STATE OF NORTH CAROLINA
OFFICE OF ADMINISTRATIVE HEARINGS

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1711 New Hope Church Rd
Raleigh, NC 27609-6285

August 15, 2019

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

Re: Extension of the Period of Review for 15A NCAC 02B .0101, .0103, .0104, .0106, .0108, .0110, .0201, .0202, .0203, .0204, .0205, .0206, .0208, .0211, .0212, .0214, .0215, .0216, .0218, .0219, .0220, .0221, .0222, .0223, .0224, .0225, .0226, .0227, .0228, .0230, .0231, .0301, .0302, .0303, .0304, .0305, .0306, .0307, .0308, .0309, .0310, .0311, .0312, .0314, .0315, .0316, and .0317

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 technical changes and submit the rewritten rules at a later meeting.

Pursuant to G.S. 150B-21.13, when the Commission extends the period of review, it is required to approve or object to rules or call a public hearing on the same within 70 days.

If you have any questions regarding the Commission's actions, please let me know.

Sincerely,

Amber C. May
Commission Counsel

cc: Connie Brower

Burgos, Alexander N

Subject: FW: RRC Review - Technical Changes for 15A NCAC 02B .0100 - .0300.

From: Brower, Connie <connie.brower@ncdenr.gov>
Sent: Wednesday, August 7, 2019 12:07 PM
To: May, Amber Cronk <amber.may@oah.nc.gov>
Cc: Manning, Jeff <jeff.manning@ncdenr.gov>; Culpepper, Linda <linda.culpepper@ncdenr.gov>; Everett, Jennifer <jennifer.everett@ncdenr.gov>; Ventaloro, Julie <julie.ventaloro@ncdenr.gov>; Ventaloro, Christopher <christopher.ventaloro@ncdenr.gov>; Weaver, Adriene <adriene.weaver@ncdenr.gov>; Kountis, Elizabeth <elizabeth.kountis@ncdenr.gov>; Flaherty, Bridget <bridget.flaherty@ncdenr.gov>; Johnston, Peter <Peter.Johnston@ncdenr.gov>; Meadows, Susan <susan.meadows@ncdenr.gov>
Subject: RRC Review - Technical Changes for 15A NCAC 02B .0100 - .0300.

Dear Ms. May,

We are kindly asking to extend the period of review for 15A NCAC 02B .0100 -.0300 in order for staff to continue addressing the Requests for Technical Changes. We are making great progress - but, feel that additional time would be beneficial to assure that we are thoughtful and careful in our review.

Thanks so much. Please let us know if you need additional information with respect to this request.

Connie

Connie Brower
Department of Environmental Quality
Division of Water Resources
Classifications, Standards and Rules Review Branch
919 707 3686
Connie.Brower@ncdenr.gov

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REQUEST FOR TECHNICAL CHANGE

AGENCY: Environmental Management Commission

RULE CITATION: All Rules

DEADLINE FOR RECEIPT: Friday, August 9, 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:

Please capitalize "state" where you mean the State of NC.

Throughout these Rules, where a word is defined by .0202, I don't think it's necessary to say "[as defined by Rule .0202]" In some cases, I think that this causes some awkward language. Please consider removing this language where you deem appropriate.

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

Amber May
Commission Counsel
Date submitted to agency: July 30, 2019

REQUEST FOR TECHNICAL CHANGE

AGENCY: Environmental Management Commission

RULE CITATION: 15A NCAC 02B .0101

DEADLINE FOR RECEIPT: Friday, August 9, 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:

Some of this Rule appears to be internal management and does not meet the definition of a "rule" as set forth in 150B-2(8a). Please review and revise as necessary.

Overall, I'm a bit confused by the intent of (b). Some of it appears to addressed petition for rulemaking in accordance with 150B-20. Please review and clarify.

Since you've already incorporated 40 CFR .131.10 by reference in (b)(2), delete "a copy of the most current…" on lines 26-27 in (b)(3).

In (b)(4), delete "appropriate" and "proper"

In (b)(4), is there a cross-reference to the required "public hearing"?

I'm not sure that I understand what is going on in (b)(5). G.S. 150B-20 addresses petitions for rule-making. Isn't this addressed elsewhere in your Rules? Alternatively, is this necessary? Since the Commission is the Rulemaking body, this appears to be internal management. Please review and clarify and/or otherwise revise. If the intent is for (5)(and (6) to be your rulemaking rule required by 150B-20, please provide some additional information as to where to send the petition for rulemaking, what is to be required in the petition, etc.

What is the public hearing requirement as set forth in 150B? Is this if the petition for rulemaking is granted?

In (b)(6), how will it be determined whether to grant or deny the petition? The factors are not provided in 150B-20. The time limits are. Is that what you mean?

Amber May
Commission Counsel
Date submitted to agency: July 30, 2019

Is (b)(7) necessary? It appears to relate to internal management.

In (b)(8), again, what public hearing?

Is (b)(8) necessary?

In (b)(8), delete or define "complete" and "relevant"

In (b)(8), change "which should" to "to"

In (b)(9), will they also consider the factors in 143-214.1?

What is the intent of (b)(10)? Is this necessary?

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

Amber May
Commission Counsel
Date submitted to agency: July 30, 2019

15A NCAC 02B .0101 is readopted as published in 32:22 NCR 2411-2493 with changes as follows:

15A NCAC 02B .0101 GENERAL PROCEDURES

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

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

(1) The Commission, or its designee, shall determine waters to be studied for the purpose of classification and assignment of water quality standards on the basis of user requests, petitions, or the identification of existing or attainable water uses, as defined by ~~15A NCAC 2B .0202,~~ Rule .0202 of this Subchapter, not presently included in the water classification.

(2) In determining the best usage of waters and assigning classifications of such waters, the Commission shall consider the criteria specified in G.S. 143-214.1(d). In determining whether to revise a designated best usage for waters through a revision to the classifications, the Commission shall follow the requirements of 40 CFR [~~131.10(b)(c)(d) and (g),~~] 131.10 which [~~are hereby~~] is incorporated by reference including subsequent amendments and editions. A copy of the most current version of the requirements is available free of charge [~~on the internet~~] at http://www.gpo.gov/fdsys/.

(3) When revising the classification of waters, the Division shall collect water quality data within the watershed for those substances [~~which~~] that require more stringent control than required by the existing classification. However, such sampling may be limited to only those parameters [~~which~~] that are of concern. If the revision to classifications involves the removal of a designated use, the Division shall conduct a use attainability analysis as required by the provisions of 40 CFR [~~131.10(j), which are hereby incorporated by reference including subsequent amendments and editions.~~] 131.10. A copy of the most current version of the provisions is available free of charge [~~on the internet~~] at http://www.gpo.gov/fdsys/.

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

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

waters on the basis of the study findings or information included in the petition supporting the classification and standards changes.

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

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

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

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

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

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

~~(1) Class C: freshwaters protected for secondary recreation, fishing, aquatic life including propagation and survival, and wildlife. All freshwaters shall be classified to protect these uses at a minimum.~~

(2) Class B: freshwaters protected for primary recreation which includes swimming on a frequent or organized basis and all Class C uses.

(3) Class WS-I: waters protected as water supplies which are essentially in natural and undeveloped watersheds. Point source discharges of treated wastewater are permitted pursuant to Rules .0104 and .0211 of this Subchapter. Local programs to control nonpoint sources and stormwater discharges of pollution are required. Suitable for all Class C uses.

(4) Class WS-II: waters protected as water supplies which are generally in predominantly undeveloped watersheds. Point source discharges of treated wastewater are permitted pursuant to Rules .0104 and .0211 of this Subchapter. Local programs to control nonpoint sources and stormwater discharges of pollution shall be required. Suitable for all Class C uses.

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

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

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

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

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

(1) Class SC: saltwaters protected for secondary recreation, fishing, aquatic life including propagation and survival, and wildlife. All saltwaters shall be classified to protect these uses at a minimum.

(2) Class SB: saltwaters protected for primary recreation which includes swimming on a frequent or organized basis and all Class SC uses.

(3) Class SA: suitable for commercial shellfishing and all other tidal saltwater uses.

(4) Class SWL: waters that meet the definition of coastal wetlands as defined by 15A NCAC 2H .0205, and which are landward of the mean high water line, and wetlands contiguous to estuarine waters as defined by 15A NCAC 2H .0206.

(e) The following are supplemental classifications:

(1) Trout waters (Tr): freshwaters protected for natural trout propagation and survival of stocked trout.

(2) Swamp waters (Sw): waters which have low velocities and other natural characteristics which are different from adjacent streams.

(3) Nutrient Sensitive Waters (NSW): waters subject to growths of microscopic or macroscopic vegetation requiring limitations on nutrient inputs.

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

(5) High Quality Waters (HQW): waters which are rated as excellent based on biological and physical/chemical characteristics through Division monitoring or special studies, native and special native trout waters (and their tributaries) designated by the Wildlife Resources Commission, primary nursery areas (PNA) designated by the Marine Fisheries Commission and other functional nursery areas designated by the Marine Fisheries Commission, all water supply watersheds which are either classified as WS-I or WS-II or those for which a formal petition for reclassification as WS-I or WS-II has been received from the appropriate local government and accepted by the Division of Water Quality and all Class SA waters.

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

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

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

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

History Note: *Authority G.S. 143-214.1; 143-215.3(a)(1);*
Eff. February 1, 1976;
Amended Eff. August 1, 1995; February 1, 1993; August 3, 1992; August 1, 1990;
RRC Objection Eff. July 18, 1996 due to lack of statutory authority and ambiguity;
Amended Eff. October 1, ~~1996.~~ 1996;
Readopted Eff. September 1, 2019.

REQUEST FOR TECHNICAL CHANGE

AGENCY: Environmental Management Commission

RULE CITATION: 15A NCAC 02B .0103

DEADLINE FOR RECEIPT: Friday, August 9, 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), lines 5 and 12, what is meant by "insofar as practicable and applicable"? How is this determined? Who holds this discretion? If it's you all, please either delete this language or say how it is to be determined.

Should lines 11-22 ("Methods not codified…22314") be its own Paragraph?

In (a), what is the cost of the "Standard Methods for the Examination of Water and Wastewater"? 150B-21.6 requires this information.

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

Amber May
Commission Counsel
Date submitted to agency: July 30, 2019

15A NCAC 02B .0103 is readopted as published in 32:22 NCR 2411-2493 with changes as follows:

15A NCAC 02B .0103 ANALYTICAL PROCEDURES

(a) Chemical/Physical Procedures. Tests or analytical procedures to determine conformity ~~or non-conformity~~ with standards shall, insofar as practicable and applicable, conform to the guidelines by the U.S. Environmental Protection Agency (EPA) codified as 40 CFR, Part 136, which are hereby incorporated by reference including ~~any~~ subsequent amendments and editions. ~~This material is available for inspection at the Department of Environment, Health, and Natural Resources, Division of Water Quality, Water Quality Section, 512 North Salisbury Street, Raleigh, North Carolina. Copies may be obtained from the U.S. Government Printing Office, Superintendent of Documents, Washington, DC 20402-9325 at a cost of thirteen dollars ($13.00).~~ A copy of the most current version of 40 CFR Part 136 is available free of charge [~~on the internet~~] at http://www.gpo.gov/fdsys/. Methods not codified by 40 CFR, Part 136 ~~will,~~ shall, insofar as practicable and applicable, conform to the ~~guidelines by the~~ American Public Health ~~Association,~~ Association (APHA), American Water Works ~~Association,~~ Association (AWWA), and Water Environment Federation (WEF) publication ~~A Standard~~ "Standard Methods for the Examination of Water and ~~Wastewater, 19th edition@(1996) [20th edition"] or subsequent editions~~ Wastewater" (20th edition), which ~~are~~ is ~~hereby~~ incorporated by ~~reference.~~ reference, including subsequent amendments and editions. ~~Copies may be obtained from the Water Environment Federation, 601 Wythe St., Alexandria, VA, 22314 at a cost of one hundred and eighty dollars ($180.00).~~ The 20th edition is available for inspection at the Department of Environmental Quality, Division of Water Resources, 512 North Salisbury Street, Raleigh, North Carolina 27604-1170. A copy of the most current edition of [~~the "Standards~~] "Standard Methods for the Examination of Water and Wastewater" is available for purchase from the following places: APHA, 8001 Street, NW Washington, DC 20001; AWWA, 6666 W. Quincy Avenue, Denver, CO 80235; or WEF, 601 Wythe Street, Alexandria, VA 22314.

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

(c) Wetland Evaluation Procedures. Evaluations of wetlands for the presence of existing uses shall be based on procedures approved by the Director. The Director shall approve wetland evaluation procedures that have been demonstrated to produce verifiable and repeatable results and that have widespread acceptance in the scientific community. Copies of approved methods or guidance may be obtained at no cost by submitting a written request ~~to NCDWQ, Ecological Assessment Group, P.O. Box 29535, Raleigh, NC 27626-0535.~~ NCDWR, Wetlands Branch, 1617 Mail Service Center, Raleigh, NC 27699-1617.

History Note: *Authority G.S. 143-214.1; 143-215.3(a)(1);*
Eff. February 1, 1976;
Amended Eff. February 1, 1993; October 1, 1989; January 1, 1985; September 9, 1979;
RRC Objection Eff. July 18, 1996 due to lack of statutory authority and ambiguity;
Amended Eff. October 1, ~~1996.~~ 1996;
Readopted Eff. September 1, 2019.

REQUEST FOR TECHNICAL CHANGE

AGENCY: Environmental Management Commission

RULE CITATION: 15A NCAC 02B .0104

DEADLINE FOR RECEIPT: Friday, August 9, 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 6, what is "approved treatment"? Approved by whom? In accordance with what? The permit? Your Rules?

In (a), please change "shall be guided by" to "shall consider"

In (b), lines 23, why is it necessary to say "All reclassifications shall adhere to rulemaking requirements of G.S. 150B"? If I'm not mistaken, this is already provided in your statutes and also the definition of a Rule in 150B itself.

In (b), should the reclassification information be its own Paragraph?

In (b), please consider providing the requirements of a reclassification request in list form.

What is the difference between (d) and (e)? They use the exact same language, but have different formats. Please review and clarify.

What is the intent of (h)? Is it just to say that y'all can do it? If so, it's not necessary as it essentially just points to the authorizing statute.

In (i), please begin a new sentence with "Other discharges of treated wastewater…"

On line 30, how is the Division to determine whether more stringent requirements will be in place? What factors will use in making this determination?

In (j), what is meant by "deemed permitted"? Can you delete "deemed permitted and" If not, how is something "deemed permitted"?

Amber May
Commission Counsel
Date submitted to agency: July 30, 2019

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

Amber May
Commission Counsel
Date submitted to agency: July 30, 2019

15A NCAC 02B .0104 is readopted as published in 32:22 NCR 2411-2493 with changes as follows:

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

(a) In determining the suitability of waters for use as a source of water supply for drinking, ~~culinary~~ culinary, or food processing purposes after approved treatment, the Commission ~~will~~ shall be guided by the physical, chemical, and bacteriological maximum contaminant levels specified by U.S. Environmental Protection Agency regulations adopted pursuant to the Public Health Service Act, 42 U.S.C. 201 et seq., as amended by the Safe Drinking Water Act, 42 U.S.C. 300(f) et seq. In addition, the Commission shall be guided by the requirements for unfiltered and filtered water supplies and the maximum contaminant levels specified in ~~the North Carolina Rules Governing Public Water Supplies,~~ 15A NCAC 18C .1100, .1200 and ~~.1500~~ .1500, which are [~~hereby~~] incorporated by reference including subsequent amendments and editions. ~~and comments provided by the Division of Environmental Health.~~

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

~~(c)~~(b) All waters used for water supply purposes or intended for future water supply use shall be classified to the most appropriate water supply classification as determined by the ~~Commission.~~ Commission in accordance with Sections .0100 and .0200 of this Subchapter. ~~Water supplies may be reclassified to a more or less protective water supply classification on a case-by-case basis through the rule-making process.~~ All reclassifications shall adhere to the rulemaking requirements of G.S. 150B. A more protective water supply classification may be applied to existing water supply watersheds after receipt of a resolution from all local governments having land use jurisdiction within the designated water supply watershed requesting a more protective water supply classification. Requests for reclassification of non-water supply segments and watersheds to a water supply classification shall include submittal to the Commission of resolutions from all local governments having land use jurisdiction within the proposed water supply watershed for which a water supply classification is being requested, provided that the Commission may reclassify waters without the consent of local governments [~~where~~] if the Commission deems such reclassifications appropriate and [~~necessary.~~] necessary in accordance with Rule .0101 of this Section. Local governments requesting water supply reclassifications shall provide a topographic map (such as a 1:24,000 scale USGS map) indicating the normal pool elevation for backwaters of water supply reservoirs, longitude and latitude coordinates of intended water supply intakes, and critical areas and other watershed boundaries as appropriate. ~~Local government(s) requesting the Future Water Supply classification must provide to the Division evidence of intent which may include one or a combination of the following: capital improvement plans, a Water Supply Plan as described in G.S. 143-355(l), bond issuance for the water treatment plant or land acquisition records. A 1:24,000 scale USGS topographical map~~

~~delineating the location of the intended water supply intake is also required. Requirements for activities administered by the State of North Carolina, such as the issuance of permits for landfills, NPDES wastewater discharges, land application of residuals and road construction activities shall be effective upon reclassification for future water supply use. The requirements shall apply to the critical area and balance of the watershed or protected area as appropriate. Upon receipt of the final approval letter from the Division of Environmental Health for construction of the water treatment plant and water supply intake, the Commission shall initiate rule making to modify the Future Water Supply supplemental classification. Local government implementation is not required until 270 days after the Commission has modified the Future Water Supply (FWS) supplemental classification through the rule making process and notified the affected local government(s) that the appropriate local government land use requirements applicable for the water supply classifications are to be adopted, implemented and submitted to the Commission for approval. Local governments may also adopt land use ordinances that meet or exceed the state's minimum requirements for water supply watershed protection prior to the end of the 270 day deadline. The requirements for FWS may also be applied to waters formerly used for drinking water supply purposes, and currently classified for water supply use, at the request of local government(s) desiring protection of the watershed for future water supply use.~~

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

~~(c)~~(d) ~~For the purposes of implementing the~~ The water supply watershed protection ~~rules (15A NCAC 2B .0100, .0200 and .0300) and the~~ requirements of Rules .0620 through .0624 of this Subchapter and G.S. ~~143-214.5,~~ 143-214.5 that ~~the following schedule of implementation shall be applicable:~~ ~~[effective dates]~~ are applicable to State agencies and units of local government with land use authority in water supply watersheds that were classified as such on or before ~~[and including]~~ August 3, ~~[1992:]~~ 1992, shall be effective no later than:

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

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

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

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

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

(e) [~~For water supply watersheds~~] The water supply watershed protection requirements of Rules .0620 through .0624 of this Subchapter and G.S. 143-214.5 that are applicable to State agencies and units of local government with land use authority in water supply watersheds that were classified as such after August 3, 1992, [~~the effective dates for implementation of the water supply watershed protection requirements shall be as follows:~~] shall be effective no later than:

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

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

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

~~(g) Where higher density developments are allowed, stormwater control systems must use wet detention ponds as described in 15A NCAC 2H .1003(g)(2), (g)(3), (i), (j), (k), and (l). Alternative stormwater management systems~~

consisting of other treatment options, or a combination of treatment options, may be approved by the Director. The design criteria for approval shall be 85 percent average annual removal of Total Suspended Solids. Also the discharge rate shall meet one of the following criteria:

(1) the discharge rate following the 1-inch design storm shall be such that the runoff draws down to the pre-storm design stage within five days, but not less than two days; or

(2) the post development peak discharge rate shall equal the predevelopment rate for the 1-year, 24-hour storm.

(h)[(e)](f) Where no practicable alternative exists, discharge Discharge from groundwater remediation projects addressing water quality problems shall be allowed if an engineering alternatives analysis submitted for approval in accordance with 15A NCAC 02H .0105(c) demonstrates that no practicable alternative exists to such a discharge. Such discharges shall meet in accordance with other applicable requirements in all water supply classifications. of Rules .0212 through .0218 of this Subchapter.

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

(j)[(f)](g) Where no practicable alternative exists other than surface water discharge, For previously unknown existing unpermitted wastewater discharges discharges to surface water, an engineering alternatives analysis shall be submitted for approval in accordance with 15A NCAC 02H .0105(c). incorporate the best possible technology treatment as deemed appropriate by the Division. If the analysis finds that no practicable alternative exists to surface water discharges, such discharges shall meet the "Minimum treatment requirements" as defined in Rule .0403 of this Subchapter.

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

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

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

~~Health, and Natural Resources, Division of Environmental Management, Water Quality Planning Branch, 512 North Salisbury Street, Raleigh, North Carolina, .~~

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

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

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

~~(1) Agricultural activities conducted after January 1, 1993 shall maintain a minimum 10 foot vegetated buffer, or equivalent control as determined by the Soil and Water Conservation Commission, along all perennial waters indicated on the most recent versions of U.S.G.S. 1:24,000 (7.5 minute) scale topographic maps or as determined by local government studies; and~~

~~(2)~~[~~(i)~~](j) Animal operation deemed permitted and permitted under 15A NCAC ~~2H .0217~~ 2T .1300 are allowed in all classified water supply watersheds.

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

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

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

(1) there are practical difficulties or unnecessary hardships that prevent compliance with the strict letter of the ordinance;

(2) the variance is in harmony with the general purpose and intent of the local watershed protection ordinance and preserves its spirit; and

(3) in granting the variance, the public safety and welfare have been assured and substantial justice has been done.

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

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

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

(2) Buffers meet the minimum statewide water supply watershed protection requirements;

(3) Built upon areas are designed and located to minimize stormwater runoff impact to the receiving waters, minimize concentrated stormwater flow, maximize the use of sheet flow through vegetated areas, and maximize the flow length through vegetated areas;

(4) Areas of concentrated density development are located in upland areas and away, to the maximum extent practicable, from surface waters and drainageways;

(5) Remainder of tract to remain in vegetated or natural state;

(6) The area in the vegetated or natural state may be conveyed to a property owners association; a local government for preservation as a park or greenway; a conservation organization; or placed in a permanent conservation or farmland preservation easement. A maintenance agreement shall be filed with the property deeds; and

(7) Cluster developments that meet the applicable low density requirements shall transport stormwater runoff by vegetated conveyances to the maximum extent practicable.

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

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

(v) Silviculture activities are subject to the provisions of the Forest Practices Guidelines Related to Water Quality (15A NCAC 1I .0101 - .0209). The Division of Forest Resources is the designated management agency responsible for implementing the provisions of the rules in 15A NCAC 2B .0200 pertaining to silviculture activities.

(w) Local governments shall, as the existing laws allow, develop, implement, and enforce comprehensive nonpoint source and stormwater discharge control programs to reduce water pollution from activities within water supply watersheds such as development, forestry, landfills, mining, on site sanitary sewage systems which utilize ground adsorption, toxic and hazardous materials, transportation, and water based recreation.

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

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

(z) A model local water supply watershed management and protection ordinance, as approved by the Commission in accordance with G.S. 143-214.5, is on file with the Office of Administrative Hearings and may be obtained by writing

~~to: Water Quality Planning Branch, Division of Environmental Management, Post Office Box 29535, Raleigh, North Carolina 27626-0535.~~

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

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

History Note: *Authority G.S. 143-214.1; 143-215.3(a)(1);*
Eff. February 1, 1976;
Amended Eff. August 1, 1995; August 3, 1992; March 1, 1991; October 1, ~~1989.~~ 1989;
Readopted Eff. September 1, 2019.

15A NCAC 02B .0106 is repealed through readoption as published in 32:22 NCR 2411-2493 as follows:

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

History Note: *Authority G.S. 143-214.1; 143-215.3(a)(1);*
Eff. February 1, 1976;
Amended Eff. October 1, 1989; January 1, 1985; September 9, ~~1979.~~ 1979;
Repealed Eff. September 1, 2019.

15A NCAC 02B .0108 is repealed through readoption as published in 32:22 NCR 2411-2493 as follows:

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

History Note: *Authority G.S. 143-214.1;*
Eff. January 1, 1985;
Amended Eff. October 1, ~~1989.~~ 1989;
Repealed Eff. September 1, 2019.

REQUEST FOR TECHNICAL CHANGE

AGENCY: Environmental Management Commission

RULE CITATION: 15A NCAC 02B .0110

DEADLINE FOR RECEIPT: Friday, August 9, 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:

Much of lines 5-10 appear to be unnecessary as they do not provide a directive. Please review and revise as necessary.

On lines 11-14, delete "The Commission shall apply" and say something like "Rules .0225 and .0227 of this Subchapter shall apply to the development of site-specific strategies to maintain…." Here, I don't think that you are intending to tell the Commission what to do. Rather, you are providing a directive and/or information to your regulated public.

On line 17, what are "other actions within its authority"? Can you provide some examples? Perhaps a cross-reference to a rule or statute?

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

Amber May
Commission Counsel
Date submitted to agency: July 30, 2019

15A NCAC 02B .0110 is readopted as published in 32:22 NCR 2411-2493 with changes as follows:

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

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

History Note: *Authority G. S. 143-214.1; 143-215.3(a)(1); 143-215.8A;*
Eff. August 1, ~~2000.~~ 2000;
Readopted Eff. September, 2019.

REQUEST FOR TECHNICAL CHANGE

AGENCY: Environmental Management Commission

RULE CITATION: 15A NCAC 02B .0201

DEADLINE FOR RECEIPT: Friday, August 9, 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:

Overall, I think that this Rule could be more clear as to what it is doing and when it will be applicable. At the same time, some of this Rule appears to be unnecessary as it repeats either statute or 40 CFR 131.12. Please review and revise as necessary.

Please delete the first sentence of (a) as it is a direct recitation of 143-215.22L(t). Please also delete "Pursuant to this policy" and simply begin the next sentence with "The requirements of 40 CFR.." If you feel like you need some additional information to say when the CFR will be applicable, please do so without the word "policy."

In (a), please also delete the last paragraph, lines 11-12 ("These requirements shall be implemented…" This language appears to be unnecessary. If you need some form of this language to comply with federal standards, please say "this Rule", as opposed to listing out each individual Paragraph."

With my comments regarding (a) above in mind, would it make sense to combine (a) and the first sentence in (b)? They appear to be addressing the same thing.

In (b), delete "properly" in "properly classifying"

In (b), line 14, delete "to protect such uses" you've already said that "The commission shall protect existing uses" on line 13.

On line 16, delete "which shall affects" and say "that affects"

On lines 16-17, what are "these waters"?

By lines 16-17, do you mean something like "In cases where the Commission determines that an existing use is not included in the

classification of waters in accordance with Rule .0101(b)(1) of this Subchapter, a project shall not permitted unless the existing uses are protected"? So, I'm reading this to say that even if existing uses aren't included in the classification, folks have to protect them anyway? Does this somehow go with (c)? Please review and clarify.

In (c), consider deleting line 21-22, "waters with quality higher than the standards are defined by Rule .0202 of this Section."

In (c), line 23, what are "these requirements"? Do you mean "this Paragraph"? "This Rule"?

In (c)(3), I don't read 40 CFR 131.12 to require "supplemental documentation." Here, do you mean something like "The Division may require supplemental documentation from an affected local government to show that a proposed project or parts of the project are necessary for important economic and social development under 40 CFR 131.12"?

In (c)(3), what is "an affected local government"

In (c)(4), consider changing "shall have the option to" to "may"

On line 35, delete or define "appropriate"

In (d), why are they making this consideration? In determining what? (d) seems to be missing something. Are they considering the present and anticipated uses in determining how much degradation is okay?

In (e), what is meant by lines 18-19, I read this to say "ORS shall be maintained, such that existing uses… shall be maintained and protected." I don't understand the use of "maintained" twice. Also, should the "shall be" be an "is" in "shall be maintained"? Here, do you mean something like "shall be maintained

In (f), line 23, what are "these procedures"? Do you mean "in accordance with this Paragraph"?

In (f), what is the intent of lines 23-24? I don't understand what's going on here.

How do lines 24-27 go with the rest of (f)? This Paragraph appears to have a lot of unrelated information thrown together. I recognize that it's possible that's not accurate and I simply don't understand this process well enough, but please review and clarify if needed.

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

Amber May
Commission Counsel
Date submitted to agency: July 30, 2019

15A NCAC 02B .0201 is readopted as published in 32:22 NCR 2411-2493 with changes as follows:

15A NCAC 02B .0201 ANTIDEGRADATION POLICY

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

(b) ~~Existing~~ The Commission shall protect existing uses, as defined by Rule .0202 of this Section, and the water quality to protect such uses ~~shall be protected~~ by properly classifying surface waters and having standards sufficient to protect these uses. In cases where the Commission or its designee determines in accordance with Rule .0101(b)(1) of this Subchapter that an existing use is not included in the classification of waters, a project which shall affect these waters shall not be permitted unless the existing uses are protected.

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

(1) Each applicant for an ~~NPDES~~ National Pollutant Discharge Elimination System (NPDES) permit or NPDES permit expansion to discharge treated waste shall document ~~an effort to consider~~ non-discharge alternatives considered pursuant to 15A NCAC ~~2H~~ 02H .0105(c)(2).

(2) Public Notices for NPDES permits shall list parameters that would be water quality limited and state whether ~~or not~~ the discharge ~~shall~~ will use the entire available load capacity of the receiving waters and ~~may~~ may, as a result, cause more stringent water quality based effluent limitations to be established for dischargers downstream.

(3) ~~The~~ In compliance with 40 CFR 131.12, the Division may require supplemental documentation from the affected local government that a proposed project or parts of the project are necessary for important economic and social development.

(4) Local governments shall have the option to work with the ~~The~~ Commission and Division ~~shall work with local governments on a voluntary basis~~ to identify and develop appropriate management strategies or classifications for waters with unused pollutant loading capacity to accommodate future economic growth.

Waters with quality higher than the standards shall be identified by the Division on a case-by-case basis through the NPDES permitting and waste load allocation ~~processes~~ ~~(pursuant~~ processes, pursuant to the provisions of 15A NCAC ~~2H .0100).~~ 02H .0100. Dischargers affected by the requirements of ~~Paragraphs~~ [~~Subparagraphs~~] ~~(c)(1) through (c)(4) of this Rule~~ this Paragraph and the public at large shall be notified according to the provisions described ~~herein,~~ herein and all other appropriate provisions pursuant to 15A NCAC ~~2H~~ 02H .0109. If an applicant objects to the requirements to protect waters with quality higher than the standards and believes degradation is necessary to accommodate important social and economic development, the applicant may contest these requirements according to the provisions of ~~General Statute~~ G.S. 143-215.1(e) and 150B-23.

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

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

(f) Activities regulated under Section 404 of the [~~Federal~~] federal Clean Water Act ~~(33 U.S.C. 1344)~~ 33 U.S.C. 1344 ~~which~~ that require a water quality certification as described in Section 401 of the [~~Federal~~] federal Clean Water Act ~~(33 U.S.C. 1341)~~ 33 U.S.C. [~~1344~~] 1341 shall be evaluated according to the procedures outlined in 15A NCAC ~~2H~~ 02H .0500. Activities ~~which~~ that receive a water quality certification pursuant to these procedures shall not be considered to remove existing uses. The evaluation of permits issued pursuant to G.S. 143-215.1 that involve the assimilation of wastewater or stormwater by wetlands shall incorporate the criteria found in 15A NCAC ~~2H~~ 02H ~~.0506(e)(1) (5)~~ .0506(c)(1) through (5) in determining the potential impact of the proposed activity on the existing uses of the wetland ~~per~~ as described in ~~15A NCAC 2H .0231.~~ Rule [~~.0231~~] .0231(a) of this Section.

History Note: *Authority G.S. 143-214.1; 143-215.1; 143-215.3(a)(1);*
Eff. February 1, 1976;
Amended Eff. October 1, 1995; August 1, 1995; February 1, 1993; April 1,1991; August 1, 1990;
RRC Objection Eff. July 18, 1996 due to lack of statutory authority and ambiguity;
Amended Eff. October 1, ~~1996.~~ 1996;
Readopted Eff. September 1. 2019.

REQUEST FOR TECHNICAL CHANGE

AGENCY: Environmental Management Commission

RULE CITATION: 15A NCAC 02B .0202

DEADLINE FOR RECEIPT: Friday, August 9, 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 Item (3), I don't see "agricultural uses" in used elsewhere in your Rules. Do you mean "agriculture activities"?

In Item (4), please change to read a consumer or client or to land they own, lease, ~~own or to land which~~ that ~~they lease~~ or otherwise hold rights.

In Item (5), what is meant by "accepted as satisfactory"? How is this determined? I assume something like "in accordance with the applicable Rules"?

In Item (6), I don't see "attainable uses" used elsewhere in your Rules. Here, do you mean to define "attainable"?

In Item (6), delete or define cost-effective and "reasonable"

In item (7), you've excluded "bacterial", but what if it is "bacterial"?

In Item (7), generally, we try to avoid defining a word with that same word. Is there a way around it here?

In item (7), what are "prevailing conditions"?

In Item (9), do you also want to include a cross-reference to the appropriate rules?

In Item (12), what are "reference conditions"?

Please consider breaking Item (14) into a list. Also, what is meant by "long-term exposure", "substantial", in "substantial portion" and "extended" in "extended period of exposure"?

In Item (18), where can these maps be found? Are these available online?

Amber May
Commission Counsel
Date submitted to agency: July 30, 2019

In Item (19), delete "from" in "than from the"

Is there a federal cross-reference available for Item (21) with regard to the approval by the EPA?

In (26), delete or define "discernable" and "discrete"

In (27), delete or define "significant"

In Item (28), change "which" to "that" in "which is used"

In Item (28), delete or define "primarily"

In (30), change "which" to "that" in "which grow"

In (30), is it necessary to say "disturbed or undisturbed conditions"? Does it not read the same without this language?

In (30), I assume that "mature and successional forests" are a term of art?

In (32)(a), remove the comma after "manufacture"

In (38), please begin "zones shall be" as a new sentence, and delete "and such."

In (40), delete "mainly"

In (40), line 22, change "which" to "that" in "which are not required"

In (42), delete "shall either directly or indirectly" so that it reads "that cause foul…"

In (42), what is meant by "foul or noxious odors, unsightly conditions, or breeding of abnormally large quantities of mosquitoes"? Does your regulated public know?

In Item (43), delete or define "full" in "full human body" and "frequent" in "frequent basis"

In Item (44), what is meant by "essential habitat"? Is this a term of art? If not, delete or define "essential"

In (45), protection measures are required by what? The Rules? The Permit?

In Item (49), what is meant by "infrequent, unorganized, or incidental basis." Note that if this issue is addressed in (43), this language may be okay.

In (55), change "which" to "that" in "which are"

In (56), what is "approved treatment"? Is there a cross-reference available?

In (57), change "whose use requires" to "that require"

In (57), delete or define "basic" in "basic purpose"

In (58), you've defined BMPs elsewhere. Why is it included in this definition?

In (59), delete or define "sufficiently" and "sufficient" on line 3.

In (59), delete "still"

Do you need Item (60)? You've already said that all of the definitions in Article 21 apply and "watershed is defined by Article 21. If you do need this, why not just say something like "means the same as set forth in 143-213(21)."

In (61), what are "normal circumstance"? Is this a term of art?

On line 17, please add "which is hereby incorporated by reference" and say whether you are including subsequent amendments and editions.

What is the intent of Item (62)? Do you need this language since this is already defined by statute?

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

Amber May
Commission Counsel
Date submitted to agency: July 30, 2019

15A NCAC 02B .0202 is readopted as published in 32:22 NCR 2411-2493 with changes as follows:

15A NCAC 02B .0202 DEFINITIONS

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

(1) ~~Acute~~ "Acute toxicity to aquatic ~~life~~ life" means lethality or other harmful effects sustained by either resident aquatic populations or indicator species used as test organisms in a controlled toxicity test due to a short-term exposure (relative to the life cycle of the organism) of 96 hours or less to a specific chemical or mixture of chemicals (as in an effluent). ~~Short-term exposure for acute tests is generally 96 hours or less.~~ Acute toxicity shall be determined using the following procedures:

(a) for specific chemical constituents or compounds, acceptable levels shall be equivalent to a concentration of one-half or less of the Final Acute Value (FAV) as determined according to "Guidelines for Deriving Numerical Water Quality Criteria for the Protection of Aquatic Life and its Uses" published by the Environmental Protection Agency and referenced in the Federal Register (50 FR 30784, July 29, 1985) which is ~~hereby~~ incorporated by reference including ~~any~~ subsequent ~~amendments.~~ amendments and editions.

(b) for specific chemical constituents or compounds for which values described under ~~Subparagraph~~ Sub-Item ~~(1)(a)~~ (a) of this ~~Rule~~ Item cannot be determined, acceptable levels shall be equivalent to a concentration of one-third or less of the lowest available LC50 value.

(c) for effluents, acceptable levels ~~are~~ shall be defined as no statistically measurable lethality (99 percent confidence level using ~~Students t test)~~ [test),] Student's t-test) ~~[a LC50>100%, or a No Observed Adverse Effect Concentration,~~] during a specified exposure period. Concentrations of exposure [~~and critical values for the No Observed Adverse Effect Concentration~~] shall be ~~determined on a case-by-case basis.~~ based on permit requirements and procedures in accordance with 15A NCAC 02H .1110.

(d) in instances where detailed dose response data indicate that levels of acute toxicity are ~~significantly~~ different from those defined in this Rule, the Director may determine on a case-by-case basis an alternate acceptable level through statistical analyses of the dose response ~~curve.~~ in accordance with 15A NCAC 02H .1110.

(2) ~~Acute~~ "Acute to Chronic ~~Ratio (ACR)~~ Ratio" or "ACR" means the ratio of acute toxicity expressed as an LC50 for a specific toxicant or an effluent to the chronic value for the same toxicant or effluent.

(3) ~~Agricultural uses include~~ "Agricultural uses" means the use of waters for stock watering, irrigation, and other farm purposes.

(4) ~~Applicator~~ "Applicator" means any person, firm, corporation, wholesaler, retailer, or ~~distributor,~~ distributor; any local, state, or federal governmental ~~agency,~~ agency; or any other person who

applies fertilizer to the land of a consumer or client or to land they own or to land ~~which~~ that they lease or otherwise hold rights.

(5) ~~Approved treatment,~~ "Approved treatment," as applied to water supplies, means treatment accepted as satisfactory by the ~~Division of Environmental Health or~~ Division of Water ~~Quality.~~ Resources.

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

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

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

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

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

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

~~(7)~~(8) ~~Best~~ "Best Management ~~Practice (BMP)~~ Practice" or "BMP" means a structural or nonstructural management-based practice used singularly or in combination to reduce nonpoint source inputs to receiving waters in order to achieve water quality protection goals.

~~(8)~~(9) ~~Best usage~~ "Best usage" or "Best use" of ~~waters~~ waters, as specified for each ~~class~~ class, means those uses as determined by the Environmental Management Commission in accordance with the provisions of G.S. 143-214.1.

~~(9)~~(10) ~~Bioaccumulation factor (BAF) is~~ "Bioaccumulation factor" or "BAF" means a unitless value that describes the degree to which substances are taken up or accumulated into tissues of aquatic organisms from water directly and from food or other ingested materials containing the accumulated substances, and is ~~usually~~ measured as a ratio of a substance's concentration in tissue versus its concentration in water in situations where exposure to the substance ~~is occurring~~ occurs from both water and the food chain.

~~(10)~~(11) ~~Bioconcentration factor (BCF) is~~ "Bioconcentration factor" or "BCF" means a unitless value that describes the degree to which substances are absorbed or concentrated into tissues of aquatic organisms from water directly and is ~~usually~~ measured as a ratio of substance's concentration in

tissue versus its concentration in water in situations where exposure to the substance ~~is occurring~~ occurs from water only.

~~(11)~~(12) ~~Biological integrity~~ "Biological integrity" means the ability of an aquatic ecosystem to support and maintain a balanced and indigenous community of organisms having species composition, diversity, population ~~densities~~ densities, and functional organization similar to that of reference conditions.

~~(12)~~(13) ~~Buffer~~ "Buffer" means a natural or vegetated area through which stormwater runoff flows in a diffuse manner so that the runoff does not become channelized and which provides for infiltration of the runoff and filtering of pollutants. ~~The buffer shall be measured landward from the normal pool elevation of impounded structures and from the bank of each side of streams or rivers.~~

~~(13) Built-upon area means that portion of a development project that is covered by impervious or partially impervious cover including buildings, pavement, gravel areas (e.g. roads, parking lots, paths), recreation facilities (e.g. tennis courts), etc. (Note: Wooden slatted decks and the water area of a swimming pool are considered pervious.)~~

(14) ~~Chronic~~ "Chronic toxicity to aquatic ~~life~~ life" means any harmful effect sustained by either resident aquatic populations or indicator species used as test organisms in a controlled toxicity test due to long-term exposure (relative to the life cycle of the organism) or exposure during a substantial portion of the duration of a sensitive period of the life cycle to a specific chemical substance or mixture of chemicals (as in an effluent). In absence of extended periods of exposure, early life stage or reproductive toxicity tests may be used to define chronic impacts.

(15) ~~Chronic~~ "Chronic value for aquatic ~~life~~ life" means the geometric mean of two concentrations identified in a controlled toxicity test as the No Observable Effect Concentration (NOEC) and the Lowest Observable Effect Concentration (LOEC).

~~(16) Cluster development means the grouping of buildings in order to conserve land resources and provide for innovation in the design of the project including minimizing stormwater runoff impacts. This term includes nonresidential development as well as single-family residential and multi-family developments. For the purpose of Sections .0100, .0200 and .0300 of this Subchapter, planned unit developments and mixed use development shall be considered as cluster development.~~

~~(17)~~(16) ~~Commercial applicator~~ "Commercial applicator" means any person, firm, corporation, wholesaler, retailer, ~~distributor~~ distributor, or any other person who for hire or compensation applies fertilizer to the land of a consumer or client.

~~(18)~~(17) ~~Concentrations are~~ "Concentration" means the mass of a substance per volume of water ~~and~~ and, for the purposes of this ~~Section~~ Section, shall be expressed as milligrams per liter (mg/l), micrograms per liter (ug/l), or nanograms per liter (ng/l).

~~(19)~~(18) ~~Contiguous refers to~~ "Contiguous" means those wetlands landward of the mean high water line or normal water level and within 575 feet of classified surface waters ~~which~~ that appear as solid blue lines on the most recently published versions of U.S.G.S. 1:24,000 (7.5 minute) scale topographic maps.

~~(20)~~(19) ~~Critical area~~ "Critical area" means the area adjacent to a water supply intake or reservoir where risk associated with pollution is greater than from the remaining portions of the watershed. The boundary of a critical area is defined ~~as~~ as:

(a) extending either 1/2 mile in a straight line fashion upstream from and draining to the normal pool elevation of the reservoir in which the intake is located or to the ridge line of the ~~watershed (whichever comes first);~~ watershed, whichever is nearest the normal pool elevation of the reservoir; ~~or~~

(b) extending either 1/2 mile in a straight line fashion upstream from and draining to the intake (or other appropriate downstream location associated with the water supply) located directly in the stream or river ~~(run-of-the-river),~~ (run-of-the-river) or to the ridge line of the ~~watershed (whichever comes first).~~ watershed, whichever is nearest the intake; or ~~Since WS-I watersheds are essentially undeveloped, establishment of a critical area is not required. Local governments may extend the critical area as needed. Major landmarks such as highways or property lines may be used to delineate the outer boundary of the critical area if these landmarks are immediately adjacent to the appropriate outer boundary of 1/2 mile.~~

(c) extending a different distance from the reservoir or intake as adopted by the ~~The~~ Commission ~~may adopt a different critical area size~~ during the reclassification ~~process.~~ process pursuant to Rule .0104 of this Subchapter.

Since WS-I watersheds are essentially undeveloped, establishment of a critical area is not required.

~~(21)~~(20) ~~Cropland~~ "Cropland" means agricultural land that is not covered by a certified animal waste management plan and is used for growing corn, grains, oilseed crops, cotton, forages, tobacco, beans, or other vegetables or fruits.

~~(22)~~(21) ~~Designated~~ "Designated Nonpoint Source ~~Agency~~ Agency" means ~~those agencies~~ an agency specified by the Governor in the North Carolina Nonpoint Source Management Program, as approved by the Environmental Protection Agency.

~~(23) Development means any land disturbing activity which adds to or changes the amount of impervious or partially impervious cover on a land area or which otherwise decreases the infiltration of precipitation into the soil.~~

~~(24)~~(22) ~~Director~~ "Director" means the Director of the ~~Division of Water Quality.~~ [~~Resources.~~] Division.

~~(25)~~(23) ~~Discharge is~~ "Discharge" means the addition of any man-induced waste effluent either directly or indirectly to ~~state~~ State surface waters.

~~(26)~~(24) ~~Division~~ "Division" means the Division of Water ~~Quality~~ Resources or its successors.

~~(27)~~(25) ~~Domestic~~ "Domestic wastewater ~~discharge~~ discharge" means the discharge of sewage, non-process industrial wastewater, other domestic ~~wastewater~~ wastewater, or any combination of these items. Domestic wastewater includes, but is not limited to, liquid waste generated by domestic water using fixtures and ~~appliances,~~ appliances from any residence, place of business, or place of public

~~assembly~~ assembly, even if it contains no sewage. Examples of domestic wastewater include once-through non-contact cooling water, seafood packing facility ~~discharges~~ discharges, and wastewater from restaurants.

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

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

~~(a) substantial expenditures of resources (time, labor, money) based on a good faith reliance upon having received a valid local government approval to proceed with the project, or~~

~~(b) having an outstanding valid building permit in compliance with G.S. 153A-344.1 or G.S. 160A-385.1, or~~

~~(c) having an approved site-specific or phased development plan in compliance with G.S. 153A-344.1 or G.S. 160A-385.1.~~

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

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

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

~~(a) to convey the resulting parcels, with the exception of parcels retained by the grantor, to a relative or relatives as a gift or for nominal consideration, but only if no more than one parcel is conveyed by the grantor from the tract to any one relative; or~~

~~(b) to divide land from a common ancestor among tenants in common, all of whom inherited by intestacy or by will.~~

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

~~(33)~~(29) ~~Fishing~~ "Fishing" means the taking of fish by ~~sport~~ recreational or commercial ~~methods~~ methods, ~~as well as~~ the consumption of fish or ~~shellfish~~ shellfish, ~~or~~ the propagation of ~~fish~~ fish, ~~and~~ ~~such~~ or

the propagation of other aquatic life as is necessary to ~~provide a suitable~~ protect the biological integrity of the environment for fish.

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

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

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

(a) wastewater resulting from any process of industry or manufacture, or from the development of any natural resource;

(b) wastewater resulting from processes of trade or business, including wastewater from laundromats and car washes, but not wastewater from restaurants; ~~or~~ and

(c) wastewater discharged from a municipal wastewater treatment plant requiring a pretreatment program.

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

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

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

~~(40)~~(36) ~~Lower~~ "Lower piedmont and coastal plain ~~waters~~ ~~mean~~ waters" means those waters of the Catawba River Basin below Lookout Shoals Dam; the Yadkin River Basin below the junction of the Forsyth, Yadkin, and Davie County lines; and all of the waters of Cape Fear, Lumber, Roanoke, Neuse, Tar-Pamlico, Chowan, Pasquotank, and White Oak River Basins; except tidal salt waters which are assigned S classifications.

~~(41)~~(37) ~~MF is an abbreviation for~~ "MF" means the membrane filter procedure for bacteriological analysis.

~~(42) Major variance means a variance from the minimum statewide watershed protection rules that results in the relaxation, by a factor greater than five percent of any buffer, density or built upon area requirement under the high density option; any variation in the design, maintenance or~~

~~operation requirements of a wet detention pond or other approved stormwater management system; or relaxation by a factor greater than 10 percent, of any management requirement under the low density option.~~

~~(43) Minor variance means a variance from the minimum statewide watershed protection rules that results in a relaxation, by a factor of up to five percent of any buffer, density or built upon area requirement under the high density option; or that results in a relaxation by a factor up to 10 percent, of any management requirement under the low density option.~~

~~(44)~~(38) ~~Mixing zone~~ "Mixing zone" means a region of the receiving water in the vicinity of a discharge within which dispersion and dilution of constituents in the discharge occurs and such zones shall be subject to conditions established in accordance with ~~15A NCAC 2B .0204(b).~~ Rule .0204(b) of this Section.

~~(45)~~(39) ~~Mountain~~ "Mountain and upper piedmont ~~waters mean~~ waters" means all of the waters of the Hiwassee; Little Tennessee, including the Savannah River drainage area; French Broad; Broad; New; and Watauga River Basins; and those portions of the Catawba River Basin above Lookout Shoals Dam and the Yadkin River Basin above the junction of the Forsyth, Yadkin, and Davie County lines.

~~(46) Nonconforming lot of record means a lot described by a plat or a deed that was recorded prior to the effective date of local watershed regulations (or their amendments) that does not meet the minimum lot size or other development requirements of Rule .0211 of this Subchapter.~~

~~(47)~~(40) ~~Nonpoint~~ "Nonpoint source ~~pollution~~ pollution" means pollution ~~which~~ that enters waters mainly as a result of precipitation and subsequent runoff from lands ~~which~~ that have been disturbed by man's activities and includes all sources of water pollution which are not required to have a permit in accordance with G.S. 143-215.1(c).

~~(48)~~(41) ~~Non-process discharge~~ "Non-process discharge" means industrial effluent not directly resulting from the manufacturing process. An example ~~would be~~ is non-contact cooling water from a compressor.

~~(49) Nutrient sensitive waters mean those waters which are so designated in the classification schedule in order to limit the discharge of nutrients (usually nitrogen and phosphorus). They are designated by "NSW" following the water classification.~~

~~(50)~~(42) ~~Offensive condition~~ "Offensive condition" means any condition or conditions resulting from the presence of sewage, industrial ~~wastes~~ wastes, or other wastes within the waters of the ~~state~~ State or along the shorelines thereof ~~which~~ that shall either directly or indirectly cause foul or noxious odors, unsightly conditions, or breeding of abnormally large quantities of mosquitoes or other insect ~~pests, or shall~~ pests; damage private or public water supplies or other ~~structures,~~ structures; result in the development of gases which destroy or damage surrounding property, herbage or ~~grasses,~~ grasses; ~~or which may~~ cause the impairment of ~~taste,~~ taste such as from fish flesh ~~tainting,~~ tainting; or affect the health of any person residing or working in the area.

