

Burgos, Alexander N

Subject: FW: Withdraw Rules from Nov. RRC

From: Everett, Jennifer

Sent: Friday, November 06, 2015 2:34 PM

To: May, Amber Cronk <amber.may@oah.nc.gov>

Cc: Kountis, Elizabeth <elizabeth.kountis@ncdenr.gov>; Manning, Jeff <jeff.manning@ncdenr.gov>

Subject: Withdraw Rules from Nov. RRC

Hi Amber,

The Environmental Management Commission would like to withdraw rules 15A NCAC 02B .0227 and .0311 from review by the Rules Review Commission at this time. We plan to resubmit them in mid-2016.

Thank you.

Jennifer

Jennifer Everett

DEQ Rulemaking Coordinator

NC Department of Environmental Quality

919-707-8614 office

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OFFICE OF ADMINISTRATIVE HEARINGS

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October 16, 2015

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

Re: Extension of the Period of Review for Rules 15A NCAC 02B .0227 and .0311

Ms. Everett:

At its meeting yesterday, the Rules Review Commission (RRC) voted to extend the period of review for the above referenced rules in accordance with G.S. 150B-21.10. They did so in response to a request from the Environmental Management Commission to extend the period of review in order to allow for approval of technical change requests by the Environmental Management Commission.

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

Sincerely,

Amber Cronk May
Commission Counsel

Cc: Elizabeth Kountis

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Burgos, Alexander N

Subject: FW: Request for extension of review

From: Everett, Jennifer

Sent: Friday, October 9, 2015 11:18:05 AM

To: May, Amber Cronk

Cc: Manning, Jeff; Kountis, Elizabeth; Weaver, Adriene; Hauser, Jennie

Subject: Request for extension of review

Hi Amber,

We are requesting an extension for period of review regarding 15A NCAC 02B .0227 and 15A NCAC 02B .0311. This extension will allow us to take 15A NCAC 02B .0227 back to the Environmental Management Commission (EMC) for approval of your technical change requests. Although 15A NCAC 02B .0311 did not have any technical change requests, we prefer these two rules stay together as part of a package. The EMC's scheduled meeting is November 5, 2015. If approved by the EMC, we plan to have 15A NCAC 02B.0227 and .0311 considered on the RRC's November 19th agenda.

Thank you.

Jennifer

*Jennifer Everett
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REQUEST FOR TECHNICAL CHANGE

AGENCY: Environmental Management Commission

RULE CITATION: 15A NCAC 02B .0227

DEADLINE FOR RECEIPT: Friday, October 9, 2015

NOTE WELL: *This request when viewed on computer extends 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 this office to inquire concerning the staff recommendation.

Why is Paragraph (a) necessary? It is simply indicating what the Commission will do, not providing any direction to your regulated public.

Are the areas listed in Sub-Paragraphs (1) and (2) the only waters determined by the Commission to be protected by a water quality management plan? If not, please reword to make more clear.

In (b)(1)(A), please remove the brackets surrounding "as specified in 15A NCAC 2H .1002(2)(a)."

In (b)(1)(B), please consider removing the parenthesis surrounding "such as non-industrial process cooling or seafood processing discharges."

Also in (b)(1)(B), is there a cross-reference that you can provide for the public hearing requirement?

In (b)(1)(C), what do you mean by "reduced loading rates" and "increased buffer zones." Is there a rule or statute that provides what the typical loading rates and buffer zones are? Also, how is this determination made? Please include factors that will be used in making this decision. Also, by whom will this determination be made? Please provide additional information.

In (b)(1)(D), please change "must" to "shall."

In (b)(1)(E), please delete or define "significant."

In (b)(2)(A), by whom and how is the "case by case" determination made?

In (b)(2)(B), how will the "case by case" determination be made? I see some additional information provided in Rule .0404, but no factors.

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

Amber Cronk May
Commission Counsel
Date submitted to agency: September 25, 2015

15A NCAC 02B .0227 has been amended with changes as published in 29:13 NCR 1605-1606 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 which 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 which 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 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 ~~Subparagraphs (1) through (5) of this Paragraph.~~ Parts (A) through (E) of this Subparagraph.

(A) New development activities within 575' of the mean high water line which require a Sedimentation

Erosion Control Plan or a CAMA major development permit must comply with the low density option of the coastal Stormwater Runoff Disposal Rules [as specified in 15A NCAC 2H .1005(2)(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 is mandatory for any proposed (new or expanded) NPDES permit to this protected area.

(C) New non-discharge permits shall be required to meet reduced loading rates and increased buffer zones, to be determined on a case-by-case basis.

(D) New or expanded marinas must be located in upland basin areas.

