15A NCAC 02B .0101 is proposed for amendment as follows:

15A NCAC 02B .0101 GENERAL PROCEDURES

(a) The rules contained in Sections .0100, .0200 and .0300 of this Subchapter which pertain to the series of classifications and water quality 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, 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), which are hereby 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 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 analysis as required by the provisions of 40 CFR 131.10(j), which are hereby incorporated by reference including subsequent amendments and editions. 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

Commented [A1]: format

Commented [A2]: Moved from (f) of this rule, updated references and removed unnecessary reference to 2B .0202.

Commented [A3]: Moved from (g) of this rule, updated references.

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)~~(2)~~(4) of this Rule.

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

~~(6)~~(8) The hearing officer(s) shall, as soon as practicable after the completion of the hearing, 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~~ G.S. 143-215.1 and G.S. 143-215.2, as amended, as a part of the Commission's official rules.

~~(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), 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.~~

Commented [A4]: (c) through (e) moved information to individual classification rules for organizational purposes (i.e. (c)(1) is now in 02B .0211 and (e)(7) is now in 02B .0231). Removed Future Water Supply (FWS) as a classification because it was never used and is not necessary.

(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

Commented [A5]: "native and special native trout waters (and their tributaries) designated by the Wildlife Rescources Commission" is removed because there is no longer this designation nor equivalent designation. However, HQW can be applied in trout streams that have excellent water quality, thus no effect.

~~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).~~

Commented [A6]: "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 Commission" is removed because it is inconsistent with Administrative Procedure Act (APA).

~~(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.

15A NCAC 02B .0103 is proposed for amendment 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 Environmental Protection Agency 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, 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 Methods for the Examination of Water and Wastewater, ~~19th edition@(1996)~~ 20th edition" or subsequent editions, which are hereby incorporated by reference. ~~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 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 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 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;

Commented [KG1]: Reference updates

Commented [KG2]: Reference update

Commented [KG3]: Address update

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;

15A NCAC 02B .0104 is proposed for amendment 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 or food processing purposes after approved treatment, the Commission will be guided by the physical, chemical, and bacteriological maximum contaminant levels specified by 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, 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. 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. 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 the Commission deems such reclassifications appropriate and necessary. 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~~

Commented [A1]: The program formerly in DEH that provided comments is now in DWR. Subchapter 18C is not an EMC rule; therefore the additional language is required.

Commented [A2]: Moved to Water Supply Watershed Protection Program Rule 15A NCAC 2B .0623. No substantive changes.

Commented [A3]: Resolutions are already required for some water supply reclassifications; this modification makes resolutions required for all water supply reclassifications. No fiscal impact.

Commented [A4]: Moved from (o) and updated language. Clarifies procedures, no new requirements added.

Commented [A5]: Eliminated FWS because it is not used.

~~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 relative proximity, quantity, composition, natural dilution and diminution of potential sources of pollution to determine that risks posed by all significant pollutants are adequately considered.

~~(e)~~(d) For the purposes of implementing 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, 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 before and including August 3, 1992:

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;

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;

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

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,~~

Commented [A6]: Updated rule references and information within effective dates. Moved some language to Water Supply Watershed Protection Program rules.

Commented [A7]: Requirement for local governments to adopt and submit ordinances and maps is moved to Water Supply Watershed Protection Program Rule 15A NCAC 2B .0623. No substantive changes.

~~.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.~~ For water supply watersheds classified as such after August 3, 1992, the effective dates for implementation of the water supply watershed protection requirements shall be as follows:

(1) 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, and road construction activities, the effective date is the date the reclassification became effective.

(2) 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.~~

Commented [A8]: O&M responsibilities moved to Water Supply Watershed Protection Program Rule 15A NCAC 2B .0623. No substantive changes.

~~(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:~~

Commented [A9]: Updated to allow stormwater control systems other than wet detention ponds and moved to Water Supply Watershed Protection Program Rule 15A NCAC 2B .0624.

~~(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.~~

Commented [A10]: Updated to allow stormwater control systems to achieve runoff volume match (90th percentile) as an alternative to basic treatment (one-inch storm) and moved to Water Supply Watershed Protection Program Rule 15A NCAC 2B .0624.

~~(h)~~(e) Where no practicable alternative exists, discharge from groundwater remediation projects addressing water quality problems shall be allowed in accordance with other applicable requirements in all water supply classifications.

~~(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) Where no practicable alternative exists other than surface water discharge, previously unknown existing unpermitted wastewater discharges shall incorporate the best possible technology treatment as deemed appropriate by the Division.

~~(k)~~(g) 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) 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 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.~~Division.

~~(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)(i) 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~~

Commented [A11]: Eliminated this paragraph because is not a requirement.

Commented [A12]: Updated reference to NCDOT permit and moved to Water Supply Watershed Protection Program Rule 15A NCAC 2B .0622. No substantive changes.

Commented [A13]: Eliminated because is unnecessary to specify this in this rule.

Commented [A14]: Eliminated because there is no longer a separate Division of Environmental Health and expansions of wastewater discharges will be reviewed in accordance with wastewater program rules.

Commented [A15]: Add a non-exclusive list of what sources of information local governments can use to "approximate normal pool elevation" and moved to Water Supply Watershed Protection Program Rule 15A NCAC 2B .0623.

Commented [A16]: Eliminated first sentence encouraging participation in the Ag Cost Share Program because is not a requirement.

Commented [A17]: Moved language regarding Soil and Water Conservation Commission as designated management agency to Water Supply Watershed Protection Program Rule 15A NCAC 2B .0622. No substantive changes.

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

~~(c) 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.~~

~~(d) 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.~~

Commented [A18]: Moved vegetated buffer requirements to Water Supply Watershed Protection Program Rule 15A NCAC 2B .0624. No substantive changes.

Commented [A19]: Moved to Water Supply Watershed Protection Program Rule 15A NCAC 2B .0624. No substantive changes.

Commented [A20]: Moved variance procedures to Water Supply Watershed Protection Program Rule 15A NCAC 2B .0623. No substantive changes.

Commented [A21]: Replaced submission requirement with "furnish upon request" and moved to Water Supply Watershed Protection Program Rule 15A NCAC 2B .0623.

~~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~~

Commented [A22]: Moved to Water Supply Watershed Protection Program Rule 15A NCAC 2B .0624. No substantive changes.

Commented [A23]: Moved to Water Supply Watershed Protection Program Rule 15A NCAC 2B .0624. No substantive changes.

~~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) 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.

Commented [A24]: Moved to Water Supply Watershed Protection Program Rule 15A NCAC 2B .0624. No substantive changes.

Commented [A25]: Updated reference to NC Forest Service Guidelines and moved to Water Supply Watershed Protection Program Rule 15A NCAC 2B .0622.

Commented [A26]: Moved to Water Supply Watershed Protection Program Rule 15A NCAC 2B .0623. No substantive changes.

Commented [A27]: Moved to Water Supply Watershed Protection Program Rule 15A NCAC 2B .0623. No substantive changes.

Commented [A28]: Eliminated because is unnecessary to state in this rule. Stormwater systems and facilities impacting waters or wetlands of the U.S. will still be subject to 404/401 permitting.

Commented [A29]: Updated reference to current division website and moved to Water Supply Watershed Protection Program Rule 15A NCAC 2B .0623.

Commented [A30]: Moved to Water Supply Watershed Protection Program Rule 15A NCAC 2B .0623. No substantive changes.

Commented [A31]: Added (j) to provide the new location for water supply watershed rules implemented by DEMLR.

15A NCAC 02B .0106 is proposed for repeal as follows:

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

~~In assigning the B or SB classification to waters intended for primary recreation, the Commission will take into consideration the relative proximity of sources of water pollution and will recognize the potential hazards involved in locating swimming areas close to sources of water pollution and will not assign this classification to waters in which such water pollution could result in a hazard to public health. Discharges to waters classified as B or SB will meet the reliability requirements specified in 15A NCAC 2H .0124. Discharges to waters where a primary recreational use is determined by the Director to be attainable will 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. February 1, 1976;
Amended Eff. October 1, 1989; January 1, 1985; September 9, 1979.

Commented [A1]: Separate rule not necessary, language moved to Class B and SB rules in Section .0200.

15A NCAC 02B .0108 is proposed for repeal as follows:

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

~~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 will not be classified SA without the written concurrence of the Division of Health Services, North Carolina Department of Human Resources.Division of Marine Fisheries, North Carolina Department of Environmental Health and Natural Resources.~~

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

Commented [A1]: Separate rule not necessary, language moved to Class SA rule in Section .0200.

15A NCAC 02B .0110 is proposed for amendment 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 Environmental Management Commission (EMC) shall utilize Rule .0225 or .0227 of this Subchapter for site specific strategies 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 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.

Commented [A1]: Corrected the authority from the division to the EMC.

Commented [A2]: The basinwide schedule has been legislatively changed to a 10 year cycle and the timeline requirement is obsolete.

15A NCAC 02B .0201 is proposed for amendment 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 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 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) 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 pursuant to 15A NCAC 2H .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 use the entire available load capacity of the receiving waters and may cause more stringent water quality based effluent limitations to be established for dischargers downstream.

(3) 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) 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 to the provisions of 15A NCAC 2H .0100). Dischargers affected by the requirements of Paragraphs (c)(1) through (c)(4) of this Rule and the public at large shall be notified according to the provisions described herein, and all other appropriate provisions pursuant to 15A NCAC 2H .0109. If an applicant objects to

Commented [A1]: Updates, no substantive changes.

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 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~~ Rule .0224 of this 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 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 Clean Water Act ~~(33 U.S.C. 1344),~~ 33 U.S.C. §1344 which require a water quality certification as described in Section 401 of the Federal Clean Water Act ~~(33 U.S.C. 1341),~~ 33 U.S.C. §1344 shall be evaluated according to the procedures outlined in 15A NCAC 2H .0500. Activities which 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 .0506(c) ~~(1) (5)~~(1 through 5) in determining the potential impact of the proposed activity on the existing uses of the wetland per ~~15A NCAC 2H .0231.~~Rule .0231 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.

Commented [A2]: This information is located in .0224.

Commented [A3]: Placeholder for Karen's comments

Commented [A4]: Corrected the reference.

15A NCAC 02B .0202 is proposed for amendment 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 toxicity to aquatic 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) 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) of this Rule 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 defined as no statistically measurable lethality (99 percent confidence level using Students t ~~test)~~ 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.

(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.

(2) Acute to Chronic Ratio (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 the use of waters for stock watering, irrigation, and other farm purposes.

(4) Applicator means any person, firm, corporation, wholesaler, retailer, distributor, any local, state, or federal governmental 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 they lease or otherwise hold rights.

(5) 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 uses that can be achieved by the imposition of effluent limits and cost effective and reasonable best management practices (BMP) for nonpoint source control.

Commented [A1]: Added to show actual practice, no substantive change

Commented [A2]: Added from input from stakeholders for clarity, no substantive change.

~~(6)~~(7) Average (except bacterial) means arithmetical average and ~~includes~~ consists of the analytical results of all samples taken during the specified period (for example: daily, weekly, or 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 Management Practice (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 of waters as specified for each 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 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 from both water and the food chain.

~~(10)~~(11) Bioconcentration factor (BCF) is 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 from water only.

~~(11)~~(12) 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 and functional organization similar to that of reference conditions.

~~(12)~~(13) 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~~

Commented [A3]: Stakeholder input received from discharge representative indicated that this definition was ambiguous. Revised language provides flexibility for sampling under various conditions. No substantive change.

Commented [A4]: No one in DWR is using these definitions. No effect

Commented [A5]: See above comment for (7)(a).

Commented [A6]: Measurement of buffer is specified in the rules where it appears.

Commented [A7]: Moved to 2B .0621 and updated to refer to definition of BUA in G.S. 143-214.7 (stormwater). Also proposed to be defined in 2B .0701 (nutrient strategies).

~~facilities (e.g. tennis courts), etc. (Note: Wooden slatted decks and the water area of a swimming pool are considered pervious.)~~

(14) Chronic toxicity to aquatic 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 value for aquatic 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 means any person, firm, corporation, wholesaler, retailer, distributor or any other person who for hire or compensation applies fertilizer to the land of a consumer or client.

~~(18)~~(17) Concentrations are the mass of a substance per volume of water and for the purposes of this 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 those wetlands landward of the mean high water line or normal water level and within 575 feet of classified surface waters which 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 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 critical area is defined as 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); or 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), or to the ridge line of the watershed (whichever comes first). 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.~~ The Commission may adopt a different critical area size during the reclassification process.

~~(21)~~(20) 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.

Commented [A8]: Moved to 2B .0621. No substantive changes.

Commented [A9]: No substantive changes, clarity only.

Commented [A10]: Moved to 2B .0623(4). No substantive changes.

~~(22)~~(21) Designated Nonpoint Source Agency means those agencies 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 means the Director of the Division of Water ~~Quality.~~Resources.

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

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

~~(27)~~(25) Domestic wastewater discharge means the discharge of sewage, non-process industrial wastewater, other domestic 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, from any residence, place of business, or place of public assembly even if it contains no sewage. Examples of domestic wastewater include once-through non-contact cooling water, seafood packing facility discharges and wastewater from restaurants.

~~(28)~~(26) Effluent channel means a discernable confined and discrete conveyance which is used for transporting treated wastewater to a receiving stream or other body of 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 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.

Commented [A11]: Moved to 2B .0621; no substantive changes.

Commented [A12]: Reference correction, no effect.

Commented [A13]: Moved to 2B .0621; no substantive changes.

Commented [A14]: Moved to .0104 (d). No effect.

Commented [A15]: Per stakeholder input from both environmental and discharge representatives, language was removed to make definition consistent with federal regulations. We added a separate definition for "attainable uses" using the last sentence. No substantive change.

~~(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 means any substance containing nitrogen or phosphorus which is used primarily for its plant food content.

~~(33)~~(29) Fishing means the taking of fish by ~~sport~~ recreational or commercial methods as well as the consumption of fish or shellfish or the propagation of fish and such other aquatic life as is necessary to provide a suitable environment for fish.

~~(34)~~(30) 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 and herbaceous plants. This includes mature and successional forests as well as cutover stands.

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

~~(36)~~(32) 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

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

~~(37)~~(33) 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 means that concentration of a toxic substance which is lethal (or immobilizing, if appropriate) to 50 percent of the organisms tested during a specified exposure period. The LC50 concentration for toxic materials shall be determined for sensitive species as defined by Subparagraph ~~(43)~~ (50) of this Rule under aquatic conditions characteristic of the receiving waters.

~~(39)~~(35) 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 piedmont and coastal plain waters mean 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.

Commented [A16]: Moved to 2B .0621; no substantive changes.

Commented [A17]: Clarity, no substantive change.

