

.0710(e). The description of the Neuse estuary as being in nonattainment “well over a decade” should be revised to say “since 1996.”

.0710(f). This amendment will effectively block implementation of the riparian buffer rules and related stormwater requirements from the Neuse Estuary rules in Falls Lake. Revise the provision to read:

“(f) GEOGRAPHIC APPICABILITY. The Neuse nutrient strategy shall apply in all areas draining to waters within the Neuse River Basin unless individual strategy rules for the Neuse nutrient strategy describe other boundaries. The riparian buffer rule at 2B .0714 applies in the Falls watershed of the Neuse basin. The wastewater discharge requirements rule at 2B .0713 apply in the Falls watershed only if the Falls wastewater discharge requirements rule at 2B .0279 is less stringent or inapplicable to a discharger included within 2B .0279.”

.0711(2). This list should be amended to include all Falls Lake jurisdictions implementing stormwater requirements. Creedmoor, Stem, Roxboro, Franklin County, Butner, Hillsborough, Granville County and Person County should all be added to this list. Given the provision in .710(f), this rule is confusing as the Falls Lake strategy presumably would remove Durham, Durham County, and Orange County from coverage by the Neuse Estuary strategy.

.0711(3). There is no 5% exemption in the Falls rules so this is in conflict with that strategy. When is the “of record” exemption date to qualify for the exemption?

.0711(4). These local government requirements are not consistent with the Falls rules for jurisdictions in that part of the Neuse Basin. The rule fails to include the Falls model program and only directs compliance with the Neuse 2001 approved program.

.0711(5)(a). The allowed loading factors are lower in the Falls. As was done in (b), add language to state that the loading factors in 2B .0277 superseded the requirements of this Item for jurisdictions for projects subject the Falls Reservoir Nutrient Strategy.”

.0711(5)(b). Cross reference to .0751 is not a rule shown for adoption in the 2B rules. The cross reference should be to the 2B .0277, the existing Falls new development rule.

.0711(6). This should address separately the requirements for local governments in the Falls Basin. Add to (a) of the rule: “The schedule for Falls Basin local governments to implement a stormwater management program is set out in 2B .0277 for new development and in 2B .0278 for existing development. Those schedule supersede any provisions of this Item otherwise applicable to Falls Lake local governments.”

.0712. In the introduction, the Falls Agricultural rule should be declared to supersede this rule in the Falls Basin. These rules are much less strict than 2B .0280.

.0712(3)(b). This new rule provision, in conjunction with the repeal of the individual requirements should a basin fail to meet its goal, essentially strips this rule of any function and authority to require individual compliance when Basin Oversight Committee plan fails. Rather than maintain the individual

standards at former (8), the new rule simply tells the Oversight Committee to notify the EMC to develop new enforceable requirements. There is no useful purpose, other than complete disabling of the rules, by this circuitous solution. The present standards are designed to define with certainty the standards applicable to each individual should there be a failure in the basin. This is a very bad and destructive policy choice in the rule revision. (8) should be restored.

.0713(2). This rule should be revised to expressly declare that the Falls Reservoir rules apply to dischargers in that part of the Neuse Basin.

.0713(3). Several definitions are not moved to .0701, but the terms are still used in the rule. The definitions that are not moved are "Nitrogen wasteload allocation," "Nitrogen estuary allocation," "Nitrogen discharge allocation," and "Nitrogen TMDL."

Nitrogen wasteload allocation and Nitrogen TMDL are both used in (4).

Nitrogen discharge allocation is used in (5).

Estuary allocation is used in (5)(a).

.0713(4). This rule should be expanded to allow individual permit holders to achieve credits from nonpoint source flow reductions achieved by the installation of retrofit BMPs within their individual jurisdiction so long as the permit holder retains responsibility for the maintenance and operation of the BMPs and certifies their performance.

.0713(5)(a)(ii). Should the allocation to the Falls Lake less than .05 MGD dischargers be reduced in light of the Fall Lake budget? Will this trigger a need for the Commission to revise the load and make allocations among existing dischargers per (b) of this rule?