(51)(43) Primary Nursery Areas (PNAs) are tidal saltwaters which provide essential habitat for the early development of commercially important fish and shellfish and are so designated by the Marine Fisheries Commission. [Primary] "Primary contact [recreation includes] recreation" means swimming, diving, skiing, and similar uses involving full human body contact with water where such activities take place in an organized or on a frequent basis.

(52)(44) Primary recreation includes swimming, skin diving, skiing, and similar uses involving human body contact with water where such activities take place in an organized or on a frequent basis. [Primary Nursery Areas (PNAs) are] "Primary nursery area" or "PNA" means tidal saltwaters [which] that provide essential habitat for the early development of commercially important fish and shellfish and are so designated by the Marine Fisheries Commission.

(53)(45) Protected area "Protected area" means the area adjoining and upstream of the critical area in a WS-IV water supply in which protection measures are required. The boundaries of the boundary of a protected areas are area is defined as within as:

(a) extending either five miles in an as-the-river-runs manner upstream from and draining to of the normal pool elevation of the reservoir in which the intake is located and draining to water supply reservoirs (measured from the normal pool elevation) or to the ridge line of the watershed (whichever comes first); watershed, whichever is nearest the normal pool elevation of the reservoir; or

(b) extending either 10 miles in an as-the-river-runs manner upstream from and draining to the intake located directly in the stream or river (run-of-the-river), run-of-the-river or to the ridge line of the watershed (whichever comes first). watershed, whichever is nearest the intake; or Local governments may extend the protected area. Major landmarks such as highways or property lines may be used to delineate the outer boundary of the protected area if these landmarks are immediately adjacent to the appropriate outer boundary of five or 10 miles. In some cases the protected area shall encompass the entire watershed.

(c) extending a different distance from the reservoir or intake as adopted by the The Commission may adopt a different protected area size during the reclassification process. process pursuant to Rule .0104 of this Subchapter.

(54)(46) Residential development "Residential development" means buildings for residence such as attached and detached single family dwellings, apartment complexes, condominiums, townhouses, cottages, and their associated outbuildings such as garages, storage buildings, and gazebos.

(55)(47) Residuals means any solid or demisolid waste generated from a wastewater treatment plant, water treatment plant or air pollution control facility permitted under the authority of the Environmental Management Commission. [Residuals are defined] "Residuals" has the same meaning as in 15A NCAC 02T .0103.

(56)(48) Riparian area "Riparian area" means an area that is adjacent to a body of water.

~~(57)~~(49) ~~Secondary~~ "Secondary contact ~~recreation includes~~ recreation" means wading, boating, other uses not involving human body contact with water, and activities involving human body contact with water where such activities take place on an infrequent, unorganized, or incidental basis.

~~(58)~~(50) ~~Sensitive~~ "Sensitive species for aquatic toxicity ~~testing~~ ~~is~~ testing" means any species utilized in procedures accepted by the Commission or its designee in accordance with Rule .0103 of this Subchapter, ~~or~~ and the following genera:

(a) Daphnia;

(b) Ceriodaphnia;

(c) Salmo;

(d) Pimephales;

(e) Mysidopsis;

(f) Champia;

(g) Cyprinodon;

(h) Arbacia;

(i) Penaeus;

(j) Menidia;

(k) Notropis;

(l) Salvelinus;

(m) Oncorhynchus;

(n) Selenastrum;

(o) Chironomus;

(p) Hyalella;

(q) Lumbriculus.

~~(59)~~(51) ~~Shellfish culture~~ ~~includes~~ "Shellfish culture" means the use of waters for the propagation, ~~storage~~ storage, and gathering of oysters, clams, and other shellfish for market purposes.

~~(60) Stormwater collection system means any conduit, pipe, channel, curb or gutter for the primary purpose of transporting (not treating) runoff. A stormwater collection system does not include vegetated swales, swales stabilized with armoring or alternative methods where natural topography prevents the use of vegetated swales (subject to case by case review), curb outlet systems or pipes used to carry drainage underneath built upon surfaces that are associated with development controlled by the provisions of 15A NCAC 2H .1003(e)(1).~~

~~(61) Source of water supply for drinking, culinary or food processing purposes means any source, either public or private, the waters from which are used for human consumption, or used in connection with the processing of milk, beverages, food, or other purpose which requires water suitable for human consumption.~~

~~(62)~~(52) ~~Swamp waters mean those waters which are classified by the Environmental Management Commission and which are topographically located so as to generally have very low velocities and~~

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

(63)(53) Tidal salt waters mean "Tidal salt waters" means all tidal waters which are classified by the Environmental Management Commission which that generally have a natural chloride ion content in excess of 500 parts per million and include all waters assigned S classifications. million.

(64)(54) Toxic substance or toxicant "Toxic substance" or "Toxicant" means any substance or combination of substances (including disease-causing agents), which agents) that, after discharge and upon exposure, ingestion, inhalation, or assimilation into any organism, either directly from the environment or indirectly by ingestion through food chains, has the potential to cause death, disease, behavioral abnormalities, cancer, genetic mutations, physiological malfunctions (including malfunctions or suppression in reproduction or growth) growth), or physical deformities in such organisms or their offspring.

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

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

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

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

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

~~(70)~~(60) ~~Watershed~~ "Watershed" means a natural area of drainage, including all tributaries contributing to the supply of at least one major waterway within the State, the specific limits of each separate watershed to be designated by the Commission as defined by G.S. 143-213 (21). ~~the entire land area contributing surface drainage to a specific point. For the purpose of the water supply protection rules in 15A NCAC 2B .0104 and .0211 local governments may use major landmarks such as highways or property lines to delineate the outer boundary of the drainage area if these landmarks are immediately adjacent to the ridgeline.~~

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

(62) For purposes of applicability to Rules [~~15A NCAC 02B~~] .0265, .0266, [~~.0277~~] .0277, and .0278 of this Section and until those rules are removed from Section .0200 of this Subchapter and recodified into Section [~~.0700,~~] .0700 of this Subchapter, refer to [~~rule 15A NCAC 02B .0621~~] G.S. 143-214.7 for the definitions of [~~"built-upon area"~~] "Built-upon area" and [~~"development".~~] "Development."

History Note: *Authority G.S. 143-214.1; 143-215.3(a)(1);*
Eff. February 1, 1976;
Amended Eff. August 1, 1995; February 1, 1993; August 3, 1992; August 1, 1990;
RRC Objection Eff. July 18, 1996 due to lack of authority and ambiguity;
Amended Eff. August 1, 1998; October 1, ~~1996.~~ 1996;
Readopted Eff. September 1, 2019.

REQUEST FOR TECHNICAL CHANGE

AGENCY: Environmental Management Commission

RULE CITATION: 15A NCAC 02B .0203

DEADLINE FOR RECEIPT: Friday, August 9, 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:

> *Is this Rule necessary? It doesn't appear to be doing anything other than saying "the Division will create these limitations", as opposed to saying what those limitations are. I'm a bit concerned with the wording of this Rule because it sounds like it has the potential to meet the definition of a "rule" as contained in 150B. Are the water quality based effluent limitations not set forth in Rule? How does this Rule go with these Rules as whole?*

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

Amber May
Commission Counsel
Date submitted to agency: July 30, 2019

15A NCAC 02B .0203 is readopted as published in 32:22 NCR 2411-2493 with changes as follows:

15A NCAC 02B .0203 PROTECTION OF WATERS DOWNSTREAM OF RECEIVING WATERS

Water quality based effluent limitations ~~or~~ and best management practices for direct or indirect discharges of waste or for other sources of water pollution ~~will~~ shall be developed by the Division such that the water quality standards and best usage of receiving waters and all downstream waters will not be impaired.

History Note: *Authority G.S. 143-214.1; 143-215.3(a)(1);*
Eff. February 1, 1976;
Amended Eff. October 1, 1989; January 1, 1985; September 9, ~~1979.~~ 1979;
Readopted Eff. September 1, 2019.

REQUEST FOR TECHNICAL CHANGE

AGENCY: Environmental Management Commission

RULE CITATION: 15A NCAC 02B .0204

DEADLINE FOR RECEIPT: Friday, August 9, 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), what are the "established standards"?

In (a), what is a "prescribed mixing zone"? Is this set forth in the Permit?

In (b), line 9, by "may" do you mean "shall"? If you mean "may", when will it be necessary to create the opportunity for mixture?

In (b), delete or define "reasonable" in "reasonable opportunity"

In (b)(3), what is an "undesirable aquatic life"? Can you provide some examples? How about "nuisance species"? Are these terms of art in your industry?

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

Amber May
Commission Counsel
Date submitted to agency: July 30, 2019

15A NCAC 02B .0204 is readopted as published in 32:22 NCR 2411-2493 with changes as follows:

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

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

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

(1) result in acute toxicity to aquatic ~~life~~ life, ~~[as~~ defined ~~by~~ in Rule .0202(1) of this ~~Section]~~ Section, or prevent free passage of aquatic organisms around the mixing zone;

(2) result in offensive conditions;

(3) produce undesirable aquatic life or result in a dominance of nuisance species outside of the assigned mixing zone; or

(4) endanger the public health or welfare.

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

History Note: *Authority G.S. 143-214.1;*
Eff. February 1, 1976;
Amended Eff. May 1, 2007; October 1, 1989; February 1, 1986; September 9, ~~1979.~~ 1979;
Readopted Eff. September 1, 2019.

REQUEST FOR TECHNICAL CHANGE

AGENCY: Environmental Management Commission

RULE CITATION: 15A NCAC 02B .0205

DEADLINE FOR RECEIPT: Friday, August 9, 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:

Lines 4-6 appear to be unnecessary. Please review and consider deleting this language.

If you decide that you need this language, what is the "normal range"? How is this determined?

On line 6, please add comma after "industrial wastes" and "other wastes"

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

Amber May
Commission Counsel
Date submitted to agency: July 30, 2019

15A NCAC 02B .0205 is readopted as published in 32:22 NCR 2411-2493 with changes as follows:

15A NCAC 02B .0205 NATURAL CHARACTERISTICS OUTSIDE STANDARDS LIMITS

Natural waters may on occasion, or temporarily, have characteristics outside of the normal range established by the standards. The adopted water quality standards relate to the condition of waters as affected by the discharge of sewage, industrial wastes or other wastes including those from nonpoint sources and other sources of water pollution. Water quality standards ~~will~~ shall not be considered violated ~~when~~ if values outside the normal range are caused by natural conditions. ~~Where~~ If wastes are discharged to such waters, the discharger ~~will~~ shall not be ~~considered~~ deemed a contributor to substandard conditions ~~provided~~ if maximum treatment in compliance with permit requirements is maintained and, therefore, meeting the established limits is beyond the discharger's control.

History Note: *Authority G.S. 143-214.1; 143-215.3(a)(1);*
Eff. February 1, 1976;
Amended Eff. October 1, 1989; January 1, ~~1985.~~ 1985;
Readopted Eff. September 1, 2019.

REQUEST FOR TECHNICAL CHANGE

AGENCY: Environmental Management Commission

RULE CITATION: 15A NCAC 02B .0206

DEADLINE FOR RECEIPT: Friday, August 9, 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:

Much of (a) appears to be unnecessary. Please review and revise. Of particular interest are lines 6-8 ("there are… categories of standards".) Could you just say "Water quality based effluent limitations shall be developed as follows:"

In (a)(1), delete "to the satisfaction of the Director"

In (c), delete or define "significantly" in "significantly less than…"

In (d)(1), how is the director to determine that the limitations will not protect the water quality standards? Are the factors set forth elsewhere?

In (d)(1), how is the director to determine the requirements for existing discharges? I understand it will be done on a case by case basis, but what factors will he or she use? Alternatively, what's the goal (see language in (b).)

What is the intent of the last line of (d)(1), "are determined to be inadequate…"? Does this relate to "limitations will not protect water quality standards" on lines 18-19? How will this determination be made?

In (d)(2), consider deleting "(additional)"

In (d)(2), how is the director to determine the requirements for existing discharges? I understand it will be done on a case by case basis, but what factors will he or she use? Alternatively, what's the goal?

In (d)(3), what standards are "the standards"? Those set forth in this Paragraph?

In (d)(3), add a comma before "unless"

Amber May
Commission Counsel
Date submitted to agency: July 30, 2019

In (d)(3), how is the Director to determine that alternative limitations protect the water uses? Are the factors set forth elsewhere in rule or statute?

In (e), by "may", do you mean "shall" on line 30?

In (e), how is it determined whether "other methods" would be appropriate?

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

Amber May
Commission Counsel
Date submitted to agency: July 30, 2019

15A NCAC 02B .0206 is readopted as published in 32:22 NCR 2411-2493 with changes as follows:

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

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

(1) All standards except toxic substances and aesthetics shall be protected using the minimum average flow for a period of seven consecutive days that has an average recurrence of once in ten years (7Q10 flow). Other governing flow strategies, such as varying discharges with the receiving waters ability to assimilate wastes, may be designated by the Commission or its designee on a case-by-case basis if the discharger or permit applicant provides evidence that establishes to the satisfaction of the Director that the alternative flow strategies will give equal or better protection for the water quality standards. "Better protection for the water quality standards" means that deviations from the standard would be expected less frequently than provided by using the 7Q10 flow.

(2) Toxic substance standards to protect aquatic life from chronic toxicity shall be protected using the 7Q10 flow.

(3) Toxic substance standards to protect aquatic life from acute toxicity shall be protected using the 1Q10 flow.

(4) Toxic substance standards to protect human health shall be the following:

(A) The 7Q10 flow for standards to protect human health through the consumption of water, fish, and shellfish from noncarcinogens; and

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

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

More complex modeling techniques may also be used to set effluent limitations directly based on frequency and duration criteria published by the U.S. Environmental Protection Agency, available free of charge at http://water.epa.gov/scitech/swguidance/standards/criteria/current/index.cfm and incorporated by reference, including subsequent amendments and editions, and the Commission or its designee has determined, on a case-by-case basis, that the techniques will protect the designated uses of receiving waters.

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

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

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

(1) ~~Where~~ If the 30Q2 flow is estimated to be greater than zero, effluent limitations for new or expanded (additional) discharges of oxygen consuming waste shall be set at BOD_5= 5 mg/l, NH_3-N = 2 mg/l and DO = 6 mg/l, unless it is determined by the Director that these limitations will not protect water quality standards. Requirements for existing discharges shall be determined on a case-by-case basis by the Director. More stringent limits shall be applied ~~in cases where~~ if violations of water quality standards are predicted to occur for a new or expanded discharge with the limits set pursuant to this ~~Rule,~~ Rule or ~~where~~ if existing limits are determined to be inadequate to protect water quality standards.

(2) If the 30Q2 and 7Q10 flows are both estimated to be zero, no new or expanded (additional) discharge of oxygen consuming waste shall be allowed. Requirements for existing discharges to streams where the 30Q2 and 7Q10 flows are both estimated to be zero shall be determined on a case-by-case basis.

(3) Other water quality standards shall be protected by requiring the discharge to meet the standards unless the Director determines that alternative limitations protect the classified water uses.

(e) Receiving water flow statistics shall be estimated through consultation with the U.S. Geological Survey. Estimates for any given location may be based on actual flow data, modeling analyses, or other methods determined to be appropriate by the Commission or its designee.

History Note: *Authority G.S. 143-214.1; 143-215.3(a)(1);*
Eff. February 1, 1976;
Amended Eff. January 1, 2015; February 1, 1993; October 1, 1989; August 1, 1985; January 1, ~~1985.~~ 1985;
Readopted Eff. September 1, 2019.

REQUEST FOR TECHNICAL CHANGE

AGENCY: Environmental Management Commission

RULE CITATION: 15A NCAC 02B .0208

DEADLINE FOR RECEIPT: Friday, August 9, 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:

Are lines 6-8 ("Specific standards… respectively") necessary here?

On line 8, what is a "narrative standard"? Is this a term or art?

In (a)(1), what is a "chronic value for aquatic life"?

In (a)(2)(A)(ii), delete "approved by the Commission or its designee" after "bioconcentration data"

On line 13, higher rate than one? The rest of the population?

Overall, I'm having a hard time following (a)(2)(B). Please consider reviewing and revising as necessary. Perhaps it would be helpful and more simple to use language such as that used in the referenced rules on line 17?

Delete lines 32-35 as this is not providing any directive or information and appears to point to rules outside of the rulemaking process.

On line 36, begin a new sentence with "Standards to protect human…" and another new sentence at the end of line 37 and beginning of line 1 with "The equations listed…"

In (a)(2)(B), line 5-6, what is an "unacceptable health risk"? I see that you provide additional information for cancer, but I assume that there are others? If you're only intending on getting to CPFs in this Rule, please make revise and clarify.

What is the intent of lines 8-12? Did you intend to incorporate this Modal of the EPA by reference?

On line 17, please begin "standards to protect human" as a new sentence.

Amber May
Commission Counsel
Date submitted to agency: July 30, 2019

Please end (a)(2)(B) with a period.

In (b), delete or define "reasonable" in "reasonable portion of the body"

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

Amber May
Commission Counsel
Date submitted to agency: July 30, 2019

15A NCAC 02B .0208 is readopted as published in 32:22 NCR 2411-2493 with changes as follows:

15A NCAC 02B .0208 STANDARDS FOR TOXIC SUBSTANCES AND TEMPERATURE

(a) Toxic Substances: the concentration of toxic substances, either alone or in combination with other wastes, in surface waters shall not render waters injurious to aquatic life or wildlife, recreational ~~activities, public health, or~~ activities, or public health, nor shall it impair the waters for any designated uses. Specific standards for toxic substances to protect freshwater and tidal saltwater uses are listed in Rules .0211 and .0220 of this Section, respectively. ~~Procedures for interpreting the~~ The narrative standard for toxic substances and numerical standards applicable to all waters ~~are~~ shall be interpreted as follows:

(1) ~~Aquatic life standards: the~~ The concentration of toxic substances shall not result in chronic ~~toxicity.~~ toxicity to aquatic life. Any levels in excess of the chronic value for aquatic life shall be considered to result in chronic toxicity. In the absence of direct measurements of chronic toxicity, the concentration of toxic substances shall not exceed the concentration specified by the fraction of the lowest LC50 value that predicts a no effect chronic level ~~(as~~ as determined by the use of an acceptable ~~acute/chronic ratios).~~ Acute to Chronic Ratio (ACR) in accordance with U.S. Environmental Protection Agency (EPA) "Guidelines for Deriving Numerical Water Quality Criteria for the Protection of Aquatic Life and its Uses." ~~If an acceptable acute/chronic ratio~~ [~~ACR~~] In the absence of an ACR, ~~is not available, then~~ that toxic substance shall not exceed one-one hundredth (0.01) of the lowest LC50 ~~or~~ or, if it is ~~affirmatively~~ demonstrated that a toxic substance has a half-life of less than 96 ~~hours~~ hours, the maximum concentration shall not exceed one-twentieth (0.05) of the lowest ~~LC50;~~ LC50.

(2) ~~Human health standards: the~~ The concentration of toxic substances shall not exceed the level necessary to protect human health through exposure routes of fish tissue consumption, water consumption, recreation, or other route identified ~~as appropriate~~ for the water body. Fish tissue consumption ~~includes~~ shall include the consumption of ~~shellfish;~~ shellfish. These concentrations of toxic substances shall be determined as follows:

(A) For non-carcinogens, these concentrations shall be determined using a Reference Dose (RfD) as published by the ~~U.S. Environmental Protection Agency~~ EPA pursuant to Section 304(a) of the Federal Water Pollution Control Act as ~~amended or~~ amended, a RfD issued by the ~~U.S. Environmental Protection Agency~~ EPA as listed in the Integrated Risk Information System (IRIS) ~~file~~ file, or a RfD approved by the Director after consultation with the State Health director. Water quality standards or criteria used to calculate water quality based effluent limitations to protect human health through the different exposure routes ~~are~~ shall be determined as follows:

(i) Fish tissue consumption:

WQS = (RfD x RSC) x Body Weight / (FCR x BCF)

where:

WQS = water quality standard or criteria;

RfD = reference dose;

RSC = Relative Source Contribution;

FCR = fish consumption rate (based upon 17.5 gm/person-day);

BCF = bioconcentration ~~factor,~~ factor or bioaccumulation factor (BAF), as appropriate.

Pursuant to Section 304(a) of the Federal Water Pollution Control Act as ~~amended~~ amended, BCF or BAF values, literature values, or site specific bioconcentration data approved by the Commission or its designee ~~are~~ shall be based on ~~U.S. Environmental Protection Agency~~ EPA publications; FCR values ~~are~~ shall be average consumption rates for a 70 Kg adult for the lifetime of the population; alternative FCR values may be used when it is considered necessary to protect localized populations that may be consuming fish at a higher rate; RSC values, when made available through ~~U.S. Environmental Protection Agency~~ EPA publications pursuant to Section 304(a) of the Federal Clean Water Pollution Control Act to account for non-water sources of exposure may be either a percentage (multiplied) or amount subtracted, depending on whether multiple criteria are relevant to the chemical;

(ii) Water consumption (including a correction for fish consumption):

WQS = (RfD x RSC) x Body Weight / [WCR+(FCRxBCF)]

where:

WQS = water quality standard or criteria;

RfD = reference dose;

RSC = Relative Source Contribution;

FCR = fish consumption rate (based upon 17.5 gm/person-day);

BCF = bioconcentration ~~factor,~~ factor or bioaccumulation factor (BAF), as appropriate;

WCR = water consumption rate (assumed to be two liters per day for adults).

To protect sensitive groups, exposure ~~is~~ shall be based on a 10 Kg child drinking one liter of water per day. Standards may also be based on drinking water standards based on the requirements of the Federal Safe Drinking Water ~~Act [42~~ Act, 42 U.S.C. ~~300(f)(g)-1].~~ 300(f)(g)-1. For non-carcinogens, specific numerical water quality standards have not been included in this Rule because water quality standards to protect aquatic life for all toxic substances for which standards have been considered are more stringent than numerical standards to protect human health from non-carcinogens through consumption of fish; standards to protect human health from non-carcinogens through water consumption are listed under the water supply classification standards in Rule .0211 of this Section; the

equations listed in this Subparagraph shall be used to develop water quality based effluent limitations on a case-by-case basis for toxic substances that are not presently included in the water quality standards. Alternative FCR values may be used when it is ~~considered~~ necessary to protect localized populations that may be consuming fish at a higher rate;

(B) For carcinogens, the concentrations of toxic substances shall not result in unacceptable health risks and shall be based on a Carcinogenic Potency Factor (CPF). An unacceptable health risk for cancer shall be ~~considered to be~~ more than one case of cancer per one million people exposed ~~(10-6~~ (10^{-6} risk level). The CPF is a measure of the cancer-causing potency of a substance estimated by the upper 95 percent confidence limit of the slope of a straight line calculated by the Linearized Multistage Model or other appropriate model according to U.S. Environmental Protection Agency ~~Guidelines [FR~~ Guidelines, FR 51 (185): 33992-34003; and FR 45 (231 Part V): ~~79318-79379].~~ 79318-79379. Water quality standards or criteria for water quality based effluent limitations ~~are~~ shall be calculated using the procedures given in ~~Subparagraphs (A) [(a)(2)(A)] and (B) of this Rule.~~ this Part and in Part (A) of this Subparagraph. Standards to protect human health from carcinogens through water consumption are listed under the water supply classification standards in Rules .0212, .0214, .0215, .0216, and .0218 of this Section; standards to protect human health from carcinogens through the consumption of fish (and shellfish) only ~~are~~ shall be applicable to all waters as follows:

(i) Aldrin: 0.05 ng/l;

(ii) Arsenic: 10 ug/l;

(iii) Benzene: 51 ug/l;

(iv) Carbon tetrachloride: 1.6 ug/l;

(v) Chlordane: 0.8 ng/l;

(vi) DDT: 0.2 ng/l;

(vii) Dieldrin: 0.05 ng/l;

(viii) Dioxin: 0.000005 ng/l;

(ix) Heptachlor: 0.08 ng/l;

(x) Hexachlorobutadiene: 18 ug/l;

(xi) Polychlorinated biphenyls (total of all identified PCBs and congeners): 0.064 ng/l;

(xii) Polynuclear aromatic hydrocarbons (total of all PAHs): 31.1 ng/l;

(xiii) Tetrachloroethane (1,1,2,2): 4 ug/l;

(xiv) Tetrachloroethylene: 3.3 ug/L;

(xvi) Trichloroethylene: 30 ug/l;

(xvii) Vinyl chloride: 2.4 ug/l.

The values listed in Subparts (i) through (xvii) of this Part may be adjusted by the Commission or its designee on a case-by-case basis to account for site-specific or chemical-specific information pertaining to the assumed BCF, ~~FCR~~ FCR, or CPF values or other data;

(b) Temperature: the Commission may establish a water quality standard for temperature for specific water bodies other than the standards specified in Rules .0211 and .0220 of this ~~Section,~~ Section upon a case-by-case determination that thermal discharges to these ~~waters,~~ waters that serve or may serve as a source or receptor of industrial cooling water provide for the maintenance of the designated best use throughout a reasonable portion of the water body. Such revisions of the temperature standard ~~must~~ shall be consistent with the provisions of Section 316(a) of the Federal Water Pollution Control ~~Act~~ Act, as amended. A ~~listing~~ list of ~~existing thermal~~ such revisions shall be maintained and made available to the public by the Division.

History Note: *Authority G.S. 143-214.1; 143-215.3(a)(1);*
Eff. February 1, 1976;
Amended Eff. May 1, 2007; April 1, 2003; February 1, 1993; October 1, 1989; January 1, 1985;
September 9, ~~1979.~~ 1979;
Readopted Eff. September 1, 2019.

REQUEST FOR TECHNICAL CHANGE

AGENCY: Environmental Management Commission

RULE CITATION: 15A NCAC 02B .0211

DEADLINE FOR RECEIPT: Friday, August 9, 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:

What is the overall intent of this Rule? I read it to say that these are the water quality standards applicable to Class C Waters. Assuming that's correct, why are lines 5-8 necessary? At best, they appear unnecessary, but more concerning to me is that they are confusing. With regard to the reference to .0208, is the intent here to say something like "In addition to the requirements set forth in Rule .0208 of this Subchapter, all fresh surface waters classified as Class C waters shall meet the following standards:"? If so, please say that.

Is (1) really a standard and/or requirement or would it make sense to move that up to the introductory information? It looks to me that Item (1) really explains what this classification means and is applicable to and would be helpful to know at the outset. Just something to consider.

In (1), what is meant by "all freshwaters shall be classified to protect these uses at a minimum"? Classified as what? Class C waters? Is the intent here just to say that these are minimum requirements and the lowest level of protection?

In Item (2), what is meant by "are suitable for all best uses"? Here, do you mean something similar to what you've done in .0212 (2) in that Items (3) through (22) really set the standard the and the requirements for Class C Waters? If so, you might want to consider combining (1) and (2) and make them part of the introductory language on lines 4-8.

Items (3) through (22), I note that your formatting is different here than in other similar Rules in that other Rules do not use the colons and the requirements in .0212 are in complete sentences. Please consider making them consistent.

Please consider formatting (4), (6), (18), (19), and (21) into a list as you've done elsewhere in this Rule. For example, (4) would look something like:

Amber May
Commission Counsel
Date submitted to agency: July 30, 2019

(4) Chlorophyll a (corrected): ~~not greater than~~

(a) shall not exceed 40 ug/l [~~(based upon monthly averaging where such data are available during the growing season which is generally April 1 – October 31)~~] for lakes, reservoirs, and other waters subject to growths of macroscopic or microscopic vegetation not designated as trout waters; ~~waters,~~ and ~~not greater than~~

(b) shall not exceed 15 ug/l for lakes, reservoirs, and other waters subject to growths of macroscopic or microscopic vegetation designated as trout . This Subitem is not waters ~~(not~~ applicable to lakes or reservoirs less than 10 acres in surface area. ~~area).~~

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

In Item (4), why is "(corrected)" after "Chlorophyll a? Do you need this here?

In Item (4), please consider taking "not applicable to lakes or reservoirs less than 10 acres in surface area" out of the parenthesis and this information appears to be fairly important.

In (7), what is meant by "consecutive samples"? Is this five consecutive days? Could they be done 5 times in one day?

What is the intent of 5-7? Is the point here to say that you all expect violations of the fecal coliform standard and if that happens, then it's okay? If that's what you mean, please make this more clear. Otherwise, I'm not sure that I understand the point of this language.

In Item (7), change "the fecal coliform standard" to "this Item"

In (7), please change "in some cases, this violation is expected to" to "may" so that it reads "Violations of this Item are expected during rainfall and may be caused by uncontrollable nonpoint source solution."

Item (8) seems to be missing a word. Is the intent here to say that floating solids, settleable solids, or sludge deposits are not considered to be a violation so long as they don't make the water unsafe or unsuitable? If so, please make that more clear. I note that in .0220(7), you've added "shall be allowed."

In Item (8), what is meant by "shall not make the water unsafe or unsuitable"? How is this determined?

In (11)(a), are the standards set forth in (11)(b)? If so, please provide that cross-reference to make it clear that you aren't referencing two different things.

In (11)(b), what is "hardness-dependent"? I assume that your regulated public knows?

Amber May
Commission Counsel
Date submitted to agency: July 30, 2019

In (11), please consider making (11)(b) (11)(a), moving (11)(a) after (11)(b) and making lines 33-12 ("With the exception… free of charge") (11)(c). I think this may aid in the clarity (but note my suggestion regarding (b) further down.)

(11) Metals:

~~(a) With the exception of mercury and selenium, freshwater aquatic life standards for metals shall be based upon measurement of the dissolved fraction of the metal. Mercury and selenium water quality standards shall be based upon measurement of the total recoverable metal;~~

~~(b)~~(a) Freshwater metals standards that are not hardness-dependent shall ~~be as follows:~~ not exceed the following:

(i) Arsenic, dissolved, acute: WER· 340 ug/l;
(ii) Arsenic, dissolved, chronic: WER· 150 ug/l;
(iii) Beryllium, dissolved, acute: WER· 65 ug/l;
(iv) Beryllium, dissolved, chronic: WER· 6.5 ug/l;
(v) Chromium VI, dissolved, acute: WER· 16 ug/l;
(vi) Chromium VI, dissolved, chronic: WER· 11 ug/l;
(vii) Mercury, total recoverable, chronic: 0.012 ug/l;
(viii) Selenium, total recoverable, chronic: 5 ug/l;
(ix) Silver, dissolved, chronic: WER· 0.06 ug/l;

(b) With the exception of mercury and selenium, ~~acute and chronic freshwater aquatic life standards for metals listed in~~ this ~~Subparagraph~~ Sub-Item shall apply to the dissolved form of the metal and apply as a function of the pollutant's water effect ratio (WER). A WER expresses the difference between the measures of the toxicity of a substance in laboratory waters and the toxicity in site water. The WER shall be assigned a value equal to one unless any person demonstrates to the Division's satisfaction in a permit proceeding that another value is developed in accordance with the "Water Quality Standards Handbook: Second Edition" published by the US Environmental Protection Agency (EPA-823-B-12-002), free of charge, at http://water.epa.gov/scitech/swguidance/standards/handbook/, ~~hereby~~ incorporated by reference including ~~any~~ subsequent ~~amendments.~~ amendments and editions. Alternative site-specific standards may also be developed when any person submits values that demonstrate to the ~~Commissions'~~ Commission's satisfaction that they were derived in accordance with the "Water Quality Standards Handbook: Second Edition, Recalculation Procedure or the Resident Species Procedure", ~~hereby~~ incorporated by reference including subsequent amendments at http://water.epa.gov/scitech/swguidance/standards/handbook/.
This material is available free of charge.

(c) With the exception of mercury and selenium, freshwater aquatic life standards for metals shall be based upon measurement of the dissolved fraction of the metal. Mercury and selenium water quality standards shall be based upon measurement of the total recoverable metal;

In (11)(b) and (d), please consider deleting "acute and chronic freshwater aquatic life standards for metals listed in" and simply say "with the exception of mercury and selenium, this Sub-Item shall apply…" or use this language at the beginning of (11). Please use consistent language where you can.

In (11)(b), lines 35-37, since you use "WER" throughout these Rules, would it be appropriate to move the definition ("A WER expresses the difference between the… site water") to .0202?

Amber May
Commission Counsel
Date submitted to agency: July 30, 2019

Out of curiosity, why is one discretion for the Division on line 1 and the other is for the Commission on line 7? In any event, please delete "any person demonstrates to the Division's [Commission's] satisfaction" or say how this determination will be made. I would suggest the following (note that I have also cleaned up the incorporation language):

(b) The WER shall be assigned a value equal to one unless ~~any person demonstrates to the Division's satisfaction in a permit proceeding that~~ another value is developed in accordance with either:

(i) the "Water Quality Standards Handbook: Second Edition" published by the US Environmental Protection Agency (EPA-823-B-12-002), which is hereby incorporated by reference, including subsequent amendments and editions, and can be obtained free of charge ~~charge,~~ at ~~http://water.epa.gov/scitech/swguidance/standards/handbook/,~~ http://water.epa.gov/scitech/swguidance/standards/handbook/; or ~~hereby incorporated by reference including any subsequent amendments.~~ [~~amendments and~~] [~~editions.~~] editions; or ~~Alternative site specific standards may also be developed when any person submits values that demonstrate to the Commissions' satisfaction that they were derived in accordance with~~

(ii) the "Water Quality Standards Handbook: Second Edition, Recalculation Procedure or the Resident Species Procedure", which is hereby incorporated by reference including subsequent amendments and can be obtained free of charge at http://water.epa.gov/scitech/swguidance/standards/handbook/.

~~This material is available free of charge.~~

Is (11)(d) applicable to both hardness-dependent and non hardness-dependent metals? I don't understand the placement of the alternative options in (b), then in (d). Should the alternative methods option in (b)(11) be in (d) as applicable to both? I note that this would make the reference to (11)(d) on line 3 before your table make sense. As written it is saying "go to (11)(d)" which says "go to (11)(b)."

In (11)(d), the language before the table appears to be repetitive of (11)(b). Should (11)(b) be moved under alternatives? Should "The WER is equal to one" only be before the table? Should the table be part of (c)? I think that the formatting and order here are a bit confusing.

In (17) (a) through (c), please take the information out of the parenthesis as it appears to be important to the testing.

In (17)(b), is this based one sample per quarter? If so, why not move this information to (17) so that it applies to all (and remove it from (a) and (c).

In (21), please consider deleting "as defined by Rule .0202"

In (21), are lines 4-6 ("BMPs shall be in full… of such BMPs") necessary?

If this language is necessary, delete or define "full" in "full compliance" and "proper" in "proper design"

Also, what are "specifications"?

Amber May
Commission Counsel
Date submitted to agency: July 30, 2019

In (22), is the language on lines 16-18 ("which is generally not… waste characteristic) necessary? This appears to be "fluff."

In (22), since you've eliminated everything except chloride, why not just say "chloride", instead of "substance listed in this Item"

In (22), what is the discharger to monitor for?

In (22), what kinds of efforts may be appropriate? Can you provide some examples?

In (22), why on line 20, is the monitoring only applicable to "the discharger" and on line 22, the efforts are applicable to "all dischargers"? Also, I don't understand the use of the semi-colon. Here, do you just mean something like "the discharger shall monitor the chemical or biological effects of the discharge and make efforts to reduce or eliminate any chloride from the effluents.

In (22), how is it to be determined whether chloride may be a "causative factor"?

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

Amber May
Commission Counsel
Date submitted to agency: July 30, 2019

15A NCAC 02B .0211 is readopted as published in 32:22 NCR 2411-2493 with changes as follows:

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

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

(1) ~~Best Usage of Waters:~~ The best usage of waters shall be aquatic life ~~propagation and maintenance of biological integrity (including fishing and fish), wildlife, secondary recreation, agriculture and any other usage except for primary recreation or as a source of water supply for drinking, culinary or food processing purposes;~~ propagation, survival, and maintenance of biological integrity (including fishing and fish); wildlife; secondary contact recreation as defined in Rule .0202 of this Section; agriculture; and any other usage except for primary contact recreation or as a source of water supply for drinking, culinary, and food processing purposes. All freshwaters shall be classified to protect these uses at a minimum.

(2) ~~Conditions Related to Best Usage: the~~ The conditions of waters shall be such that waters are suitable for ~~aquatic life propagation and maintenance of biological integrity, wildlife, secondary recreation, and agriculture.~~ all best uses specified in this Rule. Sources of water pollution that preclude any of these uses on either a short-term or long-term basis shall be ~~considered to be violating~~ deemed to violate a water quality standard;

(3) Chlorine, total residual: shall not exceed 17 ug/l;

(4) Chlorophyll a (corrected): ~~not greater than~~ shall not exceed 40 ug/l [~~(based upon monthly averaging where such data are available during the growing season which is generally April 1 – October 31)~~] for lakes, reservoirs, and other waters subject to growths of macroscopic or microscopic vegetation not designated as trout waters, and ~~not greater than~~ shall not exceed 15 ug/l for lakes, reservoirs, and other waters subject to growths of macroscopic or microscopic vegetation designated as trout waters (not applicable to lakes or reservoirs less than 10 acres in surface area). The Commission or its designee may prohibit or limit any discharge of waste into surface waters if the surface waters experience or the discharge would result in growths of microscopic or macroscopic vegetation such that the standards established pursuant to this Rule would be violated or the intended best usage of the waters would be impaired;

(5) Cyanide, total: shall not exceed 5.0 ~~ug/L;~~ ug/l;

(6) Dissolved oxygen: shall not be less than 6.0 mg/l for trout waters; for non-trout waters, shall not be less than a daily average of 5.0 mg/l with ~~a minimum~~ an instantaneous value of not less than 4.0

mg/l; swamp waters, lake coves, or backwaters, and lake bottom waters may have lower values if caused by natural conditions;

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

(8) Floating solids, settleable solids, or sludge deposits: only such amounts attributable to sewage, industrial wastes, or other wastes as shall not make the water unsafe or unsuitable for aquatic life and wildlife or impair the waters for any designated uses;

(9) Fluoride: shall not exceed 1.8 mg/l;

(10) Gases, total dissolved: ~~not greater than~~ shall not exceed 110 percent of saturation;

(11) Metals:

(a) With the exception of mercury and selenium, freshwater aquatic life standards for metals shall be based upon measurement of the dissolved fraction of the metal. Mercury and selenium water quality standards shall be based upon measurement of the total recoverable metal;

(b) Freshwater metals standards that are not hardness-dependent shall ~~be as follows:~~ not exceed the following:

(i) Arsenic, dissolved, acute: WER· 340 ug/l;

(ii) Arsenic, dissolved, chronic: WER· 150 ug/l;

(iii) Beryllium, dissolved, acute: WER· 65 ug/l;

(iv) Beryllium, dissolved, chronic: WER· 6.5 ug/l;

(v) Chromium VI, dissolved, acute: WER· 16 ug/l;

(vi) Chromium VI, dissolved, chronic: WER· 11 ug/l;

(vii) Mercury, total recoverable, chronic: 0.012 ug/l;

(viii) Selenium, total recoverable, chronic: 5 ug/l;

(ix) Silver, dissolved, chronic: WER· 0.06 ug/l;

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

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

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

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

~~(i)~~ ~~Hardness-dependent metals standards shall be~~ derived using the equations specified in Table A: Dissolved Freshwater Standards for Hardness-Dependent Metals. If the actual instream hardness (expressed as $CaCO_3$ or Ca+Mg) is ~~less than 25 milligrams/liter (mg/l), standards shall be calculated based upon 25 mg/l hardness. If the actual instream hardness is greater than 25 mg/l and~~ less than 400 mg/l, standards shall be calculated based upon the actual instream hardness. If the instream hardness is greater than 400 mg/l, the maximum applicable hardness shall be 400 ~~mg/l;~~ mg/l.

~~(ii)~~ ~~Hardness-dependent metals in NPDES permitting: for NPDES permitting purposes, application of the equations in Table A: Dissolved Freshwater Standards for Hardness-Dependent Metals shall have hardness values (expressed as $CaCO_3$ or Ca+Mg) established using the median of instream hardness data collected within the local US Geological Survey (USGS) and Natural Resources Conservation Service (NRCS) 8-digit Hydrologic Unit (HU). The minimum applicable instream hardness shall be 25 mg/l and the maximum applicable instream hardness shall be 400 mg/l, even when the actual median instream hardness is less than 25 mg/l and greater than 400 mg/l;~~

(d) Alternatives:

Acute and chronic freshwater aquatic life standards for metals listed in Table A shall apply to the dissolved form of the metal and apply as a function of the pollutant's water effect ratio (WER), which is set forth in Sub-Item ~~(b)~~ (11)(b) of this Rule. Alternative site-specific standards may also be developed as set forth in Sub-Item ~~(b)~~ (11)(b) of this Rule;

Table A: Dissolved Freshwater Standards for Hardness-Dependent Metals

Numeric standards calculated at 25 mg/l hardness are listed below for illustrative purposes. The Water Effects Ratio (WER) is equal to one unless determined otherwise under Sub-Item ~~(d)~~ (11)(d) of this Rule.

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

Silver, Acute	WER· [0.85 · e^{1.72[ln hardness]-6.59}]	0.30
Zinc, Acute	WER· [0.978 · e^{0.8473[ln hardness]+0.884}]	36
Zinc, Chronic	WER· [0.986 · e^{0.8473[ln hardness]+0.884}]	36

(e) Compliance with acute instream metals standards shall only be evaluated using an average of two or more samples collected within one hour. Compliance with chronic instream metals standards shall only be evaluated using an average of a minimum of four samples taken on consecutive days or as a 96-hour average;

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

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

(13) ~~Pesticides:~~ Pesticides shall not exceed the following:

(a) Aldrin: 0.002 ug/l;

(b) Chlordane: 0.004 ug/l;

(c) DDT: 0.001 ug/l;

(d) Demeton: 0.1 ug/l;

(e) Dieldrin: 0.002 ug/l;

(f) Endosulfan: 0.05 ug/l;

(g) Endrin: 0.002 ug/l;

(h) Guthion: 0.01 ug/l;

(i) Heptachlor: 0.004 ug/l;

(j) Lindane: 0.01 ug/l;

(k) Methoxychlor: 0.03 ug/l;

(l) Mirex: 0.001 ug/l;

(m) Parathion: 0.013 ug/l; and

(n) Toxaphene: 0.0002 ug/l;

(14) pH: shall be ~~normal for the waters in the area, which range~~ between 6.0 and 9.0 except that swamp waters may have a pH as low as 4.3 if it is the result of natural conditions;

(15) Phenolic compounds: shall be allowed only in such levels as shall not result in fish-flesh tainting or impairment of other best usage;

(16) Polychlorinated biphenyls (total of all PCBs and congeners identified): shall not exceed 0.001 ug/l;

(17) Radioactive substances:

(a) Combined radium-226 and radium-228: the average annual activity level (based on at least one sample collected per quarter) for combined radium-226 and radium-228 shall not exceed five picoCuries per liter;

(b) Alpha Emitters: the average annual gross alpha particle activity (including radium-226, but excluding radon and uranium) shall not exceed 15 picoCuries per liter;

(c) Beta Emitters: the average annual activity level (based on at least one sample collected per quarter) for strontium-90 shall not exceed eight picoCuries per ~~liter;~~ liter, nor shall the average annual gross beta particle activity (excluding potassium-40 and other naturally occurring radionuclides) exceed 50 picoCuries per ~~liter;~~ liter, nor shall the average annual activity level for tritium exceed 20,000 picoCuries per liter;

(18) Temperature: shall not ~~to~~ exceed 2.8 degrees C (5.04 degrees F) above the natural water temperature, and shall in no case ~~to~~ exceed 29 degrees C (84.2 degrees F) for mountain and upper piedmont waters and 32 degrees C (89.6 degrees F) for lower piedmont and coastal plain Waters; the temperature for trout waters shall not be increased by more than 0.5 degrees C (0.9 degrees F) due to the discharge of heated liquids, ~~but~~ and shall in no case ~~to~~ exceed 20 degrees C (68 degrees F);

(19) Toluene: shall not exceed ~~11 ug/l or~~ 0.36 ug/l in trout classified ~~waters;~~ waters or 11 ug/l in all other waters;

(20) Trialkyltin compounds: shall not exceed 0.07 ug/l expressed as tributyltin;

(21) Turbidity: the turbidity in the receiving water shall not exceed 50 Nephelometric Turbidity Units (NTU) in streams not designated as trout waters and 10 NTU in streams, lakes, or reservoirs designated as trout waters; for lakes and reservoirs not designated as trout waters, the turbidity shall not exceed 25 NTU; if turbidity exceeds these levels due to natural background conditions, the

existing turbidity level shall not be increased. Compliance with this turbidity standard ~~can be~~ shall be deemed met when land management activities employ Best Management Practices ~~(BMPs) [as~~ (BMPs), as defined by Rule .0202 of this ~~Section]~~ Section, recommended by the Designated Nonpoint Source ~~Agency [as~~ Agency, as defined by Rule .0202 of this ~~Section].~~ Section. BMPs shall be in full compliance with all specifications governing the proper design, installation, operation, and maintenance of such ~~BMPs;~~ BMPs.

(22) ~~Action Levels for Toxic Substances~~ Toxic Substance [~~Levels~~] Level Applicable to NPDES Permits:

~~(a) Copper, dissolved, chronic: 2.7 ug/l;~~

~~(b) Silver, dissolved, chronic: 0.06 ug/l;~~

~~(c) Zinc, dissolved, chronic: 36 ug/l; and~~

~~(d)~~ Chloride: 230 mg/l;

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

History Note: *Authority G.S. 143-214.1; 143-215.3(a)(1);*
Eff. February 1, 1976;
Amended Eff. January 1, 2015; May 1, 2007; April 1, 2003; August 1, 2000; October 1, 1995; August 1, 1995; April 1, 1994; February 1, ~~1993.~~ 1993;
Readopted Eff. September 1, 2019.

REQUEST FOR TECHNICAL CHANGE

AGENCY: Environmental Management Commission

RULE CITATION: 15A NCAC 02B .0212

DEADLINE FOR RECEIPT: Friday, August 9, 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:

For purposes of clarity, please consider rewording lines 5-7 to say something like "All water supply watersheds classified as WS-I shall meet the standards set forth in Rule .0211 of this Subchapter and the following:" Assuming that this is the intent.

Is (1) really a standard and/or requirement or would it make sense to move that up to the introductory information? It looks to me that Item (1) really explains what this classification means and is applicable to and would be helpful to know at the outset. Do you have it here because of the reference to "best usage" in (2)?

In (1), line 13, I don't understand the reference to Class C waters. Is the intent here just to say that best usage of this classification could be specific to this Rule or to Class C rules?

What is the intent of lines 13-15? Please revise for purposes of clarity.

Delete (2)(a), (b), and (c) as being repetitive of Items (3), (4), and (5) as they are unnecessary. They each just say follow (3), (4), or (5) and do nothing more.

In (2)(d), what treatment required by the division? Is there a cross-reference available? Is this in the Permit?

In (2)(d), what are the National Drinking Water Regulations? I see that you've incorporated the State Rules, but what are these national standards?

In Item (2)(e), what is meant by "water pollution that preclude the best uses…"? How is this determined? Here do you just mean that it has to meet the requirements of this Rule and .0211 and if you don't then it's a violation? If that's the intent, is this necessary?

Amber May
Commission Counsel
Date submitted to agency: July 30, 2019

What is the intent of (2)(f)? Is this just informational in nature? If so, is the best placement for this under standards to be met? Should this be its own Item?

In (3)(f) and (g), please consider deleting "Water quality standards (maximum permissible concentrations) to protect human health through water consumption and fish tissue consumption" Why is it necessary to say "maximum permissible concentrations"? Isn't that language applicable to all similar rules, but it's not there?

In (3)(g), why say "maximum permissible concentrations"? Isn't that language applicable to all similar rules, but it's not there?

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

Amber May
Commission Counsel
Date submitted to agency: July 30, 2019

15A NCAC 02B .0212 is readopted as published in 32:22 NCR 2411-2493 with changes as follows:

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

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

(1) ~~The best usage of WS-I waters are as follows: a source of water supply for drinking, culinary, or food processing purposes for those users desiring maximum protection of their water supplies; waters located on land in public ownership; and any best usage specified for Class C waters;~~ [~~Best Usage of Waters:~~] The best usage of waters classified as WS-I shall be as a source of water supply for drinking, culinary, or food processing purposes for those users desiring maximum protection of their water supplies in the form of the most stringent WS classification, ~~and~~ any best usage specified for Class C [~~waters;~~] waters, waters located on land in public [~~ownership~~] ownership, and waters located in undeveloped watersheds.

(2) ~~The conditions related to the best usage shall be as follows: waters of this class are protected water supplies within essentially natural and undeveloped watersheds in public ownership with no permitted point source dischargers except those specified in Rule .0104 of this Subchapter; waters within this class shall be relatively unimpacted by nonpoint sources of pollution; land use management programs are required to protect waters from nonpoint source pollution;~~ [~~Conditions Related to Best Usage:~~] The best usage of waters classified as WS-I shall be maintained as follows:

(a) Chemical and physical water quality parameters in a WS-I watershed shall meet the requirements as specified in Item (3) of this Rule.

(b) Wastewater and stormwater point source discharges in a WS-I watershed shall meet the requirements as specified in Item (4) of this Rule.

(c) Nonpoint source pollution in a WS-I watershed shall meet the requirements as specified in Item (5) of this Rule.

(d) ~~the~~ [~~The~~] ~~waters, following~~ Following treatment required by the Division, the waters shall meet the Maximum Contaminant Level concentrations considered safe for drinking, culinary, and food-processing purposes that are specified in the national drinking water regulations and in the North Carolina Rules Governing Public Water Supplies, 15A NCAC 18C ~~.1500.~~ .1500, [~~which are hereby~~] incorporated by reference including subsequent amendments and editions.

(e) Sources of water pollution that preclude any of ~~these~~ the best uses on either a short-term or long-term basis shall be ~~considered to be violating~~ deemed to violate a water quality standard.

(f) The Class WS-I classification may be used to protect portions of Class WS-II, WS-III, and WS-IV water supplies. For reclassifications occurring after the July 1, 1992 statewide reclassification, ~~the more protective classification~~ a WS-I classification that is requested by local governments shall be considered by the Commission ~~when~~ if all local governments having jurisdiction in the affected ~~area(s)~~ areas have adopted a resolution and the appropriate ordinances as required by G.S. 143-214.5(d) to protect the watershed or if the Commission acts to protect a watershed when one or more local governments has failed to adopt ~~necessary protection measures;~~ protective measures as required by this Sub-Item.