~~(41)~~(37) MF is an abbreviation for 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.~~

Commented [A18]: Moved to 2B .0621 and changed to define a Major variance as "a variance that is not a minor variance." Has the effect of excluding from the definition "any variation in the design, maintenance or operation requirements of a wet detention pond or other approved stormwater management system." Variations to O&M reqts not needed, and variations to design of SCMs are already allowed as "alternatives" to the minimum design criteria.

~~(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.~~

Commented [A19]: Moved to 2B .0621 and clarify how to calculate percent variation to a setback. No substantive changes.

~~(44)~~(38) 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).~~ .0204(b) of this Section.

~~(45)~~(39)Mountain and upper piedmont waters mean 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.~~

Commented [A20]: Moved to 2B .0621; no substantive changes.

~~(47)~~(40) Nonpoint source pollution means pollution which enters waters mainly as a result of precipitation and subsequent runoff from lands which 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 means industrial effluent not directly resulting from the manufacturing process. An example would be 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.~~

Commented [A21]: Defined in .0223 of this section

~~(50)~~(42) Offensive condition means any condition or conditions resulting from the presence of sewage, industrial wastes or other wastes within the waters of the state or along the shorelines thereof which 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 damage private or public water supplies or other structures, result in the development of gases which destroy or damage surrounding property, herbage or grasses, or which may cause the impairment of taste, such as from fish flesh 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 contact recreation includes 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 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.

~~(53)~~(45) 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~~ protected ~~areas are~~ area is defined as ~~within~~ extending 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); or 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), or to the ridge line of the watershed (whichever comes first). ~~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. The Commission may adopt a different protected area size during the reclassification process.

~~(54)~~(46) 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 in 15A NCAC 02T .0103.

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

~~(57)~~(49) Secondary contact recreation includes 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 species for aquatic toxicity testing is any species utilized in procedures accepted by the Commission or its designee in accordance with Rule .0103 of this Subchapter, or the following genera:

(a) Daphnia;
(b) Ceriodaphnia;
(c) Salmo;
(d) Pimephales;
(e) Mysidopsis;
(f) Champia;
(g) Cyprinodon;
(h) Arbacia;

Commented [A22]: Moved from below. Clarified this definition to differentiate primary from secondary contact recreation. No effect.

Commented [A23]: Moved to be in alphabetic order.

Commented [A24]: No substantive changes, clarity only.

Commented [A25]: Moved to 2B .0623(4); no substantive changes

Commented [A26]: Reference to correct definition

Commented [A27]: Clarity, no effect.

(i) Penaeus;
(j) Menidia;
(k) Notropis;
(l) Salvelinus;
(m) Oncorhynchus;
(n) Selenastrum;
(o) Chironomus;
(p) Hyalella;
(q) Lumbriculus.

~~(59)~~(51) Shellfish culture includes the use of waters for the propagation, 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).~~

Commented [A28]: Moved to 2B .0701 and updated to refer to 2H .1002 for consistency.

~~(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.~~

Commented [A29]: Deleted because this is included in the WS classification rules in this Section.

~~(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 those waters which are classified by the Environmental Management Commission as such and which are topographically located so as to generally have natural characteristics such as low velocity, dissolved oxygen, or pH, which are different from streams draining steeper topography.

Commented [A30]: Provided clarity on swamp characteristics. Consolidated swamp water definitions from other rule areas.

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

Commented [A31]: Provides for science based definition to be used as tool to determine fresh versus salt water.

~~(64)~~(54) Toxic substance or toxicant means any substance or combination of substances (including disease-causing agents), which 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) 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 those waters which are classified by the Environmental Management Commission as such and have conditions which shall sustain and allow for natural trout propagation and survival and maintenance of stocked trout on a year round basis.

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

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

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

~~(69)~~(59) Waters with quality higher than the 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) Watershed means 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)~~(60) 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.~~

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.

Commented [A32]: Reworded for clarity. Consolidated trout water definitions from other rule areas.

Commented [A33]: Unnecessary. No effect.

Commented [A34]: Removed because if readopted with a new effective date, the federal references would exclude the state's isolated wetlands program.

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15A NCAC 02B .0203 is proposed for adoption as follows:

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

Water quality based effluent limitations or management practices for direct or indirect discharges of waste or for other sources of water pollution will 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.

15A NCAC 02B .0204 is proposed for amendment as follows:

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

(a) Location of Sampling Sites: in conducting tests or making analytical determinations of classified waters to determine conformity or nonconformity with the established standards, samples shall be collected outside the limits of prescribed mixing zones. However, where appropriate, 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 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 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 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 such that discharges shall not:

(1) result in acute toxicity to aquatic 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 for point source discharges of fecal coliform organisms in waters classified "WS-II," "WS-III," "B," or ~~"SA".~~ "SA" as defined in Rule .0301 of this Subchapter. Mixing zones shall not be assigned for point source discharges of enterococci in waters classified "SB" or ~~"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 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.

Commented [A1]: Reference provided. No effect.

15A NCAC 02B .0205 is proposed for adoption 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 not be considered violated when values outside the normal range are caused by natural conditions. Where wastes are discharged to such waters, the discharger will not be considered a contributor to substandard conditions provided 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.

15A NCAC 02B .0206 is proposed for adoption as follows:

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

(a) Water quality based effluent limitations 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:

(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).

(b) In cases where 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 the Director on a case-by-case 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 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 the 7Q10 flow of the receiving stream is estimated to be zero, water quality based effluent limitations shall be assigned as follows:

(1) Where 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 violations of water quality standards are predicted to occur for a new or expanded discharge with the limits set pursuant to this Rule, or where 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.

15A NCAC 02B .0208 is proposed for adoption 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 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 narrative standard for toxic substances and numerical standards applicable to all waters are as follows:

(1) Aquatic life standards: the concentration of toxic substances shall not result in chronic toxicity. Any levels in excess of the chronic value 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 determined by the use of acceptable acute/chronic ratios). If an acceptable acute/chronic ratio is not available, then that toxic substance shall not exceed one-one hundredth (0.01) of the lowest LC50 or if it is affirmatively demonstrated that a toxic substance has a half-life of less than 96 hours the maximum concentration shall not exceed one-twentieth (0.05) of the lowest LC50;

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

(A) For non-carcinogens, these concentrations shall be determined using a Reference Dose (RfD) as published by the U.S. Environmental Protection Agency pursuant to Section 304(a) of the Federal Water Pollution Control Act as amended or a RfD issued by the U.S. Environmental Protection Agency as listed in the Integrated Risk Information System (IRIS) 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 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, or bioaccumulation factor (BAF), as appropriate.

Pursuant to Section 304(a) of the Federal Water Pollution Control Act as amended BCF or BAF values, literature values, or site specific bioconcentration data approved by the

Commission or its designee are based on U.S. Environmental Protection Agency publications; FCR values are 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 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, 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 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 U.S.C. 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 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 51 (185): 33992-34003; and FR 45 (231 Part V): 79318-79379]. Water quality standards or criteria for water quality based effluent limitations are calculated using the procedures given in Subparagraphs (A) and (B) of this Rule. 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 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) 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 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, upon a case-by-case determination that thermal discharges to these 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 be consistent with the provisions of Section 316(a) of the Federal Water Pollution Control Act as amended. A listing of existing thermal 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.

15A NCAC 02B .0211 is proposed for amendment as follows:

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

General. The water quality standards for all fresh surface waters shall be the basic standards applicable 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: 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;~~, 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 waters shall be 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 a water quality standard;

(3) Chloride: 230 mg/l;

~~(3)~~(4) Chlorine, total residual: 17 ug/l;

~~(4)~~(5) Chlorophyll a (corrected): not greater than 40 ug/l for lakes, reservoirs, and other waters subject to growths of macroscopic or microscopic vegetation not designated as trout waters, and not greater than 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)~~(6) Cyanide, total: 5.0 ~~ug/L;~~ug/l;

~~(6)~~(7) Dissolved oxygen: not less than 6.0 mg/l for trout waters; for non-trout waters, not less than a daily average of 5.0 mg/l with a minimum 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)~~(8) 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 period, nor exceed 400/100ml in more than 20 percent of the samples examined during such period. Violations of the fecal coliform standard

Commented [BC1]: Actions Levels disapproved by US EPA decision document on 2007-2015 Triennial Review (rec'd by DWR April 19, 2016)

Commented [KG2]: Merging usage information from .0101 and .0301 into individual classification rule. No effect.

Commented [KG3]: Moved to (1) above. No effect.

Commented [KG4]: Unnecessary. No effect.

Commented [BC5]: Inadvertently deleted during the last Triennial Review, added to retain protection of aquatic life.

Commented [BC6]: Renumbering to retain alphabetical alignment

Commented [BC7]: Modified for uniformity in identifying units of measure

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 high turbidity or other adverse conditions necessitate the tube dilution method. In case of controversy over results, the MPN 5-tube dilution technique shall be used as the reference method;

~~(8)~~(9) 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)~~(10) Fluoride: 1.8 mg/l;

~~(10)~~(11) Gases, total dissolved: not greater than 110 percent of saturation;

~~(11)~~(12) 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:

(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 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' 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.

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;

Commented [BC8]: A "low-end hardness cap" was disapproved for Clean Water Act purposes by US EPA decision document on 2007-2015 Triennial Review (rec'd by DWR April 19, 2016)

~~(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;~~

Commented [BC9]: NPDES implementing procedures were disapproved for Clean Water Act permitting purposes by the US EPA decision document on the 2007-2015 Triennial review (rec'd by DWR on 04-19-2016)

(d) Alternatives:

Acute and chronic freshwater aquatic life standards for metals listed in Table A 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) of this Rule. Alternative site-specific standards may also be developed as set forth in Sub-Item (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) 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

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(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;~~

Commented [MJ10]: "Biological confirmation" disapproved by US EPA decision document on 2007-2015 Triennial Review (rec'd by DWR April 19, 2016)

~~(12)~~(13) Oils, deleterious substances, colored, or other wastes: only 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 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 40 CFR 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)~~(14) Pesticides:

(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)~~(15) 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)~~(16) Phenolic compounds: only such levels as shall not result in fish-flesh tainting or impairment of other best usage;

~~(16)~~(17) Polychlorinated biphenyls (total of all PCBs and congeners identified): 0.001 ug/l;

~~(17)~~(18) 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; nor shall the average annual gross beta particle activity (excluding potassium-40 and other naturally occurring radionuclides) exceed 50 picoCuries per liter; nor shall the average annual activity level for tritium exceed 20,000 picoCuries per liter;

~~(18)~~(19) Temperature: not to exceed 2.8 degrees C (5.04 degrees F) above the natural water temperature, and 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 in no case to exceed 20 degrees C (68 degrees F);

~~(19)~~(20) Toluene: 11 ug/l or 0.36 ug/l in trout classified waters;

~~(20)~~(21) Trialkyltin compounds: 0.07 ug/l expressed as tributyltin;

~~(21)~~(22) 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 met when land management activities employ Best Management Practices (BMPs) [as defined by Rule .0202 of this Section] recommended by the Designated Nonpoint Source Agency [as defined by Rule .0202 of this 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 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~~

Commented [BC11]: Actions Levels disapproved by US EPA decision document on 2007-2015 Triennial Review (rec'd by DWR April 19, 2016

~~(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 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) are 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 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 levels 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. 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.

15A NCAC 02B .0212 is proposed for amendment as follows:

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

The following water quality standards 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: a source of water supply for drinking, culinary, or food processing purposes for those users desiring maximum protection of their water supplies and any best usage specified for Class C waters; waters located on land in public ownership and 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:

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

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

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

(d) ~~the~~ The waters, following treatment required by the Division, 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 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 requested by local governments shall be considered by the Commission when all local governments having jurisdiction in the affected area(s) have adopted a resolution and the appropriate

Commented [A1]: Merging usage information from .0101 and .0301 into individual classification rule. No effect.

Commented [A2]: Moved some language to other parts of this rule or 2B .0624. Reworded language moved to other parts of this rule for clarity. "Essentially natural" was deemed unnecessary as "natural" is a subcategory of "undeveloped" and "essentially" is an ambiguous phrase. "Land use management programs are required to protect waters from nonpoint source pollution" is a requirement already stated in 02B .0104.

Commented [A3]: Provides location of moved language from Item (2) to other parts of the rule.

Commented [A4]: Removed unnecessary language. No effect.

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;

(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 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 coliforms 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 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 500 mg/l;

~~(g)~~(e) Total hardness: not greater than 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:

(A) Barium: 1.0 mg/l;

(B) Chloride: 250 mg/l;

(C) Nickel: 25 ug/l;

(D) Nitrate nitrogen: 10.0 mg/l;

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

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

(G) Sulfates: 250 mg/l;

(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:

(A) Aldrin: 0.05 ng/1;

(B) Arsenic: 10 ug/l;

(C) Benzene: 1.19 ug/1;

(D) Carbon tetrachloride: 0.254 ug/l;

(E) Chlordane: 0.8 ng/1;

(F) Chlorinated benzenes: 488 ug/l;

(G) DDT: 0.2 ng/1;

Commented [A5]: Moved to Item 5.

Commented [A6]: Moved to Item 4.

Commented [A7]: Removed duplicative language.

Commented [A8]: Removed duplicative language.

(H) Dieldrin: 0.05 ng/1;
(I) Dioxin: 0.000005 ng/l;
(J) Heptachlor: 0.08 ng/1;
(K) Hexachlorobutadiene: 0.44 ug/l;
(L) Polynuclear aromatic hydrocarbons (total of all PAHs): 2.8 ng/l;
(M) Tetrachloroethane (1,1,2,2): 0.17 ug/l;
(N) Tetrachloroethylene: 0.7 ug/l;
(O) Trichloroethylene: 2.5 ug/l; and
(P) 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 of this Subchapter.

(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.

Commented [A9]: Language moved and reworded (for clarity) from Item (3)(b); rule reference added.

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.

15A NCAC 02B .0214 is proposed for amendment as follows:

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

The following water quality standards 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: 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:

(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 requirements as specified in Item (5) of this Rule.

(d) ~~the~~The waters, following treatment required by the Division, 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 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

Commented [A1]: Merging usage information from .0101 and .0301 into individual classification rule. No effect.

Commented [A2]: Moved some language to other parts of this rule or 2B .0624. Remaining language was deemed unnecessary: "predominately undeveloped watershed" is an ambiguous phrase and "recycle (closed loop) systems" should not discharge and are addressed in 02T rules.

Commented [A3]: Provides location of moved language from Item (2) above to other parts of the rule.

Commented [A4]: Unnecessary. No effect.

more protective classification requested by local governments shall be considered by the Commission when 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;

(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~~

Commented [A5]: Moved language in this paragraph to Item (4)(d) of this rule.

Commented [A6]: Moved and reworded this language to Item (5)(a).

Commented [A7]: (A) Through (H) moved to Water Supply Watershed Protection Rules.