(E) No dredge or fill activities shall be allowed where significant shellfish or submerged aquatic vegetation bed resources occur, 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 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

1 required to provide treatment for oxygen consuming wastes as described in Parts (A) through (C) of this
2 Subparagraph.

3 (A) Effluent limitations shall be as follows: $BOD_5 = 5$ mg/l, $NH_3-N = 1$ mg/l and $DO = 6$ mg/l, or
4 site-specific best available technology on a case-by-case basis for industrial discharges.

5 (B) Seasonal effluent limits for oxygen consuming wastes will be considered on a case-by-case basis
6 in accordance with Rule .0404 of this Subchapter.

7 (C) Any new or expanded permitted pollutant discharge of oxygen consuming waste shall not cause
8 the dissolved oxygen of the receiving water to drop more than 0.1 mg/l below the modeled in-
9 stream dissolved oxygen at total permitted capacity for all discharges.

10
11 *History Note: Authority G.S. 143-214.1; 143-215.8A;*
12 *Eff. October 1, 1995;*
13 *Amended Eff. November 1, 2015; January 1, 1996.*
14
15
16

1 **15A NCAC 02B .0311 has been amended as published in 29:13 NCR 1606-1609 as follows:**

2
3 **15A NCAC 02B .0311 CAPE FEAR RIVER BASIN**

4 (a) Effective February 1, 1976, the adopted classifications assigned to the waters within the Cape Fear River Basin
5 are set forth in the Cape Fear River Basin Schedule of Classifications and Water Quality Standards, which may be
6 inspected at the following places:

- 7 (1) the Internet at <http://portal.ncdenr.org/web/wq/ps/csu/rules>; and
8 (2) the North Carolina Department of Environment and Natural Resources:
9 (A) Winston-Salem Regional Office
10 585 Waughtown Street
11 Winston-Salem, North Carolina
12 (B) Fayetteville Regional Office
13 225 Green Street
14 Systel Building Suite 714
15 Fayetteville, North Carolina
16 (C) Raleigh Regional Office
17 3800 Barrett Drive
18 Raleigh, North Carolina
19 (D) Washington Regional Office
20 943 Washington Square Mall
21 Washington, North Carolina
22 (E) Wilmington Regional Office
23 127 Cardinal Drive Extension
24 Wilmington, North Carolina
25 (F) Division of Water Quality
26 Central Office
27 512 North Salisbury Street
28 Raleigh, North Carolina.

29 (b) The Cape Fear River Basin Schedule of Classification and Water Quality Standards was amended effective:

- 30 (1) March 1, 1977;
31 (2) December 13, 1979;
32 (3) December 14, 1980;
33 (4) August 9, 1981;
34 (5) April 1, 1982;
35 (6) December 1, 1983;
36 (7) January 1, 1985;
37 (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 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 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 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 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 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 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 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 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 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 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.

(m) The Schedule of Classifications and Water Quality Standards for the Cape Fear River Basin 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), then that development is not subject to the stormwater requirements as described in rule 15A NCAC 02H .1006 (Stormwater Requirements: High Quality Waters).

(n) The Schedule of Classifications and Water Quality Standards for the Cape Fear River Basin 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 was amended effective November 1, 2007 with the reclassifications listed below, and the North Carolina Division of Water Quality 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.

(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.

(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.

(4) Weymouth Woods Sandhill Seep near Mill Creek [18-23-11-(1)] was reclassified to Class WL UWL as defined in 15A NCAC 02B .0101.

(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.

(6) Lily Pond near Cape Fear River [Index No. 18-(71)] was reclassified to Class WL UWL as defined in 15A NCAC 02B .0101.

- (7) Grassy Pond near Cape Fear River [Index No. 18-(71)] was reclassified to Class WL UWL as defined in 15A NCAC 02B .0101.
- (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.
- (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.
- (10) Bushy Lake near Turnbull Creek [Index No. 18-46] was reclassified to Class WL UWL as defined in 15A NCAC 02B .0101.
- (p) The Schedule of Classifications and Water Quality Standards for the Cape Fear River Basin 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 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.
- (r) The Schedule of Classifications and Water Quality Standards for the Cape Fear River Basin 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 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 was amended effective November 1, 2015 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.

1 *History Note:* *Authority G.S. 143-214.1; 143-215.1; 143-215.3(a)(1);*
2 *Eff. February 1, 1976;*
3 *Amended Eff. November 1, 2015; March 1, 2012; September 1, 2009; August 11, 2009; January*
4 *1, 2009; November 1, 2007; November 1, 2004; August 1, 2002; April 1, 1999; August 1, 1998;*
5 *September 1, 1994; June 1, 1994; August 3, 1992; August 1, 1990.*

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