(3) ~~Quality standards applicable to Class WS-I Waters shall be as follows:~~ Chemical and physical water quality parameters in a WS-I watershed shall meet the following requirements:

(a) MBAS (Methylene-Blue Active ~~Substances): not greater than~~ Substances) shall not exceed 0.5 mg/l to protect the aesthetic qualities of water supplies and to prevent foaming;

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

~~(c)~~(b) ~~Organisms of coliform group: total~~ Total coliforms shall not ~~to~~ exceed 50/100 ml (MF count) as a monthly geometric mean value in watersheds serving as unfiltered water supplies;

~~(d)~~(c) Chlorinated phenolic ~~compounds: not greater than~~ compounds shall not exceed 1.0 ug/l to protect water supplies from taste and odor problems from chlorinated phenols;

~~(e) Sewage, industrial wastes: none shall be allowed except those specified in Item (2) of this Rule or Rule .0104 of this Subchapter;~~

~~(f)~~(d) Solids, total ~~dissolved: not greater than~~ dissolved shall not exceed 500 mg/l;

~~(g)~~(e) Total ~~hardness: not greater than~~ hardness shall not exceed 100 mg/l as calcium carbonate ($CaCO_3$ or Ca + Mg);

~~(h)~~(f) ~~Toxic and other deleterious substances:~~

~~(i)~~Water quality standards (maximum permissible concentrations) to protect human health through water consumption and fish tissue consumption for ~~non-carcinogens in Class WS-I waters:~~ [~~non-carcinogens:~~] toxic and other deleterious substances that are non-carcinogens shall not exceed the following:

~~(A)~~(i) Barium: 1.0 mg/l;

~~(B)~~(ii) Chloride: 250 mg/l;

~~(C)~~(iii) Nickel: 25 ug/l;

~~(D)~~(iv) Nitrate nitrogen: 10.0 mg/l;

~~(E)~~(v) 2,4-D: 70 ug/l;

~~(F)~~(vi) 2,4,5-TP (Silvex): 10 ug/l; and

~~(G)~~(vii) Sulfates: 250 mg/l;

(g) ~~(ii)~~Water quality standards (maximum permissible concentrations) to protect human health through water consumption and fish tissue consumption for ~~carcinogens in Class WS-I waters:~~ [~~carcinogens:~~] toxic and other deleterious substances that are carcinogens shall not exceed the following:

~~(A)~~(i) Aldrin: 0.05 ng/1;

~~(B)~~(ii) Arsenic: 10 ug/l;

~~(C)~~(iii) Benzene: 1.19 ug/1;

~~(D)~~(iv) Carbon tetrachloride: 0.254 ug/l;

~~(E)~~(v) Chlordane: 0.8 ng/1;

~~(F)~~(vi) Chlorinated benzenes: 488 ug/l;

~~(G)~~(vii) DDT: 0.2 ng/1;

~~(H)~~(viii) Dieldrin: 0.05 ng/1;

~~(I)~~(ix) Dioxin: 0.000005 ng/l;

~~(J)~~(x) Heptachlor: 0.08 ng/1;

~~(K)~~(xi) Hexachlorobutadiene: 0.44 ug/l;

~~(L)~~(xii) Polynuclear aromatic hydrocarbons (total of all PAHs): 2.8 ng/l;

~~(M)~~(xiii) Tetrachloroethane (1,1,2,2): 0.17 ug/l;

~~(N)~~(xiv) Tetrachloroethylene: 0.7 ug/l;

~~(O)~~(xv) Trichloroethylene: 2.5 ug/l; and

~~(P)~~(xvi) Vinyl Chloride: 0.025 ug/l.

(4) Wastewater and stormwater point source discharges in a WS-I watershed shall [~~meet the following requirements: Point source discharges shall~~] be permitted pursuant to 15A NCAC 02B .0104.

(5) Nonpoint source pollution in a WS-I watershed [~~shall meet the following requirements: Nonpoint sources of pollution~~] shall not have an adverse impact, as defined in 15A NCAC 02H .1002, on [~~waters within this class.~~] use as a water supply or any other designated use.

History Note: *Authority G.S. 143-214.1; 143-215.3(a)(1);*
Eff. February 1, 1976;
Amended Eff. January 1, 2015; May 1, 2007; April 1, 2003; October 1, 1995; February 1, 1993; March 1, 1991; October 1, ~~1989.~~ 1989;
Readopted Eff. September 1, 2019.

REQUEST FOR TECHNICAL CHANGE

AGENCY: Environmental Management Commission

RULE CITATION: 15A NCAC 02B .0214

DEADLINE FOR RECEIPT: Friday, August 9, 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:

For purposes of clarity, please consider rewording lines 5-7 to say something like "All water supply watersheds classified as WS-II shall meet the standards set forth in Rule .0211 of this Subchapter and the following:" Assuming that this is the intent.

Is (1) really a standard and/or requirement or would it make sense to move that up to the introductory information? It looks to me that Item (1) really explains what this classification means and is applicable to and would be helpful to know at the outset.

In Item (1), when would WS-I classification "not be feasible"? As determined by whom? If it's y'all, how is this to be determined? If not, can you provide some examples?

In (1), line 14, I don't understand the reference to Class C waters.

Delete (2)(a), (b), and (c) as being repetitive of Items (3), (4), and (5) as they are unnecessary. They each just say follow (3), (4), or (5) and do nothing more.

In (2)(d), what treatment required by the division? Is there a cross-reference available? Is this in the Permit?

In (2)(d), what are the National Drinking Water Regulations? I see that you've incorporated the State Rules, but what are these national standards?

In Item (2)(e), what is meant by "water pollution that preclude the best uses…"? How is this determined? Is it necessary?

What is the intent of (2)(f)? Is this just informational in nature? If so, is this the best placement for this? Should this be its own Item?

Amber May
Commission Counsel
Date submitted to agency: July 30, 2019

In (3)(b), did you intend on turning this into a complete sentence or keeping the colon. Please be consistent where you can. Did you intend to add "shall be allowed"?

In (3)(b), what are "taste and odor difficulties"?

In (3)(b), what is considered to be a "deleterious effect"? Is this defined somewhere? Is the same as adverse impact? If so, please be consistent.

In (3)(f) and (g), please consider deleting "Water quality standards (maximum permissible concentrations) to protect human health through water consumption and fish tissue consumption" Why is it necessary to say "maximum permissible concentrations"?

In (4)(d), please end the sentence after "Subchapter" and begin a new sentence with "none."

In (4)(d), is an "adverse effect" the same thing as "adverse impact"? If so, please be consistent in your terminology. If that is the case, please delete "as defined in .1002" in (5)(a) since that's not the first time this term is used.

On line 2, either delete "to the satisfaction of the Commission" or say how this will be determined.

On line 3, what are "the requirements of the Division"?

In (4)(d), when would a facility be required to have control plans? Is this set out in the permit? Is there a cross-reference available? If not, please provide information on how this determination is to be made.

(5)(a) appears to be missing a word. Please review and clarify.

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

Amber May
Commission Counsel
Date submitted to agency: July 30, 2019

15A NCAC 02B .0214 is readopted as published in 32:22 NCR 2411-2493 with changes as follows:

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

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

(1) ~~The best usage of WS-II waters are as follows: a source of water supply for drinking, culinary, or food processing purposes for those users desiring maximum protection for their water supplies where a WS-I classification is not feasible and any best usage specified for Class C waters;~~ [~~Best Usage of Waters:~~] The best usage of waters classified as WS-II shall be as a source of water supply for drinking, culinary, or food-processing purposes for those users desiring maximum protection for their water supplies where a WS-I classification is not feasible and any best usage specified for Class C waters.

(2) ~~The conditions related to the best usage shall be as follows: waters of this class are protected as water supplies which are in predominantly undeveloped watersheds and meet average watershed development density levels as specified in Sub-Items (3)(b)(i)(A), (3)(b)(i)(B), (3)(b)(ii)(A) and (3)(b)(ii)(B) of this Rule; discharges that qualify for a General Permit pursuant to 15A NCAC 02H .0127, trout farm discharges, recycle (closed loop) systems that only discharge in response to 10 year storm events and other stormwater discharges shall be allowed in the entire watershed; new domestic and industrial discharges of treated wastewater shall not be allowed in the entire watershed;~~ [~~Conditions Related to Best Usage:~~] The best usage of waters classified as WS-II shall be maintained as follows:

(a) Chemical and physical water quality parameters in a WS-II watershed shall meet requirements as specified in Item (3) of this Rule.

(b) Wastewater and stormwater point source discharges in a WS-II watershed shall meet requirements as specified in Item (4) of this Rule.

(c) Nonpoint source pollution in a WS-II watershed shall meet the requirements as specified in Item (5) of this Rule.

(d) ~~the~~ [~~The~~] ~~waters, following~~ Following treatment required by the Division, the waters shall meet the Maximum Contaminant Level concentrations considered safe for drinking, culinary, and food-processing purposes that are specified in the national drinking water regulations and in the North Carolina Rules Governing Public Water Supplies, 15A NCAC 18C ~~.1500.~~ .1500, [~~which are hereby~~] incorporated by reference including subsequent amendments and editions.

(e) Sources of water pollution that preclude any of ~~these~~ the best uses on either a short-term or long-term basis shall be ~~considered to be violating~~ deemed to violate a water quality standard.

(f) The Class WS-II classification may be used to protect portions of Class WS-III and WS-IV water supplies. For reclassifications of these portions of Class WS-III and WS-IV water supplies occurring after the July 1, 1992 statewide reclassification, ~~the more protective~~ a WS-II classification that is requested by local governments shall be considered by the Commission ~~when~~ if all local governments having jurisdiction in the affected ~~area(s)~~ areas have adopted a resolution and the appropriate ordinances as required by G.S. 143-214.5(d) to protect the watershed or if the Commission acts to protect a watershed when one or more local governments has failed to adopt ~~necessary protection measures;~~ protective measures as required by this Sub-Item.

(3) ~~Quality standards applicable to Class WS-II Waters shall be as follows:~~ Chemical and physical water quality parameters in a WS-II watershed shall meet the following requirements:

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

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

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

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

~~(B) High Density Option: if new development exceeds the low density option requirements as stated in Sub-Item (3)(b)(i)(A) of this Rule, then engineered stormwater controls shall be used to control runoff from the~~

first inch of rainfall; new residential and non residential development shall not exceed 30 percent built upon area;

(C) Land within the watershed shall be deemed compliant with the density requirements if the following condition is met: the density of all existing development at the time of reclassification does not exceed the density requirement when densities are averaged throughout the entire watershed area at the time of classification;

(D) Cluster development shall be allowed on a project by project basis as follows:

(I) overall density of the project meets associated density or stormwater control requirements of this Rule;

(II) buffers meet the minimum statewide water supply watershed protection requirements;

(III) built upon areas shall be designed and located to minimize stormwater runoff impact to the receiving waters, minimize concentrated stormwater flow, maximize the use of sheet flow through vegetated areas, and maximize the flow length through vegetated areas;

(IV) areas of concentrated development shall be located in upland areas and away, to the maximum extent practicable, from surface waters and drainageways;

(V) remainder of tract to remain in vegetated or natural state;

(VI) area in the vegetated or natural state may be conveyed to a property owners association, a local government for preservation as a park or greenway, a conservation organization, or placed in a permanent conservation or farmland preservation easement;

(VII) a maintenance agreement for the vegetated or natural area shall be filed with the Register of Deeds; and

(VIII) cluster development that meets the applicable low density option requirements shall transport stormwater runoff from the development by vegetated conveyances to the maximum extent practicable;

(E) A maximum of 10 percent of each jurisdiction's portion of the watershed outside of the critical area as delineated on July 1, 1993 may be developed with new development projects and expansions of existing development of up to 70 percent built upon surface area (the "10/70

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

(F) If local governments choose the high density development option that requires stormwater controls, then they shall assume ultimate responsibility for operation and maintenance of the required controls as outlined in Rule .0104 of this Subchapter;

(G) A minimum 100 foot vegetative buffer shall be required for all new development activities that exceed the low density option requirements as specified in Sub-Items (3)(b)(i)(A) and Sub-Item (3)(b)(ii)(A) of this Rule, otherwise a minimum 30 foot vegetative buffer for development activities shall be required along all perennial waters indicated on the most recent versions of U.S.G.S. U.S. Geological Survey 1:24,000 (7.5 minute) scale topographic maps or as determined by local government studies. Nothing in this Rule shall stand as a bar to artificial streambank or shoreline stabilization;

(H) No new development shall be allowed in the buffer; water dependent structures, or other structures such as flag poles, signs, and security lights, which result in only de minimus increases in impervious area and public projects such as road crossings and greenways may be allowed

~~where no practicable alternative exists. These activities shall minimize built-upon surface area and avoid channelizing stormwater;~~

~~(I) No National Pollutant Discharge Elimination System (NPDES) permits shall be issued for landfills that discharge treated leachate;~~

~~(ii) Critical Area Nonpoint Source and Stormwater Pollution Control Criteria:~~

~~(A) Low Density Option: new development shall be limited to either no more than one dwelling unit of single family detached residential development per two acres (or 80,000 square foot lot excluding roadway right-of-way), or six percent built-upon area for all other residential and non-residential development; stormwater runoff from the development shall be transported by vegetated conveyances to the maximum extent practicable;~~

~~(B) High Density Option: if new development density exceeds the low density requirements specified in Sub-Item (3)(b)(ii)(A) of this Rule, then engineered stormwater controls shall be used to control runoff from the first inch of rainfall; new residential and non-residential development density shall not exceed 24 percent built-upon area;~~

~~(C) No new permitted sites for land application of residuals or petroleum contaminated soils shall be allowed;~~

~~(D) No new landfills shall be allowed;~~

~~(c)~~(a) MBAS (Methylene-Blue Active ~~Substances): not greater than~~ Substances) shall not exceed 0.5 mg/l to protect the aesthetic qualities of water supplies and to prevent foaming;

~~(d)~~(b) Odor producing substances contained in sewage or other wastes: only such amounts, whether alone or in combination with other substances or wastes, as shall not cause taste and odor difficulties in water supplies that cannot be corrected by treatment, impair the palatability of fish, or have a deleterious effect upon any best usage established for waters of this class;

~~(e)~~(c) Chlorinated phenolic ~~compounds: not greater than~~ compounds shall not exceed 1.0 ug/l to protect water supplies from taste and odor problems from chlorinated phenols;

~~(f)~~(d) Total ~~hardness: not greater than~~ hardness shall not exceed 100 mg/l as calcium carbonate ($CaCO_3$ or Ca + Mg);

~~(g)~~(e) Total dissolved ~~solids: not greater than~~ solids shall not exceed 500 mg/l;

~~(h)~~(f) ~~Toxic and other deleterious substances:~~

~~(i)~~Water quality standards (maximum permissible concentrations) to protect human health through water consumption and fish tissue consumption for ~~non-carcinogens in Class WS-II waters:~~ [~~non-carcinogens:~~] toxic and other deleterious substances that are non-carcinogens shall not exceed the following:

~~(A)~~(i) Barium: 1.0 mg/l;

~~(B)~~(ii) Chloride: 250 mg/l;

~~(C)~~(iii) Nickel: 25 ug/l;

~~(D)~~(iv) Nitrate nitrogen: 10.0 mg/l;

~~(E)~~(v) 2,4-D: 70 ug/l;

~~(F)~~(vi) 2,4,5-TP (Silvex): 10 ug/l; and

~~(G)~~(vii) Sulfates: 250 mg/l;

(g) ~~(ii)~~Water quality standards (maximum permissible concentrations) to protect human health through water consumption and fish tissue consumption for ~~carcinogens in Class WS-II waters:~~ [~~carcinogens:~~] toxic and other deleterious substances that are carcinogens shall not exceed the following:

~~(A)~~(i) Aldrin: 0.05 ng/1;

~~(B)~~(ii) Arsenic: 10 ug/l;

~~(C)~~(iii) Benzene: 1.19 ug/1;

~~(D)~~(iv) Carbon tetrachloride: 0.254 ug/l;

~~(E)~~(v) Chlordane: 0.8 ng/1;

~~(F)~~(vi) Chlorinated benzenes: 488 ug/l;

~~(G)~~(vii) DDT: 0.2 ng/1;

~~(H)~~(viii) Dieldrin: 0.05 ng/1;

~~(I)~~(ix) Dioxin: 0.000005 ng/l;

~~(J)~~(x) Heptachlor: 0.08 ng/1;

~~(K)~~(xi) Hexachlorobutadiene: 0.44 ug/l;

~~(L)~~(xii) Polynuclear aromatic hydrocarbons (total of all PAHs): 2.8 ng/l;

~~(M)~~(xiii) Tetrachloroethane (1,1,2,2): 0.17 ug/l;

~~(N)~~(xiv) Tetrachloroethylene: 0.7 ug/l;

~~(O)~~(xv) Trichloroethylene: 2.5 ug/l; and

~~(P)~~(xvi) Vinyl Chloride: 0.025 ug/l.

(4) Wastewater and stormwater point source discharges in a WS-II watershed shall meet the following requirements:

(a) Discharges that qualify for a General NPDES Permit pursuant to 15A NCAC 02H .0127 shall be allowed in the entire watershed.

(b) Discharges from trout farms that are subject to Individual NPDES Permits shall be allowed in the entire watershed.

(c) Stormwater discharges that qualify for an Individual NPDES Permit pursuant to 15A NCAC 02H .0126 shall be allowed in the entire watershed.

(d) No discharge of sewage, [~~industrial~~] industrial, or other wastes shall be allowed in the entire watershed except for those allowed by Sub-Items [~~(4)(a)~~] (a) through [~~(4)(c)~~] (c) of

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

(e) New domestic and industrial discharges of treated wastewater that are subject to Individual NPDES Permits shall not be allowed in the entire watershed.

(f) No new landfills shall be allowed in the Critical Area, and no NPDES permits shall be issued for landfills that discharge treated leachate in the remainder of the watershed.

(g) No new permitted sites for land application of residuals or petroleum contaminated soils shall be allowed in the Critical Area.

(5) Nonpoint source pollution in a WS-II watershed shall meet the following requirements:

(a) None that would have an adverse impact, as that term is defined in 15A NCAC 02H .1002, on waters for use as a water supply or any other designated use.

(b) [~~Waters of this class~~] Class WS-II waters shall be protected as water supplies that are located in watersheds that meet average watershed development density levels specified for Class WS-II waters in Rule .0624 of this Subchapter.

History Note: *Authority G.S. 143-214.1; 143-215.3(a)(1);*
Eff. May 10, 1979;
Amended Eff. January 1, 2015; May 1, 2007; April 1, 2003; January 1, 1996; October 1, ~~1995.~~ 1995;
Readopted Eff. September 1, 2019.

REQUEST FOR TECHNICAL CHANGE

AGENCY: Environmental Management Commission

RULE CITATION: 15A NCAC 02B .0215

DEADLINE FOR RECEIPT: Friday, August 9, 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:

For purposes of clarity, please consider rewording lines 5-7 to say something like "All water supply watersheds classified as WS-III shall meet the standards set forth in Rule .0211 of this Subchapter and the following:" Assuming that this is the intent.

Is (1) really a standard and/or requirement or would it make sense to move that up to the introductory information? It looks to me that Item (1) really explains what this classification means and is applicable to and would be helpful to know at the outset.

In Item (1), when would WS-1 or WS-II classification "not be feasible"? As determined by whom? If it's y'all, how is this to be determined? If not, can you provide some examples?

In (1), line 13, I don't understand the reference to Class C waters.

Delete (2)(a), (b), and (c) as being repetitive of Items (3), (4), and (5) as they are unnecessary. They each just say follow (3), (4), or (5) and do nothing more.

In (2)(d), what treatment required by the division? Is there a cross-reference available? Is this in the Permit?

In (2)(d), what are the National Drinking Water Regulations? I see that you've incorporated the State Rules, but what are these national standards?

In Item (2)(e), what is meant by "water pollution that preclude the best uses…"? How is this determined? Is it necessary?

What is the intent of (2)(f)? Is this just informational in nature? If so, is this the best placement for this? Should this be its own Item?

Amber May
Commission Counsel
Date submitted to agency: July 30, 2019

In (3)(b), did you intend on turning this into a complete sentence or keeping the colon. Please be consistent where you can. Did you intend to add "shall be allowed"?

In (3)(b), what are "taste and odor difficulties"?

In (3)(b), what is considered to be a "deleterious effect"? Is this defined somewhere? Is this the same as adverse impact?

In (3)(f) and (g), please consider deleting "Water quality standards (maximum permissible concentrations) to protect human health through water consumption and fish tissue consumption" Why is it necessary to say "maximum permissible concentrations"?

In (4)(f), please end the sentence after "Subchapter" and begin a new sentence with "none."

In (4)(f), is an "adverse effect" the same thing as "adverse impact"? If so, please be consistent in your terminology. If that is the case, please delete "as defined in .1002" in (5)(a) since that's not the first time this term is used.

On line 4, either delete "to the satisfaction of the Commission" or say how this will be determined.

On line 5, what are "the requirements of the Division"?

In (4)(d), when would a facility be required to have control plans? Is this set out in the permit? Is there a cross-reference available? If not, please provide information on how this determination is to be made.

In (4)(f), is an "adverse effect" the same thing as "adverse impact"? If so, please be consistent in your terminology. If that is the case, please delete "as defined in .1002" in (5)(a) since that's not the first time this term is used.

(5)(a) appears to be missing a word. Please review and clarify.

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

Amber May
Commission Counsel
Date submitted to agency: July 30, 2019

15A NCAC 02B .0215 is readopted as published in 32:22 NCR 2411-2493 with changes as follows:

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

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

(1) ~~The best usage of WS-III waters are as follows: a source of water supply for drinking, culinary, or food-processing purposes for those users where a more protective WS-I or WS-II classification is not feasible and any other best usage specified for Class C waters;~~ [~~Best Usage of Waters:~~] The best usage of waters classified as WS-III shall be as a source of water supply for drinking, culinary, or food-processing purposes for those users where a more protective WS-I or WS-II classification is not feasible and any other best usage specified for Class C waters.

(2) ~~The conditions related to the best usage shall be as follows: waters of this class are protected as water supplies that are in low to moderately developed watersheds and meet average watershed development density levels as specified in Sub-Items (3)(b)(i)(A), (3)(b)(i)(B), (3)(b)(ii)(A) and (3)(b)(ii)(B) of this Rule; discharges that qualify for a General Permit pursuant to 15A NCAC 2H .0127, trout farm discharges, recycle (closed loop) systems that only discharge in response to 10 year storm events, and other stormwater discharges shall be allowed in the entire watershed; treated domestic wastewater discharges shall be allowed in the entire watershed but no new domestic wastewater discharges shall be allowed in the critical area; no new industrial wastewater discharges except non-process industrial discharges shall be allowed in the entire watershed;~~ [~~Conditions Related to Best Usage:~~] The best usage of waters classified as WS-III shall be maintained as follows:

(a) Chemical and physical water quality parameters in a WS-III watershed shall meet requirements as specified in Item (3) of this Rule.

(b) Wastewater and stormwater point source discharges in a WS-III watershed shall meet requirements as specified in Item (4) of this Rule.

(c) Nonpoint source pollution in a WS-III watershed shall meet the requirements as specified in Item (5) of this Rule.

(d) ~~the~~ [~~The~~] ~~waters, following~~ Following treatment required by the Division, the waters shall meet the Maximum Contaminant Level concentrations considered safe for drinking, culinary, or food-processing purposes that are specified in the national drinking water regulations and in the North Carolina Rules Governing Public Water Supplies, 15A NCAC 18C ~~.1500.~~ .1500 [~~which are hereby~~] incorporated by reference including any subsequent amendments and editions.

(e) Sources of water pollution that preclude any of ~~these~~ the best uses on either a short-term or long-term basis shall be ~~considered to be violating~~ deemed to violate a water quality standard.

(f) The Class WS-III classification may be used to protect portions of Class WS-IV water supplies. For reclassifications of these portions of WS-IV water supplies occurring after the July 1, 1992 statewide reclassification, ~~the more protective~~ a WS-II classification that is requested by local governments shall be considered by the Commission ~~when~~ if all local governments having jurisdiction in the affected ~~area(s)~~ areas have adopted a resolution and the appropriate ordinances as required by G.S. 143-214.5(d) to protect the watershed or if the Commission acts to protect a watershed when one or more local governments has failed to adopt necessary protection measures;

(3) ~~Quality standards applicable to Class WS-III Waters shall be as follows:~~ Chemical and physical water quality parameters in a WS-III watershed shall meet the following requirements:

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

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

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

~~(A) Low Density Option: development density shall be limited to either no more than two dwelling units of single family detached residential development per acre (or 20,000 square foot lot excluding roadway right-of-way), or 24 percent built-upon area for all other residential and non-residential development in watershed outside of the critical area; stormwater runoff from the development shall be transported by vegetated conveyances to the maximum extent practicable;~~

~~(B) High Density Option: if new development density exceeds the low density option requirements specified in Sub-Item (3)(b)(i)(A) of this Rule then development shall control runoff from the first inch of rainfall;~~

~~new residential and non-residential development shall not exceed 50 percent built-upon area;~~

~~(C) Land within the watershed shall be deemed compliant with the density requirements if the following condition is met: the density of all existing development at the time of reclassification does not exceed the density requirement when densities are averaged throughout the entire watershed area;(D) Cluster development shall be allowed on a project by project basis as follows:~~

~~(I) overall density of the project meets associated density or stormwater control requirements of this Rule;~~

~~(II) buffers meet the minimum statewide water supply watershed protection requirements;~~

~~(III) built-upon areas shall be designed and located to minimize stormwater runoff impact to the receiving waters, minimize concentrated stormwater flow, maximize the use of sheet flow through vegetated areas, and maximize the flow length through vegetated areas;~~

~~(IV) areas of concentrated development shall be located in upland areas and away, to the maximum extent practicable, from surface waters and drainageways;~~

~~(V) remainder of tract to remain in vegetated or natural state;~~

~~(VI) area in the vegetated or natural state may be conveyed to a property owners association, a local government for preservation as a park or greenway, a conservation organization, or placed in a permanent conservation or farmland preservation easement;~~

~~(VII) a maintenance agreement for the vegetated or natural area shall be filed with the Register of Deeds; and~~

~~(VIII) cluster development that meets the applicable low density option requirements shall transport stormwater runoff from the development by vegetated conveyances to the maximum extent practicable;~~

~~(E) A maximum of 10 percent of each jurisdiction's portion of the watershed outside of the critical area as delineated on July 1, 1993 may be developed with new development projects and expansions of existing development of up to 70 percent built upon surface area (the "10/70 option") in addition to the new development approved in compliance~~

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

(F) If local governments choose the high density development option that requires engineered stormwater controls, then they shall assume ultimate responsibility for operation and maintenance of the required controls as outlined in Rule .0104 of this Subchapter;

(G) A minimum 100 foot vegetative buffer shall be required for all new development activities that exceed the low density requirements as specified in Sub-Item (3)(b)(i)(A) and Sub-Item (3)(b)(ii)(A) of this Rule, otherwise a minimum 30 foot vegetative buffer for development shall be required along all perennial waters indicated on the most recent versions of U.S.G.S. 1:24,000 (7.5 minute) scale topographic maps or as determined by local government studies. Nothing in this Rule shall stand as a bar to artificial streambank or shoreline stabilization;

(H) No new development shall be allowed in the buffer; water dependent structures, or other structures such as flag poles, signs, and security lights, which result in only de minimus increases in impervious area and public projects such as road crossings and greenways may be allowed where no practicable alternative exists. These activities shall minimize built-upon surface area and avoid channelizing stormwater; (I) No

~~National Pollutant Discharge Elimination System (NPDES) permits shall be issued for landfills that discharge treated leachate;~~

~~(ii) Critical Area Nonpoint Source and Stormwater Pollution Control Criteria:~~

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

~~(B) High Density Option: if new development exceeds the low density requirements specified in Sub-Item (3)(b)(ii)(A) of this Rule, then engineered stormwater controls shall be used to control runoff from the first inch of rainfall; development shall not exceed 30 percent built-upon area;~~

~~(C) No new permitted sites for land application of residuals or petroleum contaminated soils shall be allowed;~~

~~(D) No new landfills shall be allowed;~~

~~(c)~~(a) MBAS (Methylene-Blue Active ~~Substances): not greater than~~ Substances) shall not exceed 0.5 mg/l to protect the aesthetic qualities of water supplies and to prevent foaming;

~~(d)~~(b) Odor producing substances contained in sewage, industrial wastes, or other wastes: only such amounts, whether alone or in combination with other substances or wastes, as shall not cause taste and odor difficulties in water supplies that cannot be corrected by treatment, impair the palatability of fish, or have a deleterious effect upon any best usage established for waters of this class;

~~(e)~~(c) Chlorinated phenolic ~~compounds: not greater than~~ compounds shall not exceed 1.0 ug/l to protect water supplies from taste and odor problems from chlorinated phenols;

~~(f)~~(d) Total ~~hardness: not greater than~~ hardness shall not exceed 100 mg/l as calcium carbonate ($CaCO_3$ or Ca + Mg);

~~(g)~~(e) Total dissolved ~~solids: not greater than~~ solids shall not exceed 500 mg/l;

~~(h)~~(f) ~~Toxic and other deleterious substances:~~

~~(i)~~Water quality standards (maximum permissible concentrations) to protect human health through water consumption and fish tissue consumption for ~~non-carcinogens in Class WS-III waters:~~ [~~non-carcinogens:~~] toxic and other deleterious substances that are non-carcinogens shall not exceed the following:

~~(A)~~(i) Barium: 1.0 mg/l;

~~(B)~~(ii) Chloride: 250 mg/l;

~~(C)~~(iii) Nickel: 25 ug/l;

~~(D)~~(iv) Nitrate nitrogen: 10.0 mg/l;

~~(E)~~(v) 2,4-D: 70 ug/l;

~~(F)~~(vi) 2,4,5-TP (Silvex): 10 ug/l; and

~~(G)~~(vii) Sulfates: 250 mg/l;

(g) ~~(ii)~~Water quality standards (maximum permissible concentrations) to protect human health through water consumption and fish tissue consumption for ~~carcinogens in Class WS-III waters~~: [~~carcinogens:~~] toxic and other deleterious substances that are carcinogens shall not exceed the following:

~~(A)~~(i) Aldrin: 0.05 ng/1;

~~(B)~~(ii) Arsenic: 10 ug/l;

~~(C)~~(iii) Benzene: 1.19 ug/1;

~~(D)~~(iv) Carbon tetrachloride: 0.254 ug/l;

~~(E)~~(v) Chlordane: 0.8 ng/1;

~~(F)~~(vi) Chlorinated benzenes: 488 ug/l;

~~(G)~~(vii) DDT: 0.2 ng/1;

~~(H)~~(viii) Dieldrin: 0.05 ng/1;

~~(I)~~(ix) Dioxin: 0.000005 ng/l;

~~(J)~~(x) Heptachlor: 0.08 ng/1;

~~(K)~~(xi) Hexachlorobutadiene: 0.44 ug/l;

~~(L)~~(xii) Polynuclear aromatic hydrocarbons (total of all PAHs): 2.8 ng/l;

~~(M)~~(xiii) Tetrachloroethane (1,1,2,2): 0.17 ug/l;

~~(N)~~(xiv) Tetrachloroethylene: 0.7 ug/l;

~~(O)~~(xv) Trichloroethylene: 2.5 ug/l; and

~~(P)~~(xvi) Vinyl Chloride: 0.025 ug/l.

(4) Wastewater and stormwater point source discharges in a WS-III watershed shall meet the following requirements:

(a) Discharges that qualify for a General NPDES Permit pursuant to 15A NCAC 02H .0127 shall be allowed in the entire watershed.

(b) Discharges from trout farms that are subject to Individual NPDES Permits shall be allowed in the entire watershed.

(c) Stormwater discharges that qualify for an Individual NPDES Permit pursuant to 15A NCAC 02H .0126 shall be allowed in the entire watershed.

(d) New domestic wastewater discharges that are subject to Individual NPDES Permits shall not be allowed in the Critical Area and are allowed in the remainder of the watershed.

(e) New industrial wastewater discharges that are subject to Individual NPDES Permits except non-process industrial discharges shall not be allowed in the entire watershed.

(f) No discharge of sewage, [~~industrial~~] industrial, or other wastes shall be allowed in the entire watershed except for those allowed by Sub-Items [~~(4)(a)~~](a) through [~~(4)(e)~~](e) of this [~~Rule~~] Item or Rule .0104 of this Subchapter; none shall be allowed that have an adverse effect on human health or that are not treated to the satisfaction of the Commission and in accordance with the requirements of the Division. Upon request by the Commission, a [~~Any~~] discharger [~~may be required by the Commission to~~] shall disclose all chemical constituents present or potentially present in their wastes and chemicals that could be spilled or be present in runoff from their facility that may have an adverse impact on downstream water quality. These facilities may be required to have spill and treatment failure control plans as well as perform special monitoring for toxic substances.

(g) No new landfills shall be allowed in the Critical Area, and no NPDES permits shall be issued for landfills to discharge treated leachate in the remainder of the watershed.

(h) No new permitted sites for land application of residuals or petroleum contaminated soils shall be allowed in the Critical Area.

(5) Nonpoint source pollution in a WS-III watershed shall meet the following requirements:

(a) None that would have an adverse impact, as that term is defined in 15A NCAC 02H .1002, on waters for use as a water supply or any other designated use.

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

History Note: *Authority G.S. 143-214.1; 143-215.3(a)(1);*
Eff. September 9, 1979;
Amended Eff. January 1, 2015; May 1, 2007; April 1, 2003; January 1, 1996; October 1, 1995; October 1, ~~1989.~~ 1989;
Readopted Eff. September 1, 2019.

REQUEST FOR TECHNICAL CHANGE

AGENCY: Environmental Management Commission

RULE CITATION: 15A NCAC 02B .0216

DEADLINE FOR RECEIPT: Friday, August 9, 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:

For purposes of clarity, please consider rewording lines 5-7 to say something like "All water supply watersheds classified as WS-IV shall meet the standards set forth in Rule .0211 of this Subchapter and the following:" Assuming that this is the intent.

Is (1) really a standard and/or requirement or would it make sense to move that up to the introductory information? It looks to me that Item (1) really explains what this classification means and is applicable to and would be helpful to know at the outset.

In Item (1), when would WS-I classification "not be feasible"? As determined by whom? If it's y'all, how is this to be determined? If not, can you provide some examples?

In (1), lines 13, I don't understand the reference to Class C waters.

Delete (2)(a), (b), and (c) as being repetitive of Items (3), (4), and (5) as they are unnecessary. They each just say follow (3), (4), or (5) and do nothing more.

In (2)(d), what treatment required by the division? Is there a cross-reference available? Is this in the Permit?

In (2)(d), what are the National Drinking Water Regulations? I see that you've incorporated the State Rules, but what are these national standards?

In Item (2)(e), what is meant by "water pollution that preclude the best uses…"? How is this determined?

What is the intent of (2)(f)? Is this just informational in nature? If so, is this the best placement for this? Should this be its own Item?

Amber May
Commission Counsel
Date submitted to agency: July 30, 2019

In (3)(b), did you intend on turning this into a complete sentence or keeping the colon. Please be consistent where you can.

(3)(b) appears to be missing a word, did you intend to add "shall be allowed"?

In (3)(b), what are "taste and odor difficulties"?

In (3)(b), what is considered to be a "deleterious effect"? Is this defined somewhere?

In (3)(f) and (g), please consider deleting "Water quality standards (maximum permissible concentrations) to protect human health through water consumption and fish tissue consumption" Why is it necessary to say "maximum permissible concentrations"?

In (4)(d), please end the sentence after "Subchapter" and begin a new sentence with "none."

In (4)(d), is an "adverse effect" the same thing as "adverse impact"? If so, please be consistent in your terminology. If that is the case, please delete "as defined in .1002" in (5)(a) since that's not the first time this term is used.

On line 8, either delete "to the satisfaction of the Commission" or say how this will be determined.

On line 9, what are "the requirements of the Division"?

In (4)(d), when would a facility be required to have control plans? Is this set out in the permit? Is there a cross-reference available? If not, please provide information on how this determination is to be made.

In (4)(e), delete "be required to" and just say "shall meet"

(5)(a) appears to be missing a word. Please review and clarify.

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

Amber May
Commission Counsel
Date submitted to agency: July 30, 2019

15A NCAC 02B .0216 is readopted as published in 32:22 NCR 2411-2493 with changes as follows:

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

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

(1) ~~The best usage of WS-IV waters shall be as follows: a source of water supply for drinking, culinary, or food processing purposes for those users where a more protective WS-I, WS-II or WS-III classification is not feasible and any other best usage specified for Class C waters;~~ [~~Best Usage of Waters:~~] The best usage of waters classified as WS-IV shall be as a source of water supply for drinking, culinary, or food-processing purposes for those users where a more protective WS-I, WS-II or WS-III classification is not feasible and any other best usage specified for Class C waters.

(2) ~~The conditions related to the best usage shall be as follows: waters of this class are protected as water supplies that are in moderately to highly developed watersheds or protected areas and~~ which ~~meet average watershed development density levels as specified in Sub-Items (3)(b)(i)(A), (3)(b)(i)(B), (3)(b)(ii)(A) and (3)(b)(ii)(B) of this Rule; discharges that qualify for a General Permit pursuant to 15A NCAC 02H .0127, trout farm discharges, recycle (closed loop) systems that only discharge in response to 10 year storm events, other stormwater discharges, and domestic wastewater discharges shall be allowed in the protected and critical areas; treated industrial wastewater discharges shall be allowed in the protected and critical areas; however, new industrial wastewater discharges in the critical area shall be required to meet the provisions of 15A NCAC 02B .0224 (1)(b)(iv), (v) and (vii), and 15A NCAC 02B .0203; new industrial connections and expansions to existing municipal discharges with a pretreatment program pursuant to 15A NCAC 02H .0904 shall be allowed;~~ [~~Conditions Related to Best Usage:~~] The best usage of waters classified as WS-IV shall be maintained as follows:

(a) Chemical and physical water quality parameters in a WS-IV watershed shall meet requirements as specified in Item (3) of this Rule.

(b) Wastewater and stormwater point source discharges in a WS-IV watershed shall meet requirements as specified in Item (4) of this Rule.

(c) Nonpoint source pollution in a WS-IV watershed shall meet the requirements as specified in Item (5) of this Rule.

(d) ~~the~~ [~~The~~] ~~waters, following~~ Following treatment required by the Division, the waters shall meet the Maximum Contaminant Level concentrations considered safe for drinking, culinary, or food-processing purposes that are specified in the national drinking water regulations and in the North Carolina Rules Governing Public Water Supplies, 15A NCAC

18C ~~.1500.~~ .1500, [~~which are hereby~~] incorporated by reference including subsequent amendments and editions.

(e) Sources of water pollution that preclude any of ~~these~~ the best uses on either a short-term or long-term basis shall be ~~considered to be violating~~ deemed to violate a water quality standard.

(f) The Class WS-II or WS-III classifications may be used to protect portions of Class WS-IV water supplies. For reclassifications of these portions of WS-IV water supplies occurring after the July 1, 1992 statewide reclassification, ~~the more protective~~ a WS-IV classification that is requested by local governments shall be considered by the Commission ~~when~~ if all local governments having jurisdiction in the affected area(s) have adopted a resolution and the appropriate ordinances to protect the watershed or the Commission acts to protect a watershed when one or more local governments has failed to adopt ~~necessary protection measures;~~ [~~measures.~~] protective measures as required by this Sub-Item.

(3) ~~Quality standards applicable to Class WS-IV Waters shall be as follows:~~ Chemical and physical water quality parameters in a WS-IV watershed shall meet the following requirements:

~~(a) Sewage, industrial wastes, non-process industrial wastes, or other wastes: none shall be allowed except for those specified in Item (2) of this Rule and Rule .0104 of this Subchapter and none shall be allowed that have an adverse effect on human health or that are not treated to the satisfaction of the Commission and in accordance with the requirements of the Division. Any dischargers or industrial users subject to pretreatment standards may be required by the Commission to disclose all chemical constituents present or potentially present in their wastes and chemicals that could be spilled or be present in runoff from their facility which may have an adverse impact on downstream water supplies. These facilities may be required to have spill and treatment failure control plans as well as perform special monitoring for toxic substances;~~

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

~~(i) Nonpoint Source and Stormwater Pollution Control Criteria For Entire Watershed or Protected Area:~~

~~(A) Low Density Option: development activities that require a Sedimentation/Erosion Control Plan in accordance with 15A NCAC 04 established by the North Carolina Sedimentation Control Commission or approved local government programs as delegated by the Sedimentation Control Commission shall be limited to no more than either: two dwelling units of single family detached development per acre (or 20,000 square foot lot excluding roadway right-of-way),or 24 percent built-upon on area for all other residential and non-residential development; or three~~

dwelling units per acre, or 36 percent built-upon area for projects without curb and gutter street systems in the protected area outside of the critical area; stormwater runoff from the development shall be transported by vegetated conveyances to the maximum extent practicable;

(B) High Density Option: if new development activities that require a Sedimentation/Erosion Control Plan exceed the low density requirements of Sub Item (3)(b)(i)(A) of this Rule, then development shall control the runoff from the first inch of rainfall; new residential and non-residential development shall not exceed 70 percent built-upon area;

(C) Land within the critical and protected area shall be deemed compliant with the density requirements if the following condition is met: the density of all existing development at the time of reclassification does not exceed the density requirement when densities are averaged throughout the entire area;

(D) Cluster development shall be allowed on a project by project basis as follows:

(I) overall density of the project meets associated density or stormwater control requirements of this Rule;

(II) buffers meet the minimum statewide water supply watershed protection requirements;

(III) built-upon areas shall be designed and located to minimize stormwater runoff impact to the receiving waters, minimize concentrated stormwater flow, maximize the use of sheet flow through vegetated areas, and maximize the flow length through vegetated areas;

(IV) areas of concentrated development shall be located in upland areas and away, to the maximum extent practicable, from surface waters and drainageways;

(V) remainder of tract to remain in vegetated or natural state;

(VI) area in the vegetated or natural state may be conveyed to a property owners association, a local government for preservation as a park or greenway, a conservation organization, or placed in a permanent conservation or farmland preservation easement;

(VII) a maintenance agreement for the vegetated or natural area shall be filed with the Register of Deeds; and

(VIII) cluster development that meets the applicable low density option requirements shall transport stormwater runoff from the development by vegetated conveyances to the maximum extent practicable;

(E) If local governments choose the high density development option that requires engineered stormwater controls, then they shall assume responsibility for operation and maintenance of the required controls as outlined in Rule .0104 of this Subchapter;

(F) A minimum 100 foot vegetative buffer shall be required for all new development activities that exceed the low density option requirements as specified in Sub-Item (3)(b)(i)(A) or Sub-Item (3)(b)(ii)(A) of this Rule, otherwise a minimum 30 foot vegetative buffer for development shall be required along all perennial waters indicated on the most recent versions of U.S.G.S. 1:24,000 (7.5 minute) scale topographic maps or as determined by local government studies;

(G) No new development shall be allowed in the buffer; water dependent structures, or other structures, such as flag poles, signs, and security lights, which result in only de minimus increases in impervious area and public projects such as road crossings and greenways may be allowed where no practicable alternative exists. These activities shall minimize built-upon surface area and avoid channelizing stormwater;

(H) For local governments that do not use the high density option, a maximum of 10 percent of each jurisdiction's portion of the watershed outside of the critical area as delineated on July 1, 1995 may be developed with new development projects and expansions to existing development of up to 70 percent built-upon surface area (the "10/70 option") in addition to the new development approved in compliance with the appropriate requirements of Sub-Item (3)(b)(i)(A) of this Rule. For expansions to existing development, the existing built-upon surface area shall not be counted toward the allowed 70 percent built-upon surface area. A local government having jurisdiction within the watershed may transfer, in whole or in part, its right to the 10/70 option land area to another local government within the watershed upon submittal of a joint resolution for review by the Commission. When the designated water supply watershed area is composed of public land, such as National Forest land, local governments may count the public land acreage within the designated watershed area outside of the critical area

~~in figuring the acreage allowed under this provision. Each project shall, to the maximum extent practicable, minimize built-upon surface area, direct stormwater runoff away from surface waters and incorporate best management practices, as defined in Rule .0202 of this Section, to minimize water quality impacts;~~

~~(ii) Critical Area Nonpoint Source and Stormwater Pollution Control Criteria:~~

~~(A) Low Density Option: new development activities that require a Sedimentation/Erosion Control Plan in accordance with 15A NCAC 4 established by the North Carolina Sedimentation Control Commission or approved local government programs as delegated by the Sedimentation Control Commission shall be limited to no more than two dwelling units of single family detached development per acre (or 20,000 square foot lot excluding roadway right of way), or 24 percent built upon area for all other residential and non residential development; stormwater runoff from the development shall be transported by vegetated conveyances to the maximum extent practicable;~~

~~(B) High Density Option: if new development density exceeds the low density requirements specified in Sub Item (3)(b)(ii)(A) of this Rule, engineered stormwater controls shall be used to control runoff from the first inch of rainfall; new residential and non residential development shall not exceed 50 percent built upon area;~~

~~(C) No new permitted sites for land application of residuals or petroleum contaminated soils shall be allowed;~~

~~(D) No new landfills shall be allowed;~~

~~(c)~~(a) MBAS (Methylene-Blue Active ~~Substances): not greater than~~ Substances) shall not exceed 0.5 mg/l to protect the aesthetic qualities of water supplies and to prevent foaming;

~~(d)~~(b) Odor producing substances contained in sewage, industrial wastes, or other wastes: only such amounts, whether alone or in combination with other substances or waste, as will not cause taste and odor difficulties in water supplies that cannot be corrected by treatment, impair the palatability of fish, or have a deleterious effect upon any best usage established for waters of this class;

~~(e)~~(c) Chlorinated phenolic ~~compounds: not greater than~~ compounds shall not exceed 1.0 ug/l to protect water supplies from taste and odor problems due to chlorinated phenols shall be allowed. Specific phenolic compounds may be given a different limit if it is demonstrated not to cause taste and odor problems and not to be detrimental to other best usage;

~~(f)~~(d) Total hardness shall not exceed 100 mg/l as calcium carbonate ($CaCO_3$ or Ca + Mg);

~~(g)~~(e) Total dissolved solids shall not exceed 500 mg/l;

~~(h)~~(f) ~~Toxic and other deleterious substances:~~

~~(i)~~Water quality standards (maximum permissible concentrations) to protect human health through water consumption and fish tissue consumption for ~~non-carcinogens in Class WS-IV waters:~~ [~~non-carcinogens:~~] toxic and other deleterious substances that are non-carcinogens shall not exceed the following:

~~(A)~~(i) Barium: 1.0 mg/l;

~~(B)~~(ii) Chloride: 250 mg/l;

~~(C)~~(iii) Nickel: 25 ug/l;

~~(D)~~(iv) Nitrate nitrogen: 10.0 mg/l;

~~(E)~~(v) 2,4-D: 70 ug/l;

~~(F)~~(vi) 2,4,5-TP (Silvex): 10 ug/l; and

~~(G)~~(vii) Sulfates: 250 mg/l;

(g) ~~(ii)~~Water quality standards (maximum permissible concentrations) to protect human health through water consumption and fish tissue consumption for ~~carcinogens in Class WS-IV waters:~~ [~~carcinogens:~~] toxic and other deleterious substances that are carcinogens shall not exceed the following:

~~(A)~~(i) Aldrin: 0.05 ng/1;

~~(B)~~(ii) Arsenic: 10 ug/l;

~~(C)~~(iii) Benzene: 1.19 ug/1;

~~(D)~~(iv) Carbon tetrachloride: 0.254 ug/l;

~~(E)~~(v) Chlordane: 0.8 ng/1;

~~(F)~~(vi) Chlorinated benzenes: 488 ug/l;

~~(G)~~(vii) DDT: 0.2 ng/1;

~~(H)~~(viii) Dieldrin: 0.05 ng/1;

~~(I)~~(ix) Dioxin: 0.000005 ng/l;

~~(J)~~(x) Heptachlor: 0.08 ng/1;

~~(K)~~(xi) Hexachlorobutadiene: 0.44 ug/l;

~~(L)~~(xii) Polynuclear aromatic hydrocarbons (total of all PAHs): 2.8 ng/l;

~~(M)~~(xiii) Tetrachloroethane (1,1,2,2): 0.17 ug/l;

~~(N)~~(xiv) Tetrachloroethylene: 0.7 ug/l;

~~(O)~~(xv) Trichloroethylene: 2.5 ug/l; and

~~(P)~~(xvi) Vinyl Chloride: 0.025 ug/l.

(4) Wastewater and stormwater point source discharges in a WS-IV watershed shall meet the following requirements:

(a) Discharges that qualify for a General NPDES Permit pursuant to 15A NCAC 02H .0127 shall be allowed in the entire watershed.

(b) Discharges from domestic facilities, industrial facilities and trout farms that are subject to Individual NPDES Permits shall be allowed in the entire watershed.

(c) Stormwater discharges that qualify for an Individual NPDES Permit pursuant to 15A NCAC 02H .0126 shall be allowed in the entire watershed.

(d) No discharge of sewage, industrial wastes, or other wastes shall be allowed in the entire watershed except for those allowed by Sub-Items [~~(4)(a)~~](a) through [~~(4)(c)~~](c) of this [~~Rule~~] Item or Rule .0104 of this Subchapter; none shall be allowed that have an adverse effect on human health or that are not treated to the satisfaction of the Commission and in accordance with the requirements of the Division. Upon request by the Commission, [~~Any~~] dischargers or industrial users subject to pretreatment standards [~~may~~] shall be required [~~by the Commission~~] to disclose all chemical constituents present or potentially present in their wastes and chemicals that could be spilled or be present in runoff from their facility which may have an adverse impact on downstream water supplies. These facilities may be required to have spill and treatment failure control plans as well as perform special monitoring for toxic substances.

(e) New industrial discharges of treated wastewater in the critical area shall be required to meet the provisions of [~~Sub-Items (c)(2)(iv), (v), and (vii) of~~] Rule .0224(c)(2)(D), (E), and (G) of this Section and Rule .0203 of this Section.

(f) New industrial connections and expansions to existing municipal discharges with a pretreatment program pursuant to 15A NCAC 02H .0904 shall be allowed in the entire watershed.