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;

Commented [A8]: Moved to Item (4) (f) of this rule.

~~(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;~~

~~(e)~~(a) MBAS (Methylene-Blue Active Substances): not greater than 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 1.0 ug/l to protect water supplies from taste and odor problems from chlorinated phenols;

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

~~(g)~~(e) Total dissolved solids: not greater than 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:

(A) Barium: 1.0 mg/l;

(B) Chloride: 250 mg/l;

(C) Nickel: 25 ug/l;

(D) Nitrate nitrogen: 10 mg/l;

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

Commented [A9]: (A) and (B) moved to Water Supply Watershed Protection Rules.

Commented [A10]: Moved to Item (4) (g) of this rule.

Commented [A11]: Moved to Item (4) (f) of this rule.

Commented [A12]: Removed duplicative language.

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

(G) Sulfates: 250 mg/l;

(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:

(A) Aldrin: 0.05 ng/l;

(B) Arsenic: 10 ug/l;

(C) Benzene: 1.19 ug/l;

(D) Carbon tetrachloride: 0.254 ug/l;

(E) Chlordane: 0.8 ng/l;

(F) Chlorinated benzenes: 488 ug/l;

(G) DDT: 0.2 ng/l;

(H) Dieldrin: 0.05 ng/l;

(I) Dioxin: 0.000005 ng/l;

(J) Heptachlor: 0.08 ng/l;

(K) Hexachlorobutadiene: 0.44 ug/l;

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

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

(N) Tetrachloroethylene: 0.7 ug/l;

(O) Trichloroethylene: 2.5 ug/l; and

(P) 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 2H .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 2H .0126 shall be allowed in the entire watershed.

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

Commented [A13]: Removed duplicative language.

Commented [A14]: Language moved from Items (2) and (3).

Commented [A15]: Additional language regarding individual permit was added for clarity.

Commented [A16]: Added correct reference and language for clarity

Commented [A17]: "Non-process industrial wastes" was removed because it is a sub-category of industrial waste, and "in the entire watershed" was added for clarity. Changed "and" to "or" for clarity.

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 shall be protected as water supplies that are located in watersheds that meet average watershed development density levels specified 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.

Commented [A18]: Added reference to NPDES permits for clarity.

Commented [A19]: Added 'remainder of the watershed" for clarity.

Commented [A20]: Language moved from Items (2) and (3).

Commented [A21]: Provided rule reference language for further clarity.

Commented [A22]: Added "that are located in watersheds" for clarity and corrected rule reference.

15A NCAC 02B .0215 is proposed for amendment as follows:

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

The following water quality standards 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: 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:

(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 requirements as specified in Item (5) of this Rule.

(d) ~~the~~ The waters, following treatment required by the Division, 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 a water quality standard.

Commented [A1]: Merging usage information from .0101 and .0301 into individual classification rule. No effect.

Commented [A2]: Moved some language to other parts of this rule or 2B .0624. Remaining language was deemed unnecessary: "low to moderately developed watershed" is an ambiguous phrase and "recycle (closed loop) systems" should not discharge and are addressed in 02T rules.

Commented [A3]: Provides location of moved language from Item (2) above to other parts of the rule.

Commented [A4]: Unnecessary. No effect.

(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 classification requested by local governments shall be considered by the Commission when 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;

(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~~

Commented [A5]: Moved language in this paragraph to Item (4)(f) of this rule.

Commented [A6]: Moved and reworded this language to Item (5)(a).

Commented [A7]: (A) Through (H) moved to Water Supply Watershed Protection Rules.

~~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:

Commented [A8]: Moved language to Item (4) (g) of this rule.

Commented [A9]: (A) and (B) moved to Water Supply Watershed Protection Rules.

~~(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;~~

~~(e)~~(a) MBAS (Methylene-Blue Active Substances): not greater than 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 1.0 ug/l to protect water supplies from taste and odor problems from chlorinated phenols;

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

~~(g)~~(e) Total dissolved solids: not greater than 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:

(A) Barium: 1.0 mg/l;

(B) Chloride: 250 mg/l;

(C) Nickel: 25 ug/l;

(D) Nitrate nitrogen: 10 mg/l;

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

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

(G) Sulfates: 250 mg/l;

Commented [A10]: Moved to Item (4) (h) of this rule.

Commented [A11]: Moved to Item (4)(g) of this rule.

Commented [A12]: Removed duplicative language.

(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:

(A) Aldrin: 0.05 ng/l;
(B) Arsenic: 10 ug/l;
(C) Benzene: 1.19 ug/l;
(D) Carbon tetrachloride: 0.254 ug/l;
(E) Chlordane: 0.8 ng/l;
(F) Chlorinated benzenes: 488 ug/l;
(G) DDT: 0.2 ng/l;
(H) Dieldrin: 0.05 ng/l;
(I) Dioxin: 0.000005 ng/l;
(J) Heptachlor: 0.08 ng/l;
(K) Hexachlorobutadiene: 0.44 ug/l;
(L) Polynuclear aromatic hydrocarbons (total of all PAHs): 2.8 ng/l;
(M) Tetrachloroethane (1,1,2,2): 0.17 ug/l;
(N) Tetrachloroethylene: 0.7 ug/l;
(O) Trichloroethylene: 2.5 ug/l; and
(P) 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 2H .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 2H .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 or other wastes shall be allowed in the entire watershed except for those allowed by Sub-Items (4)(a) through (4)(e) of this Rule 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. Any discharger may be required by the Commission to disclose all chemical constituents present or potentially present in their

Commented [A13]: Removed duplicative language.

Commented [A14]: Language moved from Items (2) and (3).

Commented [A15]: Additional language regarding individual permit was added for clarity.

Commented [A16]: Added correct reference and language for clarity.

Commented [A17]: Added reference to NPDES permits for clarity.

Commented [A18]: Added reference to NPDES permits for clarity.

Commented [A19]: "Non-process industrial wastes" was removed because it is a sub-category of industrial waste and "in the entire watershed" was added for clarity. Changed "and" to "or" for clarity.

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 shall be protected as water supplies that are located in watersheds that meet average watershed development density levels specified 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.

Commented [A20]: Added "remainder of the watershed" for clarity.

Commented [A21]: Language moved from Items (2) and (3).

Commented [A22]: Provided rule reference language for further clarity.

Commented [A23]: Added "that are located in watersheds" for clarity and corrected rule reference.

15A NCAC 02B .0216 is proposed for amendment as follows:

15A NCAC 02B .0216 FRESH SURFACE WATER QUALITY STANDARDS FOR CLASS WS-IV WATERS

The following water quality standards 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: 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:

(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 requirements as specified in Item (5) of this Rule.

(d) ~~the~~ The waters, following treatment required by the Division, 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.

Commented [WA1]: Added to be consistent with titles for other WS classification regulations

Commented [KG2]: Merging usage information from .0101 and .0301 into individual classification rule. No effect.

Commented [KG3]: Moved some language to other parts of this rule or 2B .0624. Reworded language moved to other parts of this rule for clarity. Remaining language was deemed unnecessary: "Moderately to highly developed or protected areas" are ambiguous phrases and "recycle (closed loop) systems" should not discharge and are addressed in 02T rules.

Commented [WA4]: Provides location of moved language in Item (2) to other parts in this rule.

(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 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 classification requested by local governments shall be considered by the Commission when 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.

(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~~

Commented [KG5]: Unnecessary. No effect.

Commented [WA6]: Moved to Item (4) in this rule.

Commented [KG7]: Moved (A) through (H) of (i) to Water Supply Watershed Protection Rules. No effect

~~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 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 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:

Commented [KG8]: (A) And (B) of (ii) moved to Water Supply Watershed Protection Rule. No effect.

Commented [WA9]: Moved to Item (4)(h) in this rule.

Commented [WA10]: Moved to Item (4)(g) in this rule

(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:

(A) Barium: 1.0 mg/l;

(B) Chloride: 250 mg/l;

(C) Nickel: 25 ug/l;

(D) Nitrate nitrogen: 10.0 mg/l;

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

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

(G) Sulfates: 250 mg/l;

(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:

(A) Aldrin: 0.05 ng/l;

(B) Arsenic: 10 ug/l;

(C) Benzene: 1.19 ug/l;

(D) Carbon tetrachloride: 0.254 ug/l;

(E) Chlordane: 0.8 ng/l;

(F) Chlorinated benzenes: 488 ug/l;

(G) DDT: 0.2 ng/l;

(H) Dieldrin: 0.05 ng/l;

(I) Dioxin: 0.000005 ng/l;

(J) Heptachlor: 0.08 ng/l;

(K) Hexachlorobutadiene: 0.44 ug/l;

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

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

(N) Tetrachloroethylene: 0.7 ug/l;

(O) Trichloroethylene: 2.5 ug/l; and

(P) 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 2H .0126 shall be allowed in the entire watershed.

Commented [WA11]: Removed duplicative language

Commented [WA12]: Removed duplicative language

Commented [WA13]: Language moved from Items (2) and (3) in this rule.

Commented [WA14]: Additional language regarding individual permit was added for clarity.

Commented [WA15]: Added correct reference and language for clarity.

(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) through (4)(c) of this Rule 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. 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.

(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 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 shall be protected as water supplies that are located in watersheds that meet average watershed development density levels specified 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.

Commented [WA16]: "Non-process industrial wastes" was removed because it is a sub-category of industrial waste and "in the entire watershed" was added for clarity. Changed "and" to "or" for clarity.

Commented [WA17]: Moved from Item (2) and added correct rule reference

Commented [WA18]: Moved from Item (2) in this rule.

Commented [WA19]: Moved from Item (3)(ii)(D) in this rule.

Commented [WA20]: Moved from Item (3)(ii)(C) in this rule.

Commented [WA21]: Language moved from Items (2) and (3) in this rule.

Commented [WA22]: Language moved and reworded (for clarity) from Item (3)(b), rule reference added

Commented [WA23]: Language moved and reworded (for clarity) from Item (2), rule reference added

15A NCAC 02B .0218 is proposed for amendment as follows:

15A NCAC 02B .0218 FRESH SURFACE WATER QUALITY STANDARDS FOR CLASS WS-V WATERS

The following water quality standards 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: 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:

(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 requirements as specified in Item (5) of this Rule.

(d) ~~the~~ The waters, following treatment required by the Division, 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.

Commented [KG1]: Merging usage information from .0101 and .0301 into individual classification rule. No effect.

Commented [WA2]: Moved to Item (2)(f) in this rule

Commented [WA3]: Provides location of language in this rule.

Commented [WA4]: Removed unnecessary language. No effect

(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 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 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 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 100 mg/l as calcium carbonate ($CaCO_3$ or Ca + Mg);

~~(g)~~(e) Total dissolved solids: not greater than 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:

(A) Barium: 1.0 mg/l;

(B) Chloride: 250 mg/l;

Commented [KG5]: Provides consistency with Rule .0104, no fiscal impact.

Commented [WA6]: Unnecessary. No effect

Commented [WA7]: Moved language to Item (4) in this rule

Commented [WA8]: Moved to Item (5) in this rule

Commented [WA9]: Removed duplicative language

(C) Nickel: 25 ug/l;
(D) Nitrate nitrogen: 10.0 mg/l;
(E) 2,4-D: 70 ug/l;
(F) 2,4,5-TP (Silvex): 10 ug/l; and
(G) Sulfates: 250 mg/l.

(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:

(A) Aldrin: 0.05 ng/l;
(B) Arsenic: 10 ug/l;
(C) Benzene: 1.19 ug/l;
(D) Carbon tetrachloride: 0.254 ug/l;
(E) Chlordane: 0.8 ng/l;
(F) Chlorinated benzenes: 488 ug/l;
(G) DDT: 0.2 ng/l;
(H) Dieldrin: 0.05 ng/l;
(I) Dioxin: 0.000005 ng/l;
(J) Heptachlor: 0.08 ng/l;
(K) Hexachlorobutadiene: 0.44 ug/l;
(L) Polynuclear aromatic hydrocarbons (total of all PAHs): 2.8 ng/l;
(M) Tetrachloroethane (1,1,2,2): 0.17 ug/l;
(N) Tetrachloroethylene: 0.7 ug/l;
(O) Trichloroethylene: 2.5 ug/l; and
(P) 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. 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 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 impact, as that term is defined in 15A NCAC 02H .1002, on waters for use as water supply or any other designated use;

Commented [WA10]: Removed duplicative language

Commented [WA11]: Language moved from Item (3) in this rule.

Commented [WA12]: "Non-process industrial wastes" was removed because it is a sub-category of industrial waste

Commented [WA13]: Language moved from Item (3)(c) in this Rule.

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.

15A NCAC 02B .0219 is proposed for amendment as follows:

15A NCAC 02B .0219 FRESH SURFACE WATER QUALITY STANDARDS FOR CLASS B WATERS

The following water quality standards 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 contact recreation as defined in Rule .0202 of this Section and any other best usage specified by the "C" classification.

(2) Conditions Related to Best Usage. In assigning the B classification to waters intended for primary contact recreation, the Commission will take into consideration 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 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 a water quality ~~standard;~~standard.

(3) Quality standards applicable to Class B waters:

(a) Sewage, industrial wastes, or other wastes: none which 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 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 coliforms not to exceed geometric mean of 200/100 ml (MF count) based on at least five 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 will meet the reliability requirements specified in 15A NCAC 2H .0124. Discharges to waters where a primary contact recreational use is determined by the Director to be attainable will 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.

Commented [A1]: Added clarity, no effect.

Commented [A2]: Providing rule reference, no effect.

Commented [A3]: Moved from .0106, no effect. Merged from .0101 and .0301, no effect.

Commented [A4]: Deleted unnecessary language, no effect

Commented [A5]: Moved from .0106, no effect.

15A NCAC 02B .0220 is proposed for amendment as follows:

15A NCAC 02B .0220 TIDAL SALT WATER QUALITY STANDARDS FOR CLASS SC WATERS

~~General.~~ The water quality standards for all tidal salt waters shall be the basic standards applicable 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: aquatic life propagation, survival, and maintenance of biological integrity (including fishing, 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 shall be suitable ~~for aquatic life propagation and maintenance of biological integrity, wildlife, and secondary recreation.~~all best uses specified in this Rule. Any source of water pollution that precludes any of these ~~uses, including their functioning as PNAs, on either a short-term or a long-term basis~~ uses shall be considered to be violating a water quality standard;

(3) Chlorophyll a (corrected): not greater than 40 ug/l 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 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: 1 ug/l;

(5) Dissolved oxygen: not 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*: not to exceed a geometric mean of 35 enterococci per 100 ml based upon a minimum of five samples within any consecutive 30 days. For purposes of beach monitoring and notification, "Coastal Recreational Waters Monitoring, Evaluation and Notification" regulations (15A NCAC 18A .3400), available free of charge at:

Commented [A1]: Incorporated rule reference, no effect.