.0713(6)(d). Should the TP limit be changed to be consistent with the Falls rules? "All existing facilities above Falls Lake Dam with permitted flows greater than or equal to ~~0.05~~ 0.01 MGD shall meet a quarterly average total phosphorous limit ~~of 2 mg/l~~ as set by 2B .0279."

Comment on Note following .0713(6)(d). The NRCA strongly supports this proposal. In addition, the NRCA observes that under the existing rule, those same dischargers had individual discharge allocations assigned under (5)(a)(v) of the rule for the past twenty years. With those known discharge limits and no bubble permit for those smaller WWTPs, why isn't enforcement already occurring based on the individual limits?

.0713(7). Revise to read: "This Item specifies nutrient controls for new facilities with discharges below the Falls Lake Dam. Nutrient controls for new facilities above the Falls Lake Dam shall comply with the requirements of the Falls Reservoir Nutrient Strategy rules."

.0713(8). Revise to read: "This item specifies nutrient controls for expanding facilities facilities with discharges below the Falls Lake Dam. Nutrient controls for new facilities above the Falls Lake Dam shall comply with the requirements of the Falls Reservoir Nutrient Strategy rules."

.0713(8). Revise (d) to read: "If these measures do not produce adequate estuary allocation for the expanded flows, facilities may use either of the following alternatives or a combination of the alternatives:

"(1) Purchase a portion of the nonpoint source load allocation for a period of 30 years at a rate of 200 percent of the cost as set in 15A NCAC 2B .0240 to implement practices designed to offset the loading created by the new facility. Payment for each 30 year portion of the nonpoint source load allocation shall be made prior to the ensuring permit issuance.

"(2) Establish nonpoint source best management practices for existing development within the individual permit holder's service territory which result in nutrient reduction credits to be used as a part of the permit compliance by the facility. The permit holder shall annually establish and verify the value of the nutrient credits from such best management practices and demonstrate that the best management practices remain under the operational control and maintenance responsibility of the facility."

.0713(9). Revise to read: ~~Beginning in calendar year 2003, if~~ if an association does not meet its estuary allocation limit from the total pounds of nitrogen released from its member facilities after application of any offsets created pursuant to 8(d)(2), it shall make offset payments for nonpoint source controls no later than May 1 of the following year at the rate set in 15A NCAC 2B .0240."

.0714(2). Revise to read: "APPLICABILITY. This rule applies to all landowners and other persons including local governments, state and federal entities conducting activities within the riparian buffers as described in Item (3) of this Rule in the Neuse River Basin, including the Falls Reservoir Basin."

The Neuse Estuary rules have some other provisions that apply in the Falls Lake basin and it is useful to the public to have express identification of which rules apply in these overlapping nutrient strategy basins.

.0714(b). The proposed rule adds as a key term "activities." That term is not defined. The term "development" is defined, but limited to the GS 214.7 definition for purposes of the stormwater program implemented by DEQ. Does this term include more than "development"? The rule, as written, does not reflect the implementation by DWR. It only applies the riparian buffer protections to blue line streams and not to other surface waters, in particular intermittent streams.

.0714(3)(g). The term "clearing" is not defined. It apparently means something other than "grading."

.0714(5). The onsite determination makes no reference to a blue line stream, yet that is the key means of implementation by DWR.

.0714(6). The new last sentence of the introductory paragraph is confusing. It reads as if each of the criteria listed in the rule must be met for the situation to be an exemption. Some of the criteria are contradictory. This is particularly true for sewer lines in Zone 1 that were installed prior to July 22, 1997 and require maintenance or replacement. (b) reads as if it should be a part of (a). No sewer line in Zone 1 is "a deemed allowable activity as listed in Item (10) of this Rule." That criterion should not be

universally applied. Is (c) a new requirement? Has there historically been an Authorization Certificate or Exception issued by the Authority for exemptions including sewer lines in Zone 1? If not, this new criteria should only be applied to those sites for which such a certificate was issued. (d) is unclear in its last clause. What is "displacement of vegetation by structures or regular activity"? Does it include the replacement of a sewer line in Zone 1? (e) is too limited in its scope and has been a persistent item for which municipalities have sought more clarity. The footprint of a sewer line is not wide enough to allow for its replacement or repair. The footprint of the easement might be adequate, and that concept is used in Item 10 for vegetation maintenance, but it is Allowable Upon Authorization and not Deemed Allowable. (g) provides for maintenance, but it forbids no built upon area being added within the riparian buffer. It is impossible to maintain a sewer by use of excavation equipment without more built upon area, even though it is temporary and will be restored as vegetated area. In Item 10, replacement of a sewer line that pre-existed in Zone 1 apparently will require mitigation if more than 2500 square feet are disturbed. This is objectionable and inconsistent with the permits for maintenance of sewer lines. It is impossible to move them from the pre-existing Zone 1 locations.