(g) No new landfills shall be allowed in the Critical Area.

(h) No new permitted sites for land application residuals or petroleum contaminated soils shall be allowed in the Critical Area.

(5) Nonpoint source pollution in a WS-IV watershed shall meet the following requirements:

(a) None that would have an adverse impact, as that term is defined in 15A NCAC 02H .1002, on waters for use as a water supply or any other designated use.

(b) [~~Waters of this class~~] Class WS-IV waters shall be protected as water supplies that are located in watersheds that meet average watershed development density levels specified for Class WS-IV waters in Rule .0624 of this Subchapter.

History Note: *Authority G.S. 143-214.1; 143-215.3(a)(1);*
Eff. February 1, 1986;
Amended Eff. January 1, 2015; May 1, 2007; April 1, 2003; June 1, 1996; October 1, 1995; August 1, 1995; June 1, ~~1994.~~ 1994;
Readopted September 1, 2019.

REQUEST FOR TECHNICAL CHANGE

AGENCY: Environmental Management Commission

RULE CITATION: 15A NCAC 02B .0218

DEADLINE FOR RECEIPT: Friday, August 9, 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:

For purposes of clarity, please consider rewording lines 5-7 to say something like "All water supply watersheds classified as WS-V shall meet the standards set forth in Rule .0211 of this Subchapter and the following:" Assuming that this is the intent.

Is (1) really a standard and/or requirement or would it make sense to move that up to the introductory information? It looks to me that Item (1) really explains what this classification means and is applicable to and would be helpful to know at the outset.

Is (1) delete the "or" after "WS-IV waters:" on line 16

In (2)(d), what treatment required by the division? Is there a cross-reference available? Is this in the Permit?

In (2)(d), what are the National Drinking Water Regulations? I see that you've incorporated the State Rules, but what are these national standards?

In (2)(e), how will it be determined whether these management requirements will be applied?

In (2)(f), by "may", do you mean "shall"? If you mean may, what factors will you use in making this determination? I understand that it will only happen upon request of the land use jurisdiction, but how will you decide whether to actually do it?

In (3)(b), did you intend on turning this into a complete sentence or keeping the colon. Please be consistent where you can.

(3)(b) appears to be missing a word, did you intend to add "shall be allowed"?

Amber May
Commission Counsel
Date submitted to agency: July 30, 2019

In (3)(b), what are "taste and odor difficulties"?

In (3)(b), what is considered to be a "deleterious effect"? Is this defined somewhere?

In (3)(c), please begin a new sentence with "Specific phenolic…" Please see .0216(3)(c)

In (3)(f) and (g), please consider deleting "Water quality standards (maximum permissible concentrations) to protect human health through water consumption and fish tissue consumption" Why is it necessary to say "maximum permissible concentrations"?

In (4), since this is not a list as it is in companion rules, please consider deleting "Wastewater and stormwater point discharges in a WS-V water shall meet the following requirements:"

In (4), is an "adverse effect" the same thing as "adverse impact"? If so, please be consistent in your terminology. If that is the case, please delete "as defined in .1002" in (5)since that's not the first time this term is used.

On line 34, either delete "to the satisfaction of the Commission" or say how this will be determined.

On line 35, what are "the requirements of the Division"?

In (4), when would a facility be required to have control plans? Is this set out in the permit? Is there a cross-reference available? If not, please provide information on how this determination is to be made.

In (4), is an "adverse effect" the same thing as "adverse impact"? If so, please be consistent in your terminology. If that is the case, please delete "as defined in .1002" in (5)(a) since that's not the first time this term is used.

End (5) with a period, rather than a semi-colon.

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

Amber May
Commission Counsel
Date submitted to agency: July 30, 2019

15A NCAC 02B .0218 is readopted as published in 32:22 NCR 2411-2493 with changes as follows:

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

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

(1) ~~The best usage of WS-V waters shall be as follows: waters that are protected as water supplies that are upstream and draining to Class WS-IV waters; or waters previously used for drinking water supply purposes; or waters used by industry to supply their employees, but not municipalities or counties, with a raw drinking water supply source, although this type of use shall not be restricted to WS-V classification; and all Class C uses. The Commission may consider a more protective classification for the water supply if a resolution requesting a more protective classification is submitted from all local governments having land use jurisdiction within the affected watershed;~~ [~~Best Usage of Waters:~~] The best usage of waters classified as WS-V shall be as waters that are protected as water supplies which are generally upstream and draining to Class WS-IV waters; or waters previously used for drinking water supply purposes; or waters used by industry to supply their employees, but not municipalities or counties, with a raw drinking water supply source, although this type of use is not restricted to WS-V classification; and all Class C uses.

(2) ~~The conditions related to the best usage shall be as follows: waters of this class are protected water supplies;~~ [~~Conditions Related to Best Usage:~~] The best usage of waters classified as WS-V shall be maintained as follows:

(a) Chemical and physical water quality parameters in a WS-V water shall meet requirements as specified in Item (3) of this Rule.

(b) Wastewater and stormwater point source discharges in a WS-V water shall meet requirements as specified in Item (4) of this Rule.

(c) Nonpoint source pollution in a WS-V water shall meet the requirements as specified in Item (5) of this Rule.

(d) ~~the~~ The [~~The~~] ~~waters, following~~ Following treatment required by the Division, the waters shall meet the Maximum Contaminant Level concentrations considered safe for drinking, culinary, or food-processing purposes that are specified in the national drinking water regulations and in the North Carolina Rules Governing Public Water Supplies, 15A NCAC 18C ~~.1500;~~ .1500, ~~which are hereby~~] incorporated by reference including subsequent amendments and editions;

(e) ~~no categorical restrictions on watershed development or wastewater discharges shall be required, however, the~~ The Commission or its designee may apply management

requirements for the protection of waters downstream of receiving waters ~~(15A NCAC 02B .0203).~~ provided in Rule .0203 of this Section.

(f) The Commission may consider a more protective classification for the water supply if a resolution requesting a more protective classification is submitted from all local governments having land use jurisdiction within the affected watershed.

(g) Sources of water pollution that preclude any of ~~these~~ the best uses on either a short-term or long-term basis shall be ~~considered to be violating~~ deemed to violate a water quality standard;

(3) ~~Quality standards applicable to Class WS-V Waters shall be as follows:~~ Chemical and physical water quality parameters in a WS-V water shall meet the following requirements:

~~(a)~~ ~~Sewage, industrial wastes, non-process industrial wastes, or other wastes: none shall be allowed that have an adverse effect on human health or that are not treated to the satisfaction of the Commission and in accordance with the requirements of the Division. Any discharges or industrial users subject to pretreatment standards shall be required by the Commission to disclose all chemical constituents present or potentially present in their wastes and chemicals that could be spilled or be present in runoff from their facility which may have an adverse impact on downstream water supplies. These facilities may be required to have spill and treatment failure control plans as well as perform special monitoring for toxic substances;~~

~~(b)~~(a) MBAS (Methylene-Blue Active ~~Substances): not greater than~~ Substances) shall not exceed 0.5 mg/l to protect the aesthetic qualities of water supplies and to prevent foaming;

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

~~(d)~~(b) Odor producing substances contained in sewage, industrial wastes, or other wastes: only such amounts, whether alone or in combination with other substances or waste, as will not cause taste and odor difficulties in water supplies that ~~cannot~~ can not be corrected by treatment, impair the palatability of fish, or have a deleterious effect upon any best usage established for waters of this class;

~~(e)~~(c) Chlorinated phenolic ~~compounds: not greater than~~ compounds shall not exceed 1.0 ug/l to protect water supplies from taste and odor problems due to chlorinated phenols; specific phenolic compounds may be given a different limit if it is demonstrated not to cause taste and odor problems and not to be detrimental to other best usage;

~~(f)~~(d) Total ~~hardness: not greater than~~ hardness shall not exceed 100 mg/l as calcium carbonate ($CaCO_3$ or Ca + Mg);

~~(g)~~(e) Total dissolved ~~solids: not greater than~~ solids shall not exceed 500 mg/l;

~~(h)~~(f) ~~Toxic and other deleterious substances:~~

~~(i)~~Water quality standards (maximum permissible concentrations) to protect human health through water consumption and fish tissue consumption for ~~non-carcinogens in Class WS-V waters:~~ [~~non-carcinogens:~~] toxic and other deleterious substances that are non-carcinogens shall not exceed the following:

~~(A)~~(i) Barium: 1.0 mg/l;

~~(B)~~(ii) Chloride: 250 mg/l;

~~(C)~~(iii) Nickel: 25 ug/l;

~~(D)~~(iv) Nitrate nitrogen: 10.0 mg/l;

~~(E)~~(v) 2,4-D: 70 ug/l;

~~(F)~~(vi) 2,4,5-TP (Silvex): 10 ug/l; and

~~(G)~~(vii) Sulfates: 250 mg/l;

(g) ~~(ii)~~Water quality standards (maximum permissible concentrations) to protect human health through water consumption and fish tissue consumption for ~~carcinogens in Class WS-V waters:~~ [~~carcinogens:~~] toxic and other deleterious substances that are carcinogens shall not exceed the following:

~~(A)~~(i) Aldrin: 0.05 ng/1;

~~(B)~~(ii) Arsenic: 10 ug/l;

~~(C)~~(iii) Benzene: 1.19 ug/1;

~~(D)~~(iv) Carbon tetrachloride: 0.254 ug/l;

~~(E)~~(v) Chlordane: 0.8 ng/1;

~~(F)~~(vi) Chlorinated benzenes: 488 ug/l;

~~(G)~~(vii) DDT: 0.2 ng/1;

~~(H)~~(viii) Dieldrin: 0.05 ng/1;

~~(I)~~(ix) Dioxin: 0.000005 ng/l;

~~(J)~~(x) Heptachlor: 0.08 ng/1;

~~(K)~~(xi) Hexachlorobutadiene: 0.44 ug/l;

~~(L)~~(xii) Polynuclear aromatic hydrocarbons (total of all PAHs): 2.8 ng/l;

~~(M)~~(xiii) Tetrachloroethane (1,1,2,2): 0.17 ug/l;

~~(N)~~(xiv) Tetrachloroethylene: 0.7 ug/l;

~~(O)~~(xv) Trichloroethylene: 2.5 ug/l; and

~~(P)~~(xvi) Vinyl Chloride: 0.025 ug/l.

(4) Wastewater and stormwater point source discharges in a WS-V water shall meet the following requirements: No discharge of sewage, industrial wastes, or other wastes shall be allowed that have an adverse effect on human health or that are not treated to the satisfaction of the Commission and in accordance with the requirements of the Division. Upon request by the Commission, [~~Any~~] dischargers or industrial users subject to pretreatment standards [~~may~~] shall be required by the Commission to disclose all chemical constituents present or potentially present in their wastes and

chemicals that could be spilled or be present in runoff from their facility which may have an adverse impact on downstream water quality. These facilities may be required to have spill and treatment failure control plans as well as perform special monitoring for toxic substances.

(5) Nonpoint Source pollution in a WS-V water shall [~~meet the following requirements: None that would adversely~~] not have an adverse impact, as that term is defined in 15A NCAC 02H .1002, on waters for use as water supply or any other designated use;

History Note: *Authority G.S. 143-214.1; 143-215.3(a)(1);*
Eff. October 1, 1989;
Amended Eff. January 1, 2015; May 1, 2007; April 1, 2003; October 1, ~~1995.~~ 1995;
Readopted Eff. September 1, 2019.

REQUEST FOR TECHNICAL CHANGE

AGENCY: Environmental Management Commission

RULE CITATION: 15A NCAC 02B .0219

DEADLINE FOR RECEIPT: Friday, August 9, 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:

For purposes of clarity, please consider rewording lines 4-6 to say something like "All surface waters classified as Class B waters that are used for primary contact recreation shall meet the standards set forth in Rule .0211 of this Subchapter and the following:" Assuming that this is the intent.

Is (1) really a standard and/or requirement or would it make sense to move that up to the introductory information? It looks to me that Item (1) really explains what this classification means and is applicable to and would be helpful to know at the outset.

In Item (2), line 20, change "which" to "that" in "which preclude"

In (3)(a), delete or define "effectively"

In (3)(a), begin new sentences with "In determining" and "Discharges in the immediate"

In (3)(a), delete or define "immediate"

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

Amber May
Commission Counsel
Date submitted to agency: July 30, 2019

15A NCAC 02B .0219 is readopted as published in 32:22 NCR 2411-2493 with changes as follows:

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

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

(1) ~~Best Usage of Waters. Primary recreation and any other best usage specified by the "C" classification; Best Usage of Waters.~~ [~~Best Usage of Waters: Primary~~]The best usage of Class B waters shall be primary contact recreation as defined in Rule .0202 of this Section and any other best usage specified [~~by the "C" classification.~~] for Class C waters.

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

(3) Quality standards applicable to Class B waters:

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

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

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

History Note: *Authority G.S. 143-214.1; 143-215.3(a)(1);*
Eff. January 1, 1990;
Amended Eff. October 1, ~~1995.~~ 1995;
Readopted Eff September 1, 2019.

REQUEST FOR TECHNICAL CHANGE

AGENCY: Environmental Management Commission

RULE CITATION: 15A NCAC 02B .0220

DEADLINE FOR RECEIPT: Friday, August 9, 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:

What is the overall intent of this Rule? I read it to say that these are the water quality standards applicable to tidal salt waters that as classified as Class SC. Assuming that's correct, why are lines 5-7 necessary? At best, they appear unnecessary, but more concerning to me is that they are confusing. With regard to the reference to .0208, is the intent here to say something like "In addition to the requirements set forth in Rule .0208 of this Subchapter, all tidal salt waters classified as Class SC waters shall meet the following standards:"? If so, please say that.

Is (1) really a standard and/or requirement or would it make sense to move that up to the introductory information? It looks to me that Item (1) really explains what this classification means and is applicable to and would be helpful to know at the outset.

In (3), line 27, please add "if" before "the Director"

In Item (5), what is a "poorly flushed tidally influenced stream" Is "poorly flushed" a term of art? If not, please delete or define "poorly"

In Item (7), what is meant by "shall not make the water unsafe or unsuitable"? How is this determined?

In (9)(c), please see my comments in .0211 regarding (11)(b).

Please consider formatting (17) into a list as you've done elsewhere in this Rule.

Please change the period in (15)(b) and (c) after "alpha emitters" and "beta emitters", respectively into colons in order to be consistent with (15)(a).

Please consider breaking (15)(c) out into a further list. There is a lot of information in there.

Amber May
Commission Counsel
Date submitted to agency: July 30, 2019

In Item (16), please consider deleting "be required to" in "shall be required to employ" so that it just reads "shall employ"

In (19), please consider deleting "as defined by Rule .0202"

In (19), are lines 11-13 ("BMPs shall be in full… of such BMPs") necessary?

If this language is necessary, delete or define "full" in "full compliance" and "proper" in "proper design"

Also, what are "specifications"?

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

Amber May
Commission Counsel
Date submitted to agency: July 30, 2019

15A NCAC 02B .0220 is readopted as published in 32:22 NCR 2411-2493 with changes as follows:

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

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

(1) ~~Best Usage of Waters: any usage except primary recreation or shellfishing for market purposes; usages include aquatic life propagation and maintenance of biological integrity (including fishing, fish and functioning PNAs), wildlife, and secondary recreation;~~ [~~Best Usage of Waters:~~] The best usage of waters classified as SC shall be aquatic life propagation, survival, and maintenance of biological integrity (including fishing, [~~fish~~] fish, and Primary Nursery Areas (PNAs)); wildlife; secondary contact recreation as defined in Rule .0202 in this Section; and any usage except primary contact recreation or shellfishing for market purposes. All saltwaters shall be classified to protect these uses at a minimum.

(2) ~~Conditions Related to Best Usage: the waters~~ The best usage of waters classified as SC shall be ~~suitable for aquatic life propagation and maintenance of biological integrity, wildlife, and secondary recreation.~~ [~~all best uses~~] maintained as specified in this Rule. Any source of water pollution that precludes any of these ~~uses, including their functioning as PNAs,~~ uses on either a short-term or a long-term basis [~~uses~~] shall be ~~considered to be violating~~ deemed to violate a water quality standard;

(3) Chlorophyll a (corrected): ~~not greater than~~ shall not exceed 40 ug/l [~~(based upon monthly averaging where such data are available during the growing season which is generally April 1 – October 31)~~] in sounds, estuaries, and other waters subject to growths of macroscopic or microscopic vegetation. The Commission or its designee may prohibit or limit any discharge of waste into surface waters ~~if, in the opinion of the Director, the~~ the Director determines that the surface waters experience or the discharge would result in growths of microscopic or macroscopic vegetation such that the standards established pursuant to this Rule would be violated or the intended best usage of the waters would be impaired;

(4) Cyanide: shall not exceed 1 ug/l;

(5) Dissolved oxygen: shall not be less than 5.0 mg/l, except that swamp waters, poorly flushed tidally influenced streams or embayments, or estuarine bottom waters may have lower values if caused by natural conditions;

(6) Enterococcus, ~~including Enterococcus faecalis, Enterococcus faecium, Enterococcus avium and Enterococcus gallinarium:~~ including Enterococcus faecalis, Enterococcus faecium, Enterococcus avium and Enterococcus gallinarium: shall not ~~to~~ exceed a geometric mean of 35 enterococci per

100 ml based upon ~~a minimum of~~ five or more samples within any consecutive 30 days. For the purposes of beach monitoring and notification, "Coastal Recreational Waters Monitoring, Evaluation and Notification" regulations (15A NCAC 18A .3400), available free of charge at: http://www.ncoah.com/, are ~~hereby~~ incorporated by reference including ~~any~~ subsequent ~~amendments;~~ amendments and editions;

(7) Floating solids, settleable solids, or sludge deposits: shall be allowed only in such amounts attributable to sewage, industrial wastes, or other ~~wastes,~~ wastes as shall not make the waters unsafe or unsuitable for aquatic life and wildlife, or impair the waters for any designated uses;

(8) Gases, total dissolved: ~~not greater than~~ shall not exceed 110 percent of saturation;

(9) Metals:

(a) With the exception of mercury and selenium, tidal salt water quality standards for metals shall be based upon measurement of the dissolved fraction of the metals. Mercury and selenium shall be based upon measurement of the total recoverable metal;

(b) Compliance with acute instream metals standards shall only be evaluated using an average of two or more samples collected within one hour. Compliance with chronic instream metals standards shall only be evaluated using averages of a minimum of four samples taken on consecutive days, or as a 96-hour average;

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

~~(d)~~(c) Acute and chronic tidal salt water quality metals standards ~~are as follows:~~ shall not exceed the following:

(i) Arsenic, acute: WER· 69 ug/l;

(ii) Arsenic, chronic: WER· 36 ug/l;

(iii) Cadmium, acute: WER· 40 ug/l;

(iv) Cadmium, chronic: WER· 8.8 ug/l;

(v) Chromium VI, acute: WER· 1100 ug/l;

(vi) Chromium VI, chronic: WER· 50 ug/l;

(vii) Copper, acute: WER· 4.8 ug/l;

(viii) Copper, chronic: WER· 3.1 ug/l;

(ix) Lead, acute: WER· 210 ug/l;

(x) Lead, chronic: WER· 8.1 ug/l;

(xi) Mercury, total recoverable, chronic: 0.025 ug/l;

(xii) Nickel, acute: WER· 74 ug/l;

(xiii) Nickel, chronic: WER· 8.2 ug/l;

(xiv) Selenium, total recoverable, chronic: 71 ug/l;

(xv) Silver, acute: WER· 1.9 ug/l;

(xvi) Silver, chronic: WER· 0.1 ug/l;

(xvii) Zinc, acute: WER· 90 ug/l; and

(xviii) Zinc, chronic: WER· 81 ug/l;

With the exception of mercury and selenium, acute and chronic tidal saltwater quality aquatic life standards for metals listed ~~above~~ in this Sub-Item shall apply to the dissolved form of the metal and apply as a function of the pollutant's water effect ratio (WER). A WER expresses the difference between the measures of the toxicity of a substance in laboratory waters and the toxicity in site water. The WER shall be assigned a value equal to one unless any person demonstrates to the ~~Division's~~ Division ~~satisfaction~~ in a permit proceeding that another value is developed in accordance with the "Water Quality Standards Handbook: Second Edition" published by the US Environmental Protection Agency (EPA-823-B-12-002), free of charge, at http://water.epa.gov/scitech/swguidance/standards/handbook/, ~~hereby~~ incorporated by reference including ~~any~~ subsequent ~~amendments.~~ amendments and editions. Alternative site-specific standards may also be developed when any person submits values that demonstrate to the ~~Commissions'~~ Commission ~~satisfaction~~ that they were derived in accordance with the "Water Quality Standards Handbook: Second Edition, Recalculation Procedure or the Resident Species Procedure", ~~hereby~~ incorporated by reference including subsequent amendments and editions at http://water.epa.gov/scitech/swguidance/standards/handbook/. This material is available free of charge;

(10) Oils, deleterious substances, ~~colored,~~ or colored or other ~~wastes:~~ wastes shall be allowed only in such amounts as shall not render the waters injurious to public health, secondary recreation, aquatic life, and wildlife or adversely affect the palatability of fish, aesthetic quality, or impair the waters for any designated uses. For the purpose of implementing this Rule, oils, deleterious substances, ~~colored,~~ or colored or other wastes shall include substances that cause a film or sheen upon or discoloration of the surface of the water or adjoining ~~shorelines pursuant to~~ shorelines, as described in ~~40 CFR 110.3;~~ 40 CFR [~~110.3~~] 110.3, [~~which are~~] incorporated by reference including any

subsequent amendments and editions. This material is available free of charge on the internet at http://www.gpo.gov/fdsys/.

(11) ~~Pesticides:~~ Pesticides shall not exceed the following:

(a) Aldrin: 0.003 ug/l;

(b) Chlordane: 0.004 ug/l;

(c) DDT: 0.001 ug/l;

(d) Demeton: 0.1 ug/l;

(e) Dieldrin: 0.002 ug/l;

(f) Endosulfan: 0.009 ug/l;

(g) Endrin: 0.002 ug/l;

(h) Guthion: 0.01 ug/l;

(i) Heptachlor: 0.004 ug/l;

(j) Lindane: 0.004 ug/l;

(k) Methoxychlor: 0.03 ug/l;

(l) Mirex: 0.001 ug/l;

(m) Parathion: 0.178 ug/l; and

(n) Toxaphene: 0.0002 ug/l;

(12) pH: shall be ~~normal for the waters in the area, which range~~ between 6.8 and 8.5, except that swamp waters may have a pH as low as 4.3 if it is the result of natural conditions;

(13) Phenolic compounds: shall be allowed only in such levels as shall not result in fish-flesh tainting or impairment of other best usage;

(14) Polychlorinated biphenyls: (total of all PCBs and congeners identified) shall not exceed 0.001 ug/l;

(15) Radioactive substances:

(a) Combined radium-226 and radium-228: The average annual activity level (based on at least one sample collected per quarter) for combined radium-226, and radium-228 shall not exceed five picoCuries per liter;

(b) Alpha Emitters. The average annual gross alpha particle activity (including radium-226, but excluding radon and uranium) shall not exceed 15 picoCuries per liter;

(c) Beta Emitters. The average annual activity level (based on at least one sample collected per quarter) for strontium-90 shall not exceed eight picoCuries per ~~liter;~~ liter, nor shall the average annual gross beta particle activity (excluding potassium-40 and other naturally occurring radionuclides exceed 50 picoCuries per ~~liter;~~ liter, nor shall the average annual activity level for tritium exceed 20,000 picoCuries per liter;

(16) Salinity: changes in salinity due to hydrological modifications shall not result in removal of the functions of a PNA. Projects that are determined by the Director to result in modifications of salinity such that functions of a PNA are impaired shall be required to employ water management practices to mitigate salinity impacts;

(17) Temperature: shall not be increased above the natural water temperature by more than 0.8 degrees C (1.44 degrees F) during the months of June, July, and ~~August~~ August, ~~nor~~ shall not be increased by more than 2.2 degrees C (3.96 degrees F) during other ~~months~~ months, and shall in no ~~cases to~~ case exceed 32 degrees C (89.6 degrees F) due to the discharge of heated liquids;

(18) Trialkyltin compounds: shall not exceed 0.007 ug/l expressed as tributyltin;

(19) Turbidity: the turbidity in the receiving water shall not exceed 25 Nephelometric Turbidity Units (NTU); if turbidity exceeds this level due to natural background conditions, the existing turbidity level shall not be increased. Compliance with this turbidity standard ~~can be~~ shall be deemed met when land management activities employ Best Management Practices ~~(BMPs) [as~~ (BMPs), defined by Rule .0202 of this ~~Section)~~ Section, recommended by the Designated Nonpoint Source ~~Agency~~ ~~(as~~ Agency, as defined by Rule .0202 of this ~~Section).~~ Section. BMPs shall be in full compliance with all specifications governing the proper design, installation, operation, and maintenance of such ~~BMPs;~~ BMPs.

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

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

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

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

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

History Note: *Authority G.S. 143-214.1; 143-215.3(a)(1);*
Eff. October 1, 1995;
Amended Eff. January 1, 2015; May 1, 2007; August 1, ~~2000.~~ 2000;
Readopted Eff. September 1, 2019.

REQUEST FOR TECHNICAL CHANGE

AGENCY: Environmental Management Commission

RULE CITATION: 15A NCAC 02B .0221

DEADLINE FOR RECEIPT: Friday, August 9, 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:

For purposes of clarity, please consider rewording lines 4-6 to say something like "All tidal salt waters classified as SA shall meet the standards set forth in Rules .0220 and .0222 of this Subchapter and the following:" Assuming that this is the intent.

In Item (2), change "will be guided by" to "shall consider"

In Item (2), where can the "standards adopted by the Commission for Public Health"? Please provide information regarding these Rules.

In (3)(c), delete or define "effectively"

In (3)(c), what are the "requirements of the Division"? Are these set forth in the permit?

In (3)(d), what is meant by "most probably" and "most unfavorable"? How is this determined?

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

Amber May
Commission Counsel
Date submitted to agency: July 30, 2019

15A NCAC 02B .0221 is readopted as published in 32:22 NCR 2411-2493 with changes as follows:

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

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

(1) ~~Best Usage of Waters:~~ The best usage of waters classified as SA shall be shellfishing for market purposes and any other usage specified by the "SB" or "SC" classification;

(2) ~~Conditions Related to Best Usage:~~ The best usage of waters classified as SA shall be maintained as specified in this Rule. In determining the safety or suitability of Class SA waters to be used for shellfishing for market purposes, the Commission will be guided by the existing water quality of the area in relation to the standards to protect shellfishing uses, the potential contamination of the area from both point and nonpoint sources of pollution, and the presence of harvestable quantities of shellfish or the potential for the area to have harvestable quantities through management efforts of the Division of Marine Fisheries. ~~waters~~ Waters shall meet the current sanitary and bacteriological standards as adopted by the Commission for Public Health and shall be suitable for shellfish culture. Any source of water pollution ~~which~~ that precludes any of these uses, ~~including their functioning as PNAs,~~ [~~Primary Nursery Areas~~] on either a short-term or a long-term basis shall be ~~considered to be violating~~ deemed to violate a water quality standard. Waters [~~will~~] shall not be classified SA without the written concurrence of the Division of Marine Fisheries.

(3) ~~Quality Standards applicable~~ The following water quality standards shall apply to Class SA Waters:

(a) Floating solids, settleable solids, or sludge ~~deposits: none~~ deposits attributable to sewage, industrial ~~wastes~~ wastes, or other ~~wastes:~~ wastes shall not be present;

(b) ~~Sewage: none;~~ Sewage shall not be allowed;

(c) Industrial ~~wastes,~~ wastes or other ~~wastes: none~~ wastes shall not be allowed ~~that~~ unless they are ~~not~~ effectively treated ~~to the satisfaction of the Commission~~ in accordance with the requirements of the ~~Division of Environmental Health;~~ Division; and

(d) Organisms of ~~coliform group:~~ the fecal coliform group shall not ~~to~~ exceed a median MF of 14/100 ml and not more than 10 percent of the samples shall exceed an MF count of 43/100 ml in those areas most probably exposed to fecal contamination during the most unfavorable hydrographic and pollution conditions.

History Note: *Authority G.S. 143-214.1; 143-215.3(a)(1);*
Eff. October 1, 1995;
Amended Eff. May 1, ~~2007.~~ 2007;
Readopted Eff. September 1, 2019.

REQUEST FOR TECHNICAL CHANGE

AGENCY: Environmental Management Commission

RULE CITATION: 15A NCAC 02B .0222

DEADLINE FOR RECEIPT: Friday, August 9, 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:

I note that the title of this Rule says "Tidal salt waters", but line 4 references "surface waters." Should line 4 be "tidal salt waters"? I have used that in my suggestion.

For purposes of clarity, please consider rewording lines 4-6 to say something like "All tidal salt waters classified as Class SB waters that are used for primary contact recreation shall meet the standards set forth in Rule .0220 of this Subchapter and the following:" Assuming that this is the intent.

Is (1) really a standard and/or requirement or would it make sense to move that up to the introductory information? It looks to me that Item (1) really explains what this classification means and is applicable to and would be helpful to know at the outset.

In (3)(b), delete or define "effectively"

In (3)(b), please begin new sentences with "In determining…" and "Discharges in the immediate"

In (3)(b), change "which" to "that" on line 28 in "which are to be used for bathing"

In (3)(b), delete or define "immediate"

In (3)(c), did you intend to delete the colon after "gallinarium"?

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

Amber May
Commission Counsel
Date submitted to agency: July 30, 2019

15A NCAC 02B .0222 is readopted as published in 32:22 NCR 2411-2493 with changes as follows:

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

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

(1) ~~Best Usage of waters: primary recreation and any other usage specified by the "SC" classification;~~ [~~Best Usage of Waters:~~] The best usage of waters classified as SB shall be primary contact [~~recreation~~] recreation, as defined in Rule .0202 of this [~~Section~~] Section, and any other usage specified by the "SC" classification;

(2) ~~Conditions Related to Best Usage:~~ The best usage of waters classified as SB shall be maintained as specified in this Rule. In assigning the SB classification to waters intended for primary contact recreation, the Commission [~~will take into consideration~~] shall consider the relative proximity of sources of water pollution and the potential hazards involved in locating swimming areas close to sources of water [~~pollution~~] pollution, and [~~will~~] shall not assign this classification to waters in which such water pollution could result in a hazard to public health. ~~the~~ The waters shall meet accepted sanitary standards of water quality for outdoor bathing places as specified in Item (3) of this Rule and ~~will~~ shall be of sufficient size and depth for primary contact recreation purposes. Any source of water pollution ~~which~~ that precludes any of these uses, ~~including their functioning as PNAs,~~ [~~Primary Nursery Areas~~] on either a short-term or a long-term ~~basis~~ basis, shall be ~~considered to be violating~~ deemed to violate a water quality ~~standard;~~ standard.

(3) ~~Quality Standards applicable~~ The following water quality standards shall apply to Class SB waters:

(a) Floating solids, settleable solids, or sludge ~~deposits: none~~ deposits attributable to sewage, industrial ~~wastes~~ wastes, or other ~~wastes;~~ wastes shall not be allowed;

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

(c) Enterococcus, including Enterococcus faecalis, Enterococcus faecium, Enterococcus avium and Enterococcus gallinarium: shall not ~~to~~ exceed a geometric mean of 35 enterococci per 100 ml based upon ~~a minimum of~~ five or more samples within any consecutive 30 days. In accordance with Federal Clean Water Act, 33 U.S.C. 1313

~~(Federal Water Pollution Control Act)~~ for the purposes of beach monitoring and notification, "Coastal Recreation Waters Monitoring, Evaluation and Notification" regulations (15A NCAC 18A .3400) are ~~hereby~~ incorporated by reference including ~~any~~ subsequent ~~amendments.~~ amendments and editions.

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

History Note: *Authority G.S. 143-214.1; 143-215.3(a)(1);*
Eff. October 1, 1995;
Amended Eff. May 1, ~~2007.~~ 2007;
Readopted Eff. September 1, 2019.

REQUEST FOR TECHNICAL CHANGE

AGENCY: Environmental Management Commission

RULE CITATION: 15A NCAC 02B .0223

DEADLINE FOR RECEIPT: Friday, August 9, 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:

Capitalize "state" on line 4.

In (b), delete "the Commission deems"

In (c), change "the Commission determines to be contributing" to "contribute"

In (e), what are "nutrient strategies"? Given that you have said "nutrient strategies…. shall be developed by the Commission", I want to make sure that these strategies do not meet the definition of a Rule.

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

Amber May
Commission Counsel
Date submitted to agency: July 30, 2019

15A NCAC 02B .0223 is readopted as published in 32:22 NCR 2411-2493 with changes as follows:

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

(a) In addition to existing classifications, the Commission may classify any surface waters of the state as ~~nutrient sensitive waters~~ Nutrient Sensitive Waters (NSW) upon a finding that such waters are experiencing or are subject to excessive growths of microscopic or macroscopic vegetation. Excessive growths are growths ~~which~~ that the Commission determines impair the ~~use~~ best usage of the water ~~for its best usage~~ as determined by the classification applied to such waters.

(b) NSW may include any or all waters within a particular river basin as the Commission deems necessary to ~~effectively~~ control excessive growths of microscopic or macroscopic vegetation.

(c) For the purpose of this Rule, the term "nutrients" shall mean phosphorous or nitrogen or any other chemical parameter or combination of parameters ~~which~~ that the ~~commission~~ Commission determines to be contributing to excessive growths of microscopic or macroscopic vegetation.

(d) Those waters of the ~~[state]~~ State that are ~~additionally~~ classified as ~~nutrient sensitive~~ NSW shall be identified in the appropriate ~~schedule of classifications as referenced in Section .0300 of this Subchapter.~~ river basin classification schedule. The schedules are available online at http://portal.ncdenr.org/web/wq/ps/csu/classifications.

(e) Nutrient strategies applicable to NSW shall be developed by the Commission to limit nutrients to control the magnitude, duration, or frequencies of excessive growths of microscopic or macroscopic vegetation so that the existing and designated uses of the waterbody are protected or restored.

History Note: *Authority G.S. 143-214.1; 143-215.8B;*
Eff. October 1, 1995;
Amended Eff. August 1, ~~2000.~~ 2000;
Readopted Eff. September 1, 2019.

REQUEST FOR TECHNICAL CHANGE

AGENCY: Environmental Management Commission

RULE CITATION: 15A NCAC 02B .0224

DEADLINE FOR RECEIPT: Friday, August 9, 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), I don't read these to be "procedures", please consider deleting "The following procedures set forth in"

In (c)(2), delete "be required to" so that it just reads "shall comply"

In (c)(2)(A), delete either "Effluent limitations shall be as follows" or "Oxygen Consuming Wastes" Here, do you mean something like "Effluent limitations for oxygen consuming wastes shall be as follows:"?

In (c)(2)(A), I think that "shall not" in "shall not cause the DO" should be "does not cause…"

In (c)(2)(A), delete or define "readily" in "readily available" and "generally" in "generally applicable"

In (c)(2)(B), add a semi-colon after "PNAs"

In (c)(2)(C), what are "alternative methods"? Can you provide some examples?

In (c)(2)(C), how is it determined whether something is "economically feasible"?

In (c)(2)(D), either provide what is meant by "equivalent failsafe treatment designs" and say how it will be determined whether something is "equivalent" or delete this language all together and change "including" on line 5 to "such as"

In (c)(2)(F), delete or define "appropriate." How will this be determined?

In (c)(2)(G), where can this information be found and at what cost?

Amber May
Commission Counsel
Date submitted to agency: July 30, 2019

Is (c)(3) necessary given (c)(2)?

In (c)(3), delete "be required to" so that it reads "shall comply"

In (c)(3), line 31, change "which" to "that"

In (e), please consider deleting "Listing of Waters Classified as HQW with Specific Actions." as you've not used this kind of introductory language elsewhere in this Rule.

In (e), please also consider deleting "TO protect exceptional water quality," on line 4 and "because of the local government implementation of WS-III stormwater management requirements." This language appears to be unnecessary.

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

Amber May
Commission Counsel
Date submitted to agency: July 30, 2019

15A NCAC 02B .0224 is readopted as published in 32:22 NCR 2411-2493 with changes as follows:

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

(a) High Quality Waters (HQW) are a subset of ~~waters~~ "waters with quality higher than the standards" ~~standards and are as described by 15A NCAC 2B .0101(e)(5)~~ as defined in Rule .0202(59) of this Section. The ~~following~~ procedures set forth in this [~~rule~~] Rule shall be implemented in order to ~~implement~~ meet the requirements of Rule .0201(d) of this Section.

(b) [~~All water supply watersheds which are classified as WS-I or WS-II, and all waters classified as Class SA waters are HQW. The Commission may classify, if case-by-case reclassification proceedings are conducted, any surface waters of the state as High Quality Waters (HQW) upon finding that such waters are:~~] High Quality Waters (HQW) shall include:

(1) water supply watersheds that are classified as Class WS-I or WS-II;

(2) waters classified as Class SA; and

(3) surface waters of the State that the Commission classifies as HQW upon finding that such waters are:

[~~(1)~~](A) rated excellent based on biological and physical/chemical characteristics through monitoring or special [~~studies, or~~] studies; or

[~~(2)~~](B) primary nursery areas (PNA) and other functional nursery areas designated by the Marine Fisheries Commission or the Wildlife Resources Commission.

~~(1)~~(c) New or expanded wastewater discharges in High Quality Waters shall comply with the following:

~~(a)~~(1) Discharges from new single family residences shall be prohibited. ~~Those existing~~ Existing subsurface systems for single family residences ~~which~~ that fail and must discharge shall install a septic tank, dual or recirculating sand filters, ~~disinfection~~ disinfection, and step aeration.

~~(b)~~(2) All new ~~NPDES~~ National Pollutant Discharge Elimination System (NPDES) wastewater ~~discharges (except single family residences)~~ discharges, except those for single family residences, shall be required to ~~provide the treatment described below:~~ comply with the following:

~~(i)~~(A) Oxygen Consuming Wastes: Effluent limitations shall be as follows: ~~BOD_5= 5 mg/l, NH_3-N = 2 mg/l and DO = 6 mg/l.~~ BOD_5 shall not exceed 5 mg/l, NH_3-N shall not exceed 2 mg/l, and DO shall not be less than 6 mg/l. More stringent limitations shall be set, if necessary, to ensure that the cumulative pollutant discharge of oxygen-consuming wastes shall not cause the DO of the receiving water to drop more than 0.5 mg/l below background levels, and in no case below the standard. Where background information is not readily available, evaluations shall assume a percent saturation determined by staff to be generally applicable to that hydroenvironment.

~~(ii)~~(B) Total Suspended Solids: Discharges of total suspended solids (TSS) shall ~~be limited to~~ not exceed effluent concentrations of 10 mg/l for trout waters and HQW-classified PNAs ~~PNA's,~~ and to 20 mg/l for all other High Quality Waters.

~~(iii)~~(C) Disinfection: Alternative methods to chlorination shall be required for discharges to trout streams, except that single family residences may use chlorination if other options are not economically feasible. Domestic discharges ~~are prohibited to SA waters.~~ to SA waters shall be prohibited.

~~(iv)~~(D) Emergency Requirements: Failsafe treatment designs shall be employed, including stand-by power capability for entire treatment works, dual train design for all treatment components, or equivalent failsafe treatment designs.

~~(v)~~(E) Volume: The total volume of treated wastewater for all discharges combined shall not exceed 50 percent of the total instream flow under 7Q10 conditions.

~~(vi)~~(F) Nutrients: Where nutrient overenrichment is projected to be a concern, appropriate effluent limitations shall be set for phosphorus or nitrogen, or both.

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

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

~~(2)~~(d) Development activities ~~which~~ that require an Erosion and Sedimentation Control Plan in accordance with rules established by the NC Sedimentation Control Commission ~~or local erosion and sedimentation control program approved in accordance with 15A NCAC 4B .0218,~~ and which drain to and are within one mile of High Quality Waters (HQW) shall ~~be required to follow~~ comply with the stormwater management rules as specified in 15A NCAC ~~2H~~

~~.1000.~~ 02H .1019 (coastal county waters) or .1021 (non-coastal county waters). ~~Stormwater management requirements specific to HQW are described in 15A NCAC 2H .1006.~~

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

~~If an applicant objects to the requirements to protect high quality waters and believes degradation is necessary to accommodate important social and economic development, the applicant may contest these requirements according to the provisions of G.S. 143-215.1(e) and 150B-23.~~

History Note: *Authority G.S. 143-214.1; 143-215.1; 143-215.3(a)(1);*
Eff. October 1, 1995;
Amended Eff. August 1, 1998; April 1, ~~1996.~~ 1996;
Readopted Eff. September 1, 2019.

REQUEST FOR TECHNICAL CHANGE

AGENCY: Environmental Management Commission

RULE CITATION: 15A NCAC 02B .0225

DEADLINE FOR RECEIPT: Friday, August 9, 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) and (a)(4), delete or define "unique" and "special" Are these terms of art?

In (a)(1), delete or define "special"

In (a)(2), what is considered to be "exceptional"? I see that the use off this word is defined in (b) as used in (a)(1), but how about here?

In (a)(3), what is considered to be "excellent"? Is this a term of art or otherwise defined?

In (b)(1), remove the parenthesis surrounding "or commercially important aquatic species"

In (b)(1), delete or define "outstanding"

In (b)(2), delete or define "unusually"

In (b)(3), delete "already"

In (b)(3), delete or define "special"

In (b)(4), delete or define "important"

In (b)(5) delete or define "special"

In (c)(1), delete or define "appropriate" in "appropriate local erosion"

On lines 8-9, did you intend to delete "that are"? If so, please strike this language.

Amber May
Commission Counsel
Date submitted to agency: July 30, 2019

Lines 16-17, please consider deleting "These actions may include anything within the powers of the Commission." If you choose to keep this language, please provide some additional information, such as a cross-reference to say that these "powers" are.

On line 17, change "which" to "that" in "which have been"

On line 18, delete "appropriate"

In (d)(2), (3), (5), (10), (11), and (13) by Paragraph (c), do you mean Subparagraph (c)(1)? I note that you've used (c)(1) in (c)(3) and (4), so perhaps this was intentional.

In (d)(4)(b)(iii), please choose either "higher" or "more stringent." I think that "higher" is more clear, but you've used "more stringent" in (d)(4)(b)(ii).

In (d)(4)(C)(i), (d)(9)(B)(i), and (d)(13)(A) delete either "Effluent limitations shall be as follows" or "Oxygen Consuming Wastes" Here, do you mean something like "Effluent limitations for oxygen consuming wastes shall be as follows:"?

In (d)(4)(C)(iii) and (d)(9)(B)(iii), either provide what is meant by "equivalent failsafe treatment designs" and say how it will be determined whether something is "equivalent" or delete this language all together and change "including" on line 5 to "such as"

In (d)(12)(B), what is meant by "maximum extent practicable"? Who holds this discretion? If it's you all, please either delete this language or say how it will be applied and determined.

In (d)(12)(F), is "unique hydrology" a term of art? If not, delete or define "unique"

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

Amber May
Commission Counsel
Date submitted to agency: July 30, 2019

15A NCAC 02B .0225 is readopted as published in 32:22 NCR 2411-2493 with changes as follows:

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

(a) ~~General. In addition to the existing classifications, the~~ The Commission ~~may~~ shall classify unique and special surface waters of the ~~state~~ State as outstanding resource waters (ORW) if: ~~upon finding that~~

(1) such waters are of exceptional ~~state~~ State or national recreational or ecological significance [~~which~~] that require special protection to maintain existing [~~uses~~] uses;

(2) ~~and that~~ the waters have exceptional water ~~quality while meeting the following conditions:~~ quality;

~~(1)~~(3) ~~that~~ the water quality is rated as excellent based on physical, chemical or biological information; and

~~(2)~~(4) the characteristics ~~which~~ that make these waters unique and special may not be protected by the assigned narrative and numerical water quality standards.

(b) ~~Outstanding Resource Values.~~ [~~Best Usage of Waters:~~] ~~In order to be classified as ORW, a~~ For purposes of this Rule, a water body shall be deemed to be of exceptional State or national recreational or ecological significance if it exhibits ~~must exhibit~~ one or more of the following ~~values or~~ ORW ~~uses to demonstrate it is of exceptional state or national recreational or ecological significance:~~ uses:

(1) there are outstanding fish (or commercially important aquatic species) habitat and fisheries;

(2) there is an unusually high level of water-based recreation or the potential for such recreation;

(3) the waters have already received some special designation such as a North Carolina or National Wild and Scenic ~~River,~~ ~~Native or Special Native Trout Waters~~ River or a National Wildlife Refuge, which do not provide any water quality protection;

(4) the waters represent an important component of a state or national park or forest; or

(5) the waters are of special ecological or scientific ~~significance~~ significance, such as habitat for rare or endangered species or as areas for research and education.

(c) Quality Standards for ORW.

(1) Freshwater: Water quality conditions shall be maintained to protect the outstanding resource values of waters classified ORW. Management strategies to protect resource values shall be developed on a ~~site-specific~~ site-specific basis during the proceedings to classify waters as ~~ORW.~~ ORW in accordance with Rule .0101 of the Subchapter. No new discharges or expansions of existing discharges shall be permitted, and stormwater controls for all new development activities requiring an Erosion and Sedimentation Control Plan in accordance with rules established by the NC Sedimentation Control Commission or an appropriate local erosion and sedimentation control program shall ~~be required to follow~~ comply with the stormwater provisions ~~as specified~~ set forth in 15A NCAC 02H ~~.1000. Specific~~ .1000, including the specific stormwater management requirements for freshwater ORW areas ~~are described~~ set forth in 15A NCAC 02H ~~.1007.~~ .1019 and .1021.

(2) Saltwater: Water quality conditions shall be maintained to protect the outstanding resource values of waters classified ORW. Management strategies to protect resource values shall be developed on

a site-specific basis during the proceedings to classify waters as ~~ORW.~~ ORW in accordance with Rule .0101 of this Subchapter. New development shall comply with the stormwater provisions ~~as specified~~ set forth in 15A NCAC 02H ~~.1000. Specific~~ .1000, including the specific stormwater management requirements for saltwater ~~ORWs~~ ORW areas ~~are described~~ set forth in 15A NCAC 02H ~~.1007.~~ .1019 and .1021. ~~New non-discharge permits shall meet reduced loading rates and increased buffer zones, to be determined on a case-by-case basis.~~ No dredge or fill activities shall be allowed if those activities would result in a reduction of the beds of ~~submerged~~ "submerged aquatic vegetation habitat" or ~~a reduction of shellfish~~ "shellfish producing ~~habitat~~ [~~habitat"~~] ~~as~~ [that are] habitat," defined in 15A NCAC 03I ~~.0101(b)(20)(A) and (B),~~ .0101, [~~hereby~~] and incorporated by reference including subsequent amendments and editions, except for maintenance dredging, such as that required to maintain access to existing channels and facilities located within the designated ~~areas~~ areas, or maintenance dredging for activities such as agriculture. ~~A~~ The Commission shall hold a public hearing ~~is mandatory for any proposed permits~~ before granting a permit to discharge to waters classified as ORW.

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

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

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

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

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

(1) Roosevelt Natural Area [White Oak River Basin, Index Nos. 20-36-9.5-(1) and ~~20-36-9.5-(2)]~~ 20-36-9.5-(2)], including all fresh and saline waters within the property boundaries of the natural ~~area~~ area: ~~shall have only new~~ New development ~~which complies with the low density option in the stormwater rules as specified in 15A NCAC 2H .1005(2)(a)~~ on a site within 575 feet of and naturally draining to the Roosevelt Natural Area (~~if the development site naturally drains to the Roosevelt Natural Area);~~ shall comply with the low density option in the stormwater rules set forth in 15A NCAC 02H .1019.

(2) Chattooga River ORW Area (Little Tennessee River Basin and Savannah River Drainage Area): the following undesignated waterbodies that are tributary to ORW designated segments shall comply with Paragraph (c) of this Rule in order to protect the designated waters as per Rule .0203 of this Section. However, expansions of existing discharges to ~~these~~ the following segments shall be allowed if there is no increase in pollutant loading:

(A) North and South Fowler ~~Creeks;~~ Creeks and associated tributaries;

(B) Green and Norton Mill ~~Creeks;~~ Creeks and associated tributaries;

(C) Cane ~~Creek;~~ Creek and associated tributaries;

(D) Ammons ~~Branch;~~ Branch and associated tributaries; and

(E) Glade ~~Creek; and~~ Creek and associated tributaries.

~~(F) Associated tributaries;~~

(3) Henry Fork ORW Area (Catawba River Basin): the following undesignated waterbodies that are tributary to ORW designated segments shall comply with Paragraph (c) of this Rule in order to protect the designated waters as per Rule .0203 of this Section:

(A) Ivy ~~Creek;~~ Creek and associated tributaries; and

(B) Rock ~~Creek; and~~ Creek and associated tributaries.