Commented [A2]: Merging information from .0101 and .0301, no effect.

Commented [A3]: Language moved into (1) above, no effect.

Commented [A4]: Delete unnecessary language, no effect

Commented [A5]: Italicized genus and species names, no effect.

Commented [A6]: They made me take these out – but, we can try again. They don't like italics

http://www.ncoah.com/, are hereby incorporated by reference including any subsequent ~~amendments;~~ amendments and editions;

(7) Floating solids, settleable solids, or sludge deposits: only such amounts attributable to sewage, industrial wastes, or other 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 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:

(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;

Commented [A7]: "Biological confirmation" disapproved by US EPA decision document on 2007-2015 Triennial Review (rec'd by DWR April 19, 2016)

(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 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' 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 other wastes: only 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 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 ~~40 CFR 110.3;~~ 40 CFR 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/.

Commented [A8]: Reference update, no effect.

(11) Pesticides:
(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: only 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) 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; nor shall the average annual gross beta particle activity (excluding potassium-40 and other naturally occurring radionuclides exceed 50 picoCuries per 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 nor more than 2.2 degrees C (3.96 degrees F) during other months and in no cases to exceed 32 degrees C (89.6 degrees F) due to the discharge of heated liquids;

(18) Trialkyltin compounds: 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 met when land management activities employ Best Management Practices (BMPs) [as defined by Rule .0202 of this Section] recommended by the Designated Nonpoint Source Agency (as defined by Rule .0202 of this 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.~~

Commented [A9]: Actions Levels disapproved by US EPA decision document on 2007-2015 Triennial Review (rec'd by DWR April 19, 2016)

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.

15A NCAC 02B .0221 is proposed for amendment as follows:

15A NCAC 02B .0221 TIDAL SALT WATER QUALITY STANDARDS FOR CLASS SA WATERS

The following water quality standards 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, respectively, also apply to Class SA waters.

(1) Best Usage of Waters: shellfishing for market purposes and any other usage specified by the "SB" or "SC" classification;

(2) Conditions Related to Best Usage:

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 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 a water quality standard. Waters will not be classified SA without the written concurrence of the Division of Marine Fisheries.

(3) Quality Standards applicable to Class SA Waters:

(a) Floating solids, settleable solids, or sludge deposits: none attributable to sewage, industrial wastes or other wastes;

(b) Sewage: none;

(c) Industrial wastes, or other wastes: none shall be allowed that 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: fecal coliform group 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.

Commented [A1]: Merging information from .0101, .0108 and .0301, no effect.

Commented [A2]: "functioning as a PNA" is covered by the reference in the SC rule, no effect.

Commented [A3]: Deleted unnecessary language, no effect.

Commented [A4]: Language moved from .0108, no effect.

15A NCAC 02B .0222 is proposed for amendment as follows:

15A NCAC 02B .0222 TIDAL SALT WATER QUALITY STANDARDS FOR CLASS SB WATERS

The following water quality standards 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 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: primary contact recreation as defined in Rule .0202 of this Section and any other usage specified by the "SC" classification;

(2) Conditions Related to Best Usage: In assigning the SB classification to waters intended for primary contact recreation, the Commission will take into consideration 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 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 be of sufficient size and depth for primary contact recreation purposes. Any source of water pollution which 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 a water quality ~~standard.~~standard.

(3) Quality Standards applicable to Class SB waters:

(a) Floating solids, settleable solids, or sludge deposits: none attributable to sewage, industrial wastes or other wastes;

(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 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 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*: not to exceed a geometric mean of 35 enterococci per 100 ml based upon a minimum of five samples within any consecutive 30 days. In accordance with Federal Clean Water Act, 33 U.S.C. 1313 ~~(Federal Water Pollution Control Act)~~ for 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 will meet the reliability requirements specified in 15A NCAC 2H .0124. Discharges to waters where a primary contact

Commented [A1]: Added clarity, no effect.

Commented [A2]: Providing rule reference, no effect.

Commented [A3]: Moved from .0106, no effect. Merged from .0101 and .0301, no effect.

Commented [A4]: "functioning as a PNA" is covered by the reference to the SC rule, no effect.

Commented [A5]: Deleted unnecessary language, no effect.

Commented [A6]: Moved from .0106, no effect.

recreational use is determined by the Director to be attainable will 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.

15A NCAC 02B .0223 is proposed for amendment 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 the Commission determines impair the use 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 the commission determines to be contributing to excessive growths of microscopic or macroscopic vegetation.

(d) Those waters of the state that are additionally classified as nutrient sensitive 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 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.

Commented [A1]: Added for clarity

Commented [A2]:

Commented [A3]: Add clarity and updates reference material. No effect.

15A NCAC 02B .0224 is proposed for amendment 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 in this 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:

(1) rated excellent based on biological and physical/chemical characteristics through monitoring or special studies, or

(2) 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 subsurface systems for single family residences which fail and must discharge shall install a septic tank, dual or recirculating sand filters, disinfection and step aeration.

~~(b)~~(2) All new ~~NPDES~~ National Pollutant Discharge Elimination System (NPDES) wastewater discharges (except single family residences) shall be required to provide the treatment described below:

(i) 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. 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) Total Suspended Solids: Discharges of total suspended solids (TSS) shall be limited to 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) 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.

(iv) 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.

Commented [A1]: Added language for clarity.

Commented [A2]: Reference added for clarity. No effect.

Commented [A3]: Reference is deleted because this information is now located in this rule.

Commented [A4]: Language from .0101. No effect.

Commented [A5]: Nursery areas will require a reclassification proceeding prior to applying HQW classification. The effect is that there will be a requirement for a public process.

Commented [A6]: Hearing Officer report from 1989 stated that the EMC's intention was not to include all the PNAs as HQW automatically but would have to go through the EMC's rulemaking process to be classified as HQWs

Commented [A7]: PNAs are not automatically HQWs and would have to go through the EMC's rulemaking process to apply this limit.

(v) 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) Nutrients: Where nutrient overenrichment is projected to be a concern, appropriate effluent limitations shall be set for phosphorus or nitrogen, or both.

(vii) 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).~~

Commented [A8]: Deleted obsolete reference. No effect.

~~(c)~~ (3) All expanded NPDES wastewater discharges in High Quality Waters shall be required to provide the treatment described in Sub-Item ~~(1)(b)~~ (c)(2) of this Rule, except for those existing discharges which expand with no increase in permitted pollutant loading.

~~(2)~~ (d) Development activities which 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 the stormwater management rules as specified in 15A NCAC 2H ~~.1000.~~ .1019 (coastal county waters) or .1021 (non-coastal county waters). ~~Stormwater management requirements specific to HQW are described in 15A NCAC 2H .1006.~~

Commented [A9]: Clarity and reference updates. No effect.

~~(3)~~ (e) Listing of Waters Classified HQW with Specific Actions. Waters classified as HQW with specific actions to protect exceptional water quality are listed as follows: Thorpe Reservoir [Little Tennessee River Basin, Index No. 2-79-23-(1)] including all of its tributaries shall be managed with respect to wastewater discharges through Item ~~(1)~~ (c) of this Rule. Item ~~(2)~~ (d) of this Rule shall not be applied in association with this HQW 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.~~

Commented [A10]: This provision is available to all waters regardless of classification. No effect.

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.

15a NCAC 02B .0225 is proposed for amendment 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 classify unique and special surface waters of the state as outstanding resource waters (ORW) upon finding that such waters are of exceptional state or national recreational or ecological significance which require special protection to maintain existing uses and that the waters have exceptional water quality while meeting the following conditions:

(1) that the water quality is rated as excellent based on physical, chemical or biological information; and

(2) the characteristics which 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 water body 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:

(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~~ or 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 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 basis during the proceedings to classify waters as ORW. 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 the stormwater provisions as specified in 15A NCAC 02H .1000. Specific stormwater requirements for ORW areas are described in 15A NCAC 02H .1007.

(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. New development shall comply with the stormwater provisions as specified in 15A NCAC 02H .1000. Specific stormwater management requirements for saltwater ORWs are described in 15A NCAC 02H .1007. ~~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

Commented [A1]: Added language for clarity.

Commented [A2]: Merged from .0101. No effect.

Commented [A3]: Updated language for consistency with CWA and other state classifications. No effect.

Commented [A4]: Deleted obsolete designation. No effect.

Commented [A5]: Unnecessary and obsolete because the 02T rules address all nondischarge permitting. 02T rules did not exist when .0225 was originially written.

a reduction of the beds of ~~submerged~~ "submerged aquatic vegetation habitat" or ~~a reduction of shellfish~~ "shellfish producing habitat habitat" ~~as~~ that are defined in 15A NCAC 03I ~~.0101(b)(20)(A) and (B),~~ .0101, hereby 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 or maintenance dredging for activities such as agriculture.

A public hearing is mandatory for any proposed permits to discharge to waters classified as ORW. Additional 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 ~~(c)~~ (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. ~~Descriptions of boundaries of waters classified as ORW are included in Paragraph (c) 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.~~

~~(c)~~(d) Listing of Waters Classified ORW with Specific Actions. Waters classified as ORW with specific actions to protect exceptional resource values are listed as follows:

(1) Roosevelt Natural Area [White Oak River Basin, Index Nos. 20-36-9.5-(1) and 20-36-9.5-(2)] including all fresh and saline waters within the property boundaries of the natural area shall have only new development which complies with the low density option in the stormwater rules as specified in 15A NCAC 2H .1005(2)(a) within 575 feet of the Roosevelt Natural Area (if the development site naturally drains to the Roosevelt Natural Area);

(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.

Commented [A6]: Updated references to Marine Fisheries Commission rule. No effect.

Commented [A7]: The division now keeps these maps electronically and the river basin rules (.0300s) provide the weblink to the maps and classifications.

Commented [A8]: A petition is handled by the EMC's petition rules. This language is deleted because it preexisted the EMC's petition rules.

However, expansions of existing discharges to these segments shall be allowed if there is no increase in pollutant loading:

(A) North and South Fowler Creeks;

(B) Green and Norton Mill Creeks;

(C) Cane Creek;

(D) Ammons Branch;

(E) Glade Creek; and

(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;

(B) Rock Creek; and

(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 in Subparagraph (c)(1) of this Rule, shall be applied to protect 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; 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;

(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 nutrient overenrichment is projected to be a concern, effluent limitations shall be set for phosphorus or nitrogen, or both;

(5) Old Field Creek (New River Basin): the undesignated portion of Old Field Creek (from its source to Call 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) extending from the source of the Alligator River to the U.S. Highway 64 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 than 10 slips, having no boats over 21 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 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) to Drum Point.

(B) 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.

(C) 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.

(D) The Western Bogue Sound Section of the Western Bogue Sound and Bear Island Area (White Oak River 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, including Taylor Bay and the Intracoastal Waterway.

(E) The Stump Sound Area (Cape Fear River 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 and Mill Creek.

(F) The Topsail Sound and Middle Sound Area (Cape Fear River Basin) including all estuarine waters from New Topsail Inlet to Mason Inlet, including the Intracoastal Waterway and Howe Creek, but excluding Pages Creek and Futch Creek;

(8) In the following designated waterbodies, no new or expanded NPDES permitted discharges and only new or expanded marinas with less than 10 slips, having no boats over 21 feet in length and no boats with heads shall be allowed:

(A) The Swanquarter Bay and Juniper Bay Area (Tar-Pamlico River 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, 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) to Drum Point and also excluding the Blowout Canal, Hydeland Canal, Juniper Canal and Quarter Canal.

(B) The Back Sound Section of the Southeast Pamlico, Core and Back Sound Area (White Oak River Basin) including that area of Back Sound extending from Core Sound west along Shackleford Banks, then north to the western most 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.

(C) The Bear Island Section of the Western Bogue Sound and Bear Island Area (White Oak River 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.

(D) The Masonboro Sound Area (Cape Fear River Basin) including all waters between the Barrier Islands and the mainland from Carolina Beach Inlet to Masonboro 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, in addition to the discharge requirements specified in Subparagraph (c)(1) of this Rule, shall be applied to protect 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 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/l and NH3-N = 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 nutrient overenrichment is projected to be a concern, effluent limitations shall be set for phosphorus or nitrogen, or both.

(v) Toxic substances: In cases where 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 (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 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, and monitor and maintain baseline water quality conditions for the duration of the land-disturbing activity and for any period thereafter 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 in accordance with 15A NCAC 02H. 1008; and

(F) replicate pre-development runoff characteristics and mimic the natural and unique hydrology of the site, post development.

(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 be allowed provided that:

(A) Oxygen Consuming Wastes: Effluent limitations shall be as follows: BOD = 5 mg/l, and NH3-N = 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 be held to their respective NPDES TSS permit limits;

(C) Nutrients: Where nutrient overenrichment is projected to be a concern, effluent limitations shall be set for phosphorus or 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 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 including Little Buffalo Creek and Claybank Creek [Index Nos. 10-2-20-1 and 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.

15A NCAC 02B .0226 is proposed for adoption 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.

15A NCAC 02B .0227 is proposed for adoption 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 2H .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.

15A NCAC 02B .0228 is proposed for adoption 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;

(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.

[.0229 is proposed for amendment and transfer to 15A NCAC 02B .0733]
Last Revised August 18, 2017

15A NCAC 02B .0229 is proposed for amendment as follows:

15A NCAC 02B ~~.0229~~.0733 TAR-PAMLICO ~~RIVER BASIN - NUTRIENT SENSITIVE WATERS MANAGEMENT~~ NUTRIENT STRATEGY: ~~NUTRIENT OFFSET PAYMENTS FOR NON-TAR-PAMLICO BASIN ASSOCIATION MEMBERS~~ NON-ASSOCIATION DISCHARGERS

(a) ~~All waters of the Tar-Pamlico River Basin have been supplementally classified nutrient sensitive waters (NSW) pursuant to 15A NCAC 2B .0223.~~ The following procedures are to be implemented in accordance with ~~15A NCAC 2B~~ Rule .0223 of this Subchapter in all waters ~~of the Tar-Pamlico River Basin~~ covered by the Tar Pamlico nutrient strategy for those wastewater dischargers who are not members of the Tar-Pamlico Basin Association;

(b) Existing wastewater dischargers expanding to greater than 0.5 million gallons per day ~~(MGD), who are not members of the Tar-Pamlico Basin Association,~~ (MGD) shall be required to permanently offset their additional annual nutrient loads by funding nonpoint source control ~~programs~~ projects approved by the Division ~~of Water Quality~~ prior to the issuance of their NPDES permit and at each renewal. Nitrogen and phosphorus loads shall be offset at the rate of 110 percent of the cost to implement BMPs designed to permanently reduce that same load created by expanding the discharge above 0.5 MGD. Equations for calculating the offset costs are:

(1) For an existing facility with permitted flow of less than or equal to 0.5 MGD as of December 8, 1994 expanding to greater than 0.5 ~~MGD who is not a member of the Tar-Pamlico Basin Association:~~ MGD:

Payment=((PF_e x (TN+TP) x ~~1384) (0.5~~ 3,044)-(0.5 x (TN+TP) x ~~1384))~~ 3,044)) x (BMP_c x 1.1) where:

Payment = the nutrient offset payment ($);

PF_e = Permitted Flow including expansion (MGD);

TN = ~~6~~ 3 mg/l total nitrogen for domestic discharges or BAT for industrial discharges;

TP = ~~1~~ 0.5 mg/l total phosphorus for domestic discharges or BAT for industrial discharges;

~~1384~~ 3,044 = conversion factor;

0.5 = the permitted flow (MGD) above which payment for additional nutrient loading is required;

BMP_c = Best Management Practice cost-effectiveness rate in ~~$/kg as set in 15A NCAC 2B .0237 of this Section;~~ $/lb of permanently sustained annual mass load reduction. Dischargers shall determine this value based on the option to which they select to make payment, the ~~NC Ecosystem Enhancement Program~~ Division of Mitigation Services or another provider of offset credits approved by the Division. The cost-effectiveness rate shall be determined by the chosen entity based on the requirements of Rule ~~.0240~~ .0703 of this Section, and approval of a provider's project and offset payments shall follow the requirements of that Rule;

1.1 = 110 percent of the cost for the nonpoint source controls.

