request for a public hearing, the
5 ~~Director shall decide whether a public hearing is necessary unless the applicant agrees in writing to an extension.~~ If
6 the Director determines that there is significant public interest in holding a hearing, the ~~Director~~ Division shall ~~publish~~
7 ~~notice of the hearing~~ notify the applicant by registered or certified mail, return receipt requested. The Division shall
8 ~~also shall one time in a newspaper having general circulation in the county in which the discharge will provide notice~~
9 ~~of the hearing to all individuals on the Mailing List as described in Paragraph (g) of this Rule and shall post the notice~~
10 ~~on the Division's website. occur. In any county in which there is more than one newspaper having general circulation~~
11 ~~in that county, the Director shall cause a copy of such notice to be published in as many newspapers having general~~
12 ~~circulation in the county as the Director in his discretion determines may be necessary to assure that such notice is~~
13 ~~generally available in the county.~~ The notice shall be published at least 30 calendar days prior to the date of the hearing.
14 The notice shall state the time, place and nature of the hearing. Such hearing shall be held within 90 calendar days
15 following date of notification to the applicant. The record for each hearing held under this Paragraph shall remain
16 open for a period of 30 calendar days.

17 ~~(d)(g) Wetland Permit Mailing List.~~ MAILING LIST. Any person may request that he or she be ~~mailed~~ emailed
18 copies of all public notices required by this Rule. The ~~Director~~ Division shall add the name of any such person to a
19 ~~Wetland Permit Mailing List~~ an Email Listserv and shall mail copies of notices to all persons on the list. and follow
20 procedures set forth in Rule .0503(g) of this Subchapter.

21 ~~(e)(h) OTHER PUBLIC HEARINGS. If other public hearings are being held by Divisions of the Department of~~
22 ~~Environment and Natural Resources, then any~~ Any public hearing held for this Rule may be coordinated with ~~those~~
23 ~~hearings. other public hearings held by the Department of Environmental Quality or the U.S. Army Corps of~~
24 Engineers.

25
26 *History Note: Authority G.S. 143-215.1(a)(6); 143-215.3(a)(1); 143-215.3(a)(1e); 143-215.3(c);*
27 *Codifier determined that findings did not meet criteria for temporary rule on September 26, 2001*
28 *and October 12, 2001;*
29 *Temporary Adoption Eff. October 22, 2001;*
30 *Eff. April 1, 2003.*
31 *Readopted Eff. May 1, 2019.*
32

REQUEST FOR TECHNICAL CHANGE

AGENCY: Emergency Management Commission

RULE CITATION: 15A NCAC 02H .1304

DEADLINE FOR RECEIPT: Friday, April 12, 2019

The Rules Review Commission staff has completed its review of this Rule prior to the Commission's next meeting. The Commission has not yet reviewed this Rule and therefore there has not been a determination as to whether the Rule will be approved. You may call our office to inquire concerning the staff recommendation.

In reviewing this Rule, the staff recommends the following technical changes be made:

Please note my earlier inquiries regarding the all caps introductory statements for each Paragraph.

In (a), lines 7 and 8, what do you mean by "complete"?

On lines 8-9, do you need any language after "application for Certificate of Coverage."

In (a)(2), please begin the clause with "The"

In (a)(5), how will this happen? It seems like this information will be outside the applicant's control – is that correct?

In (b), line 20, insert a comma after "(4)"

In (c), line 23, insert a comma after "Section"

In (d), line 24, there is no need to restate this. If you want to keep the all caps statement, then why not just state "MODIFICATON OR REVOCATION OF CERTIFICATION:"?

On line 33, and elsewhere you refer to the concept, what is "unable to approve the application"? How is this different from denial?

In (g), Page 2, line 5, why not just state "Division" given the definition in Rule .1301?

On line 7, when you say "may" will it be based upon the circumstances on line 8? And will the amount of time be determined on a case-by-case basis so that the extension will adjust to those two circumstances?

If the application is "unable to be approved" is that subject to Paragraph (h)?

I note that (h) is different from Rule .0507(f); is this intentional?

On line 10, I take it the determination of "unacceptable conditions" is entirely up to the permittee?

Amanda J. Reeder
Commission Counsel
Date submitted to agency: March 29, 2019

On line 11, are you relying upon G.S. 143-215.1 for this entire Rule, or just to set forth the ability to appeal? If it you are relying upon it for the Rule, then you need to add it to the History Note.