~~(C) Associated tributaries;~~

(4) South Fork New and New Rivers ORW Area [New River Basin (Index Nos. 10-1-33.5 and 10)]: the following management strategies, in addition to the discharge requirements ~~specified~~ set forth in Subparagraph (c)(1) of this Rule, shall ~~be applied to protect~~ apply to the designated ORW areas:

(A) Stormwater controls described in Subparagraph (c)(1) of this Rule shall apply to land within one mile of and that drains to the designated ORW areas;

(B) New or expanded National Pollutant Discharge Elimination System ~~NPDES~~ (NPDES) permitted wastewater discharges located upstream of the designated ORW (for the North Fork New River ORW ~~are~~ area, see Subparagraph (14) of this Paragraph) shall be permitted such that the following water quality standards are maintained in the ORW segment:

(i) the total volume of treated wastewater for all upstream discharges combined shall not exceed 50 percent of the total instream flow in the designated ORW under 7Q10 conditions, which are defined in Rule .0206(a)(1) of this Section;

(ii) a safety factor shall be applied to any chemical allocation such that the effluent limitation for a specific chemical constituent shall be the more stringent of either the limitation allocated under design conditions ~~(pursuant to 15A NCAC 02B .0206)~~ pursuant to Rule .0206 of this Section for the normal standard at the point of discharge, or the limitation allocated under design conditions for one-half the normal standard at the upstream border of the ORW segment;

(iii) a safety factor shall be applied to any discharge of complex wastewater (those containing or potentially containing toxicants) to protect for chronic toxicity in the ORW segment by setting the whole effluent toxicity limitation at the higher (more stringent) percentage effluent determined under design conditions ~~(pursuant to 15A NCAC 02B .0206)~~ pursuant to Rule .0206 of this Section for either the instream effluent concentration at the point of discharge or twice the effluent concentration calculated as if the discharge were at the upstream border of the ORW segment;

(C) New or expanded NPDES permitted wastewater discharges located upstream of the designated ORW (for the North Fork New River ORW ~~area;~~ area, see Subparagraph (14) of this Paragraph) shall comply with the following:

(i) Oxygen Consuming Wastes: Effluent limitations shall be as follows: ~~BOD = 5 mg/1, and NH3-N = 2 mg/1;~~ BOD shall not exceed 5 mg/l and NH3-N shall not exceed 2 mg/l;

(ii) Total Suspended Solids: Discharges of total suspended solids (TSS) shall be limited to effluent concentrations of 10 mg/1 for trout waters and to 20 mg/1 for all other waters;

(iii) Emergency Requirements: Failsafe treatment designs shall be employed, including stand-by power capability for entire treatment works, dual train design for all treatment components, or equivalent failsafe treatment designs;

(iv) Nutrients: ~~Where~~ If nutrient overenrichment is projected to be a concern, effluent limitations shall be set for ~~phosphorus or~~ phosphorus, nitrogen, or both;

(5) Old Field Creek (New River Basin): the undesignated portion of Old Field Creek ~~(from~~ from its source to Call ~~Creek)~~ Creek shall comply with Paragraph (c) of this Rule in order to protect the designated waters as per Rule .0203 of this Section;

(6) In the following designated waterbodies, no additional restrictions shall be placed on new or expanded marinas. The only new or expanded NPDES permitted discharges that shall be allowed shall be non-domestic, non-process industrial discharges. The Alligator River Area (Pasquotank River ~~Basin)~~ Basin), extending from the source of the Alligator River to the U.S. Highway 64 ~~bridge~~ bridge, including New Lake Fork, North West Fork Alligator River, Juniper Creek, Southwest Fork Alligator River, Scouts Bay, Gum Neck Creek, Georgia Bay, Winn Bay, Stumpy Creek Bay,

Stumpy Creek, Swann Creek (Swann Creek Lake), Whipping Creek (Whipping Creek Lake), Grapevine Bay, Rattlesnake Bay, The Straits, The Frying Pan, Coopers Creek, Babbitt Bay, Goose Creek, Milltail Creek, Boat Bay, Sandy Ridge Gut (Sawyer Lake) and Second Creek, but excluding the Intracoastal Waterway (Pungo River-Alligator River Canal) and all other tributary streams and canals;

(7) In the following designated waterbodies, the only type of new or expanded marina that shall be allowed shall be those marinas located in upland basin areas, or those with ~~less~~ fewer than 10 ~~slips,~~ slips having no boats over ~~21~~ 24 feet in length and no boats with heads. The only new or expanded NPDES permitted discharges that shall be allowed shall be non-domestic, non-process industrial discharges:

(A) ~~The~~ the Northeast Swanquarter Bay Area including all waters northeast of a line from a point at Lat. 35E 23N 51O and Long. 76E 21N 02O thence southeast along the Swanquarter National Wildlife Refuge hunting closure boundary (as defined by the 1935 Presidential ~~Proclamation)~~ Proclamation and depicted on the U.S. Fish and Wildlife Service Swanquarter National Wildlife Refuge map at https://www.fws.gov/southeast/pdf/map/swanquarter-national-wildlife-refuge.pdf, incorporated by reference) to Drum ~~Point.~~ Point;

(B) ~~The~~ the Neuse-Southeast Pamlico Sound Area (Southeast Pamlico Sound Section of the Southeast Pamlico, Core and Back Sound Area); (Neuse River Basin) including all waters within an area defined by a line extending from the southern shore of Ocracoke Inlet northwest to the Tar-Pamlico River and Neuse River basin boundary, then southwest to Ship ~~Point.~~ Point;

(C) ~~The~~ the Core Sound Section of the Southeast Pamlico, Core and Back Sound Area (White Oak River Basin), including all waters of Core Sound and its tributaries, but excluding Nelson Bay, Little Port Branch and Atlantic Harbor at its mouth, and those tributaries of Jarrett Bay that are closed to ~~shellfishing.~~ shellfishing;

(D) ~~The~~ the Western Bogue Sound Section of the Western Bogue Sound and Bear Island Area (White Oak River ~~Basin)~~ Basin), including all waters within an area defined by a line from Bogue Inlet to the mainland at SR 1117 to a line across Bogue Sound from the southwest side of Gales Creek to Rock ~~Point,~~ Point and including Taylor Bay and the Intracoastal ~~Waterway.~~ Waterway;

(E) ~~The~~ the Stump Sound Area (Cape Fear River ~~Basin)~~ Basin), including all waters of Stump Sound and Alligator Bay from marker Number 17 to the western end of Permuda Island, but excluding Rogers Bay, the Kings Creek Restricted ~~Area~~ Area, and Mill ~~Creek.~~ Creek; and

(F) ~~The~~ the Topsail Sound and Middle Sound Area (Cape Fear River ~~Basin)~~ Basin), including all estuarine waters from New Topsail Inlet to Mason ~~Inlet,~~ Inlet and including the

Intracoastal Waterway and Howe Creek, but excluding Pages Creek and Futch ~~Creek;~~ Creek.

(8) In the following designated waterbodies, no new or expanded NPDES permitted discharges and only new or expanded marinas with ~~less~~ fewer than 10 ~~slips,~~ slips having no boats over ~~21~~ 24 feet in length and no boats with heads shall be allowed:

(A) ~~The~~ the Swanquarter Bay and Juniper Bay Area (Tar-Pamlico River ~~Basin)~~ Basin), including all waters within a line beginning at Juniper Bay Point and running south and then west below Great Island, then northwest to Shell Point and including ~~Shell Bay,~~ Shell, ~~Swanquarter~~ Swanquarter, and Juniper Bays and their tributaries, but excluding all waters northeast of a line from a point at Lat. 35E 23N 51O and Long. 76E 21N 02O thence southeast along the Swanquarter National Wildlife Refuge hunting closure boundary (as defined by the 1935 Presidential ~~Proclamation)~~ Proclamation and depicted on the U.S. Fish and Wildlife Service Swanquarter National Wildlife Refuge map at https://www.fws.gov/southeast/pdf/map/swanquarter-national-wildlife-refuge.pdf, incorporated by reference) to Drum Point and also excluding the ~~Blowout Canal,~~ Blowout, ~~Hydeland Canal,~~ Hydeland, ~~Juniper Canal~~ Juniper, and Quarter ~~Canal.~~ Canals;

(B) ~~The~~ the Back Sound Section of the Southeast Pamlico, Core and Back Sound Area (White Oak River ~~Basin)~~ Basin), including that area of Back Sound extending from Core Sound west along Shackleford Banks, then north to the ~~western most~~ westernmost point of Middle Marshes and along the northwest shore of Middle Marshes (to include all of Middle Marshes), then west to Rush Point on Harker's Island, and along the southern shore of Harker's Island back to Core ~~Sound.~~ Sound;

(C) ~~The~~ the Bear Island Section of the Western Bogue Sound and Bear Island Area (White Oak River ~~Basin)~~ Basin), including all waters within an area defined by a line from the western most point on Bear Island to the northeast mouth of Goose Creek on the mainland, east to the southwest mouth of Queen Creek, then south to green marker No. 49, then northeast to the northern most point on Huggins Island, then southeast along the shoreline of Huggins Island to the southeastern most point of Huggins Island, then south to the northeastern most point on Dudley Island, then southwest along the shoreline of Dudley Island to the eastern tip of Bear ~~Island.~~ Island; and

(D) ~~The~~ the Masonboro Sound Area (Cape Fear River ~~Basin)~~ Basin), including all waters between the Barrier Islands and the mainland from Carolina Beach Inlet to Masonboro ~~Inlet;~~ Inlet.

(9) Black and South Rivers ORW Area (Cape Fear River Basin) [Index Nos. 18-68-(0.5), 18-68-(3.5), 18-68-(11.5), 18-68-12-(0.5), 18-68-12-(11.5), and 18-68-2]: the following management ~~strategies,~~ strategies shall be required in addition to the discharge requirements specified in Subparagraph (c)(1) of this ~~Rule, shall be applied to protect the designated ORW areas:~~ Rule:

(A) Stormwater controls described in Subparagraph (c)(1) of this Rule shall apply to land within one mile of and that drains to the designated ORW areas;

(B) New or expanded NPDES permitted wastewater discharges located one mile upstream of the stream segments designated ORW (upstream on the designated mainstem and upstream into direct tributaries to the designated mainstem) shall comply with the following discharge restrictions:

(i) Oxygen Consuming Wastes: Effluent limitations shall be as follows: ~~BOD = 5 mg/1, and NH3-N = 2 mg/1;~~ BOD shall not exceed 5 mg/l and NH3-N shall not exceed 2 mg/l;

(ii) Total Suspended Solids: Discharges of total suspended solids (TSS) shall be limited to effluent concentrations of 20 mg/l;

(iii) Emergency Requirements: Failsafe treatment designs shall be employed, including stand-by power capability for entire treatment works, dual train design for all treatment components, or equivalent failsafe treatment designs;

(iv) Nutrients: ~~Where~~ If nutrient overenrichment is projected to be a concern, effluent limitations shall be set for ~~phosphorus~~ phosphorus, ~~or~~ nitrogen, or both.

(v) Toxic substances: ~~In cases where~~ If complex discharges (those containing or potentially containing toxicants) may be currently present in the discharge, a safety factor shall be applied to any chemical or whole effluent toxicity allocation. The limit for a specific chemical constituent shall be allocated at one-half of the normal standard at design conditions. Whole effluent toxicity shall be allocated to protect for chronic toxicity at an effluent concentration equal to twice that which is acceptable under flow design criteria ~~(pursuant to 15A NCAC 02B .0206);~~ pursuant to Rule .0206 of the Section.

(10) Lake Waccamaw ORW Area (Lumber River Basin) [Index No. 15-2]: all undesignated waterbodies that are tributary to Lake Waccamaw shall comply with Paragraph (c) of this Rule in order to protect the designated waters as per Rule .0203 of this Section;

(11) Swift Creek and Sandy Creek ORW Area (Tar-Pamlico River Basin) [portion of Index No. 28-78-(0.5) and Index No. 28-78-1-(19)]: all undesignated waterbodies that drain to the designated waters shall comply with Paragraph (c) of this Rule in order to protect the designated waters as per Rule .0203 of this Section and to protect outstanding resource values found in the designated waters as well as in the undesignated waters that drain to the designated waters;

(12) Fontana Lake North Shore ORW Area (Little Tennessee River Basin and Savannah River Drainage Area) [Index Nos. 2-96 through ~~2-164~~ 2-164] (excluding all waterbodies that drain to the south shore of Fontana Lake) consists of the entire watersheds of all creeks that drain to the north shore of Fontana Lake between Eagle and Forney Creeks, including Eagle and Forney Creeks. In addition to the requirements ~~specified~~ set forth in Subparagraph (c)(1) of this Rule, any person conducting

development activity disturbing greater than or equal to 5,000 square feet of land area in the designated ORW area shall undertake the following actions to protect the outstanding resource values of the designated ORW and downstream waters:

(A) investigate for the presence of and identify the composition of acid-producing rocks by exploratory drilling or other means and characterize the net neutralization potential of the acid-producing rocks prior to commencing the land-disturbing activity;

(B) avoid areas to the maximum extent practical where acid-producing rocks are found with net neutralization potential of –5 or less;

(C) establish background levels of acidity and mineralization prior to commencing land-disturbing ~~activity,~~ activity and monitor and maintain baseline water quality conditions for the duration of the land-disturbing activity and ~~for any period~~ thereafter for a period of at least ~~not less than~~ two years as determined by the Division as part of a certification issued in accordance with 15A NCAC 02H .0500 or stormwater permit issued pursuant to this Rule;

(D) obtain a ~~National Pollutant Discharge Elimination System~~ NPDES permit for construction pursuant to Rule 15A NCAC 02H .0126 prior to initiating land-disturbing activity;

(E) design stormwater control systems to control and treat stormwater runoff ~~generated~~ from all surfaces generated by one inch of ~~rainfall~~ rainfall, in accordance with 15A NCAC ~~02H. 1008;~~ 02H .1003(3), .1003(5), and .1050; and

(F) post development, replicate pre-development runoff characteristics and mimic the natural and unique hydrology of the ~~site, post development.~~ site.

(13) Horsepasture River ORW Area (Savannah Drainage Area) [Index No. 4-13-(0.5) and Index No. 4-13-(12.5)]: all undesignated waterbodies that are located within the Horsepasture River watershed shall comply with Paragraph (c) of this Rule in order to protect the designated waters as per Rule .0203 of this Section and to protect outstanding resource values ~~found~~ throughout the watershed. However, new domestic wastewater discharges and expansions of existing wastewater discharges ~~may~~ shall be allowed provided that:

(A) Oxygen Consuming Wastes: Effluent limitations shall be as follows: ~~BOD = 5 mg/1, and NH3-N = 2 mg/1;~~ BOD shall not exceed 5 mg/l and NH3-N shall not exceed 2 mg/l;

(B) Total Suspended Solids: Discharges of total suspended solids (TSS) shall be limited to effluent concentrations of 10 mg/1 for trout waters and to 20 mg/l for all other waters except for mining operations, which ~~will~~ shall be held to their respective NPDES TSS permit limits;

(C) Nutrients: ~~Where~~ If nutrient overenrichment is projected to be a concern, effluent limitations shall be set for ~~phosphorus or~~ phosphorus, nitrogen, or both; and

(D) Volume: The total volume of treated wastewater for all discharges combined shall not exceed 25 percent of the total instream flow in the designated ORW under 7Q10 conditions, ~~which are~~ as defined in Rule .0206(a)(1) of this Section;

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

History Note: *Authority G.S. 143-214.1; S.L. 2005-97;*
Eff. October 1, 1995;
Amended Eff. August 1, 2003 (see S.L. 2003-433, s.2); August 1, 2000; April 1, 1996; January 1, 1996;
Temporary Amendment Eff. October 7, 2003;
Amended Eff. December 1, 2010; July 1, 2009; January 1, 2007; June 1, ~~2004.~~ 2004;
Readopted Eff. September 1, 2019.

15A NCAC 02B .0226 is readopted as published in 32:22 NCR 2411-2493 as follows:

15A NCAC 02B .0226 EXEMPTIONS FROM SURFACE WATER QUALITY STANDARDS

Variances from applicable standards, revisions to water quality standards or site-specific water quality standards may be granted by the Commission on a case-by-case basis pursuant to G.S. 143-215.3(e), 143-214.3 or 143-214.1. A listing of existing variances shall be maintained and made available to the public by the Division. Exemptions established pursuant to this Rule shall be reviewed as part of the Triennial Review of Water Quality Standards conducted pursuant to 40 CFR 131.10(g).

History Note: *Authority G.S. 143-214.1; 143-214.3; 143-215.3(e);*
Eff. October 1, ~~1995.~~ 1995;
Readopted Eff. September 1, 2019.

REQUEST FOR TECHNICAL CHANGE

AGENCY: Environmental Management Commission

RULE CITATION: 15A NCAC 02B .0227

DEADLINE FOR RECEIPT: Friday, August 9, 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:

Much of (a) appears to be unnecessary. Please review and revise.

If you need (a), what is meant by "the Commission shall develop water quality management plans on a priority basis to attain, maintain or enhance water quality throughout the state." Is that not what these Rules are doing?

In (a), what is meant by "These action may include anything within the powers of the Commission"? Please either delete this language or provide some additional information.

In (a), capitalize "state"

In (b)(1)(B), please add a comma in between "type discharges" and "such as"

In (b)(1)(C), what is the "modeled in-stream oxygen"? Is this in the permit?

In (b)(1)(C), what kind of public hearing? Is there a cross-reference available?

In (b)(2), please consider deleting "as well as the following site-specific action:" and add "In addition" before "all new individual…"

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

Amber May
Commission Counsel
Date submitted to agency: July 30, 2019

15A NCAC 02B .0227 is readopted as published in 32:22 NCR 2411-2493 as follows:

15A NCAC 02B .0227 WATER QUALITY MANAGEMENT PLANS

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

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

(1) The Lockwoods Folly River Area (Lumber River Basin), which includes all waters of the lower Lockwoods Folly River in an area extending north from the Intracoastal Waterway to a line extending from Genoes Point to Mullet Creek, shall be protected by the specific actions described in Parts (A) through (D) of this Subparagraph.

(A) New development activities within 575' of the mean high water line that require a Sedimentation Erosion Control Plan or a CAMA major development permit shall comply with the low density option of the coastal stormwater requirements as specified in 15A NCAC 02H .1005(3)(a).

(B) New or expanded NPDES permits shall be issued only for non-domestic, non-industrial process type discharges such as non-industrial process cooling or seafood processing discharges. A public hearing shall be mandatory for any proposed (new or expanded) NPDES permit to this protected area.

(C) New or expanded marinas shall be located in upland basin areas.

(D) No dredge or fill activities shall be allowed if those activities would result in a reduction of the beds of "submerged aquatic vegetation habitat" or "shellfish producing habitat" that are defined in 15A NCAC 03I .0101, except for maintenance dredging, such as that required to maintain access to existing channels and facilities located within the protected area or maintenance dredging for activities such as agriculture.

(2) A part of the Cape Fear River (Cape Fear River Basin) comprised of a section of Index No.18-(71) from upstream mouth of Toomers Creek to a line across the river between Lilliput Creek and Snows Cut shall be protected by the Class SC Sw standards as well as the following site-specific action: All new individual NPDES wastewater discharges and expansions of existing individual NPDES wastewater discharges shall be required to provide treatment for oxygen consuming wastes as described in Parts (A) through (C) of this Subparagraph.

(A) Effluent limitations shall be as follows: BOD_5 = 5 mg/l, NH_3-N = 1 mg/l and DO = 6 mg/l, or utilize site-specific best available technology on a case-by-case basis for industrial discharges in accordance with Rule .0406 (e) of this Subchapter.

(B) Seasonal effluent limits for oxygen consuming wastes shall be considered in accordance with Rule .0404 of this Subchapter.

(C) Any new or expanded permitted pollutant discharge of oxygen consuming waste shall not cause the dissolved oxygen of the receiving water to drop more than 0.1 mg/l below the modeled in-stream dissolved oxygen at total permitted capacity for all discharges.

History Note: *Authority G.S. 143-214.1; 143-215.8A;*
Eff. October 1, 1995;
Amended Eff. June 30, 2017; January 1, ~~1996.~~ 1996;
Readopted Eff. September 1, 2019.

REQUEST FOR TECHNICAL CHANGE

AGENCY: Environmental Management Commission

RULE CITATION: 15A NCAC 02B .0228

DEADLINE FOR RECEIPT: Friday, August 9, 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:

On line 5, change "which" to "that" in "which shall prevent"

On line 7, how is the director to designate the effluent channels?

What is meant by "such that the channels shall"? Would it make sense to make this its own sentence? I think that the intent here is to say that if it's designated as an effluent channel, then it has to meet Items (1) through (4). Alternatively, are these the factors that will be used in making the determination? I'm thinking that it may actually be a combination of both. Please make this language more clear.

In Item (1), please delete "to be demonstrated by the discharger" and say something like "as demonstrated by…" whatever you want to see. I understand that perhaps you can't list everything, but can you provide some examples of what may constitute sufficient evidence?

In Item (2), delete or define "direct"

In Item (3), how is the determination regarding the minimization of migration of fish made?

In Item (4), are (1) through (3) used in making this determination?

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

Amber May
Commission Counsel
Date submitted to agency: July 30, 2019

15A NCAC 02B .0228 is readopted as published in 32:22 NCR 2411-2493 with changes as follows:

15A NCAC 02B .0228 EFFLUENT CHANNELS

The standards of water quality contained in this Section shall not apply to waters within effluent channels, as defined in Rule .0202 of this Section, except that said waters shall be maintained at a quality which shall prevent the occurrence of offensive conditions, protect public health, and allow maintenance of the standards applicable to all downstream waters. Effluent channels shall be designated by the Director, such that the channels shall:

(1) be contained entirely on property owned (or otherwise controlled) by the discharger (to be demonstrated by the discharger);

(2) not contain natural waters except when such waters occur in direct response to rainfall events by overland runoff;

(3) be so constructed or modified as to minimize the migration of fish into said channel; and

(4) be identified and designated on a case-by-case basis prior to permit issuance.

History Note: *Authority G.S. 143-214.1;*
Eff. October 1, 1995;
Amended Eff. January 1, ~~1996.~~ 1996;
Readopted Eff. September 1, 2019.

REQUEST FOR TECHNICAL CHANGE

AGENCY: Environmental Management Commission

RULE CITATION: 15A NCAC 02B .0230

DEADLINE FOR RECEIPT: Friday, August 9, 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)(1), delete or define "normal"

In (a)(1), add commas behind "farming", "ranching activities", and "fiber"

In (a)(1), delete "relevant" and "must" in "relevant silviculture activities must comply"

In (a)(1), where can the memo be found and what is the cost?

In (a)(2), where can information regarding the Dam Safety Program be found?

In (a)(3), what is meant by "riparian buffer protection regulations"? Do you mean the Rules? Where can they be found?

In (a)(3), here, do you mean something like "New pond construction in designated river basins shall comply with any applicable riparian buffer protection Rules"?

In (a)(5), where can additional information regarding the Sediment and Erosion Control Program be found? Is there a cross-reference available?

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

Amber May
Commission Counsel
Date submitted to agency: July 30, 2019

15A NCAC 02B .0230 is readopted as published in 32:22 NCR 2411-2493 with changes as follows:

15A NCAC 02B .0230 ACTIVITIES DEEMED TO COMPLY WITH WETLANDS STANDARDS

(a) The following activities for which Section 404 permits are not required pursuant to Section 404(f)(1) of the Clean Water Act and which are not recaptured into the permitting process pursuant to Section 404(f)(2) are deemed to be in compliance with wetland standards in 15A NCAC 2B .0231 provided that they comply with the most current versions of the federal regulations to implement Section 404 (f) (US Environmental Protection Agency and US Army Corps of Engineers including 40 C.F.R. 232.3) and the Sedimentation Pollution Control Act, G.S. 113A, Article 4:

(1) normal, on-going silviculture**,** farming and ranching activities such as plowing, seeding, cultivating, minor drainage and harvesting for the production of food, fiber and forest products, or upland soil and water conservation practices, provided that relevant silvicultural activities must comply with U.S. Environmental Protection Agency and U.S. Army Corps of Engineers Memorandum to the Field entitled "Application of Best Management Practices to Mechanical Silvicultural Site Preparation Activities for the Establishment of Pine Plantations in the Southeast", November 28, 1995 which is hereby incorporated by reference including any subsequent amendments and editions;

(2) maintenance, including emergency reconstruction of recently damaged parts, of currently serviceable structures such as dikes, dams, levees, groins, riprap, breakwaters, causeways, and bridge abutments or approaches, and transportation structures**,** and other maintenance, repairs or modification to existing structures as required by the NC Dam Safety Program;

(3) construction and maintenance of farm or stock ponds or irrigation ditches. In addition, new pond construction in designated river basins with riparian buffer protection regulations also must comply with relevant portions of those regulations;

(4) maintenance of drainage ditches, provided that spoil is removed to high ground, placed on top of previous spoil, or placed parallel to one side or the other of the ditch within a distance of 20 feet and spoils are placed in a manner that minimizes damages to existing wetlands; and ditch maintenance is no greater than the original depth, length and width of the ditch;

(5) construction of temporary sediment control measures or best management practices as required by the NC Sediment and Erosion Control Program on a construction site, provided that the temporary sediment control measures or best management practices are restored to natural grade and stabilized within two months of completion of the project and native woody vegetation is reestablished during the next appropriate planting season and maintained; and

(6) construction or maintenance of farm roads, forest roads, and temporary roads for moving mining equipment where such roads are constructed and maintained in accordance with best management practices, as defined in 40 C.F.R. 232.3 (c)(6)(i-xv), to assure that flow and circulation patterns and chemical and biological characteristics of the navigable waters are not impaired, that the reach of navigable waters is not reduced, and that any adverse effects on the aquatic environment will be otherwise minimized.

(b) Where the Director determines, in consultation with the US Army Corps of Engineers or the US Environmental Protection Agency, and considering existing or projected environmental impact, that an activity is not exempt from permitting under Section 404(f), or where the appropriate Best Management Practices are not implemented and maintained in accordance with Paragraph (a) of this Rule, the Director may require restoration of the wetlands as well as imposition of enforcement measures as authorized by G.S. 143-215.6A (civil penalties), G.S. 143-215.6B (criminal penalties) and G.S. 143-215.6C (injunctive relief).

History Note: *Authority G.S. 143-214.1; 143-214.7; 143-215; 143-215.3; 143-215.6A; 143-215.6B; 143-215.6C;*
Temporary Adoption Eff. November 24, 1999;
Eff. April 1, ~~2001.~~ 2001;
Readopted Eff. September 1, 2019.

REQUEST FOR TECHNICAL CHANGE

AGENCY: Environmental Management Commission

RULE CITATION: 15A NCAC 02B .0231

DEADLINE FOR RECEIPT: Friday, August 9, 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 10, classify wetlands as what? WL or SWL? Does this have to do with .0225? Please review and clarify.

On line 12, by "state", do you mean the State of North Carolina? If so, please capitalize "state."

In (b), add a comma after "restore"

In (b)(1), delete or define "extreme" in "extreme water level fluctuations."

In (b)(1), should "the moderation of extreme water level fluctuations" be its own Subparagraph?

In (b)(2), add a comma after "functions" and before "including"

In (b)(3), what is meant by "adversely impact"? I assume that this is a term or art and/or is defined elsewhere in rule, statute, or CFR? Same question for (c).

In (b)(3), capitalize "state"

In (b)(5), add a comma after "organisms" and before "including"

In (b)(5), either delete "but not limited" as unnecessary or add a comma after "to"

In (b)(5), add a comma in between "organisms" and "and the plants…"

In (b)(6) add commas after "reptiles" and "travel corridors"

In (c)(1) add a comma after "other solids"

Amber May
Commission Counsel
Date submitted to agency: July 30, 2019

In (c)(1), (2), (3), and (4), should "may not be present" be "shall not be present"

In (c)(1), (2), (3), and (4), change "which" to "that" in "which may cause…"

In (c)(3), what is "unsightliness"? Please delete or define.

In (c)(3), add a comma after "taste"

In (c)(4), change "which" to "that" in "which are toxic"

In (c)(4), add a comma in between "animal" and "or plant life"

In (c)(5)(A), add a comma in between "erosion: and "or sedimentation patterns"

In (c)(5)(C), please add a comma in between "nutrient" and "and dissolved oxygen"

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

Amber May
Commission Counsel
Date submitted to agency: July 30, 2019

15A NCAC 02B .0231 is readopted as published in 32:22 NCR 2411-2493 with changes as follows:

15A NCAC 02B .0231 WETLAND STANDARDS

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

(1) Class WL: waters that meet the definition of wetlands as defined in Rule .0202 of this Section except those designated as [~~SWL.~~] SWL; or

(2) Class SWL: waters that meet the definition of coastal wetlands as defined by 15A NCAC 07H .0205, which are landward of the mean high water line, and wetlands contiguous to estuarine waters as defined by 15A NCAC 07H .0206.

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

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

(1) Storm and flood water storage and retention and the moderation of extreme water level fluctuations;

(2) Hydrologic functions including groundwater discharge that contributes to maintain dry weather streamflow and, at other locations or times, groundwater recharge that replenishes the groundwater system;

(3) Filtration or storage of sediments, nutrients, toxic substances, or other pollutants that would otherwise adversely impact the quality of other waters of the state;

(4) Shoreline protection against erosion through the dissipation of wave energy and water velocity and stabilization of sediments;

(5) Habitat for the propagation of resident wetland-dependent aquatic organisms including, but not limited to fish, crustaceans, mollusks, insects, annelids, planktonic organisms and the plants and animals upon which these aquatic organisms feed and depend upon for their needs in all life stages; and

(6) Habitat for the propagation of resident wetland-dependent wildlife species, including mammals, birds, reptiles and amphibians for breeding, nesting, cover, travel corridors and food.

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

(1) Liquids, fill or other solids or dissolved gases may not be present in amounts which may cause adverse impacts on existing wetland uses;

(2) Floating or submerged debris, oil, deleterious substances, or other material may not be present in amounts which may cause adverse impacts on existing wetland uses;

(3) Materials producing color, odor, taste or unsightliness may not be present in amounts which may cause adverse impacts on existing wetland uses;

(4) Concentrations or combinations of substances which are toxic or harmful to human, animal or plant life may not be present in amounts which individually or cumulatively may cause adverse impacts on existing wetland uses;

(5) Hydrological conditions necessary to support the biological and physical characteristics naturally present in wetlands shall be protected to prevent adverse impacts on:

(A) Water currents, erosion or sedimentation patterns;

(B) Natural water temperature variations;

(C) The chemical, nutrient and dissolved oxygen regime of the wetland;

(D) The movement of aquatic fauna;

(E) The pH of the wetland; and

(F) Water levels or elevations.

(6) The populations of wetland flora and fauna shall be maintained to protect biological integrity as defined ~~at~~ in ~~15A NCAC 2B .0202.~~ Rule .0202 of this Section.

History Note: *Authority G.S. 143-214.1; 143-215.3(a)(1);*
RRC Objection Eff. July 18, 1996 due to lack of statutory authority and ambiguity;
Eff. October 1, ~~1996.~~ 1996;
Readopted Eff. September 1, 2019.

REQUEST FOR TECHNICAL CHANGE

AGENCY: Environmental Management Commission

RULE CITATION: 15A NCAC 02B .0301

DEADLINE FOR RECEIPT: Friday, August 9, 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 (b), would it be appropriate to add CA?

Would it be appropriate to make the last sentence in (b) ("The 'best usage'…" its own Paragraph?

In (d), since you've provided the weblink in (a), I don't think it's necessary to do so again in this Paragraph.

In (f)(1)(B), approved by whom? Is there a cross-reference available?

In (f)(1)(B), change "will" to "shall" in "will be classified"

In (f)(2), what are "different policies"? Do you mean that these are otherwise set forth in Rule? Please clarify.

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

Amber May
Commission Counsel
Date submitted to agency: July 30, 2019

15A NCAC 02B .0301 is readopted as published in 32:22 NCR 2411-2493 as follows:

15A NCAC 02B .0301 CLASSIFICATIONS: GENERAL

(a) ~~Schedule of Classifications.~~ The classifications assigned to the waters of the State of North Carolina are set forth in ~~the schedules of classifications and water quality standards assigned to the waters of the river basins of North Carolina, 15A NCAC 2B .0302 to .0317.~~ river basin classification schedules provided on the Internet at http://portal.ncdenr.org/web/wq/ps/csu/classifications and in Rules .0302 to .0317 of this Section. These classifications are based upon ~~the existing or contemplated best usage of the various streams and segments of streams in the basin, as determined through studies and evaluations and the holding of public hearings for consideration of the classifications proposed.~~ procedures described in Rule .0101 of this Subchapter.

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

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

~~Fresh Waters~~

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

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

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

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

~~Class WS-V: waters protected as water supplies which are generally upstream and draining to Class WS-IV waters or waters previously used for drinking water supply purposes or waters used by industry to supply their employees, but not municipalities or counties, with a raw drinking water supply source, although this type of use is not restricted to a WS-V classification; no categorical restrictions on watershed development or treated wastewater discharges are required, however, the Commission or its designee may apply appropriate management requirements as deemed necessary for the protection of downstream receiving waters (15A NCAC 2B .0203); suitable for all Class C uses;~~

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

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

~~Tidal Salt Waters:~~

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

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

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

~~Supplemental Classifications~~

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

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

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

~~HQW: High Quality Waters which are waters that are rated as excellent based on biological and physical/chemical characteristics through division monitoring or special studies, native and special native trout waters (waters and their tributaries) designated by the Wildlife Resources Commission, primary nursery areas (PNA) designated by the Marine Fisheries Commission and other functional nursery areas designated by the Wildlife Resources Commission, critical habitat areas designated by the Wildlife Resources Commission or the Department of Agriculture, all water supply watersheds which are either classified as WS-I or WS-II or those for which a formal petition for reclassification as WS-I or WS-II has been received from the appropriate local government and accepted by the Division of Environmental Management and all Class SA waters.~~

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

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

(1) Fresh Waters Classifications:

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

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

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

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

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

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

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

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

(2) Tidal Salt Waters Classifications:

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

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

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

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

(3) Supplemental Classifications:

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

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

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

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

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

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

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

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

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

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

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

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

~~Director~~

~~Division of Environmental Management~~

~~Department of Environment, Health, and Natural Resources~~

~~Post Office Box 29535~~

~~Raleigh, North Carolina 27626-0535~~

~~(h) Places where the schedules may be inspected:~~

~~Division of State Library~~

~~Archives - State Library Building~~

~~109 E. Jones Street~~

~~Raleigh, North Carolina.~~

~~(i)~~(f) Unnamed Streams.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

History Note: *Authority G.S. 143-214.1; 143-214.5; 143-215.1; 143-215.3(a)(1);*
Eff. February 1, 1976;
Amended Eff. August 1, 1995; August 3, 1992; August 1, 1990; October 1, ~~1989.~~ 1989;

Readopted Eff. September 1, 2019.

REQUEST FOR TECHNICAL CHANGE

AGENCY: Environmental Management Commission

RULE CITATION: 15A NCAC 02B .0302

DEADLINE FOR RECEIPT: Friday, August 9, 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:

Please consider beginning (a)(2) with "the following offices of the North Carolina…"

For consistency purposes, in (b), delete "Streams. Such" so that it reads "Unnamed ~~Streams. Such~~ streams entering…" I make this suggestion because you don't have this type of introductory language anywhere else in this Rule.

In (c), please consider deleting the repetitive dates. I note that this was done to Rule .0306 back in 2014 and other Rules do not have duplicates. In this Rule, the repetitive dates are in (c)(3) and (5) through (7).

In (c), out of curiosity, where is the information for August 1, 1990? Is there a reason that this information isn't in Rule like the others? I note that this date is in all of these Rules.

In (g), line 1, please move the comma found after "rules" to behind "(… .0300)"

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

Amber May
Commission Counsel
Date submitted to agency: July 30, 2019

15A NCAC 02B .0302 is readopted as published in 32:22 NCR 2411-2493 as follows:

15A NCAC 02B .0302 HIWASSEE RIVER BASIN

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

(1) ~~Clerk of Court:~~
~~Cherokee County~~
~~Clay County;~~ the Internet at http://portal.ncdenr.org/web/wq/ps/csu/classifications; and

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

(A) Asheville Regional Office ~~Interchange Building~~
~~59 Woodfin Place~~ 2090 US 70
~~Asheville, North Carolina.~~ Swannanoa, North Carolina; and

(B) Division of Water Resources
Central Office
512 North Salisbury Street
Raleigh, North Carolina.

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

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

(1) August 9, 1981;
(2) February 1, 1986;
(3) March 1, 1989;
(4) August 1, 1990;
(5) August 3, 1992;
(6) July 1, 1995;
(7) August 1, 2002.

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

(1) Fires Creek (Index No. 1-27) and all tributary waters were reclassified from Class C-trout and Class C to Class C-trout ORW and Class C ORW.
(2) Gipp Creek (Index No. 1-52-23) and all tributary waters were reclassified from Class C-trout and Class C to Class C-trout ORW and Class C ORW.

(e) The ~~Schedule of Classifications and Water Quality Standards for the~~ Hiwassee River Basin Classification Schedule was amended effective August 3, 1992 with the reclassification of all water supply waters (with a primary classification of WS-I, WS-II or WS-III). These waters were reclassified to WS-I, WS-II, WS-III, WS-IV or WS-V as

defined in the revised water supply protection rules, (15A NCAC 02B .0100, .0200 and .0300) which became effective on August 3, 1992. In some cases, streams with primary classifications other than WS were reclassified to a WS classification due to their proximity and linkage to water supply waters. In other cases, waters were reclassified from a WS classification to an alternate appropriate primary classification after being identified as downstream of a water supply intake or identified as not being used for water supply purposes.

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

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

History Note: *Authority G.S. 143-214.1; 143-215.1; 143-215.3(a)(1);*
Eff. February 1, 1976;
Amended Eff. August 1, 2002; July 1, 1995; August 3, 1992; August 1, 1990; March 1, ~~1989.~~ 1989;
Readopted Eff. September 1, 2019.

REQUEST FOR TECHNICAL CHANGE

AGENCY: Environmental Management Commission

RULE CITATION: 15A NCAC 02B .0303

DEADLINE FOR RECEIPT: Friday, August 9, 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:

Please consider beginning (a)(2) with "the following offices of the North Carolina…"

For consistency purposes, in (b), delete "Streams. Such" so that it reads "Unnamed ~~Streams. Such~~ streams entering…" I make this suggestion because you don't have this type of introductory language anywhere else in this Rule.

In (c), please consider deleting the repetitive dates. I note that this was done to Rule .0306 back in 2014 and other Rules do not have duplicates. In this Rule, the repetitive dates are in (c)(3) and (5) through (7).

In (h), line 34, please move the comma found after "rules" to behind "(… .0300)"

In (q), you've said "the "+" symbol as used in this paragraph"; however, I don't see that this is used at all in this Rule. The first time I see this is in .0307. I note that I don't see any explanation for the use in .0307. Should this language be there?

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

Amber May
Commission Counsel
Date submitted to agency: July 30, 2019

15A NCAC 02B .0303 is readopted as published in 32:22 NCR 2411-2493 as follows:

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

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

(1) the Internet at ~~http://h2o.enr.state.nc.us/csu/;~~ http://portal.ncdenr.org/web/wq/ps/csu/classifications; and

(2) the North Carolina Department of ~~Environment and Natural Resources:~~ Environmental Quality:

(A) Asheville Regional Office
2090 US Highway 70
Swannanoa, North ~~Carolina~~ Carolina; and

(B) Division of Water ~~Quality~~ Resources
Central Office
512 North Salisbury Street
Raleigh, North Carolina.

(b) Unnamed Streams. Such streams entering Georgia or Tennessee shall be classified "C Tr." Such streams in the Savannah River drainage area entering South Carolina shall be classified "B Tr."

(c) The Little Tennessee River Basin and Savannah River Drainage Area ~~Schedule of Classifications and Water Quality Standards~~ Classification Schedule was amended effective:

(1) February 16, 1977;
(2) March 1, 1977;
(3) July 13, 1980;
(4) February 1, 1986;
(5) October 1, 1987;
(6) March 1, 1989;
(7) January 1, 1990;
(8) July 1, 1990;
(9) August 1, 1990;
(10) March 1, 1991;
(11) August 3, 1992;
(12) February 1, 1993;
(13) August 1, 1994;
(14) September 1, 1996;
(15) August 1, 1998;
(16) August 1, 2000;

(17) April 1, 2003;

(18) January 1, 2007;

(19) November 1, 2007;

(20) July 1, 2009.

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

(1) Nantahala River (Index No. 2-57) from source to the backwaters of Nantahala Lake and all tributary waters were reclassified from Class B-trout, Class C-trout and Class C to Class B-trout ORW, Class C-trout ORW and Class C ORW.

(2) Chattooga River (Index No. 3) including Scotsman Creek, Overflow Creek, Big Creek, Talley Mill Creek and all tributary waters were reclassified from Class B-trout, Class C-trout and Class C to Class B-trout ORW, Class C-trout ORW and Class C ORW and Clear Creek and all tributary waters were reclassified from Class C-trout and Class C to Class B-trout and Class B.

(e) The ~~Schedule of Classifications and Water Quality Standards for the~~ Little Tennessee River Basin and Savannah River Drainage Area Classification Schedule was amended effective January 1, 1990 as follows:

(1) North Fork Coweeta Creek (Index No. 2-10-4) and Falls Branch (Index No. 2-10-4-1) were reclassified from Class C to Class B.

(2) Burningtown Creek (Index No. 2-38) was reclassified from C-trout to B-trout.

(f) The ~~Schedule of Classifications and Water Quality Standards for the~~ Little Tennessee River Basin and Savannah River Drainage Area Classification Schedule was amended effective July 1, 1990 by the reclassification of Alarka Creek (Index No. 2-69) from source to Upper Long Creek (Index No. 2-69-2) including all tributaries from Classes C and C Tr to Classes C HQW and C Tr HQW.

(g) The ~~Schedule of Classifications and Water Quality Standards for the~~ Little Tennessee River Basin and Savannah River Drainage Area Classification Schedule was amended effective March 1, 1991 as follows:

(1) Cartoogechaye Creek [Index Nos. 2-19-(1) and 2-19-(16)] from Gibson Cove Branch to bridge at U.S. Hwy. 23 and 441 and from the bridge at U.S. Hwy. 23 and 441 to the Little Tennessee River was reclassified from Classes WS-III Tr and C Tr to Classes WS-III and B Tr and B Tr respectively.

(2) Coweeta Creek (Index Nos. 2-10) from its source to the Little Tennessee River including all tributaries except Dryman Fork (Index No. 2-10-3) and North Fork Coweeta Creek (Index No. 2-10-4) was reclassified from Classes C and C Tr to Classes B and B Tr.

(h) The ~~Schedule of Classifications and Water Quality Standards for the~~ Little Tennessee River Basin and Savannah River Drainage Area Classification Schedule was amended effective August 3, 1992 with the reclassification of all water supply waters (waters with a primary classification of WS-I, WS-II or WS-III). These waters were reclassified to WS-I, WS-II, WS-III, WS-IV or WS-V as defined in the revised water supply protection rules, (15A NCAC 02B .0100, .0200 and .0300) which became effective on August 3, 1992. In some cases, streams with primary classifications other than WS were reclassified to a WS classification due to their proximity and linkage to water supply waters. In other cases, waters were reclassified from a WS classification to an alternate appropriate primary

classification after being identified as downstream of a water supply intake or identified as not being used for water supply purposes.

(i) The ~~Schedule of Classifications and Water Quality Standards for the~~ Little Tennessee River Basin and Savannah River Drainage Area Classification Schedule has been amended effective February 1, 1993 as follows:

(1) Bearwallow Creek from its source to 2.3 miles upstream of the Toxaway River [Index No. 4-7-(1)] was revised to indicate the application of an additional management strategy ~~(referencing 15A NCAC 02B .0201(d)~~(.0201(d) of this Subchapter) to protect downstream waters; and

(2) the Tuckaseegee River from its source to Tennessee Creek [Index No. 2-79-(0.5)] including all tributaries was reclassified from Classes WS-III&B Tr HQW, WS-III HQW and WS-III to Classes WS-III Tr ORW and WS-III ORW.

(j) The ~~Schedule of Classifications and Water Quality Standards for the~~ Little Tennessee River Basin and Savannah River Drainage Area Classification Schedule was amended effective August 1, 1994 with the reclassification of Deep Creek [Index Nos. 2-79-63-(1) and 2-79-63-(16)] from its source to the Great Smokey Mountains National Park Boundary including tributaries from Classes C Tr, B Tr and C Tr HQW to Classes WS-II Tr and WS-II Tr CA.

(k) The ~~Schedule of Classifications and Water Quality Standards for the~~ Little Tennessee River Basin and Savannah River Drainage Area Classification Schedule was amended effective September 1, 1996 as follows:

(1) Deep Creek from the Great Smoky Mountains National Park Boundary to the Tuckasegee River [Index no. 2-79-63-(21)] was reclassified from Class C Tr to Class B Tr; and

(2) the Tuckasegee River from the West Fork Tuckasegee River to Savannah Creek and from Macks Town Branch to Cochran Branch [Index Nos. 2-79-(24), 2-79(29.5) and 2-79-(38)] was reclassified from Classes WS-III Tr, WS-III Tr CA and C to Classes WS-III&B Tr, WS-III&B Tr CA and B.

(l) The ~~Schedule of Classifications and Water Quality Standards for the~~ Little Tennessee River Basin and Savannah River Drainage Area Classification Schedule was amended effective August 1, 1998 with the reclassifications of Thorpe Reservoir (Lake Glenville), Hurricane Creek, and Laurel Branch [Index Nos. 2-79-23-(1), 2 -79-23-2, and 2-79-23-2-1 respectively] from classes WS-III&B, WS-III Tr and WS-III to classes WS-III&B HQW, WS-III Tr HQW, and WS-III HQW.

(m) The ~~Schedule of Classifications and Water Quality Standards for the~~ Little Tennessee River Basin and Savannah River Drainage Area Classification Schedule was amended August 1, 2000 with the reclassification of Wesser Creek [Index No. 2-79-52-5-1] from its source to Williams Branch from Class C to Class C Tr.

(n) The ~~Schedule of Classifications and Water Quality Standards for the~~ Little Tennessee River Basin and Savannah River Drainage Area Classification Schedule was amended April 1, 2003 with the reclassification of a portion of the Little Tennessee River [Index No. 2-(1)] from a point 0.4 mile upstream of N.C. Highway 28 to Nantahala River Arm of Fontana Lake from Class C to Class B.

(o) The ~~Schedule of Classifications and Water Quality Standards for the~~ Little Tennessee River Basin and Savannah River Drainage Area Classification Schedule was amended January 1, 2007 with the reclassification of the entire watersheds of all creeks that drain to the north shore of Fontana Lake between Eagle and Forney Creeks, including Eagle and Forney Creeks, [Index Nos. 2-96 through 2-164 (excluding all waterbodies that drain to the south shore of

Fontana Lake)] from Class B, C Tr, WS-IV Tr CA, WS-IV Tr, and WS-IV & B CA to Class B ORW, C Tr ORW, WS-IV Tr ORW CA, WS-IV Tr ORW, and WS-IV & B ORW CA, respectively. Additional site-specific management strategies are outlined in ~~Rule 15A NCAC 02B .0225(e)(12).~~ Rule .0225(e)(12) of this Subchapter.

(p) The ~~Schedule of Classifications and Water Quality Standards for the~~ Little Tennessee River Basin and Savannah River Drainage Area Classification Schedule was amended effective November 1, 2007 with the reclassification of Richland Balsam Seep near Beechflat Creek [Index No. 2-79-28-3-2] to Class WL ~~UWL as defined in 15A NCAC 02B. 0101.~~ UWL. The Division of Water ~~Quality~~ Resources maintains a Geographic Information Systems data layer of the UWL.

(q) The ~~Schedule of Classifications and Water Quality Standards for the~~ Little Tennessee River Basin and Savannah River Drainage Area Classification Schedule was amended July 1, 2009 with the reclassification of the watershed of the lower portion of the Horsepasture River [portion of Index Number 4-13-(12.5)] from a point approximately 0.60 miles downstream of N.C. 281 (Bohaynee Road) to the NC-SC state line from Class B Tr to Class B Tr ORW, and the watershed of the upper portion of the Horsepasture River [Index Number 4-13-(0.5) and a portion of Index Number 4-13-(12.5)] from source to a point approximately 0.60 miles downstream of N.C. 281 (Bohaynee Road) to include only the ORW management strategy as represented by "+". The "+" symbol as used in this paragraph means that all undesignated waterbodies that are located within the watershed of the upper portion of Horsepasture River shall comply with ~~Paragraph (e) of Rule .0225~~ Rule .0225(c) of this Subchapter in order to protect the designated waters as per Rule .0203 of this Subchapter and to protect outstanding resource values found throughout the entire Horsepasture River watershed. Site-specific management strategies are outlined in ~~15A NCAC 02B .0225(e)(13).~~ Rule .0225(e)(13) of this Subchapter.

History Note: *Authority G.S. 143-214.1; 143-215.1; 143-215.3(a)(1); S.L. 2005-97;*
Eff. February 1, 1976;
Amended Eff. July 1, 2009; November 1, 2007; January 1, 2007; April 1, 2003; August 1, 2000; August 1, 1998; September 1, 1996; August 1, 1994; February 1, 1993; August 3, 1992; March 1, ~~1991.~~ 1991;
Readopted Eff. September 1, 2019.

REQUEST FOR TECHNICAL CHANGE

AGENCY: Environmental Management Commission

RULE CITATION: 15A NCAC 02B .0304

DEADLINE FOR RECEIPT: Friday, August 9, 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:

Please consider beginning (a)(2) with "the following offices of the North Carolina…"

For consistency purposes, in (b), delete "Streams. Such" so that it reads "Unnamed ~~Streams. Such~~ streams entering…" I make this suggestion because you don't have this type of introductory language anywhere else in this Rule.

In (g), line 8, please move the comma found after "rules" to behind "(….0300)"

In (v), should "is amended effective" be "was amended effective" to match language elsewhere in your Rules? Even the most recent change uses a "was" elsewhere.

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

Amber May
Commission Counsel
Date submitted to agency: July 30, 2019

15A NCAC 02B .0304 is readopted as published in 32:22 NCR 2411-2493 as follows:

15A NCAC 02B .0304 FRENCH BROAD RIVER BASIN

(a) ~~Effective February 1, 1976, the adopted classifications~~ Classifications assigned to the waters within the French Broad River Basin are set forth in the French Broad River Basin ~~Schedule of Classifications and Water Quality Standards,~~ Classification Schedule, which may be inspected at the following places:

(1) the Internet at https://deq.nc.gov/river-basin-classification-schedule; and

(2) the North Carolina Department of Environmental Quality:

(A) Asheville Regional Office
2090 US Highway 70
Swannanoa, North Carolina; and

(B) Division of Water Resources
Central Office
512 North Salisbury Street
Raleigh, North Carolina.

(b) Unnamed Streams. Such streams entering Tennessee are classified "B."

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

(1) September 22, 1976;

(2) March 1, 1977;

(3) August 12, 1979;

(4) April 1, 1983;

(5) August 1, 1984;

(6) August 1, 1985;

(7) February 1, 1986;

(8) May 1, 1987;

(9) August 1, 1990.

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

(1) Cataloochee Creek (Index No. 5-41) and all tributary waters were reclassified from Class C-trout and Class C to Class C-trout ORW and Class C ORW.

(2) South Fork Mills River (Index No. 6-54-3) down to Queen Creek and all tributaries were reclassified from Class WS-I and Class WS-III-trout to Class WS-I ORW and Class WS-III-trout ORW.

(e) The ~~Schedule of Classifications and Water Quality Standards for the~~ French Broad River Basin Classification Schedule was amended effective October 1, 1989 as follows: Cane River (Index No. 7-3) from source to Bowlens Creek and all tributaries were reclassified from Class C trout and Class C to Class WS-III trout and Class WS-III.

