

REQUEST FOR TECHNICAL CHANGE

AGENCY: Environmental Management Commission

RULE CITATION: 15A NCAC 02B .0227

DEADLINE FOR RECEIPT: Friday, June 10, 2016

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.

In reviewing these rules, the staff determined that the following technical changes need to be made. Approval of any rule is contingent upon making technical changes as set forth in G.S. 150B-21.10.

Line 4, please place the phrase "existing uses" in quotation marks to clarify the phrase being defined

Line 4, delete the brackets around "as defined...of this Section"

Lines 5, 6, and 7, please clarify if "state" means any state or the State of North Carolina. If the use of the term is for North Carolina, please capitalize

Lines 5, 9, and 18, replace "which" with "that"

Line 6, add a comma after "maintain"

Line 8, please clarify what is meant by "within the powers of the Commission" Could a specific statute be cited that lists the powers?

Line 19, replace "must" with "shall"

Line 21, please note that the citation provided is incorrect. Please review and correct the citation. Furthermore, please note that the cited rule is currently proposed to be repealed. Based upon the concurrent ruling making efforts of these sets of rules, the citation could not be updated to the not-yet codified citation, but please note this upcoming change for future rulemaking efforts.

Line 24, replace "is" with "shall be"

Lines 31, please place the defined phrases, "submerged aquatic vegetation habitat" and "shellfish producing habitat," in quotation marks to clarify the phrase being defined

Line 31, add a comma after "producing habitat"

Abigail M. Hammond
Commission Counsel

Date submitted to agency: Thursday, May 26, 2016

Line 34, what is the purpose of the second use of “maintenance dredging”? Please consider deleting as it seems unnecessary

Line 35, what is meant by “section 18(71)? Is this a known term or phrase to the regulated public?

Line 37, what is meant by “SC Sw”? Is this a known term or phrase to the regulated public?

Page 2, lines 4 thru 11, are these items a list? If a list, please begin the clauses with lowercase letters, replace the periods at the end with semicolons; and add an “and” or “or” at the end of line 8

Page 2, line 7, replace “will” with “shall”

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

Abigail M. Hammond
Commission Counsel
Date submitted to agency: Thursday, May 26, 2016

15A NCAC 02B .0227 has been amended with changes as published in 30:12 NCR 1277-1278 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 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 (E) (D) 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).~~ 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).~~ 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)~~(C) New or expanded marinas ~~must~~ shall be located in upland basin areas.

~~(E)~~(D) No dredge or fill activities shall be allowed ~~where significant shellfish or submerged aquatic vegetation bed resources occur, if those activities would result in a reduction of the beds of submerged aquatic vegetation habitat or [a reduction of] shellfish producing habitat [as] which are defined in [15A NCAC 03I .0101(b)(20)(A) and (B)].~~ 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 18-(71) from upstream mouth of Toomers Creek to a line across the river between Lilliput Creek and Snows Cut shall be protected

1 by the Class SC Sw standards as well as the following site-specific action: All new individual NPDES
2 wastewater discharges and expansions of existing individual NPDES wastewater discharges shall be
3 required to provide treatment for oxygen consuming wastes as described in Parts (A) through (C) of this
4 Subparagraph.

5 (A) Effluent limitations shall be as follows: BOD₅ = 5 mg/l, NH₃-N = 1 mg/l and DO = 6 mg/l, or
6 utilize site-specific best available technology on a case-by-case basis for industrial
7 discharges. discharges in accordance with Rule .0406 (e) of this Subchapter.

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

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

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14 *History Note:* *Authority G.S. 143-214.1; 143-215.8A;*
15 *Eff. October 1, 1995;*
16 *Amended Eff. July 1, 2016; January 1, 1996.*
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