Please retype the rule accordingly and resubmit it to our office at 1711 New Hope Church Road, Raleigh, North Carolina 27609.

Amanda J. Reeder
Commission Counsel
Date submitted to agency: March 29, 2019

1 15A NCAC 02H .1304 is readopted as published in 32:21 NCR 1943 as follows:

2
3 **15A NCAC 02H .1304 DECISION ON APPLICATION FOR PERMITS OR CERTIFICATES OF**
4 **COVERAGE**

5 (a) ~~FINAL ACTION ON APPLICATION. Not later than 60 days following the publication of the notice of intent or~~
6 ~~decision to process the project under a General Permit, or within 90 days following a public hearing, the~~ The Director
7 shall ~~issue, issue with modifications, issue~~ or deny within 60 calendar days after receipt of the complete Permit
8 application or complete application for Certificate of Coverage. Coverage electronically or at 1617 Mail Service
9 Center, Raleigh, North Carolina, 27699-1617. Failure to take action within 60 or 90 days, respectively, calendar days
10 shall result in the waiver of the permit requirement by the ~~Director.~~ Director, unless:

11 (1) The applicant agrees, in writing, to a longer period;

12 (2) Final decision is to be made pursuant to a public hearing;

13 (3) The applicant fails to furnish information necessary to the Director's decision;

14 (4) The applicant refuses the staff access to its records or premises for the purpose of gathering
15 information necessary to the Director's decision; or

16 (5) Information necessary to the Director's decision is unavailable.

17 (b) FINAL ACTION AFTER HEARING. The Director shall issue or deny the complete Permit application or
18 complete application for Certificate of Coverage within 60 calendar days following the close of the record for the
19 public hearing. Failure to take action within 60 calendar days shall result in the waiver of the permit requirement by
20 the Director, unless Subparagraphs (a)(1), (3), (4) or (5) of this Rule apply.

21 ~~(b)(c) Conditions of Permit.~~ CONDITIONS OF PERMIT. Any Permit or Certificate of Coverage issued pursuant to
22 this Section may contain such conditions as the Director shall deem necessary to ~~insure~~ ensure compliance with this
23 Section including written post-discharge notification to the Division.

24 ~~(c)(d) MODIFICATION OR REVOCATION.~~ MODIFICATION OR REVOCATION. Modification or Revocation of Permit or Certificate of Coverage:

25 (1) Any Permit or Certificate of Coverage issued pursuant to this Section may be subject to revocation
26 or modification for violation of conditions of the Permit or Certificate of Coverage; and

27 (2) Any Permit or Certificate of Coverage issued pursuant to this Section may be subject to revocation
28 or modification upon a determination that information contained in the application or presented in
29 support thereof is incorrect or if the Director finds that the discharge has violated or may violate a
30 downstream water quality standard.

31 ~~(d)(e) Notification of Unapproved Application.~~ NOTIFICATION OF FINAL ACTION. The Division shall notify the
32 applicant of the final action to issue or deny the application. In the event that the Director denies the application for a
33 Permit or Certificate of Coverage or for any reason is unable to approve the application, the Director shall ~~so notify~~
34 the applicant by certified or registered mail, return receipt requested, specifying in such notification specify the reasons
35 for the denial or inability to be approved. approve.

1 (f) TERM OF PERMIT. Individual Permits and Certificates of Coverage for General Permits shall be issued for a
2 period of five years, after which time the Permit shall be void, unless the discharge is complete or an extension is
3 granted pursuant to Paragraph (g) of this Rule. The permit shall become enforceable when issued.

4 ~~(e)(g)~~ RENEWALS AND EXTENSIONS. Permit or Certificate of Coverage renewals shall require a new complete
5 application and payment of a fee to the Division of Water Quality Resources. unless the The applicant may request
6 requests and is granted an extension in writing which shall be granted that the Division grant an extension before the
7 permit expires. An extension may be granted by the Division for a time period not to exceed one additional ~~year~~ year.
8 provided that the construction has commenced or is under contract to commence. commence before the permit expires.

9 ~~(f)(h) Contested Case Hearing for Applicant.~~ CONTESTED CASE HEARING. An applicant whose Permit or
10 Certificate of Coverage is denied or granted subject to unacceptable ~~conditions,~~ conditions shall have the right to seek
11 a contested case hearing pursuant to the provisions of G.S. ~~143-215.1(e)~~ 143-215.1(e), by filing a petition under G.S.
12 ~~150B-23 within 30 calendar days after the Director notifies the applicant or permittee of its decision in writing. 150B-~~
13 23.