.0714(9)(a)(2). This standard is ambiguous. In what context does it refer to "new flow [that] does not result in the need to alter the conveyance," especially as it relates to flooding events?

.0714(9)(b)(ii). The 3.6 pounds of nutrient loading reflects the Neuse Estuary standard, but not the Falls Lake standard. The rule should be revised to include both standards.

.0714(9)(b)(iii)-(viii). These are all indicated to be new uses allowable upon authorization. Is that correct for each new use per the Falls Lake rules as well as the Neuse Estuary rules?

.0714(10)(b). The rule uses the term "potential new uses." How does that apply to replacement sewer lines or major maintenance of existing sewer lines within the riparian buffer?

.0714(10)(b) Greenways, trails, sidewalks or linear pedestrian/bicycle transportation system. The deemed allowable use does not include construction of such facilities which comply with the American Disabilities Act. Paved trails within Zone 2 should be added to deemed allowable category with appropriate stormwater runoff protection.

.0714(10)(b) Pedestrian access trail and associated steps leading to a surface water, dock, canoe or kayak access, fishing pier, boat ramp or other water dependent structure. Such access features should be made deemed allowable when the built upon area is added to comply with the American Disabilities Act.

.0714(10)(b) Protection of existing structure and facilities when this requires additional disturbance of the riparian buffer. The term "facilities" is not defined. It should be defined to include protection of existing sewer lines and left as deemed allowable.

.0714(10)(b) Stormwater Control Measure. Not a defined term in .0702.

.0714(10)(b) Temporary roads. Does this include roads used for the pathway to replace or maintain a sewer line in Zone 1? If so, then the requirement for restoration of a wooded buffer should exclude the

maintenance easement area for the sewer line so the permit holder can comply with collection system permit requirements.

.0714(10)(b) Temporary sediment and erosion control devices. Does this include such devices deployed to control erosion and sedimentation in the replacement or substantial maintenance of existing sewer lines in Zone 1? If so, the restoration of a wooded buffer should exclude the maintenance easement area for the sewer line so the permit holder can comply with collection system permit requirements. Does this requirement apply if the devices are deployed in conjunction with an exemption involving maintenance or repair?

.0714(10)(b) Utility Sewer Lines. Construction activities is not a defined term in .0702. It appears that it includes the replacement or repair of sewer lines which disturb more than 150 linear feet. It is mandatory that such lines be kept in good repair under the NPDES permit for the treatment facility and under the collection system permit issued by the State. Complying with those legal requirements for pre-existing sewer lines in the riparian buffer should not include a requirement for mitigation. This is covered by the catch all "Impacts to Zone 1 other than noted above." Per the comment, mitigation will be required if the impact in Zone 1 is above 2500 sq ft. Since the easement for the utility line is 20 feet wide at minimum, especially during construction, this results in a requirement for mitigation to repair or replace a pre-existing line that is longer than 125 feet. That is an unreasonable burden when the utility is confronted with the high cost of replacement and repair of such lines. The damage can be restored and restoration should be the only requirement, not mitigation. Why are sewer lines limited to a vegetation maintenance area 20 feet wide when other non-sewer utility lines can maintain a vegetation maintenance area of 30 feet? Sewer lines should also be allowed up to 30 feet.

.0714(10)(b) Vegetation Maintenance. In the removal of individual trees provision, the term structures is used, but not defined at .0703. It should include sewer lines when an individual tree is at risk of causing the sewer line to be damaged.

.0714. Prior (8) Determination of No Practical Alternatives shows a comment saying it was moved into (10) above. Where is it in (10)? Was it moved to .0705 per (11)(a)?