(f) The ~~Schedule of Classifications and Water Quality Standards for the~~ French Broad River Basin Classification Schedule was amended effective January 1, 1990 as follows: North Toe River (Index No. 7-2) from source to Cathis Creek (Christ Branch) and all tributaries were reclassified from Class C trout and Class C to Class WS-III trout and Class WS-III.

(g) The ~~Schedule of Classifications and Water Quality Standards for the~~ French Broad River Basin Classification Schedule was amended effective August 3, 1992 with the reclassification of all water supply waters (waters with a primary classification of WS-I, WS-II or WS-III). These waters were reclassified to WS-I, WS-II, WS-III, WS-IV or WS-V as defined in the revised water supply protection rules, (15A NCAC 02B .0100, .0200 and .0300) which became effective on August 3, 1992. In some cases, streams with primary classifications other than WS were reclassified to a WS classification due to their proximity and linkage to water supply waters. In other cases, waters were reclassified from a WS classification to an alternate appropriate primary classification after being identified as downstream of a water supply intake or identified as not being used for water supply purposes.

(h) The ~~Schedule of Classifications and Water Quality Standards for the~~ French Broad River Basin Classification Schedule was amended effective October 1, 1993 as follows: Reasonover Creek [Index No. 6-38-14-(1)] from source to Reasonover Lake Dam and all tributaries were reclassified from Class B Trout to Class WS-V and B Trout, and Reasonover Creek [Index No. 6-38-14-(4)] from Reasonover Lake Dam to Lake Julia Dam and all tributaries were reclassified from Class C Trout to Class WS-V Trout.

(i) The ~~Schedule of Classifications and Water Quality Standards for the~~ French Broad River Basin Classification Schedule was amended effective July 1, 1995 with the reclassification of Cane Creek [Index Nos. 6-57-(1) and 6-57-(9)] from its source to the French Broad River from Classes WS-IV and WS-IV Tr to Classes WS-V, WS-V Tr and WS-IV.

(j) The ~~Schedule of Classifications and Water Quality Standards for the~~ French Broad River Basin Classification Schedule was amended effective November 1, 1995 as follows: North Toe River [Index Numbers 7-2-(0.5) and 7-2-(37.5)] from source to a point 0.2 miles downstream of Banjo Branch, including tributaries, has been reclassified from Class WS-III, WS-III Trout and WS-III Trout CA (critical area) to Class WS-IV Trout, WS-IV, WS-IV Trout CA, and C Trout.

(k) The ~~Schedule of Classifications and Water Quality Standards for the~~ French Broad River Basin Classification Schedule was amended effective January 1, 1996 as follows: Stokely Hollow [Index Numbers 6-121.5-(1) and 6-121.5-(2)] from source to mouth of French Broad River has been reclassified from Class WS-II and Class WS-II CA to Class C.

(l) The ~~Schedule of Classifications and Water Quality Standards for the~~ French Broad River Basin Classification Schedule was amended April 1, 1996 with the reclassification of the French Broad River [Index No. 6-(1)] from a point 0.5 miles downstream of Little River to Mill Pond Creek to Class WS-IV; French Broad River [Index No. 6-(51.5)] from a point 0.6 miles upstream of Mills River to Mills River to Class WS-IV CA (Critical Area), from Mills River to a point 0.1 miles upstream of Boring Mill Branch to Class C; and the Mills River [Index No. 6-54-(5)] was reclassified from City of Hendersonville water supply intake to a point 0.7 miles upstream of mouth of Mills River to

Class WS-III, and from a point 0.7 miles upstream of mouth of Mills River to French Broad River to Class WS-III CA (Critical Area).

(m) The ~~Schedule of Classifications and Water Quality Standards for the~~ French Broad River Basin Classification Schedule was amended August 1, 1998 with the revision to the primary classification for portions of the French Broad River [Index No. 6-(38.5)] and the North Toe River 7-2-(10.5) from Class IV to Class C.

(n) The ~~Schedule of Classifications and Water Quality Standards for the~~ French Broad River Basin Classification Schedule was amended August 1, 1998 with the reclassification of Clear Creek [Index No. 6-55-(1)] from its source to Lewis Creek from Class C Tr to Class B Tr.

(o) The ~~Schedule of Classifications and Water Quality Standards for the~~ French Broad River Basin Classification Schedule was amended August 1, 2000 with the reclassification of Rough Creek [Index No. 5-8-4-(1)], including all tributaries, from its source to the Canton Reservoir from Class WS-I to Class WS-I Tr ORW.

(p) The ~~Schedule of Classifications and Water Quality Standards for the~~ French Broad River Basin Classification Schedule was amended August 1, 2002 with the revision to the primary classification for the French Broad River [Index No. 6-(1), 6-(27), 6-(47.5), 6-(52.5), and 6-(54.5)] including its four headwater forks' mainstems, watershed of tributary Davidson River, and watershed of tributary Bent Creek below Powhatan Dam, and the Nolichucky River [Index No. 7] including a lower portion of the North Toe River from Class C and Class WS-IV to Class B.

(q) The ~~Schedule of Classifications and Water Quality Standards for the~~ French Broad River Basin Classification Schedule was amended August 1, 2002 with the reclassification of the North Toe River [Index No. 7-2-(0.5)], including all tributaries, from source to a point 0.2 mile upstream of Pyatt Creek, from Class C Tr to Class WS-V Tr.

(r) The ~~Schedule of Classifications and Water Quality Standards for the~~ French Broad River Basin Classification Schedule was amended September 1, 2004 with the reclassification of a portion of Richland Creek [Index No. 5-16(1)], from source to a point approximately 11.2 miles from source (Boyd Avenue), from Class B to Class B Tr, and all tributaries to the portion of the creek referenced in this Paragraph from C, C HQW, and WS-I HQW, and WS-I HQW to C Tr, C HQW Tr, and WS-I HQW Tr, respectively, except Hyatt Creek [Index No. 5-16-6], Farmer Branch [Index No. 5-16-11], and tributaries already classified as Tr.

(s) The ~~Schedule of Classifications and Water Quality Standards for the~~ French Broad River Basin Classification Schedule was amended effective November 1, 2007 with the reclassification of McClure's Bog near Gash Creek [Index No. 6-47] to Class WL ~~UWL as defined in 15A NCAC 02B .0101.Rule .0202 of this Subchapter~~ UWL. The North Carolina Division of Water ~~Quality~~ Resources maintains a Geographic Information Systems data layer of the UWL.

(t) The ~~Schedule of Classifications and Water Quality Standards for the~~ French Broad River Basin Classification Schedule was amended effective September 1, 2009 with the reclassification of the entire watershed of Big Laurel Creek (Index No. 6-112) from source to the French Broad River from Class C Tr to Class C ORW Tr.

(u) The ~~Schedule of Classifications and Water Quality Standards for the~~ French Broad River Basin Classification Schedule was amended effective September 1, 2009 with the reclassification of the entire watershed of Spring Creek [Index No. 6-118-(1) and 6-118-(27)] from source to the French Broad River from Class C Tr and Class C to Class C ORW Tr and Class C ORW.

(v) The ~~Schedule of Classifications and Water Quality Standards for the~~ French Broad River Basin Classification Schedule is amended December 1, 2011 with the reclassification of a portion of the French Broad River [Index No. 6-(54.5)] from the confluence of the Mills River to a point 0.2 miles downstream of the confluence of the Mills River from Class B to Class WS-IV&B CA.

(w) The Schedule of Classifications and Water Quality Standards for the French Broad River Basin was amended January 1, 2019 with the reclassification of Enka Lake, which is a portion of the Bill Moore Creek (Index No. 6-76-7) from Class C to Class B.

History Note: *Authority G.S. 143-214.1; 143-215.1; 143-215.3(a)(1);*
Eff. February 1, 1976;
Amended Eff. January 1, 2019; December 1, 2011; September 1, 2009; November 1, 2007; September 1, 2004; August 1, 2002; August 1, 2000; August 1, 1998; April 1, 1996; January 1, 1996; November 1, 1995; July 1, ~~1995.~~ 1995;
Readopted Eff. September 1, 2019.

REQUEST FOR TECHNICAL CHANGE

AGENCY: Environmental Management Commission

RULE CITATION: 15A NCAC 02B .0305

DEADLINE FOR RECEIPT: Friday, August 9, 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:

Please consider beginning (a)(2) with "the following offices of the North Carolina…"

For consistency purposes, in (b), delete "Streams. Such" so that it reads "Unnamed ~~Streams. Such~~ streams entering…" I make this suggestion because you don't have this type of introductory language anywhere else in this Rule.

In (c), please consider deleting the repetitive dates. I note that this was done to Rule .0306 back in 2014 and other Rules do not have duplicates. In this Rule, the repetitive dates are in (c)(6) and (5) through (12).

In (g), line 16, please move the comma found after "rules" to behind "(… .0300)"

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

Amber May
Commission Counsel
Date submitted to agency: July 30, 2019

15A NCAC 02B .0305 is readopted as published in 32:22 NCR 2411-2493 as follows:

15A NCAC 02B .0305 WATAUGA RIVER BASIN

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

(1) the Internet at ~~http://h2o.enr.state.nc.us/csu/;~~ http://portal.ncdenr.org/web/wq/ps/csu/classifications; and

(2) the North Carolina Department of ~~Environment and Natural Resources:~~ Environmental Quality:

(A) Asheville Regional Office
2090 US Highway 70
Swannanoa, ~~Carolina~~ Carolina;

~~(B) Division of Water Quality~~
~~Central Office~~
~~512 North Salisbury Street~~
~~Raleigh, North Carolina.~~

(B) Winston-Salem Regional Office
450 West Hanes Mill Road
Winston-Salem, North Carolina; and

(C) Division of Water Resources
Central Office
512 North Salisbury Street
Raleigh, North Carolina.

(b) Unnamed Streams. Such streams entering the State of Tennessee are classified "C."

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

(1) August 12, 1979;
(2) February 1, 1986;
(3) October 1, 1987;
(4) August 1, 1989;
(5) August 1, 1990;
(6) December 1, 1990;
(7) April 1, 1992;
(8) August 3, 1992;
(9) February 1, 1993;
(10) April 1, 1994;
(11) August 1, 1998;

(12) November 1, 2007.

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

(1) Dutch Creek (Index No. 8-11) was reclassified from Class C-trout to Class B-trout.

(2) Pond Creek (Index No. 8-20-2) from water supply intake (located just above Tamarack Road) to Beech Creek and all tributary waters were reclassified from Class WS-III to C.

(e) The ~~Schedule of Classifications and Water Quality Standards for the~~ Watauga River Basin Classification Schedule was amended effective December 1, 1990 with the reclassification of the Watauga River from the US Highway 321 bridge to the North Carolina/Tennessee state line from Class C to Class B.

(f) The ~~Schedule of Classifications and Water Quality Standards for the~~ Watauga River Basin Classification Schedule was amended effective April 1, 1992 with the reclassification of Pond Creek from Classes WS-III and C to Classes WS-III Trout and C Trout.

(g) The ~~Schedule of Classifications and Water Quality Standards for the~~ Watauga River Basin Classification Schedule was amended effective August 3, 1992 with the reclassification of all water supply waters (waters with a primary classification of WS-I, WS-II or WS-III). These waters were reclassified to WS-I, WS-II, WS-III, WS-IV or WS-V as defined in the revised water supply protection rules, (15A NCAC 2B .0100, .0200 and .0300) which became effective on August 3, 1992. In some cases, streams with primary classifications other than WS were reclassified to a WS classification due to their proximity and linkage to water supply waters. In other cases, waters were reclassified from a WS classification to an alternate appropriate primary classification after being identified as downstream of a water supply intake or identified as not being used for water supply purposes.

(h) The ~~Schedule of Classifications and Water Quality Standards for the~~ Watauga River Basin Classification Schedule ~~has been~~ was amended effective February 1, 1993 with the reclassification of Boone Fork (Index No. 8-7) and all tributary waters from Classes C Tr HQW and C HQW to Classes C Tr ORW and C ORW.

(i) The ~~Schedule of Classifications and Water Quality Standards for the~~ Watauga River Basin Classification Schedule ~~has been~~ was amended effective April 1, 1994 with the reclassification of the Elk River from Peavine Branch to the North Carolina/Tennessee state line [Index No. 8-22-(3)] from Class C Tr to Class B Tr.

(j) The ~~Schedule of Classifications and Water Quality Standards for the~~ Watauga River Basin Classification Schedule ~~has been~~ was amended effective August 1, 1998 with the reclassification of East Fork Pond Creek from its source to the backwater of Santis Lake, [Index No. 8-20-2-1.5] from Class WS-II Tr to Class WS-III Tr; the reclassification of West Fork Pond Creek (Santis Lake) [Index No. 8-20-2-1-(2)] from the backwaters of Santis Lake to Pond Creek from WS-II Tr CA to WS-III Tr CA; and the reclassification of the connecting stream of Lake Coffey [Index No. 8-20-2-2] from the dam at Lake Coffey to Pond Creek from WS-II Tr CA to C Tr.

(k) The ~~Schedule of Classifications and Water Quality Standards for the~~ Watauga River Basin Classification Schedule ~~has been~~ was amended effective November 1, 2007 with the reclassification of the Beech Creek Bog near Beech Creek [Index No. 8-20] to Class WL ~~UWL as defined in 15A NCAC 02B .0101. Rule .0202 of this SubChapter~~ UWL. The North Carolina Division of Water ~~Quality~~ Resources maintains a Geographic Information Systems data layer of the UWL.

History Note: *Authority G.S. 143-214.1; 143-215.1; 143-215.3(a)(1);*
Eff. February 1, 1976;
Amended Eff. November 1, 2007; August 1, 1998; April 1, 1994; February 1, 1993; August 3, 1992;
April 1, ~~1992.~~ 1992;
Readopted Eff. September 1, 2019.

REQUEST FOR TECHNICAL CHANGE

AGENCY: Environmental Management Commission

RULE CITATION: 15A NCAC 02B .0306

DEADLINE FOR RECEIPT: Friday, August 9, 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:

> *Please consider beginning (a)(2) with "the following offices of the North Carolina…"*
>
> *For consistency purposes, in (b), delete "Streams. Such" so that it reads "Unnamed ~~Streams. Such~~ streams entering…" I make this suggestion because you don't have this type of introductory language anywhere else in this Rule.*

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

Amber May
Commission Counsel
Date submitted to agency: July 30, 2019

15A NCAC 02B .0306 is readopted as published in 32:22 NCR 2411-2493 as follows:

15A NCAC 02B .0306 BROAD RIVER BASIN

(a) ~~Effective February 1, 1976, the adopted classifications~~ Classifications assigned to the waters within the Broad River Basin are set forth in the Broad River Basin ~~Schedule of Classifications and Water Quality Standards,~~ Classification Schedule, which may be inspected at the following places:

(1) the Internet at http://portal.ncdenr.org/web/wq/ps/csu/classifications; and

(2) the North Carolina Department of ~~Environment and Natural Resources:~~ Environmental Quality:

(A) Mooresville Regional Office
610 East Center Avenue
Suite 301
Mooresville, North ~~Carolina~~ Carolina;

(B) Asheville Regional Office
2090 US Highway 70
Swannanoa, North ~~Carolina.~~ Carolina; and

(C) Division of Water Resources
Central Office
512 North Salisbury Street
Raleigh, North Carolina.

(b) Unnamed Streams. Such streams entering South Carolina are classified "C."

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

(1) March 1, 1977;

(2) February 12, 1979;

(3) August 12, 1979;

(4) April 1, 1983;

(5) February 1, 1986.

(d) The ~~Schedule of Classifications and Water Quality Standards for the~~ Broad River Basin Classification Schedule was amended effective August 3, 1992 with the reclassification of all water supply waters (waters with a primary classification of WS-I, WS-II or WS-III). These waters were reclassified to WS-I, WS-II, WS-III, WS-IV or WS-V as defined in the revised water supply protection rules (15A NCAC 02B .0100, .0200 and 0300), which became effective on August 3, 1992. In some cases, streams with primary classifications other than WS were reclassified to a WS classification due to their proximity and linkage to water supply waters. In other cases, waters were reclassified from a WS classification to an alternate appropriate primary classification after being identified as downstream of a water supply intake or identified as not being used for water supply purposes.

(e) The ~~Schedule of Classifications and Water Quality Standards for the~~ Broad River Basin Classification Schedule was amended effective September 1, 1994 with the reclassification of the Second Broad River [Index No. 9-41-(0.5)]

from its source to Roberson Creek including associated tributaries was reclassified from Class WS-V to Classes WS-V, WS-IV and WS-IV CA.

(f) The ~~Schedule of Classifications and Water Quality Standards for the~~ Broad River Basin Classification Schedule was amended effective August 1, 1998 with the revision to the primary classification for portions of the Broad River [Index No. 9-(23.5)] from Class WS-IV to Class C and Second Broad River [Index Nos. 9-41-(10.5) and 9-41-(14.5)] and First Broad River [Index No. 9-50-(11)] from Class WS-IV to Class WS-V.

(g) The ~~Schedule of Classifications and Water Quality Standards for the~~ Broad River Basin Classification Schedule was amended August 1, 2000 with the reclassification of the Green River [Index No. 9-29-(1)], including all tributaries, from its source to its mouth in Lake Summit at elevation 2011 from Class C Tr to Class B Tr.

(h) The ~~Schedule of Classifications and Water Quality Standards for the~~ Broad River Basin Classification Schedule was amended effective August 1, 2000 with the reclassification of Lake Montonia [Index No. 9-54-1-(1)], and all tributaries, from Class B to Class B HQW.

(i) The ~~Schedule of Classifications and Water Quality Standards for the~~ Broad River Basin Classification Schedule was amended effective April 1, 2001 with the reclassification of the Green River [Index No. 9-29-(1)], including all tributaries, from its source to the downstream side of the mouth of Rock Creek from Class B Tr to Class B Tr HQW.

(j) The ~~Schedule of Classifications and Water Quality Standards for the~~ Broad River Basin Classification Schedule was amended effective March 1, 2007 with the reclassification of the North Fork First Broad River (Index No. 9-50-4), including all tributaries, from its source to the First Broad River from Class C Tr to Class C Tr ORW.

(k) The ~~Schedule of Classifications and Water Quality Standards for the~~ Broad River Basin Classification Schedule was amended effective March 1, 2007 with the reclassification of a segment of the Broad River [Index No. 9-(25.5)] from a point 0.5 mile upstream of the City of Shelby proposed water supply intake to the City of Shelby proposed water supply intake from Class C to Class WS-IV CA, and from a point 0.5 mile upstream of the City of Shelby proposed water supply intake to a point approximately 0.3 mile downstream of its confluence with Cane Creek from Class C to Class WS-IV. The City of Shelby proposed water supply intake is to be placed on the Broad River at a point approximately one mile upstream of its confluence with the First Broad River.

(l) The ~~Schedule of Classifications and Water Quality Standards for the~~ Broad River Basin Classification Schedule was amended effective March 1, 2007 with the reclassification of a segment of the Broad River [Index No. 9-(25.5)] from a point 0.5 mile upstream of the Town of Forest City proposed water supply intake to the Town of Forest City proposed water supply intake from Class C to Class WS-IV CA, and from a point 0.5 mile upstream of the Town of Forest City proposed water supply intake to a point approximately 0.2 mile downstream of Rutherford County SR 1145 (Town of Rutherfordton water supply intake) from Class C to Class WS-IV. The Town of Forest City proposed water supply intake is to be placed on the Broad River at a point approximately 0.4 mile downstream of McKinney Creek.

(m) The ~~Schedule of Classifications and Water Quality Standards for the~~ Broad River Basin was Classification Schedule amended effective September 1, 2014, in order to allow a water supply intake to be placed in Lake Adger by Polk County, as follows:

(1) a portion of the Green River [Index No. 9-29-(33)], including tributaries, from the dam at Lake Adger to a point 0.35 mile downstream of Rash Creek from Class C to Class WS-IV CA. The CA extends 0.5 mile from and draining to the normal pool elevation of Lake Adger.

(2) a portion of the Green River from a point 0.35 mile [Index No. 9-29-(33)], including tributaries, downstream of Rash Creek to a point 300 feet downstream of Laurel Branch from Class C to Class WS-IV. The PA extends 5.0 miles from and draining to the normal pool elevation of Lake Adger.

History Note: *Authority G.S. 143-214.1; 143-215.1; 143-215.3(a)(1);*
Eff. February 1, 1976;
Amended Eff. September 1, 2014; March 1, 2007; April 1, 2001; August 1, 2000; August 1, 1998; September 1, 1994; August 3, 1992; February 1, 1986; January 1, ~~1985.~~ 1985;
Readopted Eff. September 1, 2019.

REQUEST FOR TECHNICAL CHANGE

AGENCY: Environmental Management Commission

RULE CITATION: 15A NCAC 02B .0307

DEADLINE FOR RECEIPT: Friday, August 9, 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:

Please consider beginning (a)(2) with "the following offices of the North Carolina…"

For consistency purposes, in (b), delete "Streams. Such" so that it reads "Unnamed ~~Streams. Such~~ streams entering…" I make this suggestion because you don't have this type of introductory language anywhere else in this Rule.

For consistency purposes, in (c), delete the corresponding paragraphs (e,g, "see paragraph ((d)") since you've not done this in the majority of your other similar rules and have instead deleted the duplicate information.

In (c), please consider deleting the repetitive dates. I note that this was done to Rule .0306 back in 2014 and other Rules do not have duplicates. In this Rule, all the dates listed in (c) are repetitive.

In (i), line 2, please move the comma found after "rules" to behind "(… .0300)"

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

Amber May
Commission Counsel
Date submitted to agency: July 30, 2019

15A NCAC 02B .0307 is readopted as published in 32:22 NCR 2411-2493 as follows:

15A NCAC 02B .0307 NEW RIVER BASIN

(a) ~~Effective February 1, 1976, the adopted classifications~~ Classifications assigned to the waters within the New River Basin are set forth in the New River Basin ~~Schedule of Classifications and Water Quality Standards,~~ Classification Schedule, which may be inspected at the following places:

(1) the Internet at ~~http://portal.ncdenr.org/web/wq/ps/csu/rules;~~ http://portal.ncdenr.org/web/wq/ps/csu/classifications ; and

(2) the North Carolina Department of ~~Environment and Natural Resources:~~ Environmental Quality:

(A) Asheville Regional Office
2090 US Highway 70
Swannanoa, North Carolina;

(B) Winston-Salem Regional Office
~~585 Waughtown Street~~ 450 West Hanes Mill Road
Winston-Salem, North Carolina; and

(C) Division of Water ~~Quality~~ Resources
Central Office
512 North Salisbury Street
Raleigh, North Carolina.

(b) Unnamed Streams. Such streams entering the State of Tennessee are classified "C."

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

(1) August 10, 1980 (see Paragraph (d) of this Rule);
(2) April 1, 1983 (see Paragraph (e) of this Rule);
(3) February 1, 1986 (see Paragraph (f) of this Rule);
(4) August 1, 1989 (see Paragraph (g) of this Rule);
(5) August 1, 1990 (see Paragraph (h) of this Rule);
(6) August 3, 1992 (see Paragraph (i) of this Rule);
(7) February 1, 1993 (see Paragraph (j) of this Rule);
(8) August 1, 1998 (see Paragraph (k) of this Rule);
(9) November 1, 2007 (see Paragraph (l) of this Rule);
(10) December 1, 2010 (see Paragraph (m) of this Rule); and
(11) July 3, 2012 (see Paragraph (n) of this Rule).

(d) The ~~Schedule of Classifications and Water Quality Standards for the~~ New River Basin Classification Schedule was amended effective August 10, 1980 as follows:

(1) South Fork New River [Index No. 10-1-(1)] from the confluence of the Middle Fork South Fork New River and the East Fork South Fork New River to Winkler Creek was reclassified from Class C to Class A-II;

(2) Middle Fork South Fork New River [Index Nos. 10-1-2-(6) and 10-1-2-(14)] from Brown Branch to the South Fork New River was reclassified from Class C and C Trout to Class A-II and A-II Trout;

(3) East Fork South Fork New River [Index Nos. 10-1-3-(1) and 10-1-3-(7)] was reclassified from Class C and C Trout to Class A-II and A-II Trout; and

(4) Winkler Creek [Index No. 10-1-4-(2) from Boone water supply intake dam to Watauga County SR 1549 and Flannery Fork [Index No. 10-1-4-3-(2)] from the dam at Camp Sky Ranch Bathing Lake to Winkler Creek were reclassified from Class C Trout to Class A-II Trout.

(e) The ~~Schedule of Classifications and Water Quality Standards for the~~ New River Basin Classification Schedule was amended effective April 1, 1983 as follows: Naked Creek [Index No. 10-1-32] was reclassified from Class C Trout to Class C.

(f) The ~~Schedule of Classifications and Water Quality Standards for the~~ New River Basin Classification Schedule was amended effective February 1, 1986 with the reclassification of all Class A-I and A-II streams to Class WS-I and WS-III in the New River Basin.

(g) The ~~Schedule of Classifications and Water Quality Standards for the~~ New River Basin Classification Schedule was amended effective August 1, 1989 as follows: South Fork New River [Index No. 10-1-(30)] from Dog Creek to New River and all tributary waters were reclassified from Class C-trout and Class C to Class B-trout and B.

(h) The ~~Schedule of Classifications and Water Quality Standards for the~~ New River Basin Classification Schedule was amended effective August 1, 1990 as follows:

(1) New River [Index No. 10] from the confluence of the North and South Forks New River to the last point at which the New River crosses the North Carolina/Virginia State line was reclassified from Class C to Class C HQW;

(2) South Fork New River [Index Nos. 10-1-(14.5), 10-1-(26), 10-1-(30), and 10-1-(33.5)] from Elk Creek to the confluence of the New River and North Fork New River was reclassified from Class C, B and WS-III to Class C HQW, B HQW and WS-III HQW;

(3) Howard Creek [Index Nos. 10-1-9-(1) and 10-1-9-(6)] from source to the South Fork New River was reclassified from Class WS-III Trout and C Trout to Class WS-III Trout HQW and C Trout HQW;

(4) Big Horse Creek [Index No. 10-2-21-(5.5)] from North Carolina/Virginia State line to lower Ashe County SR 1361 bridge was reclassified from Class C Trout to Class C Trout HQW; and

(5) Little River [Index No. 10-9-(11.5)] from N.C. Hwy. 18 bridge to the North Carolina/Virginia State line was reclassified from Class C to Class C HQW.

(i) The ~~Schedule of Classifications and Water Quality Standards for the~~ New River Basin Classification Schedule was amended effective August 3, 1992 with the reclassification of all water supply waters (waters with a primary

classification of WS-I, WS-II or WS-III). These waters were reclassified to WS-I, WS-II, WS-III, WS-IV or WS-V as defined in the revised water supply protection rules, (15A NCAC 02B .0100, .0200 and .0300) which became effective on August 3, 1992. In some cases, streams with primary classifications other than WS were reclassified to a WS classification due to their proximity and linkage to water supply waters. In other cases, waters were reclassified from a WS classification to an alternate appropriate primary classification after being identified as downstream of a water supply intake or identified as not being used for water supply purposes.

(j) The ~~Schedule of Classifications and Water Quality Standards for the~~ New River Basin Classification Schedule was amended effective February 1, 1993 as follows:

(1) the South Fork New River (Index No. 10-1-33.5) from Dog Creek to the New River was reclassified from Class B HQW to Class B ORW;

(2) the New River (Index No. 10) from the confluence of the North And South Fork New Rivers to the last point at which it crosses the North Carolina/Virginia State line was reclassified from Class C HQW to Class C ORW; and

(3) Old Field Creek (Index No. 10-1-22) from Call Creek to the South Fork New River, and Call Creek (Index No. 10-1-22-1) from its source to Old Field Creek were reclassified from Class WS-IV Trout to Class WS-IV Trout ORW.

(k) The ~~Schedule of Classifications and Water Quality Standards for the~~ New River Basin Classification Schedule was amended effective August 1, 1998 with the revision to the primary classification for a portion of the South Fork New River [Index No. 10-1 (20.5)] from Class WS-IV to Class WS-V.

(l) The ~~Schedule of Classifications and Water Quality Standards for the~~ New River Basin Classification Schedule was amended effective November 1, 2007 with the reclassification of Bluff Mountain Fen near Buffalo Creek [Index No. 10-2-20] to Class WL ~~UWL as defined in 15A NCAC 02B .0101.Rule .0202 of this Subchapter~~ UWL. The North Carolina Division of Water ~~Quality~~ Resources maintains a Geographic Information Systems data layer of the UWL.

(m) The ~~Schedule of Classifications and Water Quality Standards for the~~ New River Basin Classification Schedule was amended effective December 1, 2010 with the reclassification of the North Fork New River [Index Nos. 10-2-(1), 10-2-(12)] and its tributaries from C+, C+ Trout and C Trout HQW to C ORW and C Trout ORW with the exception of the following:

(1) Index Nos. 10-2-21-9, 10-2-21-(8), 10-2-(11) and 10-2-20 were reclassified from C+ and C Trout + to C HQW and C Trout HQW; and

(2) Little Buffalo Creek and Claybank Creek (Index Nos. 10-2-20-1 and 10-2-20-1-1) did not qualify for the ORW or HQW designation; however, these waters shall be managed in the same way as the downstream designated HQW areas.

(n) The ~~Schedule of Classifications and Water Quality Standards for the~~ New River Basin Classification Schedule was amended effective July 3, 2012 as follows:

(1) the portion of the South Fork New River [Index No. 10-1-(14.5)] from the Town of Boone's intake, located nearly 0.5 miles upstream of SR 1100, to 875 feet downstream of SR 1351 from C HQW to WS-IV CA HQW;

(2) the portion of the South Fork New River [Index No. 10-1-(14.5)] from 875 feet downstream of SR 1351 to Elk Creek from C HQW to WS-IV HQW; and

(3) the portion of the South Fork New River [Index No. 10-1-(3.5)] from Elk Creek to 1.75 miles upstream of SR 1351 from C+ to WS-IV +.

History Note: *Authority G.S. 143-214.1; 143-215.1; 143-215.3(a)(1);*
Eff. February 1, 1976;
Amended Eff. July 3, 2012; December 1, 2010; November 1, 2007; August 1, 1998; February 1, 1993; August 3, 1992; August 1, 1990; August 1, ~~1989.~~ 1989;
Readopted Eff. September 1, 2019.

REQUEST FOR TECHNICAL CHANGE

AGENCY: Environmental Management Commission

RULE CITATION: 15A NCAC 02B .0308

DEADLINE FOR RECEIPT: Friday, August 9, 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:

Please consider beginning (a)(2) with "the following offices of the North Carolina…"

For consistency purposes, in (b), delete "Streams. Such" so that it reads "Unnamed ~~Streams. Such~~ streams entering…" I make this suggestion because you don't have this type of introductory language anywhere else in this Rule.

For consistency purposes, in (b), delete the corresponding paragraphs (e,g, "see paragraph (c)") since you've not done this in the majority of your other similar rules and have instead deleted the duplicate information.

In (c), please consider deleting the repetitive dates. I note that this was done to Rule .0306 back in 2014 and other Rules do not have duplicates. In this Rule, all of the dates listed in (c) are repetitive.

In (n), line 23, please move the comma found after "rules" to behind "(… .0300)"

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

Amber May
Commission Counsel
Date submitted to agency: July 30, 2019

15A NCAC 02B .0308 is readopted as published in 32:22 NCR 2411-2493 as follows:

15A NCAC 02B .0308 CATAWBA RIVER BASIN

(a) ~~Effective February 1, 1976, the adopted classifications~~ Classifications assigned to the waters within the Catawba River Basin are set forth in the Catawba River Basin ~~Schedule of Classifications and Water Quality Standards,~~ Classification Schedule, which may be inspected at the following places:

(1) the Internet at https://deq.nc.gov/river-basin-classification-schedule ; and

(2) the North Carolina Department of Environmental Quality:

(A) Mooresville Regional Office
610 East Center Avenue, Suite 301
Mooresville, North Carolina;

(B) Asheville Regional Office
2090 US Highway 70
Swannanoa, North Carolina; and

(C) Division of Water Resources
Central Office
512 North Salisbury Street
Raleigh, North Carolina.

(b) Unnamed Streams. Such streams entering South Carolina are classified "C."

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

(1) March 1, 1977 (see Paragraph (d) of this Rule);
(2) August 12, 1979 (see Paragraph (e) of this Rule);
(3) April 1, 1982 (see Paragraph (f) of this Rule; Rule);
(4) January 1, 1985 (see Paragraph (g) of this Rule);
(5) August 1, 1985 (see Paragraph (h) of this Rule);
(6) February 1, 1986 (see Paragraph (i) of this Rule);
(7) March 1, 1989 (see Paragraph (j) of this Rule);
(8) May 1, 1989 (see Paragraph (k) of this Rule);
(9) March 1, 1990 (see Paragraph (l) of this Rule);
(10) August 1, 1990 (see Paragraph (m) of this Rule);
(11) August 3, 1992 (see Paragraph (n) of this Rule);
(12) April 1, 1994 (see Paragraph (o) of this Rule);
(13) July 1, 1995 (see Paragraph (p) of this Rule);
(14) September 1, 1996 (see Paragraph (q) of this Rule);
(15) August 1, 1998 (see Paragraph (r) of this Rule);
(16) April 1, 1999 (see Paragraph (s) of this Rule);

(17) August 1, 2000 (see Paragraph (t) of this Rule);

(18) August 1, 2004 (see Paragraph (u) of this Rule);

(19) May 1, 2007 (see Paragraph (v) of this Rule);

(20) September 1, 2010 (see Paragraph (w) of this Rule);

(21) March 1, 2013 (see Paragraph (x) of this Rule); and

(22) July 1, 2017 (see Paragraph (y) of this Rule).

(d) The ~~Schedule of Classifications and Water Quality Standards for the~~ Catawba River Basin Classification Schedule was amended effective March 1, 1977 as follows:

(1) Torrence Branch (Index No. 11-136) from source to North Carolina-South Carolina State Line was reclassified from Class D to Class B; and

(2) Edwards Branch (Index No. 11-137-8-2-1) from source to Brier Creek was reclassified from Class D to Class C.

(e) The ~~Schedule of Classifications and Water Quality Standards for the~~ Catawba River Basin Classification Schedule was amended effective August 12, 1979 as follows: Unnamed Tributary to Lower Little River (Robinette Creek)(Index No. 11-69-1.5) from source to Lower Little River was reclassified from Class C to Class B.

(f) The ~~Schedule of Classifications and Water Quality Standards for the~~ Catawba River Basin Classification Schedule was amended effective April 1, 1982 as follows:

(1) Spainhour Creek (Index No. 11-39-3) from source to Lower Creek was reclassified from Class C (1) to Class C; and

(2) Allen Creek (Index No. 11-129-5-7-2-4) from source to Maiden Creek was reclassified from Class C to Class A-II.

(g) The ~~Schedule of Classifications and Water Quality Standards for the~~ Catawba River Basin Classification Schedule was amended effective January 1, 1985 as follows: Catawba Creek from source to N.C. Highway 275 was reclassified from Class C(1) to Class C.

(h) The ~~Schedule of Classifications and Water Quality Standards for the~~ Catawba River Basin Classification Schedule was amended effective August 1, 1985 as follows:

(1) Brier Creek (Index No. 11-137-8-2) from source to Little Sugar Creek was reclassified from Class C (1) to Class C;

(2) Little Hope Creek (Index No. 11-137-8-3) from source to Little Sugar Creek was reclassified from Class C (1) to Class C; and

(3) McMullen Creek (Index No. 11-137-9-5) from source to N.C. Highway 16 was reclassified from Class C (1) to Class C.

(i) The ~~Schedule of Classification and Water Quality Standards for the~~ Catawba River Basin Classification Schedule was amended effective February 1, 1986 with the reclassification of all A-I and A-II streams to WS-I and WS-III in the Catawba River Basin.

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

Wilson Creek (Index No. 11-38-34) and all tributary waters were reclassified from Class B-trout and Class C-trout to Class B-trout ORW and Class C-trout ORW.

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

(1) Henry Fork [Index Nos. 11-129-1-(1) and 11-129-1-(2)] from source to Laurel Creek, including all tributaries, were reclassified from Class WS-I, C and C trout to Class WS-I ORW, C ORW and C trout ORW, except Ivy Creek and Rock Creek which will remain Class C trout and Class C; and

(2) Jacob Fork [Index Nos. 11-129-2-(1) and 11-129-2-(4)] from source to Camp Creek, including all tributaries, were reclassified from Class WS-III trout and WS-III to WS-III trout ORW and WS-III ORW.

(l) The ~~Schedule of Classifications and Water Quality Standards for the~~ Catawba River Basin Classification Schedule was amended effective March 1, 1990 as follows:

(1) Upper Creek [Index No. 11-35-2-(1)] from source to Timbered Branch including all tributaries except Timbered Branch (Index No. 11-35-2-9) was reclassified from Class C Trout to Class C Trout ORW; and

(2) Steels Creek [Index No. 11-35-2-12(1)] from source to Little Fork and all tributaries was reclassified from Class C Trout to Class C Trout ORW.

(m) The ~~Schedule of Classifications and Water Quality Standards for the~~ Catawba River Basin Classification Schedule was amended effective August 1, 1990 as follows:

(1) The classification for the portion of Mackey Creek [Index No. 11-15-(2)] from Marion Water Supply Intake to Laurel Fork was reclassified from Class C to Class C HQW;

(2) Laurel Fork Creek [Index No. 11-15-3] from source to Mackey Creek was reclassified from Class C Tr to Class C Tr HQW;

(3) Armstrong Creek [Index No. 11-24-14-(1)] from source to Bee Rock Creek was reclassified from Class WS-III Tr to Class WS-III Tr HQW;

(4) Two segments of Linville River [Index Nos. 11-29-(16) and 11-29-(19)] were reclassified from Class B Tr and Class B to Class B Tr HQW and Class B HQW, respectively;

(5) Upper Creek [Index No. 11-35-2-(8.5)] and its named tributaries were reclassified from Class C Tr to Class C Tr HQW;

(6) Upper Creek (Clear Water Beach Lake) [Index No. 11-35-2-(10)] from Holly Spring Branch to Dam Clear Water Beach Lake was reclassified from Class B Tr to Class B Tr HQW;

(7) Holly Spring Branch [Index No. 11-35-2-11] from source to Upper Creek was reclassified from Class C Tr to Class Tr HQW;

(8) Steels Creek [Index No. 11-35-2-12-(5)] from Little Fork to a point 1.7 miles upstream from N.C. Highway 181 Bridge was reclassified from Class B Tr to Class B Tr HQW and Steels Creek [Index No. 11-35-2-12-(7)] from a point 1.7 miles upstream from N.C. Highway 181 bridge to Clear Water Beach Lake, Upper Creek was reclassified from Class B to Class B HQW;

(9) Upper Creek [Index No. 11-35-2-(13)] from Dam at Clear Water Beach Lake to Warrior Fork was reclassified from Class WS-III Tr to Class WS-III Tr HQW;

(10) The portion of Johns River [Index No. 11-38-(28)] from Wilson Creek to Rhodhiss Lake, Catawba River was reclassified from Class C to Class C HQW;

(11) Mulberry Creek [Index No. 11-38-32-(1)] from source to Boone Fork and its tributaries Left Fork Mulberry Creek [Index No. 11-38-32-2], Right Fork Mulberry Creek [Index No. 11-38-32-3], Roaring Creek [Index No. 11-38-32-8] and Clark Branch [Index No. 11-38-32-10] were reclassified from Class C Tr to Class C Tr HQW;

(12) Amos Creek [Index No. 11-38-32-4] and Mills Creek [Index No. 11-38-32-5] and their named tributaries were reclassified from Class C to Class C HQW;

(13) Cane Branch [Index No. 11-38-32-6], Rush Branch [11-38-32-7] and Frankum Creek [11-38-32-9] and its named tributaries were reclassified from Class C to Class C HQW;

(14) Mulberry Creek [Index No. 11-38-32-(11)] from Boone Branch to Dam at Mulberry Beach was reclassified from Class B to Class B HQW;

(15) Boone Branch (Fork) [Index No. 11-38-32-12] and its named tributaries from source to Mulberry Creek were reclassified from Class B to Class B HQW;

(16) Brown Branch [Index No. 11-38-32-13] and Moore Branch [Index No. 11-38-32-14] were reclassified from Class B to Class B HQW; and

(17) Anderson Creek [Index No. 11-38-32-16] was reclassified from Class C to Class C HQW.

(n) The ~~Schedule of Classifications and Water Quality Standards for the~~ Catawba River Basin Classification Schedule was amended effective August 3, 1992 with the reclassification of all water supply waters (waters with a primary classification of WS-I, WS-II or WS-III). These waters were reclassified to WS-I, WS-II, WS-III, WS-IV or WS-V as defined in the revised water supply protection rules, (15A NCAC 02B .0100, .0200 and .0300) which became effective on August 3, 1992. In some cases, streams with primary classifications other than WS were reclassified to a WS classification due to their proximity and linkage to water supply waters. In other cases, waters were reclassified from a WS classification to an alternate appropriate primary classification after being identified as downstream of a water supply intake or identified as not being used for water supply purposes.

(o) The ~~Schedule of Classifications and Water Quality Standards for the~~ Catawba River Basin Classification Schedule was amended effective April 1, 1994 as follows:

(1) Friday Lake (Index No. 11-125.5) from its source to Little Paw Creek was reclassified from Class C to Class B; and

(2) The Linville River [Index No. 12-29-(1)] from Grandmother Creek to Linville Falls was reclassified from Class C Tr to Class B Tr.

(p) The ~~Schedule of Classifications and Water Quality Standards for the~~ Catawba River Basin Classification Schedule was amended effective July 1, 1995 with the reclassification of Clark Creek from a point 0.6 mile downstream of Catawba County SR 2014 to 0.4 mile upstream of Larkard Creek [Index No. 11-129-5-(4.5)], and Howards Creek

from its source to 0.7 mile upstream of Lincoln County State Road 1200 [Index No. 11-129-4], including associated tributaries from Class WS-IV to Classes C and WS-IV.

(q) The ~~Schedule of Classifications and Water Quality Standards for the~~ Catawba River Basin Classification Schedule was amended effective September 1, 1996 as follows:

(1) North Fork Catawba River [Index No. 11-24-(1)] from Laurel Branch to Armstrong Creek from Class C Tr to Class B Tr; and

(2) Catawba River (Lake Hickory) from Rhodhiss dam to highway 321 [Index No. 11-(51)] from Class WS-IV CA to Class WS-IV B CA.

(r) The ~~Schedule of Classifications and Water Quality Standards for the~~ Catawba River Basin Classification Schedule was amended effective August 1, 1998 as follows:

(1) The primary classification for portions of South Fork Catawba River [Index No. 11-129-(0.5)] and Hoyle Creek [Index No. 11-129-15-(1)] was reclassified from Class WS-IV to Class WS-V;

(2) Mill Creek [Index No. 11-7] from its source to Swannanoa Creek, including all tributaries, from Class C Tr to Class Tr HQW;

(3) Toms Creek [Index Nos. 11-21-(1) and 11-21-(2)] from its source to Harris Creek, including all tributaries were reclassified from Class C Tr to Class Tr HQW; and

(4) Harris Creek to McDowell County SR 1434, including all tributaries were reclassified from Class C to Class HQW.

(s) The ~~Schedule of Classifications and Water Quality Standards for the~~ Catawba River Basin Classification Schedule was amended effective April 1, 1999 as follows:

(1) Portion of the Catawba River [Index Nos. 11-(27.5) and 11-(31)] from Class WS-IV B and WS-IV to Class WS-V B and WS-V;

(2) Armstrong Creek [Index Nos. 11-24-14-(1), 11-24-14-(13.5) and 11-24-14-(14)], and all tributaries from Classes WS-II Tr, WS-II, WS-II CA and C Tr to Classes C Tr HQW and C HQW;

(3) Lookout Shoals Lake from Oxford Dam to Island Creek [Index No. 11-(67)] from Class WS-V to Class WS-IV CA, from Island Creek to Elk Shoal Creek [Index No. 11-(70.5)] from Class WS-IV to Class WS-IV CA and from Elk Shoal Creek to a point one half mile upstream of Lookout Shoals Dam [Index No. 11-(72)] from Class WS-IV B to Class WS-IV B CA;

(4) The classifications of tributary streams that are within five miles and draining to the normal pool elevation of Lookout Shoals Lake (Protected Area) have been revised to Class WS-IV; and

(5) The classifications of tributary streams that are within one half mile and draining to the normal pool elevation of Lookout Shoals Lake (Critical Area) have been revised to Class WS-IV CA.

(t) The ~~Schedule of Classifications and Water Quality Standards for the~~ Catawba River Basin Classification Schedule was amended August 1, 2000 with the reclassification of Little Grassy Creek (Index No. 11-29-2), including all tributaries, from its source to the Linville River from Class C Tr to Class C Tr ORW.

(u) The ~~Schedule of Classifications and Water Quality Standards for the~~ Catawba River Basin Classification Schedule was amended August 1, 2004 with the reclassification of a segment of three surface waters, more specifically Henry

Fork [11-129-1-(1)], Jerry Branch [11-129-1-3-(1)], and He Creek [11-129-1-4-(1)], from source to a formerly used City of Morganton Water Intake from Class WS-I ORW to Class WS-V ORW.

(v) The ~~Schedule of Classifications and Water Quality Standards for the~~ Catawba River Basin Classification Schedule was amended May 1, 2007 with the reclassification of the Catawba River [Index No. 11-(31.5)] from a point 0.6 mile upstream of Muddy Creek to a point 1.2 miles upstream of Canoe Creek from WS-IV to WS-IV Tr and Catawba River [Index No. 11-(32.3)] from a point 1.2 miles upstream of Canoe Creek to a point 0.7 mile upstream of Canoe Creek (Morganton water supply intake) from WS-IV CA to WS-IV Tr CA. Named and unnamed tributaries to this portion of the Catawba River are not classified as Trout. Between the last day of May and the first day of November the water quality standard for dissolved oxygen shall not be less than a daily average of 5.0 mg/l with a minimum instantaneous value of not less than 4.0 mg/l.

(w) The ~~Schedule of Classifications and Water Quality Standards for the~~ Catawba River Basin Classification Schedule was amended September 1, 2010 with the reclassification of the portion of the Catawba River [Index No. 11-(1)], from its source to the Left Prong Catawba River confluence, and its named tributaries, Chestnut Branch (Fork) [Index No. 11-2], Clover Patch Branch [Index No. 11-3], Youngs Fork Creek [Index No. 11-4], Spring Branch [Index No. 11-5], and Left Prong Catawba River [Index No. 11-6] from Class C Tr to Class C Tr HQW.

(x) The ~~Schedule of Classifications and Water Quality Standards for the~~ Catawba River Basin Classification Schedule was amended March 1, 2013 as follows:

(1) the portion of Maiden Creek [Index No. 11-129-5-7-2-(1)] from source to a point 0.7 mile upstream from backwaters of Maiden Reservoir, and its named tributary, Bee Branch [Index No. 11-129-5-7-2-2], from Class WS-II HQW to WS-V;

(2) the portion of Maiden Creek [Index No. 11-129-5-7-2-(2.5)] from a point 0.7 mile upstream from backwaters of Maiden Reservoir to dam at Maiden Reservoir from Class WS-II HQW CA to WS-V;

(3) the portion of Allen Creek [Index No. 11-129-5-7-2-4-(1)] from source to a point 0.7 mile upstream of Maiden water supply intake from Class WS-II HQW to WS-V; and

(4) the portion of Allen Creek [Index No. 11-129-5-7-2-4-(2)] from a point 0.7 mile upstream of Maiden water supply intake to Maiden water supply intake from Class WS-II HQW CA to WS-V.

(y) The ~~Schedule of Classifications and Water Quality Standards for the~~ Catawba River Basin Classification Schedule was amended July 1, 2017 as follows:

(1) a portion of the Catawba River [Index No. 11-(23)], including tributaries, from Bridgewater Dam to North Fork Catawba River from Class WS-V & B to Class WS-IV CA & B, and a portion of the Catawba River [part of Index No. 11-(8)], including tributaries, from North Fork Catawba River to a point ~~0.75~~ 0.7 mile downstream of SR 1501 from Class C to Class WS-IV CA. The CA extends 0.5 mile from and draining to the normal pool elevation of Lake James.

(2) a portion of the Catawba River [part of Index No. 11-(8)], including tributaries, from a point ~~0.75~~ 0.7 mile downstream of SR 1501 to a point ~~0.21~~ 0.2 mile upstream of ~~I-221~~ SR 1221 from Class C

to Class WS-IV. The PA extends 5.0 miles from and draining to the normal pool elevation of Lake James.

History Note: *Authority G.S. 143-214.1; 143-215.1; 143-215.3(a)(1);*
Eff. February 1, 1976;
Amended Eff. July 1, 2017; March 1, 2013; December 1, 2010; September 1, 2010; May 1, 2007; August 1, 2004; August 1, 2000; April 1, 1999; August 1, 1998; September 1, 1996; July 1, 1995; April 1, 1994; August 3, 1992; August 1, ~~1990.~~ 1990;
Readopted Eff. September 1, 2019.

REQUEST FOR TECHNICAL CHANGE

AGENCY: Environmental Management Commission

RULE CITATION: 15A NCAC 02B .0309

DEADLINE FOR RECEIPT: Friday, August 9, 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:

Please consider beginning (a)(2) with "the following offices of the North Carolina…"

For consistency purposes, in (b), delete "Streams. Such" so that it reads "Unnamed ~~Streams. Such~~ streams entering…" I make this suggestion because you don't have this type of introductory language anywhere else in this Rule.

In (c), please consider deleting the repetitive dates. I note that this was done to Rule .0306 back in 2014 and other Rules do not have duplicates. In this Rule, it appears as though (c)(5) and (6); (9) through (12); and (14) through (20) are repetitive.