(2) For an expanding facility with a permitted flow of greater than or equal to 0.5 MGD as of December 8, ~~1994 who is not a member of the Tar-Pamlico Basin Association:~~ 1994:

Payment=((PF_e x (TN+TP) x ~~1384) (PF~~ 3,044)-(PF x (TN+TP) x ~~1384))~~ 3,044)) x (BMP_c x 1.1) where:

Payment = the nutrient offset payment ($);

Commented [A1]: Change: Added language requiring additional new loads from expanding dischargers must be permanently offset to clarify the time element of the offset requirement

Effect: Clarification. No Impact on implementation.

Commented [A2]: Change: Throughout the rule updated conversion factors offset calculation formula reflecting a change in unit from dollar per kilogram to dollars per pound. Also, updated concentration limits for calculating offsets needed for new, and expanding discharges to better reflect current treatment technology capabilities.

Effect: Offset needs expressed in pounds instead of kilograms. Lowered limits will require additional treatment but is in line with current treatment capabilities. Fiscal Impact will be evaluated during the rulemaking process.

Commented [A3]: Change: Throughout the rule updated BMP cost-effectiveness rate from fixed rate in Rule .0237 to process established in the Nutrient Offset Rule .0703.

Effect: Clarifies how BMP cost-effectiveness rate will be determined for use in this calculation. Fiscal Impact will be evaluated during the rulemaking process.

PF_e = Permitted Flow including expansion (MGD);
PF = Permitted Flow as of December 8, 1994 (MGD);
TN = ~~6~~ 3 mg/l total nitrogen for domestic discharges or BAT for industrial discharges;
TP = ~~1~~ 0.5 mg/l total phosphorus for domestic discharges or BAT for industrial discharges;
~~1384~~ 3,044 = conversion factor;
BMP_c = Best Management Practice cost-effectiveness rate in ~~$/kg as set in 15A NCAC 2B .0237 of this Section;~~ $/lb of permanently sustained annual mass load reduction. Dischargers shall determine this value based on the option to which they select to make payment, the Division of Mitigation Services or another provider of offset credits approved by the Division. The cost-effectiveness rate shall be determined by the chosen entity based on the requirements of Rule ~~.0240~~ .0703 of this Section, and approval of an offset provider's project and offset payments shall follow the requirements of that Rule;
1.1 = 110 percent of the cost for the nonpoint source controls.

(c) New wastewater dischargers with permitted flows greater than or equal to 0.05 ~~MGD, who are not members of the Tar-Pamlico Basin Association,~~ MGD shall be required to offset their nutrient loads by funding nonpoint source control programs approved by the Division ~~of Water Quality~~ prior to the issuance of their NPDES permit and at each renewal. Nitrogen and phosphorus loads shall be offset at the rate of 110 percent of the cost to implement BMPs designed to reduce that same loading created by the new discharge above 0.05 MGD. The equation for calculating the offset costs is:

Payment = PF x (TN+TP) x ~~1384~~ 3,044 x (BMP_c x 1.1) where:
Payment = the nutrient offset payment ($);
PF = Permitted Flow (MGD);
TN = ~~6~~ 3 mg/l total nitrogen for domestic discharges or BAT for industrial discharges;
TP = ~~1~~ 0.5 mg/l total phosphorus for domestic discharges or BAT for industrial discharges;
~~1384~~ 3,044 = conversion factor;
BMP_c = Best Management Practice cost-effectiveness rate in ~~$/kg as set in 15A NCAC 2B .0237 of this Section;~~ $/lb of permanently sustained annual mass load reduction. Dischargers shall determine this value based on the option to which they select to make payment, the ~~NC~~ Division of Mitigation Services or another provider of offset credits approved by the Division. The cost-effectiveness rate shall be determined by the chosen entity based on the requirements of Rule .0703 of this Section, and approval of a provider's project and offset payments shall follow the requirements of that Rule;
1.1 = 110 percent of the cost for the nonpoint source controls.

(d) Existing wastewater dischargers expanding to greater than 0.5 ~~MGD, who are not members of the Tar-Pamlico Basin Association,~~ MGD may petition the Commission or its designee for an exemption from Paragraph (b) of this Rule upon meeting all of the following conditions:

(1) For industrial facilities:

(A) The facility has reduced its annual average TN loading by 30 percent from its annual average 1991 TN loading or nitrogen is not part of the waste stream above background levels;

Commented [A4]: Change: Same updates to conversion factors, concentration limits for same reasons as explained in Paragraph (b)

Effect: Same as explained for Paragraph (b)

Commented [A5]:
Change: Same updates BMP cost-effectiveness rate for same reasons as explained in Sub-paragraph (b)(1)

Effect: Same as explained for Sub-paragraph (b)(1)

Commented [A6]:
Change: Same updates to conversion factors, concentration limits for same reasons as explained in Paragraph (b)

Effect: Same as explained for Paragraph (b)

Commented [A7]: Change: Same updates BMP cost-effectiveness rate for same reasons as explained in Sub-paragraph (b)(1)

Effect: Same as explained for Sub-paragraph (b)(1)

(B) The facility has reduced its annual average TP loading by 30 percent from its annual average 1991 TP loading or phosphorus is not part of the waste stream above background levels;

(C) The expansion does not result in annual average TN loading greater than 70 percent of the 1991 annual average TN load. Permit limits may be established to insure that the 70 percent load is not exceeded;

(D) The expansion does not result in annual average TP loading greater than 70 percent of the 1991 annual average TP load. Permit limits may be established to insure that the 70 percent load is not exceeded;

(E) To maintain its exemption from Paragraph (b) of this Rule, a facility must continue to meet the requirements of Subparagraph (d)(1) Parts (A) through (D) of this Rule.

(2) For municipal facilities:

(A) The facility has reduced its annual average TN loading by 30 percent from its annual average 1991 TN loading;

(B) The facility has reduced its annual average TP loading by 30 percent from its annual average 1991 TP loading;

(C) The expansion does not result in annual average TN loading greater than 70 percent of the 1991 annual average TN load. Permit limits may be established to insure that the 70 percent load is not exceeded;

(D) The expansion does not result in annual average TP loading greater than 70 percent of the 1991 annual average TP load. Permit limits may be established to insure that the 70 percent load is not exceeded;

(E) To maintain its exemption from Paragraph (b) of this Rule, a facility must continue to meet the requirements of Subparagraph (d)(2) Parts (A) through (D) of this Rule.

History Note: *Authority G.S. 143-214.1;*
Eff. April 1, 1997.
Amended Eff. [New Date].

15A NCAC 02B .0230 is proposed for adoption 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;

(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.*

15A NCAC 02B .0231 is proposed for amendment 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.

(2) Class SWL: waters that meet the definition of coastal wetlands as defined by 15A NCAC 7H .0205, which are landward of the mean high water line, and wetlands contiguous to estuarine waters as defined by 15A NCAC 7H .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 ~~to the satisfaction of the Commission~~ 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;

Commented [A1]: Merging information from .0101 and .0301 into this rule. No effect

Commented [A2]: Deleted unnecessary language as shown. "to the satisfaction of the Commission" is deleted because .0101 already describes the classification procedure.

(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 ~~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.

[.0232 is proposed for amendment and transfer to 15A NCAC 02B .0710]
Last Revised August 18, 2017

15A NCAC 02B .0232 is proposed for amendment as follows:

15A NCAC 02B ~~.0232~~ .0710 NEUSE NUTRIENT STRATEGY: PURPOSE AND SCOPE ~~NEUSE RIVER BASIN- NUTRIENT SENSITIVE WATERS MANAGEMENT STRATEGY: BASIN NUTRIENT REDUCTION GOAL~~

(a) PURPOSE. The purpose of this Rule and Rules 15A NCAC 02B .0711 through .0715 of this Section is to attain the designated uses of the Neuse River estuary with respect to meeting nutrient-related water quality standards. All waters of the Neuse River Basin are supplementally classified as Nutrient Sensitive Waters (NSW) pursuant to 15A NCAC 2B .0223. The rules enumerated in Paragraph (d) of this Rule together constitute the Neuse nutrient strategy, and shall be implemented in accordance with 15A NCAC 02B .0223. This rule establishes the framework of the Neuse nutrient strategy. ~~Pursuant to 1995 (Reg. Sess., 1996) N.C. Session Laws, c. 572, the Environmental Management Commission hereby establishes the goal of reducing the average annual load of nitrogen delivered to the Neuse River Estuary from point and nonpoint sources by a minimum of 30 percent of the average annual load for the period 1991 through 1995 by the year 2001. All waters of the Neuse River Basin have been supplementally classified as Nutrient Sensitive Waters (NSW) pursuant to 15A NCAC 2B .0223. The following rules shall be implemented in accordance with 15A NCAC 2B .0223 in all waters of the Neuse River Basin:~~

(b) SCOPE AND LIMITATION. The Neuse nutrient strategy rules require controls to reduce nitrogen loads from significant sources of this nutrient throughout the Neuse Basin. These Rules do not address sources for which there is insufficient scientific knowledge to base regulation. The Commission may undertake additional rulemaking in the future or make recommendations to other rulemaking bodies as deemed appropriate to more fully address nutrient sources to the Neuse River Estuary.

(c) GOAL. To achieve the purpose of the Neuse nutrient strategy, the Commission has established the goal of reducing the average annual load of nitrogen delivered to the Neuse estuary from point and nonpoint sources by a minimum of 30 percent below the average annual load for the period 1991 through 1995 and thereafter maintaining it at or below that level.

(d) RULES ENUMERATED. The rules of the Neuse nutrient strategy are titled as follows:

~~(1) Rule .0233 for protection and maintenance of riparian areas,~~

~~(2) Rule .0234 for wastewater discharges,~~

~~(3) Rule .0235 for urban stormwater management,~~

~~(4) Rules .0236 and .0238 for agricultural nitrogen reduction,~~

~~(5) Rule .0239 for nutrient management, and~~

~~(6)~~(5) Rule .0240 for nitrogen offset fees.~~fees; and~~

~~(6) Rules .0241 and .0295 for riparian buffer and mitigation.~~

(1) Rule .0711 for urban stormwater management,

(2) Rule .0712 for agriculture,

(3) Rule .0713 for wastewater discharges,

Commented [A1]: Change: Updated rule references and added clarifying language to better explain the purpose of the rules to achieve nutrient related water quality standards in the Neuse estuary.

Effect: Improved clarity. No impact on implementation.

Commented [A2]: Note: Statement on what sources are addressed under the rules and the Commissions ability to undertake additional rulemaking.

Effect: No Impact

Commented [A3]: Change: Moved and clarified goals language addressing the overall strategy nitrogen reduction goal from Paragraph (a)

Effect: No Impact

Commented [A4]: Change: Provides updated Rule References to point to new .0700 Rule numbers

Effect: Points to new .0700 Rule Numbers

[.0232 is proposed for amendment and transfer to 15A NCAC 02B .0710]
Last Revised August 18, 2017

(4) Rule .0714 for riparian buffer protection, and

(5) Rule .0715 for riparian buffer program delegation

(e) ADAPTIVE MANAGEMENT. Given ongoing impairment of the Neuse estuary over a decade after full implementation of the above rules, the Division shall pursue fuller evaluation of the basin's nutrient dynamics to inform and guide adaptive management. Evaluation shall seek to utilize all sources of available information, including stakeholder input, and shall consider drivers, character and shifts in the impairment with time, trends and character of loading delivered to the estuary, and distribution and character of loading inputs to the basin and changes to those inputs over time. Evaluation shall address the extent to which the reduction goals identified above have been achieved and shall, based on its findings, provide recommendations on management needs. The Division shall seek to complete an evaluation within three years of the effective date of this rule and shall distribute its findings, which may recommend regulatory and non-regulatory actions, upon completion. The Division shall also report biannually to the Water Quality Committee of the Commission on implementation progress and reductions achieved by sources subject to the Neuse nutrient strategy.

(f) GEOGRAPHIC APPLICABILITY. The Neuse nutrient strategy shall apply in all areas draining to waters within the Neuse River Basin unless individual strategy rules describe other boundaries.

~~(b)~~(g) PENALTIES. Failure to meet requirements of the Neuse nutrient strategy ~~Rules .0233, .0234, .0235, .0236, .0238, .0239, and .0240 .0240. and .0295 of this Section~~ may result in 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; 143-215.1; 143-215.3(a)(1); 143-215.6A; 143-215.6B; 143-215.6C;*
Eff. August 1, 1998.
Amended Eff. [New Date].

Commented [A5]: Change: Added adaptive management language recognizing the ongoing water quality issues in the estuary and the availability of more information to evaluate implementation as time goes on. Establishes date by which evaluation would be completed and recommendations made. Added requirement for Division to report to the WQC biannually on implementation progress.

Effect: Provides for better tracking of progress and ability for management strategy to be modified based on evaluation of additional data and strategy effectiveness.

Commented [A6]: Change: Clarified geographic area to which the Neuse nutrient strategy rules apply.

Effect: No Impact

Commented [A7]: Change: Removed unnecessary rule references and simplified language to refer to the collective Neuse nutrient strategy.

Effect: Improved Clarity. No Impact.