14
15 *History Note: Authority G.S. 143-215.1(a)(6); 143-215.1(b); 143-215.3(a)(1); 143-215.3(c);*
16 *Codifier determined that findings did not meet criteria for temporary rule on September 26, 2001*
17 *and October 12, 2001;*
18 *Temporary Adoption Eff. October 22, 2001;*
19 *Eff. April 1, 2003.*
20 *Readopted Eff. May 1, 2019.*
21

REQUEST FOR TECHNICAL CHANGE

AGENCY: Emergency Management Commission

RULE CITATION: 15A NCAC 02H .1306

DEADLINE FOR RECEIPT: Friday, April 12, 2019

The Rules Review Commission staff has completed its review of this Rule prior to the Commission's next meeting. The Commission has not yet reviewed this Rule and therefore there has not been a determination as to whether the Rule will be approved. You may call our office to inquire concerning the staff recommendation.

In reviewing this Rule, the staff recommends the following technical changes be made:

On line 4, please make "rules" lowercase.

I take it the regions in Items (1) through (3) are as defined in Rule .01305?

In the History Note, please refer to the Session Laws as "S.L.2014-120, Section 54; S.L. 2015-286, Section 4.18;"

And please insert an Effective Date on line 23.

Please retype the rule accordingly and resubmit it to our office at 1711 New Hope Church Road, Raleigh, North Carolina 27609.

Amanda J. Reeder
Commission Counsel
Date submitted to agency: March 29, 2019

1 15A NCAC 02H .1306 is adopted as published in 32:21 NCR 1943 as follows:

2
3 **15A NCAC 02H .1306 SOIL SERIES**

4 For purposes of implementing the Rules in this Section, the Natural Resources Conservation Service of the U.S.
5 Department of Agriculture have categorized soil series that occur in North Carolina as follows:

6 (1) Soil series in the Mountain Region shall include the following: Alarka, Anakeesta, Arkaqua, Ashe,
7 Balsam, Bandana, Biltmore, Braddock, Bradson, Brasstown, Breakneck, Brevard, Brownwood,
8 Buladean, Burton, Cades, Calvin, Cashiers, Cataloochee, Cataska, Chandler, Cheoah, Chester,
9 Chestnut, Chestoa, Chiltoskie, Cleveland, Clifffield, Clifford, Clifton, Clingman, Codorus, Colvard,
10 Comus, Cowee, Craggey, Crossnore, Cruso, Cullasaja, Cullowhee, Dellwood, Dillard, Dillsboro,
11 Ditney, Edneytown, Edneyville, Ela, Ellijay, Elsinboro, Evard, Fannin, Farner, Fontaflora, French,
12 Greenlee, Guyot, Harmiller, Hatboro, Hayesville, Heintooga, Hemphill, Hiwassee, Horsetrough,
13 Huntale, Iotla, Jeffrey, Junaluska, Kanuga, Keener, Kinkora, Lauada, Leatherwood, Longhope,
14 Lonon, Lostcove, Luftee, Mars Hill, Maymead, Micaville, Nantahala, Nikwasi, Northcove,
15 Nowhere, Oconaluftee, Ostin, Oteen, Peaks, Pigeonroost, Pineola, Pinnacle, Plott, Porters, Pullback,
16 Rabun, Reddies, Rosman, Saluda, Santeetlah, Saunook, Sauratown, Shinbone, Skyuka, Smokemont,
17 Snowbird, Soco, Spivey, Statler, Stecoah, Suches, Swannanoa, Sylco, Sylva, Tanasee, Tate,
18 Thunder, Thurmont, Toccoa, Toecane, Toxaway, Transylvania, Trimont, Tsali, Tuckasegee,
19 Tusquitee, Unaka, Unicoi, Unison, Walnut, Watauga, Wayah, Wesser, Whiteoak, Whiteside, and
20 Zillicoa.