In (i), line 11, please move the comma found after "rules" to behind "(… .0300)"

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

Amber May
Commission Counsel
Date submitted to agency: July 30, 2019

15A NCAC 02B .0309 is readopted as published in 32:22 NCR 2411-2493 with changes as follows:

15A NCAC 02B .0309 YADKIN-PEE DEE RIVER BASIN

(a) ~~The Yadkin-Pee Dee River Schedule of Classifications and Water Quality Standards may be inspected at the following places:~~ Classifications assigned to the waters within the Yadkin-Pee Dee River Basin are set forth in the Yadkin River Basin Classification Schedule, which may be inspected at the following places:

(1) the Internet at ~~http://h2o.enr.state.nc.us/csu/;~~ http://portal.ncdenr.org/web/wq/ps/csu/classifications; and

(2) the North Carolina Department of ~~Environment and Natural Resources:~~ Environmental Quality:

(A) Mooresville Regional Office
610 East Center Avenue, Suite 301
Mooresville, North ~~Carolina~~ Carolina;

(B) Winston-Salem Regional Office
~~585 Waughtown Street~~ 450 West Hanes Mill Road
Winston-Salem, North ~~Carolina~~ Carolina;

(C) Fayetteville Regional Office
~~Systel Building~~
225 Green Street
Systel Building Suite 714
Fayetteville, North ~~Carolina~~ Carolina;

(D) Asheville Regional Office
2090 US Highway 70
Swannanoa, North ~~Carolina~~ Carolina; and

(E) Division of Water ~~Quality~~ Resources
Central Office
512 North Salisbury Street
Raleigh, North Carolina.

(b) Unnamed Streams. Such streams entering Virginia are classified "C," and such streams entering South Carolina are classified "C".

(c) The Yadkin-Pee Dee River Basin ~~Schedule of Classifications and Water Quality Standards~~ Classification Schedule was amended effective:

(1) February 12, 1979;
(2) March 1, 1983;
(3) August 1, 1985;
(4) February 1, 1986;
(5) October 1, 1988;
(6) March 1, 1989;

(7) January 1, 1990;

(8) August 1, 1990;

(9) January 1, 1992;

(10) April 1, 1992;

(11) August 3, 1992;

(12) December 1, 1992;

(13) April 1, 1993;

(14) September 1, 1994;

(15) August 1, 1995;

(16) August 1, 1998;

(17) April 1, 1999;

(18) July 1, 2006;

(19) September 1, 2006;

(20) November 1, 2007.

(d) The ~~Schedule of Classifications and Water Quality Standard for the~~ Yadkin-Pee Dee River Basin Classification Schedule ~~has been~~ was amended effective October 1, 1988 as follows:

(1) Mitchell River [Index No. 12-62-(1)] from source to mouth of Christian Creek (North Fork Mitchell River) including all tributaries has been reclassified from Class B Tr to Class B Tr ORW.

(2) Mitchell River [Index No. 12-62-(7)] from mouth of Christian Creek (North Fork Mitchell River) to Surry County SR 1315 including all tributaries has been classified from Class C Tr to C Tr ORW, except Christian Creek and Robertson Creek which will be reclassified from Class B Tr to Class B Tr ORW.

(3) Mitchell River [Index No. 12-62-(12)] from Surry County SR 1315 to mouth of South Fork Mitchell River including all tributaries from Class C to Class C ORW.

(e) The ~~Schedule of Classifications and Water Quality Standard for the~~ Yadkin-Pee Dee River Basin Classification Schedule was amended effective March 1, 1989 as follows: Elk Creek [Index Nos. 12-24-(1) and 12-24-(10)] and all tributary waters were reclassified from Class B-trout, Class C-trout and Class B to Class B-trout ORW, Class C-trout ORW and Class B ORW.

~~(1) Elk Creek [Index Nos. 12-24-(1) and 12-24-(10)] and all tributary waters were reclassified from Class B-trout, Class C-trout and Class B to Class B-trout ORW, Class C-trout ORW and Class B ORW.~~(f) The ~~Schedule of Classifications and Water Quality Standard for the~~ Yadkin-Pee Dee River Basin Classification Schedule was amended effective January 1, 1990 as follows: Barnes Creek (Index No. 13-2-18) was reclassified from Class C to Class C ORW.

(g) The ~~Schedule of Classifications and Water Quality Standard for the~~ Yadkin-Pee Dee River Basin Classification Schedule ~~has been~~ was amended effective January 1, 1992 as follows:

(1) Little River [Index Nos. 13-25-(10) and 13-25-(19)] from Suggs Creek to Densons Creek has been reclassified from Classes WS-III and C to Classes WS-III HQW and C HQW.

(2) Densons Creek [Index No. 13-25-20-(1)] from its source to Troy's Water Supply Intake including all tributaries has been reclassified from Class WS-III to Class WS-III HQW.

(3) Bridgers Creek (Index No. 13-25-24) from its source to the Little River has been reclassified from Class C to Class C HQW.

(h) The ~~Schedule of Classifications and Water Quality Standard for the~~ Yadkin-Pee Dee River Basin Classification Schedule was amended effective April 1, 1992 with the reclassification of the North Prong South Fork Mitchell River from Class C to Class C Trout.

(i) The ~~Schedule of Classifications and Water Quality Standard for the~~ Yadkin-Pee Dee River Basin Classification Schedule was amended effective August 3, 1992 with the reclassification of all water supply waters (waters with a primary classification of WS-I, WS-II or WS-III). These waters were reclassified to WS-I, WS-II, WS-III, WS-IV or WS-V as defined in the revised water supply protection rules, (15A NCAC 2B .0100, .0200 and .0300) which became effective on August 3, 1992. In some cases, streams with primary classifications other than WS were reclassified to a WS classification due to their proximity and linkage to water supply waters. In other cases, waters were reclassified from a WS classification to an alternate appropriate primary classification after being identified as downstream of a water supply intake or identified as not being used for water supply purposes.

(j) The ~~Schedule of Classifications and Water Quality Standard for the~~ Yadkin-Pee Dee River Basin Classification Schedule ~~has been~~ was amended effective December 1, 1992 as follows:

(1) Pike Creek (Index No. 12-46-1-2) was reclassified from Class C Tr to Class C Tr HQW;

(2) Basin Creek (Index No. 12-46-2-2) was reclassified from Class C Tr to Class C Tr ORW;

(3) Bullhead Creek (Index No. 12-46-4-2) was reclassified from Class C Tr to Class C Tr ORW;

(4) Rich Mountain Creek (Index No. 12-46-4-2-2) was reclassified from Class Tr to Class C Tr ORW; and

(5) Widows Creek (Index No. 12-46-4-4) was reclassified from Class C Tr HQW to Class C Tr ORW.

(k) The ~~Schedule of Classifications and Water Quality Standard for the~~ Yadkin-Pee Dee River Basin Classification Schedule ~~has been~~ was amended effective September 1, 1994 as follows:

(1) Lanes Creek [Index Nos. 13-17-40-(1) and 13-17-40-(10.5)] from its source to the Marshville water supply dam including tributaries was reclassified from Classes WS-II and WS-II CA to Class WS-V.

(2) The South Yadkin River [Index Nos. 12-108-(9.7) and 12-108-(15.5)] from Iredell County SR 1892 to a point 0.7 mile upstream of the mouth of Hunting Creek including associated tributaries was reclassified from Classes WS-V, C and WS-IV to Classes WS-V, WS-IV, C and WS-IV CA.

(3) The Yadkin River [Index Nos. 12-(53) and 12-(71)] from a point 0.3 mile upstream of the mouth of Elkin Creek (River) to the Town of King water supply intake including associated tributaries was reclassified from Classes C and WS-IV to Classes WS-IV and WS-IV CA.

(4) The Yadkin River [Index Nos. 12-(80.5), 12-(81.5) and 12-(84.5)] from the Town of King water supply intake to the Davie County water supply intake reclassified from Classes C, B, WS-IV and WS-V to Classes WS-IV, WS-IV B and WS-IV CA.

(l) The ~~Schedule of Classifications and Water Quality Standard for the~~ Yadkin-Pee Dee River Basin Classification Schedule ~~has been~~ was amended effective August 1, 1995 as follows: Bear Creek [Index Nos. 12-108-18-(3), 12-108-18-(3.3)], Little Bear Creek (Index No. 12-108-18-2), and Blue Branch (Index No. 12-108-18-2-1) were reclassified from WS-II and WS-II CA (Critical Area) to C and WS-IV.

(m) The ~~Schedule of Classifications and Water Quality Standard for the~~ Yadkin-Pee Dee River Basin Classification Schedule was amended effective August 1, 1998 with the revision to the primary classification for portions of the Yadkin River [Index No. 12-(45)] from Class WS-IV to WS-V, Yadkin River [Index No. 12-(67.5)] from Class WS-IV to Class C, Yadkin River [Index Nos. 12-(93.5) and 12-(98.5)] from Class WS-IV to Class WS-V, South Yadkin River [Index No. 12-108-(12.5)] from Class WS-IV to Class WS-V, and South Yadkin River [Index Nos. 12-108-(19.5) and 12-108-(22)] from Class WS-IV to Class C.

(n) The ~~Schedule of Classifications and Water Quality Standard for the~~ Yadkin-Pee Dee River Basin Classification Schedule was amended effective April 1, 1999 with the reclassification of a portion of the Yadkin River [Index No. 12-(80.5)] from WS-IV CA to WS-IV. A portion of the Yadkin River 0.5 mile upstream of Bashavia Creek was reclassified from WS-IV to WS-IV CA. Bashavia Creek [Index Nos. 12-81-(0.5) and 12-81-(2)] was reclassified from WS-IV and WS-IV CA to Class C. Tributaries to Bashavia Creek were also reclassified to Class C. Portions of the Yadkin River [Index Nos. 12-(25.5) and 12-(27)] were reclassified from WS-IV to Class C and from WS-IV & B to Class B. Tributaries were reclassed from Class WS-IV to Class C. Supplemental classifications were not changed.

(o) The ~~Schedule of Classifications and Water Quality Standard for the~~ Yadkin-Pee Dee River Basin Classification Schedule was amended effective July 1, 2006 with the reclassification of a portion of the Uwharrie River. More specifically, Index No. 13-2-(25), Index No. 13-2-(17.5), and a portion of Index No. 13-2-(1.5) was reclassified from Class WS-IV CA, WS-IV, and C, to Class WS-IV B CA, WS-IV B, and B, respectively.

(p) The ~~Schedule of Classifications and Water Quality Standard for the~~ Yadkin-Pee Dee River Basin Classification Schedule was amended effective September 1, 2006 with the reclassification of a segment of the Yadkin River [portion of Index No. 12-(53)] from a point 0.3 mile upstream of the Town of Elkin proposed water supply intake to the Town of Elkin proposed water supply intake from C to WS-IV CA. The Town of Elkin proposed water supply intake is to be placed on the Yadkin River at a point directly above the mouth of Elkin Creek.

(q) The ~~Schedule of Classifications and Water Quality Standard for the~~ Yadkin-Pee Dee River Basin Classification Schedule was amended effective November 1, 2007 with the reclassifications as listed below, and the North Carolina Division of Water ~~Quality~~ Resources maintains a Geographic Information Systems data layer of these UWLs.

(1) Black Ankle Bog near Suggs Creek [Index No. 13-25-12] was reclassified to Class WL ~~UWL as defined in 15A NCAC 02B .0101~~ UWL.

(2) Pilot Mountain Floodplain Pool near Horne Creek [Index No. 12-75] was reclassified to Class WL ~~UWL as defined in 15A NCAC 02B .0101~~ UWL.

History Note: *Authority G.S. 143-214.1; 143-215.1; 143-215.3(a)(1);*
Eff. February 1, 1976;

Amended Eff. November 1, 2007; September 1, 2006; July 1, 2006; April 1, 1999; August 1, 1998; August 1, 1995; September 1, 1994; April 1, 1993; December 1, ~~1992.~~ 1992;
Readopted Eff. September 1, 2019.

REQUEST FOR TECHNICAL CHANGE

AGENCY: Environmental Management Commission

RULE CITATION: 15A NCAC 02B .0310

DEADLINE FOR RECEIPT: Friday, August 9, 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:

Please consider beginning (a)(2) with "the following offices of the North Carolina…"

For consistency purposes, in (b), delete "Streams. Such" so that it reads "Unnamed ~~Streams. Such~~ streams entering…" I make this suggestion because you don't have this type of introductory language anywhere else in this Rule.

In (c), please consider deleting the repetitive dates. I note that this was done to Rule .0306 back in 2014 and other Rules do not have duplicates. In this Rule, the repetitive dates are in (c)(7), (9), (10), (11), and (12.)

In (e), line 7, please move the comma found after "rules" to behind "(… .0300)"

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

Amber May
Commission Counsel
Date submitted to agency: July 30, 2019

15A NCAC 02B .0310 is readopted as published in 32:22 NCR 2411-2493 as follows:

15A NCAC 02B .0310 LUMBER RIVER BASIN

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

(1) the Internet at ~~http://h2o.enr.state.nc.us/csu/;~~ http://portal.ncdenr.org/web/wq/ps/csu/classifications; and

(2) the North Carolina Department of ~~Environment and Natural Resources:~~ Environmental Quality:

(A) Fayetteville Regional Office
225 Green Street
Systel Building Suite 714
Fayetteville, North ~~Carolina~~ Carolina;

(B) Wilmington Regional Office
127 Cardinal Drive Extension
Wilmington, North ~~Carolina~~ Carolina; and

(C) Division of Water ~~Quality~~ Resources
Central Office
512 North Salisbury Street
Raleigh, North Carolina.

(b) Unnamed Streams. Such streams entering South Carolina are classified "C Sw".

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

(1) March 1, 1977;
(2) December 13, 1979;
(3) September 14, 1980;
(4) April 12, 1981;
(5) April 1, 1982;
(6) February 1, 1986;
(7) July 1, 1990;
(8) August 1, 1990;
(9) August 3, 1992;
(10) September 1, 1996;
(11) August 1, 2000;
(12) November 1, 2007.

(d) The ~~Schedule of Classifications and Water Quality Standards for the~~ Lumber River Basin Classification Schedule was amended effective July 1, 1990 by the reclassification of Naked Creek (Index No. 14-2-6) from source to Drowning Creek including all tributaries from Class WS-III to Class WS-III ORW.

(e) The ~~Schedule of Classifications and Water Quality Standards for the~~ Lumber River Basin Classification Schedule was amended effective August 3, 1992 with the reclassification of all water supply waters (waters with a primary classification of WS-I, WS-II or WS-III). These waters were reclassified to WS-I, WS-II, WS-III, WS-IV or WS-V as defined in the revised water supply protection rules, (15A NCAC 02B .0100, .0200 and .0300) which became effective on August 3, 1992. In some cases, streams with primary classifications other than WS were reclassified to a WS classification due to their proximity and linkage to water supply waters. In other cases, waters were reclassified from a WS classification to an alternate appropriate primary classification after being identified as downstream of a water supply intake or identified as not being used for water supply purposes.

(f) The ~~Schedule of Classifications and Water Quality Standards for the~~ Lumber River Basin Classification Schedule was amended effective September 1, 1996 by the reclassification of the Lumber River from 2.0 miles upstream of highway 401 to a point 0.5 mile upstream of Powell Branch [Index Nos. 14-(3), 14-(4), 14-(4.5), 14-(7) and 14-(10.3)] from Classes WS-IV Sw HQW, WS-IV Sw HQW CA and C Sw HQW to Classes WS-IV B Sw HQW, WS-IV B Sw HQW CA and B Sw HQW.

(g) The ~~Schedule of Classifications and Water Quality Standards for the~~ Lumber River Basin Classification Schedule was amended effective August 1, 2000 with the reclassification of Lake Waccamaw [Index No. 15-2] from Class B Sw to Class B Sw ORW.

(h) The ~~Schedule of Classifications and Water Quality Standards for the~~ Lumber River Basin Classification Schedule was amended effective November 1, 2007 with the reclassifications listed below, and the North Carolina Division of Water ~~Quality~~ Resources maintains a Geographic Information Systems data layer of these UWLs:

(1) Waccamaw Natural Lake Shoreline near Lake Waccamaw [Index No. 15-2] was reclassified to Class WL ~~UWL as defined in 15A NCAC 02B .0101.~~ UWL.

(2) Green Swamp Small Depression Pond near Royal Oak Swamp [Index No. 15-25-1-12] was reclassified to Class WL ~~UWL as defined in 15A NCAC 02B .0101.~~ UWL.

(3) Old Dock Savanna near Gum Swamp Run [Index No. 15-6] was reclassified to Class WL ~~UWL as defined in 15A NCAC 02B .0101.~~ UWL.

(4) Myrtle Head Savanna near Mill Branch [Index No. 15-7-7] was reclassified to Class WL ~~UWL as defined in 15A NCAC 02B .0101.~~ UWL.

(5) Goosepond Bay near Big Marsh Swamp [Index No. 14-22-2] was reclassified to Class WL ~~UWL as defined in 15A NCAC 02B .0101.~~ UWL.

(6) Antioch Bay near Raft Swamp [Index No. 14-10-(1)] was reclassified to Class WL ~~UWL as defined in 15A NCAC 02B .0101.~~ UWL.

(7) Pretty Pond Bay near Big Marsh Swamp [Index No. 14-22-2] was reclassified to Class WL ~~UWL as defined in 15A NCAC 02B .0101.~~ UWL.

(8) Dunahoe Bay near Big Marsh Swamp [Index No. 14-22-2] was reclassified to Class WL ~~UWL as defined in 15A NCAC 02B .0101.~~ UWL.

(9) Hamby's Bay near Raft Swamp [Index No. 14-10-(1)] was reclassified to Class WL ~~UWL as defined in 15A NCAC 02B .0101.~~ UWL.

(10) Oak Savanna Bay near Smith Branch [Index No. 14-10-3] was reclassified to Class WL ~~UWL as defined in 15A NCAC 02B .0101.~~ UWL.

(11) Big Island Savanna near Driving Creek [Index No. 15-7-1] was reclassified to Class WL ~~UWL as defined in 15A NCAC 02B .0101.~~ UWL.

History Note: *Authority G.S. 143-214.1; 143-215.1; 143-215.3(a)(1);*
Eff. February 1, 1976;
Amended Eff. November 1, 2007; August 1, 2000; September 1, 1996; August 3, 1992; August 1, 1990; July 1, 1990; February 1, ~~1986.~~ 1986;
Readopted Eff. September 1, 2019.

REQUEST FOR TECHNICAL CHANGE

AGENCY: Environmental Management Commission

RULE CITATION: 15A NCAC 02B .0311

DEADLINE FOR RECEIPT: Friday, August 9, 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:

Please consider beginning (a)(2) with "the following offices of the North Carolina…"

In (g), line 7, please move the comma found after "rules" to behind "(… .0300)"

Also in (g), there is a random strike of a comma in between .0100 and 0200 on line 8. Please delete this.

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

Amber May
Commission Counsel
Date submitted to agency: July 30, 2019

15A NCAC 02B .0311 is readopted as published in 32:22 NCR 2411-2493 with changes as follows:

15A NCAC 02B .0311 CAPE FEAR RIVER BASIN

(a) ~~Effective February 1, 1976, the adopted classifications~~ Classifications assigned to the waters within the Cape Fear River Basin are set forth in the Cape Fear River Basin ~~Schedule of Classifications and Water Quality Standards,~~ Classification Schedule, which may be inspected at the following places:

(1) the Internet at ~~http://portal.ncdenr.org/web/wq/ps/csu/rules;~~ http://portal.ncdenr.org/web/wq/ps/csu/classifications; and

(2) the North Carolina Department of ~~Environment and Natural Resources:~~ Environmental Quality:

(A) Winston-Salem Regional Office
~~585 Waughtown Street~~ 450 West Hanes Mill Road
Winston-Salem, North ~~Carolina~~ Carolina;

(B) Fayetteville Regional Office
225 Green Street
Systel Building Suite 714
Fayetteville, North ~~Carolina~~ Carolina;

(C) Raleigh Regional Office
3800 Barrett Drive
Raleigh, North ~~Carolina~~ Carolina;

(D) Washington Regional Office
943 Washington Square Mall
Washington, North ~~Carolina~~ Carolina;

(E) Wilmington Regional Office
127 Cardinal Drive Extension
Wilmington, North ~~Carolina~~ Carolina; and

(F) Division of Water ~~Quality~~ Resources
Central Office
512 North Salisbury Street
Raleigh, North Carolina.

(b) The Cape Fear River Basin ~~Schedule of Classification and Water Quality Standards~~ Classification Schedule was amended effective:

(1) March 1, 1977;
(2) December 13, 1979;
(3) December 14, 1980;
(4) August 9, 1981;
(5) April 1, 1982;
(6) December 1, 1983;

(7) January 1, 1985;

(8) August 1, 1985;

(9) December 1, 1985;

(10) February 1, 1986;

(11) July 1, 1987;

(12) October 1, 1987;

(13) March 1, 1988;

(14) August 1, 1990.

(c) The ~~Schedule of Classifications and Water Quality Standards for the~~ Cape Fear River Basin Classification Schedule was amended effective June 1, 1988 as follows:

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

(2) Morgan Creek [Index No. 16-41-1-(1)] to the University Lake dam including University Lake and all tributaries has been reclassified from Class WS-III to WS-I.

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

(e) The ~~Schedule of Classifications and Water Quality Standards for the~~ Cape Fear River Basin Classification Schedule was amended effective January 1, 1990 as follows:

(1) Intracoastal Waterway (Index No. 18-87) from southern edge of White Oak River Basin to western end of Permuda Island (a line from Morris Landing to Atlantic Ocean), from the eastern mouth of Old Topsail Creek to the southwestern shore of Howe Creek and from the southwest mouth of Shinn Creek to channel marker No. 153 including all tributaries except the King Creek Restricted Area, Hardison Creek, Old Topsail Creek, Mill Creek, Futch Creek and Pages Creek were reclassified from Class SA to Class SA ORW.

(2) Topsail Sound and Middle Sound ORW Area which includes all waters between the Barrier Islands and the Intracoastal Waterway located between a line running from the western most shore of Mason Inlet to the southwestern shore of Howe Creek and a line running from the western shore of New Topsail Inlet to the eastern mouth of Old Topsail Creek was reclassified from Class SA to Class SA ORW.

(3) Masonboro Sound ORW Area which includes all waters between the Barrier Islands and the mainland from a line running from the southwest mouth of Shinn Creek at the Intracoastal Waterway to the southern shore of Masonboro Inlet and a line running from the Intracoastal Waterway Channel marker No. 153 to the southside of the Carolina Beach Inlet was reclassified from Class SA to Class SA ORW.

(f) The ~~Schedule of Classifications and Water Quality Standards for the~~ Cape Fear River Basin Classification Schedule was amended effective January 1, 1990 as follows: Big Alamance Creek [Index No. 16-19-(1)] from source to Lake Mackintosh Dam including all tributaries has been reclassified from Class WS-III NSW to Class WS-II NSW.

(g) The ~~Schedule of Classifications and Water Quality Standards for the~~ Cape Fear River Basin Classification Schedule was amended effective August 3, 1992 with the reclassification of all water supply waters (waters with a primary classification of WS-I, WS-II or WS-III). These waters were reclassified to WS-I, WS-II, WS-III, WS-IV or WS-V as defined in the revised water supply protection rules, (15A NCAC 02B .0100 ~~,~~ .0200 and .0300) which became effective on August 3, 1992. In some cases, streams with primary classifications other than WS were reclassified to a WS classification due to their proximity and linkage to water supply waters. In other cases, waters were reclassified from a WS classification to an alternate appropriate primary classification after being identified as downstream of a water supply intake or identified as not being used for water supply purposes.

(h) The ~~Schedule of Classifications and Water Quality Standards for the~~ Cape Fear River Basin Classification Schedule was amended effective June 1, 1994 as follows:

(1) The Black River from its source to the Cape Fear River [Index Nos. 18-68-(0.5), 18-68-(3.5) and 18-65-(11.5)] was reclassified from Classes C Sw and C Sw HQW to Class C Sw ORW.

(2) The South River from Big Swamp to the Black River [Index Nos. 18-68-12-(0.5) and 18-68-12(11.5)] was reclassified from Classes C Sw and C Sw HQW to Class C Sw ORW.

(3) Six Runs Creek from Quewhiffle Swamp to the Black River [Index No. 18-68-2] was reclassified from Class C Sw to Class C Sw ORW.

(i) The ~~Schedule of Classifications and Water Quality Standards for the~~ Cape Fear River Basin Classification Schedule was amended effective September 1, 1994 with the reclassification of the Deep River [Index No. 17-(36.5)] from the Town of Gulf-Goldston water supply intake to US highway 421 including associated tributaries from Class C to Classes C, WS-IV and WS-IV CA.

(j) The ~~Schedule of Classifications and Water Quality Standards for the~~ Cape Fear River Basin Classification Schedule was amended effective August 1, 1998 with the revision to the primary classification for portions of the Deep River [Index No. 17-(28.5)] from Class WS-IV to Class WS-V, Deep River [Index No. 17-(41.5)] from Class WS-IV to Class C, and the Cape Fear River [Index 18-(10.5)] from Class WS-IV to Class WS-V.

(k) The ~~Schedule of Classifications and Water Quality Standards for the~~ Cape Fear River Basin Classification Schedule was amended effective April 1, 1999 with the reclassification of Buckhorn Creek (Harris Lake)[Index No. 18-7-(3)] from the backwaters of Harris Lake to the Dam at Harris Lake from Class C to Class WS-V.

(l) The ~~Schedule of Classifications and Water Quality Standards for the~~ Cape Fear River Basin Classification Schedule was amended effective April 1, 1999 with the reclassification of the Deep River [Index No. 17-(4)] from the dam at Oakdale-Cotton Mills, Inc. to the dam at Randleman Reservoir (located 1.6 mile upstream of U.S. Hwy 220 Business), and including tributaries from Class C and Class B to Class WS-IV and Class WS-IV & B. Streams within the Randleman Reservoir Critical Area have been reclassified to WS-IV CA. The Critical Area for a WS-IV reservoir is defined as 0.5 mile and draining to the normal pool elevation of the reservoir. All waters within the Randleman

Reservoir Water Supply Watershed are within a designated Critical Water Supply Watershed and are subject to a special management strategy specified in ~~15A NCAC 02B .0248.~~ Rule .0248 of this Subchapter.

(m) The ~~Schedule of Classifications and Water Quality Standards for the~~ Cape Fear River Basin Classification Schedule was amended effective August 1, 2002 as follows:

(1) Mill Creek [Index Nos. 18-23-11-(1), 18-23-11-(2), 18-23-11-3, 18-23-11-(5)] from its source to the Little River, including all tributaries was reclassified from Class WS-III NSW and Class WS-III B NSW to Class WS-III NSW HQW@ and Class WS-III B NSW HQW@.

(2) McDeed's Creek [Index Nos. 18-23-11-4, 18-23-11-4-1] from its source to Mill Creek, including all tributaries was reclassified from Class WS III NSW and Class WS-III B NSW to Class WS-III NSW HQW@ and Class WS-III B NSW HQW@.

The "@" symbol as used in this Paragraph means that if the governing municipality has deemed that a development is covered under a "5/70 provision" as described in ~~Rule 15A NCAC 02B .0215(3)(b)(i)(E)(Fresh Surface Water Quality Standards for Class WS-III Waters),~~ Rule .0215(3)(b)(i)(E) of this Subchapter, then that development is not subject to the stormwater requirements as described in ~~rule 15A NCAC 02H .1006 (Stormwater Requirements: High Quality Waters).~~ 15A NCAC 02H .1006.

(n) The ~~Schedule of Classifications and Water Quality Standards for the~~ Cape Fear River Basin Classification Schedule was amended effective November 1, 2004 as follows:

(1) the portion of Rocky River [Index Number 17-43-(1)] from a point 0.3 mile upstream of Town of Siler City upper reservoir dam to a point 0.3 mile downstream of Lacy Creek from WS-III to WS-III CA.

(2) the portion of Rocky River [Index Number 17-43-(8)] from dam at lower water supply reservoir for Town of Siler City to a point 65 feet below dam (site of proposed dam) from C to WS-III CA.

(3) the portion of Mud Lick Creek (Index No. 17-43-6) from a point 0.4 mile upstream of Chatham County SR 1355 to Town of Siler City lower water supply reservoir from WS-III to WS-III CA.

(4) the portion of Lacy Creek (17-43-7) from a point 0.6 mile downstream of Chatham County SR 1362 to Town of Siler City lower water supply reservoir from WS-III to WS-III CA.

(o) The ~~Schedule of Classifications and Water Quality Standards for the~~ Cape Fear River Basin Classification Schedule was amended effective November 1, 2007 with the reclassifications listed below, and the North Carolina Division of Water ~~Quality~~ Resources maintains a Geographic Information Systems data layer of these UWLs.

(1) Military Ocean Terminal Sunny Point Pools, all on the eastern shore of the Cape Fear River [Index No. 18-(71)] were reclassified to Class WL ~~UWL as defined in 15A NCAC 02B .0101.~~ UWL.

(2) Salters Lake Bay near Salters Lake [Index No. 18-44-4] was reclassified to Class WL ~~UWL as defined in 15A NCAC 02B .0101.~~ UWL.

(3) Jones Lake Bay near Jones Lake [Index No. 18-46-7-1] was reclassified to Class WL ~~UWL as defined in 15A NCAC 02B .0101.~~ UWL.

(4) Weymouth Woods Sandhill Seep near Mill Creek [18-23-11-(1)] was reclassified to Class ~~UWL as defined in 15A NCAC 02B .0101.~~ UWL.

(5) Fly Trap Savanna near Cape Fear River [Index No. 18-(71)] was reclassified to Class WL ~~UWL as defined in 15A NCAC 02B .0101.~~ UWL.

(6) Lily Pond near Cape Fear River [Index No. 18-(71)] was reclassified to Class WL ~~UWL as defined in 15A NCAC 02B .0101.~~ UWL.

(7) Grassy Pond near Cape Fear River [Index No. 18-(71)] was reclassified to Class WL ~~UWL as defined in 15A NCAC 02B .0101.~~ UWL.

(8) The Neck Savanna near Sandy Run Swamp [Index No. 18-74-33-2] was reclassified to Class WL ~~UWL as defined in 15A NCAC 02B .0101.~~ UWL.

(9) Bower's Bog near Mill Creek [Index No. 18-23-11-(1)] was reclassified to Class WL ~~UWL as defined in 15A NCAC 02B .0101.~~ UWL.

(10) Bushy Lake near Turnbull Creek [Index No. 18-46] was reclassified to Class WL ~~UWL as defined in 15A NCAC 02B .0101.~~ UWL.

(p) The ~~Schedule of Classifications and Water Quality Standards for the~~ Cape Fear River Basin Classification Schedule was amended effective January 1, 2009 as follows:

(1) the portion of Cape Fear River [Index No. 18-(26)] (including tributaries) from Smithfield Packing Company's intake, located approximately 2 miles upstream of County Road 1316, to a point 0.5 miles upstream of Smithfield Packing Company's intake from Class C to Class WS-IV CA.

(2) the portion of Cape Fear River [Index No.18-(26)] (including tributaries) from a point 0.5 miles upstream of Smithfield Packing Company's intake to a point 1 mile upstream of Grays Creek from Class C to Class WS-IV.

(q) The ~~Schedule of Classifications and Water Quality Standards for the~~ Cape Fear River Basin Classification Schedule was amended effective August 11, 2009 with the reclassification of all Class C NSW waters and all Class B NSW waters upstream of the dam at B. Everett Jordan Reservoir from Class C NSW and Class B NSW to Class WS-V NSW and Class WS-V & B NSW, respectively. All waters within the B. Everett Jordan Reservoir Watershed are within a designated Critical Water Supply Watershed and are subject to a special management strategy specified in ~~15A NCAC 02B .0262 through .0273.~~ Rules .0262 through .0273 of this Subchapter.

(r) The ~~Schedule of Classifications and Water Quality Standards for the~~ Cape Fear River Basin Classification Schedule was amended effective September 1, 2009 with the reclassification of a portion of the Haw River [Index No. 16-(28.5)] from the Town of Pittsboro water supply intake, which is located approximately 0.15 mile west of U.S. 15/501, to a point 0.5 mile upstream of the Town of Pittsboro water supply intake from Class WS-IV to Class WS-IV CA.

(s) The ~~Schedule of Classifications and Water Quality Standards for the~~ Cape Fear River Basin Classification Schedule was amended effective March 1, 2012 with the reclassification of the portion of the Haw River [Index No. 16-(1)] from the City of Greensboro's intake, located approximately 650 feet upstream of Guilford County 2712, to a point 0.5 miles upstream of the intake from Class WS-V NSW to Class WS-IV CA NSW, and the portion of the Haw River [Index No. 16-(1)] from a point 0.5 miles upstream of the intake to a point 0.6 miles downstream of U.S. Route 29 from Class WS-V NSW to Class WS-IV NSW.

(t) The ~~Schedule of Classifications and Water Quality Standards for the~~ Cape Fear River Basin Classification Schedule was amended effective June 30, 2017 with the reclassification of a section of 18-(71) from upstream mouth of Toomers Creek to a line across the river between Lilliput Creek and Snows Cut from Class SC to Class SC Sw. A site-specific management strategy is outlined in 15A NCAC 02B .0227.

(u) The Cape Fear River Basin Classification Schedule was amended effective September 1, [~~2018~~] 2019 with the reclassification of a portion of Sandy Creek [Index No. 17-16-(1)] (including tributaries) from a point 0.4 mile upstream of SR-2481 to a point 0.6 mile upstream of N.C. Hwy 22 from WS-III to WS-III CA. The reclassification resulted in an updated representation of the water supply watershed for the Sandy Creek reservoir.

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

REQUEST FOR TECHNICAL CHANGE

AGENCY: Environmental Management Commission

RULE CITATION: 15A NCAC 02B .0312

DEADLINE FOR RECEIPT: Friday, August 9, 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:

Please consider beginning (a)(2) with "the following offices of the North Carolina…"

For consistency purposes, in (b), delete the corresponding paragraphs (e,g, "see paragraph (c)") since you've not done this in the majority of your other similar rules and have instead deleted the duplicate information.

In (c), please consider deleting the repetitive dates. Here all dates are addressed elsewhere.

In (e), line 7, please move the comma found after "rules" to behind "(… .0300)"

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

Amber May
Commission Counsel
Date submitted to agency: July 30, 2019

15A NCAC 02B .0312 is readopted as published in 32:22 NCR 2411-2493 as follows:

15A NCAC 02B .0312 WHITE OAK RIVER BASIN

(a) ~~The White Oak River Basin Schedule of Classifications and Water Quality Standards may be inspected in the following places:Effective February 1, 1976, adopted classifications~~ Classifications assigned to the waters within the White Oak River Basin are set forth in the White Oak River Basin Classification Schedule, which may be inspected in the following places:

(1) the ~~internet~~ Internet at ~~http://h2o.enr.state.nc.us/csu/;~~ http://portal.ncdenr.org/web/wq/ps/csu/classifications ; and

(2) the North Carolina Department of ~~Environment and Natural Resources:~~ Environmental Quality:

(A) Washington Regional Office
943 Washington Square Mall
Washington, North Carolina;

(B) Wilmington Regional Office
127 Cardinal Drive Extension
Wilmington, North Carolina; and

(C) Division of Water ~~Quality~~ Resources
Central Office
512 North Salisbury Street
Raleigh, North Carolina.

(b) The White Oak River Basin ~~Schedule of Classification and Water Quality Standards~~ Classification Schedule was amended effective:

(1) December 13, 1979 see Paragraph (c);
(2) June 1, 1988 see Paragraph (d);
(3) January 1, 1990 see Paragraph (e);
(4) August 1, 1990 see Paragraph (f);
(5) August 1, 1991 see Paragraph (g);
(6) June 1, 1992 see Paragraph (h);
(7) December 1, 1992 see Paragraph (i);
(8) November 1, 2007 see Paragraph (j);
(9) July 1, 2011 see Paragraph (k).

(c) The ~~Schedule of Classifications and Water Quality Standards for the~~ White Oak River Basin Classification Schedule ~~has been~~ was amended effective December 13, 1979 with the reclassification of a portion of the White Oak River Restricted Area (Index No. 20-32) and a portion of the Newport River (Morehead City and Beaufort Harbors Restricted Area) [Index No. 21-(31)] from Class SC to Class SA.

(d) The ~~Schedule of Classifications and Water Quality Standards for the~~ White Oak River Basin Classification Schedule ~~has been~~ was amended effective June 1, 1988 with the reclassification of unnamed waters as follows:

(1) a portion of the Roosevelt Natural Area Swamp, which drains to Bogue Sound (20-36), from Class SA to Class C Sw ORW.

(2) another portion of the Roosevelt Natural Area Swamp, which drains to Bogue Sound (20-36), from Class SA to Class SA Sw ORW.

(e) The ~~Schedule of Classifications and Water Quality Standards for the~~ White Oak River Basin Classification Schedule ~~has been~~ was amended effective January 1, 1990 as follows:

(1) Intracoastal Waterway (Index No. 19-39) from northeastern boundary of Cape Fear River Basin to Daybeacon No. 17 including all unnamed bays, guts, and channels, except Rogers Bay and Mill Creek and Intracoastal Waterway (Index No. 19-41) from the northeast mouth of Goose Creek to the southwest mouth of Queen Creek were reclassified from Class SA to Class SA ORW.

(2) Bear Island ORW Area, which includes all waters within an area north of Bear Island defined by a line from the western most point on Bear Island to the northeast mouth of Goose Creek on the mainland, east to the southwest mouth of Queen Creek, then south to green marker No. 49, then northeast to the northern most point on Huggins Island, then southeast along the shoreline of Huggins Island to the southeastern most point of Huggins Island, then south to the northeastern most point on Dudley Island, then southwest along the shoreline of Dudley Island to the eastern tip of Bear Island to the western mouth of Foster Creek including Cow Channel were reclassified from Class SA to Class SA ORW.

(3) Bogue Sound (including Intracoastal Waterway from White Oak River Basin to Beaufort Inlet)(Index No. 20-36) from Bogue Inlet to a line across Bogue Sound from the southwest side of mouth of Gales Creek to Rock Point and all tributaries except Hunting Island Creek, Goose Creek, and Broad Creek were reclassified from Class SA to Class SA ORW.

(4) Core Sound (Index No. 21-35-7) from northern boundary of White Oak River Basin (a line from Hall Point to Drum Inlet) to Back Sound and all tributaries except Atlantic Harbor Restricted Area, Nelson Bay, Jarrett Bay, Williston Creek, Wade Creek and Middens Creek were reclassified from Class SA to Class SA ORW.

(5) Back Sound (Index No. 21-35) from a point on Shackleford Banks at lat. 34 degrees 40' 57" and long 76 degrees 37' 30" north to the western most point of Middle Marshes and along the northwest shoreline of Middle Marshes (to include all of Middle Marshes) to Rush Point on Harkers Island and along the southern shore of Harkers Island back to Core Sound and all tributaries were reclassified from Class SA to Class SA ORW.

(f) The ~~Schedule of Classifications and Water Quality Standards for the~~ White Oak River Basin Classification Schedule ~~has been~~ was amended effective August 1, 1990 with the reclassification of a portion of the White Oak River [Index No. 20-(1)] from Spring Branch to Hunters Creek from Class C to Class C HQW.

(g) The ~~Schedule of Classifications and Water Quality Standards for the~~ White Oak River Basin Classification Schedule was amended effective August 1, 1991 by adding the supplemental classification NSW (Nutrient Sensitive

Waters) to all waters in the New River Drainage Area above a line running across the New River from Grey Point to a point of land approximately 2,200 yards downstream of the mouth of Duck Creek.

(h) The ~~Schedule of Classifications and Water Quality Standards for the~~ White Oak River Basin Classification Schedule was amended effective June 1, 1992 with the reclassification of Peletier Creek (Index No. 20-36-11) from its source to Bogue Sound from Class SA to Class SB with the requirement that no discharges be allowed.

(i) The ~~Schedule of Classifications and Water Quality Standards for the~~ White Oak River Basin Classification Schedule ~~has been~~ was amended effective December 1, 1992 with the reclassification of the Atlantic Harbor Restricted Area (Index No. 21-35-7-2) from Class SC to Class SA ORW.

(j) The ~~Schedule of Classifications and Water Quality Standards for the~~ White Oak River Basin Classification Schedule ~~has been~~ was amended effective November 1, 2007 with the reclassifications listed below, and the North Carolina Division of Water ~~Quality~~ Resources maintains a Geographic Information Systems data layer of these UWLs:

(1) Theodore Roosevelt Maritime Swamp Forest near Roosevelt Natural Area Swamp [Index No. 20-36-9.5-(1)] was reclassified to Class WL ~~UWL as defined in 15A NCAC 02B .0101.~~ UWL.

(2) Bear Island Maritime Wet Grassland near the Atlantic Ocean [Index No. 99-(4)] was reclassified to Class WL ~~UWL as defined in 15A NCAC 02B .0101.~~ UWL.

(k) The ~~Schedule of Classifications and Water Quality Standards for the~~ White Oak River Basin Classification Schedule ~~has been~~ was amended effective July 1, 2011 with the reclassification of a portion of Southwest Creek [Index No. 19-17-(0.5)] from a point approximately 0.5 mile upstream of Mill Run to Mill Run from Class C NSW to Class SC NSW, and another portion of Southwest Creek [Index No. 19-17-(6.5)] from Mill Run to New River from Class C HQW NSW to Class SC HQW NSW.

History Note: *Authority G.S. 143-214.1; 143-215.1; 143-215.3(a)(1);*
Eff. February 1, 1976;
Amended Eff. July 1, 2011; November 1, 2007; December 1, 1992; June 1, 1992; August 1, 1991; August 1, ~~1990.~~ 1990;
Readopted Eff. September 1, 2019.

REQUEST FOR TECHNICAL CHANGE

AGENCY: Environmental Management Commission

RULE CITATION: 15A NCAC 02B .0313

DEADLINE FOR RECEIPT: Friday, August 9, 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:

Please consider beginning (a)(2) with "the following offices of the North Carolina…"

For consistency purposes, in (b), delete "Streams. Such" so that it reads "Unnamed ~~Streams. Such~~ streams entering…" I make this suggestion because you don't have this type of introductory language anywhere else in this Rule.

In (e), line 7, please move the comma found after "rules" to behind "(….0300)"

In (l), should "is amended effective" be "was amended effective" to match language elsewhere in your Rules? Even the most recent change uses a "was" elsewhere.

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

Amber May
Commission Counsel
Date submitted to agency: July 30, 2019

15A NCAC 02B .0313 is readopted as published in 32:22 NCR 2411-2493 as follows:

15A NCAC 02B .0313 ROANOKE RIVER BASIN

(a) ~~Effective February 1, 1976, the adopted classifications~~ Classifications assigned to the waters within the Roanoke River Basin are set forth in the Roanoke River Basin ~~Schedule of Classifications and Water Quality Standards,~~ Classification Schedule, which may be inspected at the following places:

(1) the Internet at ~~http://h2o.enr.state.nc.us/csu/;~~ http://portal.ncdenr.org/web/wq/ps/csu/classifications; and

(2) the North Carolina Department of ~~Environment and Natural Resources:~~ Environmental Quality:

(A) Raleigh Regional Office
3800 Barrett Drive
Raleigh, ~~Carolina~~ Carolina;

(B) Washington Regional Office
943 Washington Square Mall
Washington, ~~Carolina~~ Carolina;

(C) Winston-Salem Regional Office
~~585 Waughtown Street Winston-Salem,~~ 450 West Hanes Mill Road
North ~~Carolina~~ Carolina; and

(D) Division of Water ~~Quality~~ Resources
Regional Office
512 North Salisbury Street
Raleigh, North Carolina.

(b) Unnamed Streams. Such streams entering Virginia are classified "C", except that all backwaters of John H. Kerr Reservoir and the North Carolina portion of streams tributary thereto not otherwise named or described shall carry the classification "B," and all backwaters of Lake Gaston and the North Carolina portion of streams tributary thereto not otherwise named or described shall carry the classification "C and B".

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

(1) May 18, 1977;
(2) July 9, 1978;
(3) July 18, 1979;
(4) July 13, 1980;
(5) March 1, 1983;
(6) August 1, 1985;
(7) February 1, 1986.

(d) The ~~Schedule of Classifications and Water Quality Standards for the~~ Roanoke River Basin Classification Schedule was amended effective July 1, 1991 with the reclassification of Hyco Lake (Index No. 22-58) from Class C to Class B.

(e) The ~~Schedule of Classifications and Water Quality Standards for the~~ Roanoke River Basin Classification Schedule was amended effective August 3, 1992 with the reclassification of all water supply waters (waters with a primary classification of WS-I, WS-II or WS-III). These waters were reclassified to WS-I, WS-II, WS-III, WS-IV or WS-V as defined in the revised water supply protection rules, (15A NCAC 2B .0100, .0200 and .0300) which became effective on August 3, 1992. In some cases, streams with primary classifications other than WS were reclassified to a WS classification due to their proximity and linkage to water supply waters. In other cases, waters were reclassified from a WS classification to an alternate appropriate primary classification after being identified as downstream of a water supply intake or identified as not being used for water supply purposes.

(f) The ~~Schedule of Classifications and Water Quality Standards for the~~ Roanoke River Basin Classification Schedule was amended effective August 1, 1998 with the reclassification of Cascade Creek (Camp Creek) [Index No. 22-12] and its tributaries from its source to the backwaters at the swimming lake from Class B to Class B ORW, and reclassification of Indian Creek [index No. 22-13] and its tributaries from its source to Window Falls from Class C to Class C ORW.

(g) The ~~Schedule of Classifications and Water Quality Standards for the~~ Roanoke River Basin Classification Schedule was amended effective August 1, 1998 with the reclassification of Dan River and Mayo River WS-IV Protected Areas. The Protected Areas were reduced in size.

(h) The ~~Schedule of Classifications and Water Quality Standards for the~~ Roanoke River Basin Classification Schedule was amended effective April 1, 1999 as follows:

(1) Hyco River, including Hyco Lake below elevation 410 [Index No. 22-58-(0.5)] was reclassified from Class B to Class WS-V B.

(2) Mayo Creek (Maho Creek)(Mayo Reservoir) [Index No. 22-58-15] was reclassified from its source to the dam of Mayo Reservoir from Class C to Class WS-V.

(i) The ~~Schedule of Classifications and Water Quality Standards for the~~ Roanoke River Basin Classification Schedule was amended effective April 1, 2001 as follows:

(1) Fullers Creek from source to a point 0.8 mile upstream of Yanceyville water supply dam [Index No. 22-56-4-(1)] was reclassified from Class WS-II to Class WS-III.

(2) Fullers Creek from a point 0.8 mile upstream of Yanceyville water supply dam to Yanceyville water supply dam [Index No. 22-56-4-(2)] was reclassified from Class WS-II CA to Class WS-III CA.

(j) The ~~Schedule of Classifications and Water Quality Standards for the~~ Roanoke River Basin Classification Schedule was amended effective November 1, 2007 with the reclassification of Hanging Rock Hillside Seepage Bog near Cascade Creek [Index No. 22-12-(2)] to Class WL ~~UWL as defined in 15A NCAC 02B .0101. Rule .0202 of this Subchapter~~ UWL. The Division of Water ~~Quality~~ Resources maintains a Geographic Information Systems data layer of the UWL.

(k) The ~~Schedule of Classifications and Water Quality Standards for the~~ Roanoke River Basin Classification Schedule was amended effective July 3, 2012 as follows:

(1) a portion of the Dan River [Index No. 22-(39)] (including tributaries) from the City of Roxboro's intake, located approximately 0.7 mile upstream of NC Highway 62, to a point approximately 0.5 mile upstream of the City of Roxboro's intake from Class C to Class WS-IV CA.

(2) a portion of the Dan River [Index No. 22-(39)] (including tributaries) from a point approximately 0.5 mile upstream of the City of Roxboro's intake to the North Carolina-Virginia state line from Class C to Class WS-IV.

(l) The ~~Schedule of Classifications and Water Quality Standards for the~~ Roanoke River Basin Classification Schedule is amended effective January 1, 2013 as follows:

(1) a portion of the Roanoke River [Index No. 23-(26)] (including tributaries) from the Martin County Regional Water And Sewer Authority's intake, located approximately 0.3 mile upstream of US 13/US 17, to a point approximately 0.5 mile upstream of the Martin County Regional Water And Sewer Authority's intake from Class C to Class WS-IV CA.

(2) a portion of the Roanoke River [Index No. 23-(26)] (including tributaries) from a point approximately 0.5 mile upstream of the Martin County Regional Water And Sewer Authority's intake to a point approximately 1 mile downstream of Coniott Creek (Town Swamp) from Class C to Class WS-IV.

History Note: *Authority G.S. 143-214.1; 143-215.1; 143-215.3(a)(1);*
Eff. February 1, 1976;
Amended Eff. January 1, 2013; July 3, 2012; November 1, 2007; April 1, 2001; April 1, 1999; August 1, 1998; August 3, 1992; July 1, 1991; February 1, 1986; August 1, ~~1985.~~ 1985;
Readopted Eff. September 1, 2019.

REQUEST FOR TECHNICAL CHANGE

AGENCY: Environmental Management Commission

RULE CITATION: 15A NCAC 02B .0314

DEADLINE FOR RECEIPT: Friday, August 9, 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:

Please consider beginning (a)(2) with "the following offices of the North Carolina…"

For consistency purposes, in (b), delete "Streams. Such" so that it reads "Unnamed ~~Streams. Such~~ streams entering…" I make this suggestion because you don't have this type of introductory language anywhere else in this Rule.

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

Amber May
Commission Counsel
Date submitted to agency: July 30, 2019

15A NCAC 02B .0314 is readopted as published in 32:22 NCR 2411-2493 as follows:

15A NCAC 02B .0314 CHOWAN RIVER BASIN

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

(1) ~~Clerk of Court:~~

~~Bertie County~~

~~Chowan County~~

~~Gates County~~

~~Hertford County~~

~~Northampton County~~ the Internet at http://portal.ncdenr.org/web/wq/ps/csu/classifications; and

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

(A) Raleigh Regional Office

3800 Barrett Drive

Raleigh, ~~North Carolina~~ North Carolina;

(B) Washington Regional Office

~~1502 North Market Street~~ 943 Washington Square Mall

Washington, ~~North Carolina~~ North Carolina: and

(C) Division of Water Resources

Central Office

512 North Salisbury Street

Raleigh, North Carolina.

(b) Unnamed Streams. Such streams entering Virginia are classified "C."

(c) All classifications assigned to the waters of the Chowan River Basin ~~and referenced in (a) of this Rule~~ are additionally classified as ~~nutrient sensitive waters (NSW)~~ Nutrient Sensitive Waters (NSW) in accordance with the provisions of Rule .0214 of this Subchapter.

(d) The Chowan River Basin ~~Schedule of Classification and Water Quality Standards~~ Classification Schedule was amended effective August 1, 1985.