15A NCAC 02B .0233 is proposed for repeal as follows:

Commented [HK1]: moved to Rule .0705, .0706 and .0714

~~**15A NCAC 02B .0233 NEUSE RIVER BASIN: NUTRIENT SENSITIVE WATERS MANAGEMENT STRATEGY: PROTECTION AND MAINTENANCE OF EXISTING RIPARIAN BUFFERS**~~

~~The following is the management strategy for maintaining and protecting existing riparian buffers in the Neuse River Basin.~~

~~(1) PURPOSE. The purpose of this Rule shall be to protect and preserve existing riparian buffers in the Neuse River Basin to maintain their nutrient removal functions.~~

~~(2) DEFINITIONS. For the purpose of this Rule, these terms shall be defined as follows:~~

~~(a) 'Channel' means a natural water-carrying trough cut vertically into low areas of the land surface by erosive action of concentrated flowing water or a ditch or canal excavated for the flow of water. (current definition in Forest Practice Guidelines Related to Water Quality, 15A NCAC 01I .0102)~~

~~(b) 'DBH' means Diameter at Breast Height of a tree, which is measured at 4.5 feet above ground surface level.~~

~~(c) 'Ditch or canal' means a man-made channel other than a modified natural stream constructed for drainage purposes that is typically dug through inter-stream divide areas. A ditch or canal may have flows that are perennial, intermittent, or ephemeral and may exhibit hydrological and biological characteristics similar to perennial or intermittent streams.~~

~~(d) 'Ephemeral (stormwater) stream' means a feature that carries only stormwater in direct response to precipitation with water flowing only during and shortly after large precipitation events. An ephemeral stream may or may not have a well-defined channel, the aquatic bed is always above the water table, and stormwater runoff is the primary source of water. An ephemeral stream typically lacks the biological, hydrological, and physical characteristics commonly associated with the continuous or intermittent conveyance of water.~~

~~(e) 'Forest plantation' means an area of planted trees that may be conifers (pines) or hardwoods. On a plantation, the intended crop trees are planted rather than naturally regenerated from seed on the site, coppice (sprouting), or seed that is blown or carried into the site.~~

~~(f) 'High Value Tree' means a tree that meets or exceeds the following standards: for pine species, 14-inch DBH or greater or 18-inch or greater stump diameter; and, for hardwoods and wetland species, 16-inch DBH or greater or 24-inch or greater stump diameter.~~

~~(g) 'Intermittent stream' means a well-defined channel that contains water for only part of the year, typically during winter and spring when the aquatic bed is below the 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 conveyance of water.

(h) 'Modified natural stream' means an on-site channelization or relocation of a stream channel and subsequent relocation of the intermittent or perennial flow as evidenced by topographic alterations in the immediate watershed. A modified natural stream must have the typical biological, hydrological, and physical characteristics commonly associated with the continuous conveyance of water.

(i) 'Perennial stream' means a well-defined channel that contains water year-round during a year of normal rainfall with the aquatic bed located below the water table for most of the year. Groundwater is the primary source of water for a perennial stream, but it also carries stormwater runoff. A perennial stream exhibits the typical biological, hydrological, and physical characteristics commonly associated with the continuous conveyance of water.

(j) 'Perennial waterbody' means a natural or man-made basin that stores surface water permanently at depths sufficient to preclude growth of rooted plants, including lakes, ponds, sounds, non-stream estuaries and ocean. For the purpose of the State=s riparian buffer protection program, the waterbody must be part of a natural drainageway (i.e., connected by surface flow to a stream).

(k) 'Stream' means a body of concentrated flowing water in a natural low area or natural channel on the land surface.

(l) 'Surface water' means all waters of the state as defined in G.S. 143-212 except underground waters.

(m) 'Tree' means a woody plant with a DBH equal to or exceeding five inches.

(3) APPLICABILITY. This Rule shall apply to 50-foot wide riparian buffers directly adjacent to surface waters in the Neuse River Basin (intermittent streams, perennial streams, lakes, ponds, and estuaries), excluding wetlands. Except as described in Sub-Item (4)(a)(iii) of this Rule, wetlands adjacent to surface waters or within 50 feet of surface waters shall be considered as part of the riparian buffer but are regulated pursuant to 15A NCAC 02H .0506. The riparian buffers protected by this Rule shall be measured pursuant to Item (4) of this Rule. For the purpose of this Rule, a surface water shall be present if the feature is approximately shown on either the most recent version of the soil survey map prepared by the Natural Resources Conservation Service of the United States Department of Agriculture or the most recent version of the 1:24,000 scale (7.5 minute) quadrangle topographic maps prepared by the United States Geologic Survey (USGS). Riparian buffers adjacent to surface waters that do not appear on either of the maps shall not be subject to this Rule. Riparian buffers adjacent to surface waters that appear on the maps shall be subject to this Rule unless one of the following applies.

(a) EXEMPTION WHEN AN ON-SITE DETERMINATION SHOWS THAT SURFACE WATERS ARE NOT PRESENT. When a landowner or other affected party believes that

the maps have inaccurately depicted surface waters, he or she shall consult the Division or the appropriate delegated local authority. Upon request, the Division or delegated local authority shall make on-site determinations. Any disputes over on-site determinations shall be referred to the Director in writing. A determination of the Director as to the accuracy or application of the maps is subject to review as provided in Articles 3 and 4 of G.S. 150B. Surface waters that appear on the maps shall not be subject to this Rule if an on-site determination shows that they fall into one of the following categories.

(i) Ditches and manmade conveyances other than modified natural streams unless constructed for navigation or boat access.

(ii) Manmade ponds and lakes that are located outside natural drainage ways.

(iii) Ephemeral (stormwater) streams.

(b) EXEMPTION WHEN EXISTING USES ARE PRESENT AND ONGOING. This Rule shall not apply to portions of the riparian buffer where a use is existing and ongoing according to the following:

(i) A use shall be considered existing if it was present within the riparian buffer as of July 22, 1997. Existing uses shall include, but not be limited to, agriculture, buildings, industrial facilities, commercial areas, transportation facilities, maintained lawns, utility lines and on-site sanitary sewage systems. Only the portion of the riparian buffer that contains the footprint of the existing use is exempt from this Rule. Activities necessary to maintain uses are allowed provided that no additional vegetation is removed from Zone 1 except that grazed or trampled by livestock and existing diffuse flow is maintained. Grading and revegetating Zone 2 is allowed provided that the health of the vegetation in Zone 1 is not compromised, the ground is stabilized and existing diffuse flow is maintained.

(ii) At the time an existing use is proposed to be converted to another use, this Rule shall apply. An existing use shall be considered to be converted to another use if any of the following applies:

(A) Impervious surface is added to the riparian buffer in locations where it did not exist previously.

(B) An agricultural operation within the riparian buffer is converted to a non-agricultural use.

(C) A lawn within the riparian buffer ceases to be maintained.

(4) ZONES OF THE RIPARIAN BUFFER. The protected riparian buffer shall have two zones as follows:

(a) Zone 1 shall consist of a vegetated area that is undisturbed except for uses provided for in Item (6) of this Rule. The location of Zone 1 shall be as follows:

(i) For intermittent and perennial streams, Zone 1 shall begin at the most landward limit of the top of bank or the rooted herbaceous vegetation and extend landward a distance of 30 feet on all sides of the surface water, measured horizontally on a line perpendicular to the surface water.

(ii) For ponds, lakes and reservoirs located within a natural drainage way, Zone 1 shall begin at the most landward limit of the normal water level or the rooted herbaceous vegetation and extend landward a distance of 30 feet, measured horizontally on a line perpendicular to the surface water.

(iii) For surface waters within the 20 Coastal Counties (defined in 15A NCAC 02B .0202) within the jurisdiction of the Division of Coastal Management, Zone 1 shall begin at the most landward limit of:

(A) the normal high water level;

(B) the normal water level; or

(C) the landward limit of coastal wetlands as defined by the Division of Coastal Management;

and extend landward a distance of 30 feet, measured horizontally on a line perpendicular to the surface water, whichever is more restrictive.

(b) Zone 2 shall consist of a stable, vegetated area that is undisturbed except for activities and uses provided for in Item (6) of this Rule. Grading and revegetating Zone 2 is allowed provided that the health of the vegetation in Zone 1 is not compromised. Zone 2 shall begin at the outer edge of Zone 1 and extend landward 20 feet as measured horizontally on a line perpendicular to the surface water. The combined width of Zones 1 and 2 shall be 50 feet on all sides of the surface water.

(5) DIFFUSE FLOW REQUIREMENT. Diffuse flow of runoff shall be maintained in the riparian buffer by dispersing concentrated flow and reestablishing vegetation.

(a) Concentrated runoff from new ditches or manmade conveyances shall be converted to diffuse flow before the runoff enters the Zone 2 of the riparian buffer.

(b) Periodic corrective action to restore diffuse flow shall be taken if necessary to impede the formation of erosion gullies.

(6) TABLE OF USES. The following chart sets out the uses and their designation under this Rule as exempt, allowable, allowable with mitigation, or prohibited. The requirements for each category are given in Item (7) of this Rule.

	Exempt	Allowable	Allowable with Mitigation	Prohibited
Airport facilities: • Airport facilities that impact equal to or less than 150 linear feet or one-third of an acre of riparian buffer		X	X	

• Airport facilities that impact greater than 150 linear feet or one-third of an acre of riparian buffer				
Archaeological activities	X			
Bridges		X		
Dam maintenance activities	X			
Drainage ditches, roadside ditches and stormwater outfalls through riparian buffers: • Existing drainage ditches, roadside ditches, and stormwater outfalls provided that they are managed to minimize the sediment, nutrients and other pollution that convey to waterbodies • New drainage ditches, roadside ditches and stormwater outfalls provided that a stormwater management facility is installed to control nitrogen and attenuate flow before the conveyance discharges through the riparian buffer • New drainage ditches, roadside ditches and stormwater outfalls that do not provide control for nitrogen before discharging through the riparian buffer • Excavation of the streambed in order to bring it to the same elevation as the invert of a ditch	X	X		 X X
Drainage of a pond in a natural drainage way provided that a new riparian buffer that meets the requirements of Items (4) and (5) of this Rule is established adjacent to the new channel	X			
Driveway crossings of streams and other surface waters subject to this Rule: • Driveway crossings on single family residential lots that disturb equal to or less than 25 linear feet or 2, 500 square feet of riparian buffer • Driveway crossings on single family residential lots that disturb greater than 25 linear feet or 2,500 square feet of riparian buffer • In a subdivision that cumulatively disturb equal to or less than 150 linear feet or one-third of an acre of riparian buffer • In a subdivision that cumulatively disturb greater than 150 linear feet or one-third of an acre of riparian buffer	X	 X X	 X	
Fences provided that disturbance is minimized and installation does not result in removal of forest vegetation	X			
Forest harvesting – see Item (11) of this Rule				
Fertilizer application: • One-time fertilizer application to establish replanted vegetation • Ongoing fertilizer application	X			 X
Grading and revegetation in Zone 2 only provided that diffuse flow and the health of existing vegetation in Zone 1 is not compromised and disturbed areas are stabilized	X			
Greenway/hiking trails		X		
Historic preservation	X			

Landfills as defined by G.S. 130A-290				X
Mining activities: • Mining activities that are covered by the Mining Act provided that new riparian buffers that meet the requirements of Items (4) and (5) of this Rule are established adjacent to the relocated channels • Mining activities that are not covered by the Mining Act OR where new riparian buffers that meet the requirements or Items (4) and (5) of this Rule are not established adjacent to the relocated channels • Wastewater or mining dewatering wells with approved NPDES permit	 X	X X	 X	
Non-electric utility lines: • Impacts other than perpendicular crossings in Zone 2 only[3] • Impacts other than perpendicular crossings in Zone 1[3]		X	 X	
Non-electric utility line perpendicular crossing of streams and other surface waters subject to this Rule[3]: • Perpendicular crossings that disturb equal to or less than 40 linear feet of riparian buffer with a maintenance corridor equal to or less than 10 feet in width • Perpendicular crossings that disturb greater than 40 linear feet of riparian buffer with a maintenance corridor greater than 10 feet in width • Perpendicular crossings that disturb greater than 40 linear feet but equal to or less than 150 linear feet of riparian buffer with a maintenance corridor equal to or less than 10 feet in width • Perpendicular crossings that disturb greater than 40 linear feet but equal to or less than 150 linear feet of riparian buffer with a maintenance corridor greater than 10 feet in width • Perpendicular crossings that disturb greater than 150 linear feet of riparian buffer	X	 X X	 X X	
On-site sanitary sewage systems - new ones that use ground absorption				X
Overhead electric utility lines: • Impacts other than perpendicular crossings in Zone 2 only[3] • Impacts other than perpendicular crossings in Zone 1 [1,2,3]	 X X			
Overhead electric utility line perpendicular crossings of streams and other surface waters subject to this Rule[3] • Perpendicular crossings that disturb equal to or less than 150 linear feet of riparian buffer[1] • Perpendicular crossings that disturb greater than 150 linear feet of riparian buffer [1, 2]	 X	 X		
Periodic maintenance of modified natural streams such as canals and a grassed travelway on one side of the surface water when alternative forms of maintenance access are not practical		X		

[1] Provided that, in Zone 1, all of the following BMPs for overhead utility lines are used. If all of these BMPs are not used, then the overhead utility lines shall require a no practical alternatives evaluation by the Division.

- A minimum zone of 10 feet wide immediately adjacent to the water body shall be managed such that only vegetation that poses a hazard or has the potential to grow tall enough to interfere with the line is removed.
- Woody vegetation shall be cleared by hand. No land grubbing or grading is allowed.
- Vegetative root systems shall be left intact to maintain the integrity of the soil. Stumps shall remain where trees are cut.
- Rip rap shall not be used unless it is necessary to stabilize a tower.
- No fertilizer shall be used other than a one-time application to re-establish vegetation.
- Construction activities shall minimize the removal of woody vegetation, the extent of the disturbed area, and the time in which areas remain in a disturbed state.
- Active measures shall be taken after construction and during routine maintenance to ensure diffuse flow of stormwater through the buffer.
- In wetlands, mats shall be utilized to minimize soil disturbance.

[2] Provided that poles or towers shall not be installed within 10 feet of a water body unless the Division completes a no practical alternatives evaluation.

[3] Perpendicular crossings are those that intersect the surface water at an angle between 75 degrees and 105 degrees.