21 (2) Soil series in the Piedmont Region shall include the following: Alamance, Altavista, Appling,
22 Appomattox, Armenia, Ashlar, Augusta, Ayersville, Badin, Banister, Bannertown, Belews Lake,
23 Bentley, Betheria, Bethlehem, Biscoe, Brickhaven, Buncombe, Callison, Carbondon, Cartecay,
24 Casville, Cecil, Chewacla, Cid, Claycreek, Cliffside, Clover, Colfax, Congaree, Coronaca,
25 Creedmoor, Cullen, Dan River, Danripple, Davidson, Davie, Delila, Devotion, Dorian, Durham,
26 Elbert, Enon, Enott, Exway, Fairview, Georgeville, Goldston, Granville, Green Level, Grover,
27 Gwinnett, Halifax, Hallison, Haw River, Helena, Herndon, Hibriten, Hiwassee, Hornsboro, Hulett,
28 Iredell, Jackland, Kinkora, Kirksey, Lackstown, Leaksville, Lignum, Lloyd, Louisa, Louisburg,
29 Madison, Mandale, Masada, Mattaponi, Mayodan, McQueen, Meadowfield, Mecklenburg, Merry
30 Oaks, Misenheimer, Mocksville, Monacan, Moncure, Montonia, Mooshaunee, Nanford, Nason,
31 Nathalie, Oak Level, Oakboro, Orange, Ostin, Pacolet, Pactolus, Peakin, Peawick, Penhook,
32 Pfafftown, Picture, Pilot Mountain, Pinkston, Pinoka, Pittsboro, Poindexter, Polkton, Poplar Forest,
33 Rasalo, Rhodhiss, Rion, Riverview, Ronda, Rowan, Saw, Secrest, Sedgfield, Siloam, Skyuka,
34 Spartanburg, Spray, Spriggs, Starr, Stoneville, Stott Knob, Tarrus, Tatum, Tillery, Toast, Toccoa,
35 Tomlin, Totier, Turbeville, Tussahaw, Uwharrie, Vance, Wadesboro, Wake, Warne, Wate, Wateree,
36 Wedowee, Wehadkee, Westfield, White Store, Wickham, Wilkes, Winnsboro, Woolwine,
37 Worsham, Wynott, Yadkin, and Zion.

(3) Soil series in the Coastal Region shall include the following: Acredale, Ailey, Alaga, Alpin, Arapahoe, Argent, Augusta, Autryville, Aycock, Backbay, Ballahack, Barclay, Bayboro, Baymeade, Belhaven, Bertie, Betheria, Bibb, Bladen, Blaney, Blanton, Bohicket, Bojac, Bolling, Bonneau, Bragg, Brookman, Butters, Byars, Cainhoy, Candor, Cape Fear, Cape Lookout, Caroline, Carteret, Centenary, Chapanoke, Charleston, Chastain, Chenneby, Chesapeake, Chipley, Chowan, Conaby, Conetoe, Corolla, Cowarts, Coxville, Craven, Croatan, Currituck, Dare, Deloss, Delway, Dogue, Dorovan, Dothan, Dragston, Duckston, Dunbar, Duplin, Echaw, Emporia, Engelhard, Exum, Faceville, Foreston, Fork, Fortescue, Fripp, Fuquay, Gertie, Gilead, Goldsboro, Grantham, Grifton, Gritney, Gullrock, Hobonny, Hobucken, Hyde, Hydeland, Icaria, Invershiel, Johns, Johnston, Kalmia, Kenansville, Kinston, Kureb, Lakeland, Leaf, Lenoir, Leon, Liddell, Lillington, Longshoal, Lucy, Lumbee, Lynchburg, Lynn Haven, Mandarin, Mantachie, Marlboro, Marvyn, Masontown, Maxton, Mayodan, McColl, Meggett, Mooshaunee, Muckalee, Munden, Murville, Myatt, Nahunta, Nakina, Nankin, Nawney, Neeses, Newhan, Newholland, Nimmo, Nixonton, Noboco, Norfolk, Ocilla, Onslow, Orangeburg, Osier, Ousley, Pactolus, Pamlico, Pantego, Pasquotank, Paxville, Peakin, Pelion, Pender, Perquimans, Pettigrew, Plummer, Pocalla, Polawana, Ponzer, Portsmouth, Pungo, Rains, Rimini, Roanoke, Roper, Rumford, Rutlege, Scuppernong, Seabrook, Seagate, Shellbluff, Stallings, State, Stockade, Suffolk, Tarboro, Tetotum, Thursa, Toisnot, Tomahawk, Tomotley, Torhunta, Troup, Uchee, Valhalla, Varina, Vacluse, Wagram, Wahee, Wakulla, Wando, Wasda, Weeksville, Wilbanks, Winton, Woodington, Wrightsboro, Wysocking, Yaupon, Yeopim, and Yonges.

History Note: Authority G.S. 143-215.1(a)(6); 143-215.3(a)(1); 143-215.3(c); S.L. 2014, c. 120; S.L. 2015, c. 286
Eff. [New Date].