History Note: *Filed as an Emergency Amendment [(f)] Eff. March 10, 1979, for a period of 120 days to expire on September 7, 1979;*
Authority G.S. 143-214.1; 143-215.1; 143-215.3(a)(1);
Eff. February 1, 1976;
Amended Eff. November 1, 1978; March 1, 1977;
Emergency Amendment [(f)] Made Permanent Eff. September 6, 1979;
Amended Eff. August 1, 1985; January 1, ~~1985.~~ 1985;

Readopted Eff. September 1, 2019.

REQUEST FOR TECHNICAL CHANGE

AGENCY: Environmental Management Commission

RULE CITATION: 15A NCAC 02B .0315

DEADLINE FOR RECEIPT: Friday, August 9, 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:

Please consider beginning (a)(2) with "the following offices of the North Carolina…"

For consistency purposes, in (b), delete the corresponding paragraphs (e,g, "see paragraph (c)") since you've not done this in the majority of your other similar rules and have instead deleted the duplicate information.

In (c), please consider deleting the repetitive dates. I note that this was done to Rule .0306 back in 2014. In this Rule, all except (b)(18) are repetitive.

In (s), line 27, please move the comma found after "rules" to behind "(… .0300)"

In (bb) and (cc), should "is amended effective" be "was amended effective" to match language elsewhere in your Rules? Even the most recent change uses a "was" elsewhere. Also, in (bb), should "are within" be "were within"?

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

Amber May
Commission Counsel
Date submitted to agency: July 30, 2019

15A NCAC 02B .0315 is readopted as published in 32:22 NCR 2411-2493 as follows:

15A NCAC 02B .0315 NEUSE RIVER BASIN

(a) ~~Effective February 1, 1976, the adopted classifications~~ Classifications assigned to the waters within the Neuse River Basin are set forth in the Neuse River Basin ~~Schedule of Classification and Water Quality Standards,~~ Classification Schedule, which may be inspected at the following places:

(1) the Internet at ~~http://portal.ncdenr.org/web/wq/ps/csu/rules;~~ http://portal.ncdenr.org/web/wq/ps/csu/classifications; and

(2) the North Carolina Department of ~~Environment and Natural Resources:~~ Environmental Quality:

(A) Raleigh Regional Office
3800 Barrett Drive
Raleigh, North Carolina;

(B) Washington Regional Office
943 Washington Square Mall
Washington, North Carolina;

(C) Wilmington Regional Office
127 Cardinal ~~Drive~~ Drive Extension
Wilmington, North ~~Carolina;~~ Carolina; and

(D) Division of Water ~~Quality~~ Resources
Central Office
512 North Salisbury Street
Raleigh, North Carolina.

(b) The Neuse River Basin ~~Schedule of Classification and Water Quality Standards~~ Classification Schedule was amended effective:

(1) March 1, 1977 see Paragraph (c) of this Rule;
(2) December 13, 1979 see Paragraph (d) of this Rule;
(3) September 14, 1980 see Paragraph (e) of this Rule;
(4) August 9, 1981 see Paragraph (f) of this Rule;
(5) January 1, 1982 see Paragraph (g) of this Rule;
(6) April 1, 1982 see Paragraph (h) of this Rule;
(7) December 1, 1983 see Paragraph (i) of this Rule;
(8) January 1, 1985 see Paragraph (j) of this Rule;
(9) August 1, 1985 see Paragraph (k) of this Rule;
(10) February 1, 1986 see Paragraph (l) of this Rule;
(11) May 1, 1988 see Paragraph (m) of this Rule;
(12) July 1, 1988 see Paragraph (n) of this Rule;
(13) October 1, 1988 see Paragraph (o) of this Rule;

(14) January 1, 1990 see Paragraph (p) of this Rule;
(15) August 1, 1990;
(16) December 1, 1990 see Paragraph (q) of this Rule;
(17) July 1, 1991 see Paragraph (r) of this Rule;
(18) August 3, 1992;
(19) April 1, 1994 see Paragraph (t) of this Rule;
(20) July 1, 1996 see Paragraph (u) of this Rule;
(21) September 1, 1996 see Paragraph (v) of this Rule;
(22) April 1, 1997 see Paragraph (w) of this Rule;
(23) August 1, 1998 see Paragraph (x) of this Rule;
(24) August 1, 2002 see Paragraph (y) of this Rule;
(25) July 1, 2004 see Paragraph (z) of this Rule;
(26) November 1, 2007see Paragraph (aa) of this Rule;
(27) January 15, 2011 see Paragraph (bb) of this Rule; and
(28) July 1, 2012 see Paragraph (cc) of this Rule.

(c) The ~~Schedule of Classifications and Water Quality Standards for the~~ Neuse River Basin Classification Schedule was amended effective March 1, 1977 with the a total of 179 streams in the Neuse River Basin reclassified from Class D to Class C.

(d) The ~~Schedule of Classifications and Water Quality Standards for the~~ Neuse River Basin Classification Schedule ~~has been~~ was amended effective December 13, 1979 as follows: Little River [Index No. 27-57-(21.5)] from source to the dam at Wake Forest Reservoir has been reclassified from Class A-II to Class A-II and B.

(e) The ~~Schedule of Classifications and Water Quality Standards for the~~ Neuse River Basin Classification Schedule ~~has been~~ was amended effective September 14, 1980 as follows: The Eno River from Durham County State Road 1003 to U.S Highway 501 [Index No. 27-2-(16)] was reclassified from Class C and B to Class A-II and B.

(f) The ~~Schedule of Classifications and Water Quality Standards for the~~ Neuse River Basin Classification Schedule was amended effective August 9, 1981 to remove the swamp water designation from all waters designated SA in the Neuse River Basin.

(g) The ~~Schedule of Classifications and Water Quality Standards for the~~ Neuse River Basin Classification Schedule ~~has been~~ was amended effective January 1, 1982 as follows: The Trent River from the mouth of Brice Creek to the Neuse River [Index No. 27-101-(39)] was reclassified from Class SC Sw to Class SB Sw.

(h) The ~~Schedule of Classifications and Water Quality Standards for the~~ Neuse River Basin Classification Schedule ~~has been~~ was amended effective April 1, 1982 as follows:

(1) Longview Branch from source to Crabtree Creek [Index No. 27-33-(21)] was reclassified from Class C1 to Class C.
(2) Watson Branch from source to Walnut Creek [Index No. 27-34-(8)] was reclassified from Class C1 to Class C.

(i) The ~~Schedule of Classifications and Water Quality Standards for the~~ Neuse River Basin Classification Schedule was amended effective December 1, 1983 to add the Nutrient Sensitive Waters classification to the entire river basin above Falls dam.

(j) The ~~Schedule of Classifications and Water Quality Standards for the~~ Neuse River Basin Classification Schedule ~~has been~~ was amended effective January 1, 1985 as follows: Nobel Canal from source to Swift Creek [Index No. 27-97-(2)] was reclassified from Class C1 to Class C.

(k) The ~~Schedule of Classifications and Water Quality Standards for the~~ Neuse River Basin Classification Schedule ~~has been~~ was amended effective August 1, 1985 as follows:

(1) Southeast Prong Beaverdam Creek from source to Beaverdam Creek [Index No. 27-33-15(2)] was reclassified from Class C1 to Class C.

(2) Pigeon House branch from source to Crabtree Creek [Index No. 27-33-(18)] was reclassified from Class C1 to Class C.

(3) Rocky Branch from source to Pullen Road [Index No. 27-34-6-(1)] was reclassified from Class C1 to Class C.

(4) Chavis Branch from source to Watson Branch [Index No. 27-37-8-1] was reclassified from Class C1 to Class C.

(l) The ~~Schedule of Classifications and Water Quality Standards for the~~ Neuse River Basin Classification Schedule ~~has been~~ was amended effective February 1, 1986 to reclassify all Class A-I and Class A-II streams in the Neuse River Basin to WS-I and WS-III.

(m) The ~~Schedule of Classifications and Water Quality Standards for the~~ Neuse River Basin Classification Schedule was amended effective May 1, 1988 to add the Nutrient Sensitive Waters classification to the waters of the Neuse River Basin below the Falls Lake dam.

(n) The ~~Schedule of Classifications and Water Quality Standards for the~~ Neuse River Basin Classification Schedule ~~has been~~ was amended effective July 1, 1988 as follows:

(1) Smith Creek [Index No. 27-23-(1)] from source to the dam at Wake Forest Reservoir has been reclassified from Class WS-III to WS-I.

(2) Little River [Index No. 27-57-(1)] from source to the N.C. Hwy. 97 Bridge near Zebulon including all tributaries has been reclassified from Class WS-III to WS-I.

(3) An unnamed tributary to Buffalo Creek just upstream of Robertson's Pond in Wake County from source to Buffalo Creek including Leo's Pond has been reclassified from Class C to B.

(o) The ~~Schedule of Classifications and Water Quality Standards for the~~ Neuse River Basin Classification Schedule ~~has been~~ was amended effective October 1, 1988 as follows:

(1) Walnut Creek (Lake Johnson, Lake Raleigh) [Index No. 27-34-(1)]. Lake Johnson and Lake Raleigh have been reclassified from Class WS-III to Class WS-III B.

(2) Haw Creek (Camp Charles Lake)(Index No. 27-86-3-7) from the backwaters of Camp Charles Lake to dam at Camp Charles Lake has been reclassified from Class C to Class B.

(p) The ~~Schedule of Classifications and Water Quality Standards for the~~ Neuse River Basin Classification Schedule ~~has been~~ was amended effective January 1, 1990 as follows:

(1) Neuse-Southeast Pamlico Sound ORW Area which includes all waters within a line beginning at the southwest tip of Ocracoke Island, and extending north west along the Tar-Pamlico River Basin and Neuse River Basin boundary line to Lat. 35 degrees 06' 30", thence in a southwest direction to Ship Point and all tributaries, were reclassified from Class SA NSW to Class SA NSW ORW.

(2) Core Sound (Index No. 27-149) from northeastern limit of White Oak River Basin (a line from Hall Point to Drum Inlet) to Pamlico Sound and all tributaries, except Thorofare, John Day Ditch were reclassified from Class SA NSW to Class SA NSW ORW.

(q) The ~~Schedule of Classifications and Water Quality Standards for the~~ Neuse River Basin Classification Schedule was amended effective December 1, 1990 with the reclassification of the following waters as described in (1) through (3) of this Paragraph.

(1) Northwest Creek from its source to the Neuse River (Index No. 27-105) from Class SC Sw NSW to Class SB Sw NSW;

(2) Upper Broad Creek [Index No. 27-106-(7)] from Pamlico County SR 1103 at Lees Landing to the Neuse River from Class SC Sw NSW to Class SB Sw NSW; and

(3) Goose Creek [Index No. 27-107-(11)] from Wood Landing to the Neuse River from Class SC Sw NSW to Class SB Sw NSW.

(r) The ~~Schedule of Classifications and Water Quality Standards for the~~ Neuse River Basin Classification Schedule was amended effective July 1, 1991 with the reclassification of the Bay River [Index No. 27-150-(1)] within a line running from Flea Point to the Hammock, east to a line running from Bell Point to Darby Point, including Harper Creek, Tempe Gut, Moore Creek and Newton Creek, and excluding that portion of the Bay River landward of a line running from Poorhouse Point to Darby Point from Classes SC Sw NSW and SC Sw NSW HQW to Class SA NSW.

(s) The ~~Schedule of Classifications and Water Quality Standards for the~~ Neuse River Basin Classification Schedule was amended effective August 3, 1992 with the reclassification of all water supply waters (waters with a primary classification of WS-I, WS-II or WS-III). These waters were reclassified to WS-I, WS-II, WS-III, WS-IV or WS-V as defined in the revised water supply protection rules, (15A NCAC 02B .0100, .0200 and .0300) which became effective on August 3, 1992. In some cases, streams with primary classifications other than WS were reclassified to a WS classification due to their proximity and linkage to water supply waters. In other cases, waters were reclassified from a WS classification to an alternate appropriate primary classification after being identified as downstream of a water supply intake or identified as not being used for water supply purposes.

(t) The ~~Schedule of Classifications and Water Quality Standards for the~~ Neuse River Basin Classification Schedule was amended effective April 1, 1994 as follows:

(1) Lake Crabtree [Index No. 27-33-(1)] was reclassified from Class C NSW to Class B NSW.

(2) The Eno River from Orange County State Road 1561 to Durham County State Road 1003 [Index No. 27-10-(16)] was reclassified from Class WS-IV NSW to Class WS-IV B NSW.

(3) Silver Lake (Index No. 27-43-5) was reclassified from Class WS-III NSW to Class WS-III B NSW.

(u) The ~~Schedule of Classifications and Water Quality Standards for the~~ Neuse River Basin Classification Schedule was amended effective July 1, 1996 with the reclassification of Austin Creek [Index Nos. 27-23-3-(1) and 27-23-3-(2)] from its source to Smith Creek from classes WS-III NSW and WS-III NSW CA to class C NSW.

(v) The ~~Schedule of Classifications and Water Quality Standards for the~~ Neuse River Basin Classification Schedule was amended effective September 1, 1996 with the reclassification of an unnamed tributary to Hannah Creek (Tuckers Lake) [Index No. 27-52-6-0.5] from Class C NSW to Class B NSW.

(w) The ~~Schedule of Classifications and Water Quality Standards for the~~ Neuse River Basin Classification Schedule was amended effective April 1, 1997 with the reclassification of the Neuse River (including tributaries) from mouth of Marks Creek to a point 1.3 miles downstream of Johnston County State Road 1908 to class WS-IV NSW and from a point 1.3 miles downstream of Johnston County State Road 1908 to the Johnston County Water Supply intake (located 1.8 miles downstream of Johnston County State Road 1908) to class WS-IV CA NSW [Index Nos. 27-(36) and 27-(38.5)].

(x) The ~~Schedule of Classifications and Water Quality Standards for the~~ Neuse River Basin Classification Schedule was amended effective August 1, 1998 with the revision of the Critical Area and Protected Area boundaries surrounding the Falls Lake water supply reservoir. The revisions to these boundaries are the result of the US Army Corps of Engineers raising the lake's normal pool elevation. The result of these revisions is the Critical and Protected Area boundaries (classifications) may extend further upstream than the current designations. The Critical Area for a WS-IV reservoir is defined as 0.5 miles and draining to the normal pool elevation. The Protected Area for a WS-IV reservoir is defined as 5 miles and draining to the normal pool elevation. The normal pool elevation of the Falls Lake reservoir has changed from 250.1 feet mean sea level (msl) to 251.5 feet msl.

(y) The ~~Schedule of Classifications and Water Quality Standards for the~~ Neuse River Basin Classification Schedule was amended effective August 1, 2002 with the reclassification of the Neuse River [portions of Index No. 27-(56)], including portions of its tributaries, from a point 0.7 mile downstream of the mouth of Coxes Creek to a point 0.6 mile upstream of Lenoir County proposed water supply intake from Class C NSW to Class WS-IV NSW and from a point 0.6 mile upstream of Lenoir County proposed water supply intake to Lenoir proposed water supply intake from Class C NSW to Class WS-IV CA NSW.

(z) The ~~Schedule of Classifications and Water Quality Standards for the~~ Neuse River Basin Classification Schedule was amended effective July 1, 2004 with the reclassification of the Neuse River (including tributaries in Wake County) [Index Nos. 27-(20.7), 27-21, 27-21-1] from the dam at Falls Lake to a point 0.5 mile upstream of the Town of Wake Forest Water Supply Intake (former water supply intake for Burlington Mills Wake Finishing Plant) from Class C NSW to Class WS-IV NSW and from a point 0.5 mile upstream of the Town of Wake Forest proposed water supply intake to Town of Wake Forest proposed water supply intake [Index No. 27-(20.1)] from Class C NSW to Class WS-IV NSW CA. Fantasy Lake [Index No. 27 -57-3-1-1], a former rock quarry within a WS-II NSW water supply watershed, was reclassified from Class WS-II NSW to Class WS-II NSW CA.

(aa) The ~~Schedule of Classifications and Water Quality Standards for the~~ Neuse River Basin Classification Schedule was amended effective November 1, 2007 with the reclassification of the entire watershed of Deep Creek (Index No. 27-3-4) from source to Flat River from Class WS-III NSW to Class WS-III ORW NSW.

(bb) The ~~Schedule of Classifications and Water Quality Standards for the~~ Neuse River Basin Classification Schedule is amended effective January 15, 2011 with the reclassification of all Class C NSW waters and all Class B NSW waters upstream of the dam at Falls Reservoir from Class C NSW and Class B NSW to Class WS-V NSW and Class WS-V & B NSW, respectively. All waters within the Falls Watershed are within a designated Critical Water Supply Watershed and are subject to a special management strategy specified in ~~Rules 15A NCAC 02B .0275 through .0283.~~ Rules .0275 through .0283 of this Subchapter.

(cc) The ~~Schedule of Classifications and Water Quality Standards for the~~ Neuse River Basin Classification Schedule is amended effective July 1, 2012 as follows:

(1) Johnston County owned quarry near Little River [Index No. 27-57-(20.2)] from Class C NSW to Class WS-IV NSW CA. The Division of Water ~~Quality~~ Resources maintains a Geographic Information Systems data layer of this quarry;

(2) a portion of the Neuse River [Index Number 27-(41.7)] from a point approximately 1.4 miles downstream of Gar Gut to a point approximately 1.7 miles upstream of Bawdy Creek from Class WS-V NSW to Class WS-IV NSW; and

(3) a portion of the Neuse River [Index No. 27-(49.5)] from a point approximately 0.5 mile upstream of S.R. 1201 (Johnston County intake) to S.R. 1201 (Johnston County intake) from Class WS-IV NSW to Class WS-IV NSW CA.

History Note: *Authority G.S. 143-214.1; 143-215.1; 143-215.3(a)(1);*
Eff. February 1, 1976;
Amended Eff. November 1, 2007; July 1, 2004 (see SL 2001-361); August 1, 2002; August 1, 1998; April 1, 1997; September 1, 1996; July 1, 1996; April 1, 1994; August 3, 1992; July 1, 1991;
Amended Eff. January 15, 2011 (this permanent rule replaces the temporary rule approved by the RRC on December 16, 2010);
Amended Eff. July 1, ~~2012.~~ 2012;
Readopted Eff. September 1, 2019.

REQUEST FOR TECHNICAL CHANGE

AGENCY: Environmental Management Commission

RULE CITATION: 15A NCAC 02B .0316

DEADLINE FOR RECEIPT: Friday, August 9, 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:

Please consider beginning (a)(2) with "the following offices of the North Carolina…"

In (b), you have used "unnamed streams" and "drainage canals." I assume that these are not the same things? What is the intent here? In any event, please delete "Unnamed Streams" as you haven't used this introductory language elsewhere.

In (c), please consider deleting the repetitive dates. I note that this was done to Rule .0306 back in 2014 and other Rules do not have duplicates. In this Rule, the repetitive dates are in (c)(8), (9), and (11) through (17).

In (g), line 22, please move the comma found after "rules" to behind "(… .0300)"

In (k), you've said "the "+" symbol as used in this paragraph"; however, I don't see that this is used at all in this Rule.

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

Amber May
Commission Counsel
Date submitted to agency: July 30, 2019

15A NCAC 02B .0316 is readopted as published in 32:22 NCR 2411-2493 with changes as follows:

15A NCAC 02B .0316 TAR-PAMLICO RIVER BASIN

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

(1) the ~~internet~~ Internet at ~~http://h2o.enr.state.nc.us/csu/;~~ http://portal.ncdenr.org/web/wq/ps/csu/classifications; and

(2) the North Carolina Department of ~~Environment and Natural Resources:~~ Environmental Quality:

(A) Raleigh Regional Office
3800 Barrett Drive
Raleigh, North ~~Carolina~~ Carolina;

(B) Washington Regional Office
943 Washington Square Mall
Washington, North ~~Carolina~~ Carolina; and

(C) Division of Water ~~Quality~~ Resources
Central Office
512 North Salisbury Street
Raleigh, North Carolina.

(b) Unnamed Streams. All drainage canals not noted in the schedule are classified "C Sw," except the main drainage canals to Pamlico Sound and its bays which are classified "SC."

(c) The Tar-Pamlico River Basin ~~Schedule of Classification and Water Quality Standards~~ Classification Schedule was amended effective:

(1) March 1, 1977;
(2) November 1, 1978;
(3) June 8, 1980;
(4) October 1, 1983;
(5) June 1, 1984;
(6) August 1, 1985;
(7) February 1, 1986;
(8) August 1, 1988;
(9) January 1, 1990;
(10) August 1, 1990;
(11) August 3, 1992;
(12) April 1, 1994;
(13) January 1, 1996;
(14) September 1, 1996;

(15) October 7, 2003;

(16) June 1, 2004;

(17) November 1, 2007.

(d) The ~~Schedule of Classifications and Water Quality Standards for the~~ Tar-Pamlico River Basin Classification Schedule was amended effective August 1, 1988 as follows: Tar River (Index No. 28-94) from a point 1.2 miles downstream of Broad Run to the upstream side of Tranters Creek from Class C to Class B.

~~(1) Tar River (Index No. 28-94) from a point 1.2 miles downstream of Broad Run to the upstream side of Tranters Creek from Class C to Class B.~~

(e) The ~~Schedule of Classifications and Water Quality Standards for the~~ Tar-Pamlico River Basin Classification Schedule was amended effective January 1, 1990 by the reclassification of Pamlico River and Pamlico Sound [Index No. 29-(27)] which includes all waters within a line beginning at Juniper Bay Point and running due south to Lat. 35° 18' 00", long. 76° 13' 20", thence due west to lat. 35° 18' 00", long 76° 20' 00", thence northwest to Shell Point and including Shell Bay, Swanquarter and Juniper Bays and their tributaries, but excluding the Blowout, Hydeland Canal, Juniper Canal and Quarter Canal were reclassified from Class SA and SC to SA ORW and SC ORW.

(f) The ~~Schedule of Classifications and Water Quality Standards for the~~ Tar-Pamlico River Basin Classification Schedule was amended effective January 1, 1990 by adding the supplemental classification NSW (Nutrient Sensitive Waters) to all waters in the basin from source to a line across Pamlico River from Roos Point to Persimmon Tree Point.

(g) The ~~Schedule of Classifications and Water Quality Standards for the~~ Tar-Pamlico River Basin Classification Schedule was amended effective August 3, 1992 with the reclassification of all water supply waters (waters with a primary classification of WS-I, WS-II or WS-III). These waters were reclassified to WS-I, WS-II, WS-III, WS-IV or WS-V as defined in the revised water supply protection rules, (15A NCAC 2B .0100, .0200 and .0300) which became effective on August 3, 1992. In some cases, streams with primary classifications other than WS were reclassified to a WS classification due to their proximity and linkage to water supply waters. In other cases, waters were reclassified from a WS classification to an alternate appropriate primary classification after being identified as downstream of a water supply intake or identified as not being used for water supply purposes.

(h) The ~~Schedule of Classifications and Water Quality Standards for the~~ Tar-Pamlico River Basin Classification Schedule was amended effective April 1, 1994 with the reclassification of Blounts Creek from Herring Run to Blounts Bay [Index No. 29-9-1-(3)] from Class SC NSW to Class SB NSW.

(i) The ~~Schedule of Classifications and Water Quality Standards for the~~ Tar-Pamlico River Basin Classification Schedule was amended effective January 1, 1996 with the reclassification of Tranters Creek [Index Numbers 28-103- (4.5), 28-103- (13.5), 28-103- (14.5) and 28-103- (16.5)] from a point 1.5 miles upstream of Turkey Swamp to the City of Washington's former auxiliary water supply intake, including tributaries, from Class WS-IV Sw NSW and Class WS-IV CA Sw NSW to Class C Sw NSW.

(j) The ~~Schedule of Classifications and Water Quality Standards for the~~ Tar-Pamlico River Basin Classification Schedule was amended effective September 1, 1996 with the addition of Huddles Cut (previously unnamed in the schedule) classified as SC NSW with an Index No. of 29-25.5.

(k) The ~~Schedule of Classifications and Water Quality Standards for the~~ Tar-Pamlico River Basin Classification Schedule was temporarily amended effective October 7, 2003 and permanently amended June 1, 2004 with the reclassification of a portion of Swift Creek [Index Number 28-78-(0.5)] and a portion of Sandy Creek [Index Number 28-78-1-(19)] from Nash County SR 1004 to Nash County SR 1003 from Class C NSW to Class C ORW NSW, and the waters that drain to these two creek portions to include only the ORW management strategy as represented by "+". The "+" symbol as used in this paragraph means that all undesignated waterbodies that drain to the portions of the two creeks referenced in this Paragraph shall comply with ~~Paragraph (c) of Rule .0225 of this Subchapter~~ Rule .0225 (c) of this Subchapter in order to protect the designated waters as per Rule .0203 of this Subchapter and to protect outstanding resource values found in the designated waters as well as in the undesignated waters that drain to the designated waters.

(l) The ~~Schedule of Classifications and Water Quality Standards for the~~ Tar-Pamlico River Basin Classification Schedule was amended effective November 1, 2007 with the reclassifications listed below, and the North Carolina Division of Water ~~Quality~~ Resources maintains a Geographic Information Systems data layer of these UWLs.

(1) Goose Creek Tidal Freshwater Marsh along the confluence of Goose Creek [Index No. 29-33] and the Pamlico River [Index No. 29-(27)], along Flatty Creek [Index No. 29-11-4] a length of the Pamlico River shoreline [Index No. 29-(27)] was reclassified to Class WL ~~UWL as defined in 15A NCAC 02B .0101.~~ UWL.

(2) Mallard Creek Tidal Freshwater Marsh along Mallard Creek [Index No. 29-13-(1)] 0.2 miles above its confluence with the Pamlico River to Class WL ~~UWL as defined in 15A NCAC 02B .0101.~~ UWL.

History Note: *Authority G.S. 143-214.1; 143-215.1; 143-215.3(a)(1);*
Eff. February 1, 1976;
Amended Eff. August 1, 2003 (see S.L. 2003-433, s.1); September 1, 1996; January 1, 1996; April 1, 1994; August 3, 1992; August 1, 1990;
Temporary Amendment Eff. October 7, 2003;
Amended Eff. November 1, 2007; June 1, ~~2004.~~ 2004;
Readopted Eff. September 1, 2019.

REQUEST FOR TECHNICAL CHANGE

AGENCY: Environmental Management Commission

RULE CITATION: 15A NCAC 02B .0317

DEADLINE FOR RECEIPT: Friday, August 9, 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:

Please consider beginning (a)(2) with "the following offices of the North Carolina…"

In (b), you have used "unnamed streams" and "drainage canals." I assume that these are not the same things? What is the intent here? In any event, please delete "Unnamed Streams" as you haven't used this introductory language elsewhere.

In (c), please consider deleting the repetitive dates. I note that this was done to Rule .0306 back in 2014 and other Rules do not have duplicates. In this Rule, the repetitive dates are in (c)(6) through (11). Here, I note that August 1, 1990 is addressed.

In (f), line 11, please move the comma found after "rules" to behind "(… .0300)"

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

Amber May
Commission Counsel
Date submitted to agency: July 30, 2019

15A NCAC 02B .0317 is readopted as published in 32:22 NCR 2411-2493 as follows:

15A NCAC 02B .0317 PASQUOTANK RIVER BASIN

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

(1) the Internet at ~~http://h2o.enr.state.nc.us/csu/;~~ http://portal.ncdenr.org/web/wq/ps/csu/classifications; and

(2) the North Carolina Department of ~~Environment and Natural Resources:~~ Environmental Quality:

(A) Washington Regional Office
943 Washington Square Mall
Washington, North ~~Carolina~~ Carolina; and

(B) Division of Water ~~Quality~~ Resources
Central Office
512 North Salisbury Street
Raleigh, North Carolina.

(b) Unnamed Streams. All drainage canals not noted in the schedule are classified "C."

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

(1) March 1, 1977;
(2) May 18, 1977;
(3) December 13, 1979;
(4) January 1, 1985;
(5) February 1, 1986;
(6) January 1, 1990;
(7) August 1, 1990;
(8) August 3, 1992;
(9) August 1, 1998;
(10) August 1, 2000;
(11) November 1, 2007.

(d) The ~~Schedule of Classifications and Water Quality Standards for the~~ Pasquotank River Basin Classification Schedule was amended effective January 1, 1990 by the reclassification of Alligator River [Index Nos. 30-16-(1) and 30-16-(7)] from source to U.S. Hwy. 64 and all tributaries except Swindells Canal, Florida Canal, New Lake, Fairfield Canal, Carters Canal, Dunbar Canal and Intracoastal Waterway (Pungo River - Alligator River Canal) were reclassified from C Sw and SC Sw to C Sw ORW and SC Sw ORW.

(e) The ~~Schedule of Classifications and Water Quality Standards for the~~ Pasquotank River Basin Classification Schedule was amended effective August 1, 1990 as follows:

(1) Croatan Sound [Index No. 30-20-(1)] from a point of land on the southern side of mouth of Peter Mashoes Creek on Dare County mainland following a line eastward to Northwest Point on Roanoke Island and then from Northwest Point following a line west to Reeds Point on Dare County mainland was reclassified from Class SC to Class SB.

(2) Croatan Sound [Index No. 30-20-(1.5)] from Northwest Point on Roanoke Island following a line west to Reeds Point on Dare County mainland to William B. Umstead Memorial Bridge was reclassified from Class SC to Class SA.

(f) The ~~Schedule of Classifications and Water Quality Standards for the~~ Pasquotank River Basin Classification Schedule was amended effective August 3, 1992 with the reclassification of all water supply waters (waters with a primary classification of WS-I, WS-II or WS-III). These waters were reclassified to WS-I, WS-II, WS-III, WS-IV or WS-V as defined in the revised water supply protection rules, (15A NCAC 2B .0100, .0200 and .0300) which became effective on August 3, 1992. In some cases, streams with primary classifications other than WS were reclassified to a WS classification due to their proximity and linkage to water supply waters. In other cases, waters were reclassified from a WS classification to an alternate appropriate primary classification after being identified as downstream of a water supply intake or identified as not being used for water supply purposes.

(g) The ~~Schedule of Classifications and Water Quality Standards for the~~ Pasquotank River Basin Classification Schedule was amended effective August 1, 1998 with the revision to the primary classification for a portion of the Pasquotank River [Index No. 30-3-(1.7)] from Class WS-IV to Class WS-V.

(h) The ~~Schedule of Classifications and Water Quality Standards for the~~ Pasquotank River Basin Classification Schedule was amended effective August 1, 2000 with the reclassification of Lake Phelps [Index No. 30-14-4-6-1] from Class C Sw to Class B Sw ORW.

(i) The ~~Schedule of Classifications and Water Quality Standards for the~~ Pasquotank River Basin Classification Schedule was amended effective November 1, 2007 with the reclassifications listed below, and the North Carolina Division of Water ~~Quality~~ Resources maintains a Geographic Information Systems data layer of these UWLs.

(1) Phelps Lake Natural Lake Shoreline near Phelps Lake [Index No. 30-14-4-6-1] was reclassified to Class WL ~~UWL as defined in 15A NCAC 02B .0101.~~ UWL.

(2) Nags Head Woods near Buzzard Bay [Index No. 30-21-1] was reclassified to Class WL ~~UWL as defined in 15A NCAC 02B .0101.~~ UWL.

History Note: *Authority G.S. 143-214.1; 143-215.1; 143-215.3(a)(1);*
Eff. February 1, 1976;
Amended Eff. November 1, 2007; August 1, 2000; August 1, 1998; August 3, 1992; August 1, 1990; January 1, 1990; February 1, ~~1986.~~ 1986;
Readopted Eff. September 1, 2019.

REQUEST FOR TECHNICAL CHANGE

AGENCY: Environmental Management Commission

RULE CITATION: 15A NCAC 02B .0621

DEADLINE FOR RECEIPT: Tuesday, August 6, 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 Items (2) and (25), since you've already included the definitions in G.S. 143-214.7, it is not necessary to do it again in your Rule? I note that this was also asked in the January 30, 2019 technical change requests and this language was taken out.

In Item (14), delete or define "heavily" in "heavily supplemented" I note that this language as striken in the most recently approved version of 15A NCAC 02B .0610.

In Item (17), have lines 6-9 been otherwise published or is this information also in a different rule that's being repealed? I don't see it in .202.

In Item (18), what are "watershed regulations"? Here, do you mean your Rules? Federal Regulations? Please clarify.

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

Amber May
Commission Counsel
Date submitted to agency: July 22, 2019

15A NCAC 02B .0621 is amended pursuant to G.S. 150B-21.5(a)(3) as follows:

15A NCAC 02B .0621 WATER SUPPLY WATERSHED PROTECTION PROGRAM: DEFINITIONS

In addition to the definitions set forth in G.S. 143-214.7, the following definitions shall apply to Rules .0622 - .0624.

(1) "Balance of Watershed" or "-BW" means the area adjoining and upstream of the critical area in a WS-II and WS-III water supply watershed. The "balance of watershed" is comprised of the entire land area contributing surface drainage to the stream, river, or reservoir where a water supply intake is located.

(2) "Built-upon area" has the same meaning as in GS 143-214.7

~~(2)~~(3) "Cluster development" ~~has the same meaning as in 15A NCAC 02B .0202.~~ means the grouping of buildings in order to conserve land resources and provide for innovation in the design of the project including minimizing stormwater runoff impacts. This term includes nonresidential development as well as single family residential and multi family developments. Planned unit development and mixed use development shall be considered as cluster development.

~~(3)~~(4) "Commission" has the same meaning as in 15A NCAC 02H .1002.

~~(4)~~(5) "Common plan of development" has the same meaning as in 15A NCAC 02H .1002.

~~(5)~~(6) "Critical area" has the same meaning as in 15A NCAC 02B .0202.

~~(6)~~(7) "Curb Outlet System" has the same meaning as in 15A NCAC 02H .1002.

~~(7)~~(8) "Dispersed flow" has the same meaning as in 15A NCAC 02H .1002.

~~(8)~~(9) "Division" has the same meaning as in 15A NCAC 02H .1002.

~~(9)~~(10) "Erosion and Sedimentation Control Plan" has the same meaning as in 15A NCAC 02H .1002.

~~(10)~~(11) "Existing development" has the same meaning as in 15A NCAC 02H .1002.

~~(11)~~(12) "Family subdivision" ~~has the same meaning as in 15A NCAC 02B .0202.~~ means a division of a tract of land:

(a) to convey the resulting parcels, with the exception of parcels retained by the grantor, to a relative or relatives as a gift for nominal consideration, but only if no more than one parcel is conveyed by the grantor from the tract to any one relative; or

(b) to divide land form a common ancestor among tenants in common, all of whom inherited by intestacy or by will.

~~(12)~~(13) "Geotextile fabric" has the same meaning as in 15A NCAC 02H .1002.

~~(13)~~(14) "Intermittent stream" ~~has the same meaning as in 15A NCAC 02B .0610~~ 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.

~~(14)~~(15) "Major variance" ~~has the same meaning as in 15A NCAC 02B .0202.~~ means a variance that is not a "minor variance" as that term is defined in this Rule.

~~(15)~~(16) "Minimum Design Criteria" or "MDC" has the same meaning as in 15A NCAC 02H .1002.

~~(16)~~(17) "Minor variance" ~~has the same meaning as in 15A NCAC 02B .0202.~~ means a variance from the minimum statewide watershed protection rules that results in the relaxation of up to 10 percent of any vegetated setback, density, or minimum lot size requirement applicable to low density development, or the relaxation of up to five percent of any vegetated setback, density, or minimum lot size requirement applicable to high density development. For variances to a vegetated setback requirement, the percent variation shall be calculated using the foot print of built-upon area proposed to encroach within the vegetated setback divided by the total area of vegetated setback within the project.

~~(17)~~(18) "Nonconforming lot of record" ~~has the same meaning as in 15A NCAC 02B .0202~~. means a lot described by a plat or a deed that was recorded prior to the effective date of local watershed regulations (or their amendments) that does not meet the minimum lot size or other development requirements of Rule .0624 of this Section.

~~(18)~~(19) "NPDES" has the same meaning as in 15A NCAC 02H .1002.

~~(19)~~(20) "Perennial stream" ~~has the same meaning as in 15A NCAC 02B .0610~~ 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 steam, 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.

~~(20)~~(21) "Perennial waterbody" ~~has the same meaning as in 15A NCAC 02B .0610~~ 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.

~~(21)~~(22) "Primary SCM" has the same meaning as in 15A NCAC 02H .1002.

~~(22)~~(23) "Project" has the same meaning as in 15A NCAC 02H .1002.

~~(23)~~(24) "Protected area" has the same meaning as in 15A NCAC 02B .0202.

~~(24)~~(25) "Redevelopment" has the same meaning as in GS 143-214.7

~~(25)~~(26) "Required storm depth" has the same meaning as in 15A NCAC 02H .1002.

~~(26)~~(27) "Runoff treatment" has the same meaning as in 15A NCAC 02H .1002.

~~(27)~~(28) "Runoff volume match" has the same meaning as in 15A NCAC 02H .1002.

~~(28)~~(29) "Secondary SCM" has the same meaning as in 15A NCAC 02H .1002.

~~(29)~~(30) "Stormwater Control Measure" or "SCM" has the same meaning as in 15A NCAC 02H .1002.

~~(30)~~(31) "Vegetated setback" has the same meaning as in 15A NCAC 02H .1002.

~~(31)~~(32) "Vegetated conveyance" has the same meaning as in 15A NCAC 02H .1002.

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

Eff. March 1, 2019 (Portions of this Rule were previously codified in 15A NCAC 02B .0104 and 02B .0212 through .0218), July 11, 2019;

Amended Eff. September 1, 2019.

15A NCAC 02B .0624 is amended pursuant to G.S. 150B-21.5(a)(3) as follows:

15A NCAC 02B .0624 WATER SUPPLY WATERSHED PROTECTION PROGRAM: NONPOINT SOURCE AND STORMWATER POLLUTION CONTROL

This Rule sets forth requirements for projects that are subject to water supply watershed regulations.

(1) IMPLEMENTING AUTHORITY. The requirements of this Rule shall be implemented by local governments with land use authority in one or more designated water supply watersheds. State agencies shall also comply with this Rule insofar as required by G.S. 143-214.5 and in accordance with Rule .0622 of this Section.

(2) APPLICABILITY. This Rule shall apply to all new development projects, including state owned projects, that lie within a designated water supply watershed, except in a Class WS-IV watershed where this Rule applies only to new development projects that require an Erosion and Sedimentation Control Plan. Rule .0622 of this Section includes project types to which rules do not apply.

(3) PROJECT DENSITY. The following maximum allowable project densities and minimum lot sizes shall apply to a project according to the classification of the water supply watershed where it is located, its relative location in the watershed, its project density, and the type of development:

Water Supply Classification	Location in the Watershed	Maximum Allowable Project Density or Minimum Lot Size		
		Low Density Development		High Density Development
		Single-family detached residential	Non-residential and all other residential	All types
WS-I	Not Applicable: Watershed shall remain undeveloped except for the following uses when they cannot be avoided: power transmission lines, restricted access roads, and structures associated with water withdrawal, treatment, and distribution of the WS-I water. Built-upon area shall be designed and located to minimize stormwater runoff impact to receiving waters.			
WS-II	Critical Area	1 dwelling unit per 2 acres or 80,000 square foot lot excluding roadway right-of-way or 6% built-upon area	6% built-upon area	6 to 24% built-upon area
	Balance of Watershed	1 dwelling unit per 1 acre or 40,000	12% built-upon area	12 to 30% built-upon area

		square foot lot excluding roadway right-of-way or 12% built-upon area		
WS-III	Critical Area	1 dwelling unit per 1 acre or 40,000 square foot lot excluding roadway right-of-way or 12% built-upon area	12% built-upon area	12 to 30% built-upon area
	Balance of Watershed	1 dwelling unit per one-half acre or 20,000 square foot lot excluding roadway right-of-way or 24% built-upon area	24% built-upon area	24 to 50% built-upon area
WS-IV	Critical Area	2 dwelling units per acre or 20,000 square foot lot excluding roadway right-of-way or 24% built-upon area	24% built-upon area	24 to 50% built-upon area
	Protected Area	2 dwelling units per acre or 20,000 square foot lot excluding roadway right-of-way or 24% built-upon; or 3 dwelling units per acre or 36% built-upon area without curb and gutter street system	24% built-upon area; or 36% built-upon area without curb and gutter street system	24 to 70% built-upon area
WS-V	Not Applicable			

1

(4) CALCULATION OF PROJECT DENSITY. The following requirements shall apply to the calculation of project density:

(a) Project density shall be calculated as the total built-upon area divided by the total project area;

(b) A project with "existing development," as that term is defined in Rule .0621 of this Section, may use the calculation method in Sub-Item (a) of this Item or may calculate project density as the difference of total built-upon area minus existing built-upon area divided by the difference of total project area minus existing built-upon area. Expansions to existing development shall be subject to this Rule except as excluded in ~~Sub-Item (3)(d) of this Rule~~ Rule .0622 (1)(d) of this Section. Where there is a net increase of built-upon area, only the area of net increase shall be subject to this Rule. Where existing development is being replaced with new built-upon area, and there is a net increase of built-upon area, only the area of net increase shall be subject to this Rule;

(c) Total project area shall exclude the following:

(i) areas below the Normal High Water Line (NHWL); and

(ii) areas defined as "coastal wetlands" pursuant to 15A NCAC 07H .0205, herein incorporated by reference, including subsequent amendments and editions, and available at no cost at http://reports.oah.state.nc.us/ncac.asp, as measured landward from the NHWL; and

(d) Projects under a common plan of development shall be considered as a single project for purposes of density calculation except that on a case-by-case basis, local governments may allow projects to be considered to have both high and low density areas based on one or more of the following criteria:

(i) natural drainage area boundaries;

(ii) variations in land use throughout the project; or

(iii) construction phasing.

(5) LOW DENSITY PROJECTS. In addition to complying with the project density requirements of Item (3) of this Rule, low density projects shall comply with the following:

(a) VEGETATED CONVEYANCES. Stormwater runoff from the project shall be released to vegetated areas as dispersed flow or transported by vegetated conveyances to the maximum extent practicable. In determining whether this criteria has been met, the local government shall take into account site-specific factors such as topography and site layout as well as protection of water quality. Vegetated conveyances shall be maintained in perpetuity to ensure that they function as designed. Vegetated conveyances that meet the following criteria shall be deemed to satisfy the requirements of this Sub-Item:

(i) Side slopes shall be no steeper than 3:1 (horizontal to vertical) unless it is demonstrated to the local government that the soils and vegetation will remain

stable in perpetuity based on engineering calculations and on-site soil investigation; and

(ii) The conveyance shall be designed so that it does not erode during the peak flow from the 10-year storm event as demonstrated by engineering calculations.

(b) CURB OUTLET SYSTEMS. In lieu of vegetated conveyances, low density projects shall have the option to use curb and gutter with outlets to convey stormwater to grassed swales or vegetated areas. Requirements for these curb outlet systems shall be as follows:

(i) The curb outlets shall be located such that the swale or vegetated area can carry the peak flow from the 10-year storm and at a non-erosive velocity;

(ii) The longitudinal slope of the swale or vegetated area shall not exceed five percent except where not practical due to physical constraints. In these cases, devices to slow the rate of runoff and encourage infiltration to reduce pollutant delivery shall be provided;

(iii) The swale's cross section shall be trapezoidal with a minimum bottom width of two feet;

(iv) The side slopes of the swale or vegetated area shall be no steeper than 3:1 (horizontal to vertical);

(v) The minimum length of the swale or vegetated area shall be 100 feet; and

(vi) Low density projects may use treatment swales designed in accordance with 15A NCAC 02H .1061 in lieu of the requirements specified in Sub-Items (i) through (v) of this Sub-Item.

(6) HIGH DENSITY PROJECTS. In addition to complying with the project density requirements of Item (3) of this Rule, high density projects shall comply with the following:

(a) SCMs shall be designed, constructed, and maintained so that the project achieves either "runoff treatment" or "runoff volume match" as those terms are defined in Rule .0621 of this Section;

(b) For high density projects designed to achieve runoff treatment, the required storm depth shall be one inch. Applicants shall have the option to design projects to achieve runoff volume match in lieu of runoff treatment;

(c) Stormwater runoff from off-site areas and "existing development," as that term is defined in Rule .0621 of this Section, shall not be required to be treated in the SCM. Runoff from off-site areas or existing development that is not bypassed shall be included in sizing of on-site SCMs;

(d) SCMs shall meet the relevant MDC set forth in 15A NCAC 02H .1050 through .1062; and

(e) Stormwater outlets shall be designed so that they do not cause erosion downslope of the discharge point during the peak flow from the 10-year storm event as shown by engineering calculations.

(7) OPTIONS FOR IMPLEMENTING PROJECT DENSITY. Local governments shall have the following options when developing or revising their ordinances in place of or in addition to the requirements of Item (3) of this Rule, as appropriate:

(a) Local governments may allow only low density development in their water supply watershed areas in accordance with this Section.

(b) Local governments may regulate low density single-family detached residential development using the minimum lot size requirements, dwelling unit per acre requirements, built-upon area percentages, or some combination of these.

(c) 10/70 OPTION. Outside of WS-I watersheds and the critical areas of WS-II, WS-III, and WS-IV watersheds, local governments may regulate new development under the "10/70 option" in accordance with the following requirements:

(i) A maximum of 10 percent of the land area of a water supply watershed outside of the critical area and within a local government's planning jurisdiction may be developed with new development projects and expansions of existing development of up to 70 percent built-upon area.

(ii) In water supply watersheds classified on or before August 3, 1992, the beginning amount of acreage available under this option shall be based on a local government's jurisdiction as delineated on July 1, 1993. In water supply watersheds classified after August 3, 1992, the beginning amount of acreage available under this option shall be based on a local government's jurisdiction as delineated on the date the water supply watershed classification became effective. The acreage within the critical area shall not be counted towards the allowable 10/70 option acreage;

(iii) Projects that are covered under the 10/70 option shall comply with the low density requirements set forth in Item (5) of this Rule unless the local government allows high density development, in which case the local government may require these projects to comply with the high density requirements set forth in Item (6) of this Rule;

(iv) The maximum built-upon area allowed on any given new development project shall be 70 percent;

(v) A local government having jurisdiction within a designated water supply watershed may transfer, in whole or in part, its right to the 10/70 land area to another local government within the same water supply watershed upon submittal of a joint resolution and approval by the Commission; and

(vi) When the water supply watershed is composed of public lands, such as National Forest land, local governments may count the public land acreage within the

watershed outside of the critical area in calculating the acreage allowed under this provision.

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

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

(8) CLUSTER DEVELOPMENT. Cluster development shall be allowed on a project-by-project basis as follows:

(a) Overall density of the project shall meet the requirements of Item (3) of this Rule;

(b) Vegetated setbacks shall meet the requirements of Item (11) of this Rule;

(c) Built-upon areas are designed and located to minimize stormwater runoff impact to receiving waters, minimize concentrated stormwater flow, maximize the use of sheet flow through vegetated areas, and maximize the flow length through vegetated areas;

(d) Areas of concentrated development shall be located in upland areas and away, to the maximum extent practicable, from surface waters and drainageways. In determining whether these criteria have been met, the local government shall take into account site-specific factors such as topography and site layout as well as protection of water quality;

(e) The remainder of tract shall remain in a vegetated or natural state;

(f) The area in the vegetated or natural state may be conveyed to a property owners association, a local government for preservation as a park or greenway, a conservation organization, or placed in a permanent conservation or farmland preservation easement;

(g) A maintenance agreement for the vegetated or natural area shall be filed with the Register of Deeds; and

(h) Cluster development that meets the applicable low density requirements shall comply with Item (5) of this Rule.

(9) DENSITY AVERAGING OF NONCONTIGUOUS PARCELS. Density averaging of two noncontiguous parcels for purposes of complying with this Rule shall be allowed in accordance with G.S. 143-214.5 (d2).

(10) RESPONSIBILITY FOR SCM OPERATION & MAINTENANCE. Operation and maintenance agreements and plans are required for SCMs in accordance with 15A NCAC 02H .1050. Local governments that allow high density development shall assume responsibility for operation and maintenance of the SCMs that they approve.

(11) VEGETATED SETBACKS. Vegetated setbacks shall be required along perennial waterbodies and perennial streams that are 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 other maps developed by the Department or a local government and approved by the Commission. Where USGS topographic maps do not distinguish between perennial and intermittent streams, an on-site stream determination may be performed by an individual qualified to perform such stream determinations. A qualified individual is one who has been certified to perform stream determinations by completing and passing the Surface Water Identification Training and Certification (SWITC) Course offered by the North Carolina Division of Water Resources and North Carolina State University. Vegetated setbacks shall also be in accordance with the following:

(a) MINIMUM VEGETATION WIDTHS. The following minimum widths shall apply:

(i) low density projects – 30 feet;

(ii) high density projects – 100 feet;

(iii) projects covered under the 10/70 option – 100 feet; and

(iv) agricultural activities – 10 feet, or equivalent control as determined by the designated agency as set forth in Rule .0622 of this Section; and

(b) 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;

(c) Vegetated setbacks may be cleared or graded, but shall be replanted and maintained in grass or other vegetation;

(d) No new built-upon area shall be allowed in the vegetated setback except for the following uses where it is not practical to locate the built-upon area elsewhere:

(i) publicly-funded linear projects such as roads, greenways, and sidewalks;

(ii) water dependent structures such as docks; and

(iii) minimal footprint uses such as poles, signs, utility appurtenances, and security lights.

Built-upon area associated with these uses shall be minimized and the channelization of stormwater runoff shall be avoided; and

(e) Artificial streambank and shoreline stabilization shall not be subject to the requirements of this Item.

(f) For minor variances to a vegetated setback requirement, the percent variation shall be calculated using the footprint of built upon area proposed to encroach within the vegetated setback divided by the total area of vegetated setback within the project.

(g) Non-family subdivisions that are exempt from local subdivision ordinances shall implement the requirements of this Item to the maximum extent practicable considering site-specific factors including technical and cost consideration as well as protection of water quality.

(12) VARIANCES. Variances to this Rule may be considered in accordance with Rule .0623 of this Section.

History Note: *Authority G.S. 143-214.1; 143-214.5; 143-215.3(a)(1);*
Eff. March 1, 2019 (Portions of this Rule were previously codified in 15A NCAC 02B .0104 and 02B .0212 through .0218), July 11, 2019;
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