	Exempt	Allowable	Allowable with Mitigation	Prohibited
Playground equipment: • Playground equipment on single family lots provided that installation and use does not result in removal of vegetation • Playground equipment installed on lands other than single family lots or that requires removal of vegetation	X	X		
Ponds in natural drainage ways, excluding dry ponds: • New ponds provided that a riparian buffer that meets the requirements of Items (4) and (5) of this Rule is established adjacent to the pond • New ponds where a riparian buffer that meets the requirements of Items (4) and (5) of this Rule is NOT established adjacent to the pond		— X	X	
Protection of existing structures, facilities and streambanks when this requires additional disturbance of the riparian buffer or the stream channel		X		
Railroad impacts other than crossings of streams and other surface waters subject to this Rule			X	
Railroad crossings of streams and other surface waters subject to this Rule: • Railroad crossings that impact equal to or less than 40 linear feet of riparian buffer • Railroad crossings that impact greater than 40 linear feet but equal to or less than 150 linear feet or one-third of an acre of riparian buffer • Railroad crossings that impact greater than 150 linear feet or one-third of an acre of riparian buffer	X	X	X	
Removal of previous fill or debris provided that diffuse flow is maintained and any vegetation removed is restored	X			
Road impacts other than crossings of streams and other surface waters subject to this Rule			X	
Road crossings of streams and other surface waters subject to this Rule:		—		

• Road crossings that impact equal to or less than 40 linear feet of riparian buffer	X		—	
• Road crossings that impact greater than 40 linear feet but equal to or less than 150 linear feet or one-third of an acre of riparian buffer		X		
• Road crossings that impact greater than 150 linear feet or one-third of an acre of riparian buffer			X	
Scientific studies and stream gauging	X			
Stormwater management ponds excluding dry ponds:				
• New stormwater management ponds provided that a riparian buffer that meets the requirements of Items (4) and (5) of this Rule is established adjacent to the pond		X	—	
• New stormwater management ponds where a riparian buffer that meets the requirements of Items (4) and (5) of this Rule is NOT established adjacent to the pond			X	
Stream restoration	X			
Streambank stabilization		X		
Temporary roads:				
• Temporary roads that disturb less than or equal to 2,500 square feet provided that vegetation is restored within six months of initial disturbance	X			
• Temporary roads that disturb greater than 2,500 square feet provided that vegetation is restored within six months of initial disturbance		X		
• Temporary roads used for bridge construction or replacement provided that restoration activities, such as soil stabilization and revegetation, are conducted immediately after construction		X		
Temporary sediment and erosion control devices:				
• In Zone 2 only provided that the vegetation in Zone 1 is not compromised and that discharge is released as diffuse flow in accordance with Item (5) of this Rule	X			
• In Zones 1 and 2 to control impacts associated with uses approved by the Division or that have received a variance provided that sediment and erosion control for upland areas is addressed to the maximum extent practical outside the buffer	—	X		
• In-stream temporary erosion and sediment control measures for work within a stream channel	X			
Underground electric utility lines:				
• Impacts other than perpendicular crossings in Zone 2 only[3]	X			
• Impacts other than perpendicular crossings in Zone 1[3,4]	X			
Underground electric utility line perpendicular crossings of streams and other surface waters subject to this Rule:[3]				
• Perpendicular crossings that disturb less than or equal to 40 linear feet of riparian buffer[3,4]	X			
• Perpendicular crossings that disturb greater than 40 linear feet of riparian buffer[3,4]		X		

[4] Provided that, in Zone 1, all of the following BMPs for underground utility lines are used. If all of these BMPs are not used, then the underground utility line shall require a no practical alternatives evaluation by the Division.

- Woody vegetation shall be cleared by hand. No land grubbing or grading is allowed.
- Vegetative root systems shall be left intact to maintain the integrity of the soil. Stumps shall remain, except in the trench, where trees are cut.
- Underground cables shall be installed by vibratory plow or trenching.
- The trench shall be backfilled with the excavated soil material immediately following cable installation.
- No fertilizer shall be used other than a one-time application to re-establish vegetation.
- Construction activities shall minimize the removal of woody vegetation, the extent of the disturbed area, and the time in which areas remain in a disturbed state.
- Active measures shall be taken after construction and during routine maintenance to ensure diffuse flow of stormwater through the buffer.
- In wetlands, mats shall be utilized to minimize soil disturbance.

	Exempt	Allowable	Allowable with Mitigation	Prohibited
Vegetation management:				
• Emergency fire control measures provided that topography is restored	X			
• Periodic mowing and harvesting of plant products in Zone 2 only	X			
• Planting vegetation to enhance the riparian buffer	X			
• Pruning forest vegetation provided that the health and function of the forest vegetation is not compromised	X			
• Removal of individual trees which are in danger of causing damage to dwellings, other structures or human life	X			
• Removal of poison ivy	X			
• Removal of understory nuisance vegetation as defined in: Smith, Cherri L. 1998. Exotic Plant Guidelines. Department of Environment and Natural Resources. Division of Parks and Recreation. Raleigh, NC. Guideline #30	X			
Water dependent structures as defined in 15A NCAC 02B .0202		X		
Water supply reservoirs:				
• New reservoirs provided that a riparian buffer that meets the requirements of Items (4) and (5) of this Rule is established adjacent to the reservoir		X		
• New reservoirs where a riparian buffer that meets the requirements of Items (4) and (5) of this Rule is NOT established adjacent to the reservoir			X	
Water wells	X			
Wetland restoration	X			

(7) REQUIREMENTS FOR CATEGORIES OF USES. Uses designated as exempt, allowable, allowable with mitigation and prohibited in Item (6) of this Rule shall have the following requirements:

(a) EXEMPT. Uses designated as exempt are allowed within the riparian buffer. Exempt uses shall be designed, constructed and maintained to minimize soil disturbance and to provide

the maximum water quality protection practicable. In addition, exempt uses shall meet requirements listed in Item (6) of this Rule for the specific use.

(b) ALLOWABLE. Uses designated as allowable may proceed within the riparian buffer provided that there are no practical alternatives to the requested use pursuant to Item (8) of this Rule. These uses require written authorization from the Division or the delegated local authority.

(c) ALLOWABLE WITH MITIGATION. Uses designated as allowable with mitigation may proceed within the riparian buffer provided that there are no practical alternatives to the requested use pursuant to Item (8) of this Rule and an appropriate mitigation strategy has been approved pursuant to Item (10) of this Rule. These uses require written authorization from the Division or the delegated local authority.

(d) PROHIBITED. Uses designated as prohibited may not proceed within the riparian buffer unless a variance is granted pursuant to Item (9) of this Rule. Mitigation may be required as one condition of a variance approval.

(8) DETERMINATION OF "NO PRACTICAL ALTERNATIVES." Persons who wish to undertake uses designated as allowable or allowable with mitigation shall submit a request for a "no practical alternatives" determination to the Division or to the delegated local authority. The applicant shall certify that the criteria identified in Sub-Item (8)(a) of this Rule are met. The Division or the delegated local authority shall grant an Authorization Certificate upon a "no practical alternatives" determination. The procedure for making an Authorization Certificate shall be as follows:

(a) For any request for an Authorization Certificate, the Division or the delegated local authority shall review the entire project and make a finding of fact as to whether the following requirements have been met in support of a "no practical alternatives" determination:

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

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

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

(b) Requests for an Authorization Certificate shall be reviewed and either approved or denied within 60 days of receipt of a complete submission based on the criteria in Sub-Item (8)(a) of this Rule by either the Division or the delegated local authority. Failure to issue an approval or denial within 60 days shall constitute that the applicant has demonstrated "no practical alternatives." The Division or the delegated local authority may attach conditions

to the Authorization Certificate that support the purpose, spirit and intent of the riparian buffer protection program. Complete submissions shall include the following:

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

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

(iii) The location of the activity, including the jurisdiction;

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

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

(vi) Plans for any best management practices proposed to be used to control the impacts associated with the activity.

(c) Any disputes over determinations regarding Authorization Certificates shall be referred to the Director for a decision. The Director's decision is subject to review as provided in Articles 3 and 4 of G.S. 150B.

(9) VARIANCES. Persons who wish to undertake uses designated as prohibited may pursue a variance. The Division or the appropriate delegated local authority may grant minor variances. The variance request procedure shall be as follows:

(a) For any variance request, the Division or the delegated local authority shall make a finding of fact as to whether the following requirements have been met:

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

(A) If the applicant complies with the provisions of this Rule, he/she can secure no reasonable return from, nor make reasonable use of, his/her property. Merely proving that the variance would permit a greater profit from the property shall not be considered adequate justification for a variance. Moreover, the Division or delegated local authority shall consider whether the variance is the minimum possible deviation from the terms of this Rule that shall make reasonable use of the property possible.

(B) The hardship results from application of this Rule to the property rather than from other factors such as deed restrictions or other hardship.

(C) The hardship is due to the physical nature of the applicant's property, such as its size, shape, or topography, which is different from that of neighboring property.

(D) The applicant did not cause the hardship by knowingly or unknowingly violating this Rule.

(E) The applicant did not purchase the property after the effective date of this Rule, and then requesting an appeal.

(F) The hardship is unique to the applicant's property, rather than the result of conditions that are widespread. If other properties are equally subject to the hardship created in the restriction, then granting a variance would be a special privilege denied to others, and would not promote equal justice;

(ii) The variance is in harmony with the general purpose and intent of the State's riparian buffer protection requirements and preserves its spirit; and

(iii) In granting the variance, the public safety and welfare have been assured water quality has been protected, and substantial justice has been done.

(b) MINOR VARIANCES. A minor variance request pertains to activities that are proposed only to impact any portion of Zone 2 of the riparian buffer. Minor variance requests shall be reviewed and approved based on the criteria in Sub-Item (9)(a) of this Rule by the either the Division or the delegated local authority pursuant to G.S. 153A Article 18, or G.S. 160A Article 19. The Division or the delegated local authority may attach conditions to the variance approval that support the purpose, spirit and intent of the riparian buffer protection program. Requests for appeals of decisions made by the Division shall be made to the Office of Administrative Hearings. Request for appeals made by the delegated local authority shall be made to the appropriate Board of Adjustment under G.S. 160A 388 or G.S. 153A 345.

(c) MAJOR VARIANCES. A major variance request pertains to activities that are proposed to impact any portion of Zone 1 or any portion of both Zones 1 and 2 of the riparian buffer. If the Division or the delegated local authority has determined that a major variance request meets the requirements in Sub-Item (9)(a) of this Rule, then it shall prepare a preliminary finding and submit it to the Commission. Preliminary findings on major variance requests shall be reviewed by the Commission within 90 days after receipt by the Director. Requests for appeals of determinations that the requirements of Sub-Item (9)(a) of this Rule have not been met shall be made to the Office of Administrative Hearings for determinations made by the Division or the appropriate Board of Adjustments under G.S. 160A 388 or G.S. 153A 345 for determinations made by the delegated local authority. The purpose of the Commission's review is to determine if it agrees that the requirements in Sub-Item

(9)(a) of this Rule have been met. Requests for appeals of decisions made by the Commission shall be made to the Office of Administrative Hearings. The following actions shall be taken depending on the Commission's decision on the major variance request:

(i) Upon the Commission's approval, the Division or the delegated local authority shall issue a final decision granting the major variance.

(ii) Upon the Commission's approval with conditions or stipulations, the Division or the delegated local authority shall issue a final decision, which includes these conditions or stipulations.

(iii) Upon the Commission's denial, the Division or the delegated local authority shall issue a final decision denying the major variance.

(10) MITIGATION. Persons who wish to undertake uses designated as allowable with mitigation shall meet the following requirements in order to proceed with their proposed use.

(a) Obtain a determination of "no practical alternatives" to the proposed use pursuant to Item (8) of this Rule.

(b) Obtain approval for a mitigation proposal pursuant to 15A NCAC 02B .0242.

(11) REQUIREMENTS SPECIFIC TO FOREST HARVESTING. The following requirements shall apply for forest harvesting operations and practices.

(a) The following measures shall apply in the entire riparian buffer:

(i) Logging decks and sawmill sites shall not be placed in the riparian buffer.

(ii) Access roads and skid trails shall be prohibited except for temporary and permanent stream crossings established in accordance with 15A NCAC 01I .0203. Temporary stream crossings shall be permanently stabilized after any site disturbing activity is completed.

(iii) Timber felling shall be directed away from the stream or water body.

(iv) Skidding shall be directed away from the stream or water body and shall be done in a manner that minimizes soil disturbance and prevents the creation of channels or ruts.

(v) Individual trees may be treated to maintain or improve their health, form or vigor.

(vi) Harvesting of dead or infected trees or application of pesticides necessary to prevent or control extensive tree pest and disease infestation shall be allowed. These practices must be approved by the Division of Forest Resources for a specific site. The Division of Forest Resources must notify the Division of all approvals.

(vii) Removal of individual trees that are in danger of causing damage to structures or human life shall be allowed.

(viii) Natural regeneration of forest vegetation and planting of trees, shrubs, or ground cover plants to enhance the riparian buffer shall be allowed provided that soil disturbance is minimized. Plantings shall consist primarily of native species.

(ix) High intensity prescribed burns shall not be allowed.

(x) Application of fertilizer shall not be allowed except as necessary for permanent stabilization. Broadcast application of fertilizer or herbicides to the adjacent forest stand shall be conducted so that the chemicals are not applied directly to or allowed to drift into the riparian buffer.

(b) In Zone 1, forest vegetation shall be protected and maintained. Selective harvest as provided for below is allowed on forest lands that have a deferment for use value under forestry in accordance with G.S. 105-277.2 through G.S. 277.6 or on forest lands that have a forest management plan prepared or approved by a registered professional forester. Copies of either the approval of the deferment for use value under forestry or the forest management plan shall be produced upon request. For such forest lands, selective harvest is allowed in accordance with the following:

(i) Tracked or wheeled vehicles are not permitted except at stream crossings designed, constructed and maintained in accordance with 15A NCAC 01I .0203.

(ii) Soil disturbing site preparation activities are not allowed.

(iii) Trees shall be removed with the minimum disturbance to the soil and residual vegetation.

(iv) The following provisions for selective harvesting shall be met:

(A) The first 10 feet of Zone 1 directly adjacent to the stream or waterbody shall be undisturbed except for the removal of individual high value trees as defined provided that no trees with exposed primary roots visible in the streambank be cut.

(B) In the outer 20 feet of Zone 1, a maximum of 50 percent of the trees greater than five inches dbh may be cut and removed. The reentry time for harvest shall be no more frequent than every 15 years, except on forest plantations where the reentry time shall be no more frequent than every five years. In either case, the trees remaining after harvest shall be as evenly spaced as possible.

(C) In Zone 2, harvesting and regeneration of the forest stand shall be allowed provided that sufficient ground cover is maintained to provide for diffusion and infiltration of surface runoff.

(12) REQUIREMENTS SPECIFIC TO LOCAL GOVERNMENTS WITH STORMWATER PROGRAMS FOR NITROGEN CONTROL. Local governments that are required to have local

~~stormwater programs pursuant to 15A NCAC 02B .0235 shall have two options for ensuring protection of riparian buffers on new developments within their jurisdictions as follows.~~

~~(a) Obtain authority to implement a local riparian buffer protection program pursuant to 15A NCAC 02B .0241.~~

~~(b) Refrain from issuing local approvals for new development projects unless either:~~

~~(i) The person requesting the approval does not propose to impact the riparian buffer of a surface water that appears on either the most recent versions of the soil survey maps prepared by the Natural Resources Conservation Service of the United States Department of Agriculture or the most recent versions of the 1:24,000 scale (7.5 minute quadrangle) topographic maps prepared by the United States Geologic Survey (USGS).~~

~~(ii) The person requesting the approval proposes to impact the riparian buffer of a surface water that appears on the maps described in Sub-Item (12)(b)(i) of this Rule and either:~~

~~(A) Has received an on-site determination from the Division pursuant to Sub-Item (3)(a) of this Rule that surface waters are not present;~~

~~(B) Has received an Authorization Certificate from the Division pursuant to Item (8) of this Rule for uses designated as Allowable under this Rule;~~

~~(C) Has received an Authorization Certificate from the Division pursuant to Item (8) of this Rule and obtained the Division's approval on a mitigation plan pursuant to Item (10) of this Rule for uses designated as Allowable with Mitigation under this Rule; or~~

~~(D) Has received a variance from the Commission pursuant to Item (9) of this Rule.~~

~~(13) OTHER LAWS, REGULATIONS AND PERMITS. In all cases, compliance with this Rule does not preclude the requirement to comply with all federal, state and local regulations and laws.~~

History Note: *Authority G.S. 143-214.1; 143-214.7; 143-215.3(a)(1); S.L. 1995, c. 572;*
Temporary Adoption Eff. July 22, 1997;
Temporary Adoption Eff. June 22, 1999; April 22, 1998; January 22, 1998;
Eff. August 1, 2000.

[.0235 is proposed for amendment and transfer to 15A NCAC 02B .0711]
Last Revised August 18, 2017

15A NCAC 02B .0235 is proposed for amendment as follows:

15A NCAC 02B ~~.0235~~ .0711 NEUSE ~~RIVER BASIN~~ NUTRIENT ~~SENSITIVE WATERS MANAGEMENT~~ STRATEGY: ~~BASINWIDE~~ STORMWATER ~~REQUIREMENTS~~

The following is the urban stormwater management strategy for the Neuse River Basin:

(1) PURPOSE. The purpose of this Rule is to achieve and maintain the nitrogen loading reduction goal established for the Neuse River Estuary in Rule .0710 of this Section from an undeveloped condition on lands in the Neuse River Basin on which new development occurs. Nothing in this Rule preempts the requirements of 15A NCAC 02B .0277 for projects subject to the Falls Reservoir Nutrient Strategy or prevents local governments from implementing requirements that are more restrictive than those set forth in this Rule.

~~(1)~~(2) APPLICABILITY. The following local governments ~~are designated, based on population and other factors, as parties responsible for implementing stormwater management requirements as part of the Neuse River Nutrient Sensitive Waters stormwater management strategy:~~ shall implement stormwater management requirements as part of the Neuse River Nutrient Sensitive Waters stormwater management strategy. Municipalities shall implement this rule throughout their corporate limits and extraterritorial jurisdiction, while counties shall implement this rule throughout their direct territorial jurisdictions. Counties named in this Item may implement this rule within municipalities not named in this Item in accordance with G.S. 160A-360(d).

(a) Local governments designated by the Commission in 1998 as subject to this Rule:

~~(a)~~(i) Cary,
~~(b)~~(ii) Durham,
~~(c)~~(iii) Garner,
~~(d)~~(iv) Goldsboro,
~~(e)~~(v) Havelock,
~~(f)~~(vi) Kinston,
~~(g)~~(vii) New Bern,
~~(h)~~(viii) Raleigh,
~~(i)~~(ix) Smithfield,
~~(j)~~(x) Wilson,
~~(k)~~(xi) Durham County,
~~(l)~~(xii) Johnston County,
~~(m)~~(xiii) Orange County,
~~(n)~~(xiv) Wake County, and
~~(o)~~(xv) Wayne County.

(b) Additional local governments designated by the Commission in 2018 as subject to this Rule:

(i) Apex,

Commented [A1]: Change: Added Purpose statement to clarify goal of this rule is to achieve reductions from new development. And point to the overall strategy reduction goals in Rule .0710. Given overlap of Falls and Neuse watershed geographic areas added statement that the requirements of the Falls Lake rules supersede those of the Neuse where applicable.

Effect: No substantive change. Improved clarity of rule purpose and interaction between Falls and Neuse rules.

Commented [A2]: Change: Provide a more detailed explanation of boundaries where the requirements of this rule apply within the municipality or county

Effect: Greater clarity. Ensure rule requirements implemented consistently geographically for all subject local governments. Adds flexibility for counties to work with municipalities not named in this rule to implement requirements allowing for greater coverage.

Commented [A3]: Change: Added additional local governments to which the requirements of this rule shall apply based on assessment of growth by looking at overall populations and growth rate over the past 15 years. Added counties and municipalities with populations greater than 20K and 5K respectively that have a growth rate of approximately 200 or more people a year.

Effect: Improved coverage of rule requirements. Addresses holes in strategy coverage where larger and fast growing communities were previously left out of the original rule. These newly named local governments will be required to develop and adopt local programs including local ordinances to implement the rule requirements. Fiscal impact will be determined during the rulemaking process.

(ii) Clayton,
(iii) Fuquay Varina,
(iv) Greenville,
(v) Holly Springs,
(vi) Knightdale,
(vii) Morrisville,
(viii) Rolesville,
(viii) Wake Forest,
(ix) Wendell,
(x) Winterville,
(xi) Craven County,
(xii) Greene County,
(xiii) Nash County,
(xiv) Pitt County, and
(xv) Wilson County.

~~(2) Other incorporated areas and other counties, not listed under Item (1) of this Rule, may seek to implement their own local stormwater management plan by complying with the requirements specified in Items (5) and (6) of this Rule.~~

(3) EXEMPTION. A stormwater management plan is not required for new development on an individual single family lot if the new development meets the following criteria:

(a) It is not part of a larger common plan of development or sale; and

(b) The project does not result in greater than 5 percent built upon area on the lot or it is for purposes of a single family residence on a lot 5 acres in size or greater.

~~(3) The Environmental Management Commission may designate additional local governments by amending this Rule based on their potential to contribute significant nutrient loads to the Neuse River. At a minimum, the Commission shall review the need for additional designations to the stormwater management program as part of the basinwide planning process for the Neuse River Basin. Any local governments that are designated at a later date under the Neuse Nutrient Sensitive Waters Stormwater Program shall meet the requirements under Items (5) and (6) of this Rule.~~

~~(4)~~(4) LOCAL PROGRAM IMPLEMENTATION REQUIREMENTS. All local governments subject to this rule shall implement stormwater management programs approved by the Commission ~~in March 2001~~ pursuant to the timeframes set out in Item (6) of this Rule, or any subsequent modifications to those plans approved by the Director, according to the following requirements and the standards contained in Item (5) of this Rule: ~~Local stormwater programs shall address nitrogen reductions for both existing and new development and include the following elements:~~

(a) ~~Review and approval of stormwater management plans for new developments to ensure that:~~The requirement for local government approval of a stormwater plan for all proposed

Commented [A4]: Change: Removed this provision as it is unnecessary since local governments already have this authority under session law 2006-246.

Effect: No Impact

Commented [A5]: Change: Provided exemption for individual single lot residential projects under a 5% BUA or of a certain size and not part of a larger common plan of development. Addition in response to stakeholder input and based on scenarios run using the latest accounting tool, projects meeting these criteria are assumed to already be meeting the required export rate targets.

Effect: Provides straightforward path for projects meeting these criteria to show compliance with the rule export targets without the cost of having to run export calculations and submitting a stormwater plan.

Commented [A6]: Change: Reorganized rule text to clearly state the requirements subject local governments must meet in their local implementation programs.

Effect: Provides clear separation between local government and developer requirements under the rule. Makes rule text current and clarifies that all local governments implementing programs continue to implement. Improved clarity. No substantive impact.

new development projects disturbing one acre or more for single family and duplex residential property and recreational facilities, and one-half acre or more for commercial, industrial, institutional, multifamily residential, or local government property. Where proposed new development on an existing developed lot not part of a larger common plan of development results in built-upon area exceeding 24 percent, a stormwater plan addressing the new built-upon area shall be required.

(b) A plan to ensure maintenance of stormwater control measures (SCMs) implemented to comply with this rule for the life of the development;

(c) A plan to ensure enforcement and compliance with the provisions in Item (5) of this Rule for the life of the development;

(d) A public education program to inform citizens how to reduce nutrient pollution and to inform developers about the nutrient requirements set forth in Item (5);

(e) A mapping program that includes major components of the municipal separate storm sewer system, waters of the State, land use types, and location of sanitary sewers; and

(f) A program to identify and remove illegal discharges.

(5) DEVELOPMENT PROJECT REQUIREMENTS. A proposed development project shall be approved by a subject local government when the applicable requirements of Item (4) and the following criteria are met. For development projects subject to the requirements of 15A NCAC 02B .0277 the requirements of this Item shall not apply.

~~(i)~~(a) The project area shall meet either a nitrogen loading rate target of 3.6 pounds/acre/year or the definition of runoff volume match provided in 15A NCAC 02H .1002. Except as otherwise stated in this Item, the project may meet the loading rate target through use of nutrient offset credit pursuant to Rule .0703 of this Section; ~~the nitrogen load contributed by new development activities is held at 70 percent of the average nitrogen load contributed by the 1995 land uses of the non-urban areas of the Neuse River Basin. The local governments shall use a nitrogen export standard of 3.6 pounds/acre/year, determined by the Environmental Management Commission as 70 percent of the average collective nitrogen load for the 1995 non-urban land uses in the basin above New Bern. The EMC may periodically update the design standard based on the availability of new scientific information; Developers shall have the option of offsetting part of their nitrogen load by funding offsite management measures by making payment to the NC Ecosystem Enhancement Program or to another seller of offset credits approved by the Division or may implement other offset measures contingent upon approval by the Division. Offset payments shall meet the requirements of Rule .0240 of this Section, which establishes procedural requirements for nutrient offset payments. However, before using offset payments, the development must attain, at a minimum, a nitrogen export that does not exceed 6~~

Commented [A7]: Change: Included land disturbance thresholds previously included in model program to provide information in one location.

Effect: Improved clarity and ease of finding information. No change in thresholds.

Commented [A8]: Change: Language added to address cumulative impacts in cases where small land disturbances add up over time to exceeded land disturbance thresholds that require a stormwater plan to be submitted.

Effect: Captures projects with cumulative impacts over land disturbance thresholds over time that would previously have been missed under the rule. Only requires the new BUA to be treated. Addresses loophole in previous rule language

Commented [A9]: Change: This language was moved up to this location from elsewhere in the rule.

Effect: Improved clarity concerning local government responsibilities.

Commented [A10]: Change: Reorganized this section to make it easier for the development community to identify the requirements their development projects need to meet.

Effect: Provides clear separation between local government and developer requirements under the rule. Improved Clarity.

Commented [A11]: Change: Updated this language to recognize there are multiple ways for a developer to meet runoff requirements for a proposed project including meeting the export rates targets as well as meeting the requirements through runoff volume match or the use of offsite nutrient offsets.

Effect: Improved clarity and added flexibility by providing multiple pathways for compliance.

~~pounds/acre/year for residential development and 10 pounds/acre/year for commercial or industrial development;~~

~~(ii) For the following local governments and any additional local governments identified in rule by the Commission, the post-construction requirements of 15 NCAC 02B .0277 shall supersede the requirements in this Sub-item for areas within their jurisdiction within the watershed of the Falls of the Neuse Reservoir: Durham, Raleigh, Durham County, Orange County, and Wake County; and~~

(b) Nitrogen loading rates, and reductions resulting from the use of SCMs, shall be determined through the use of the tool most recently approved by the Division for stormwater nutrient accounting or an alternative method at least as protective as accepted by the Division;

(c) Projects resulting in greater than 24 percent built-upon area shall install a primary SCM that meets the design specifications provided in 15A NCAC 02H .1003 for all impervious area on the project site;

(d) Projects with less than 24 percent built upon area shall meet the low density design requirements provided in 15A NCAC 02H .1003 for dispersed flow, vegetative conveyances, and curb outlet systems;

(e) Proposed new development undertaken by a local government solely as a public road or public sidewalk project or proposed new development subject to the jurisdiction of the Surface Transportation Board shall be exempt from the requirements of Sub-Items (5)(c) and (5)(d) of this Rule;

(f) Proposed development projects that would replace or expand existing structures and would result in a net increase in built-upon area shall be responsible for nitrogen loading from the area of disturbance less any preexisting built-upon area located therein. The developer shall have the option to either achieve the nitrogen percent loading reduction goal established in Rule .0710 of this Section or meet the nitrogen loading rate target of this Item;

(g) Proposed new development projects that utilize an offsite SCM that meets the design specifications provided in 15A NCAC 02H .1003 and is dedicated to treating an area encompassing the project shall be considered compliant with the treatment requirements described in Sub-Item (5)(c) of this Rule;

(h) SCMs shall meet a required storm depth of one inch in non-coastal counties and one and one-half inches in coastal counties;

(i) Where pursuant to G.S. 153A-454 and G.S. 160A-459 a local government program does not review a development project proposed by a state or federal entity, the entity shall obtain Department review and approval; and

(j) Proposed development projects shall demonstrate compliance with the riparian buffer protection requirements of Rule .0714 of this Section or subsequent amendments or replacement to those requirements.

Commented [A12]: Change: Added requirement that only the most recently approved stormwater accounting tool (or Division approved equivalent) is to be used for calculating loading rates and reductions to ensure all developers and local governments are using the same accounting tool based on the most recent available data.

Effect: Provides improved consistency of rule implementation.

Commented [A13]: Change: Eliminated outdated onsite treatment threshold pounds and replaced with onsite treatment requirement of one SCM minimum for projects exceeding 24% BUA or not meeting loading rate targets.

Effect: Eliminates the 6 & 10 lbs/ac/yr onsite treatment thresholds required before developer could go offsite for a nutrient reduction buydown. Improves agreement of Neuse rule with Phase II Stormwater requirements. Fiscal impact will be determined during the rulemaking process.

Commented [A14]: Change: Added low density option to better align rule with options provided under Phase II stormwater requirements.

Effect: Establishes minimum site design requirements for low density projects. Fiscal impact will be determined during the rulemaking process.

Commented [A15]: Change: In response to stakeholder input added option for local government road and sidewalk projects that have limited or no space for SCMs to meet export targets entirely through the use of offsite nutrient offsets.

Effect: Provides flexibility and potentially more cost-effective ways for projects meeting these criteria to meet the requirements of the rule.

Commented [A16]: Change: Updated language addressing redevelopment scenarios per new definition of development in Session Law 2014-90 to make it clear that the area of disturbance minus any preexisting BUA must be treated when development replaces or expands existing development resulting in net increase in BUA.

Effect: Reduces the area and amount of treatment required under redevelopment scenarios. Aligns rule with session law.

Commented [A17]: Change: Based on stakeholder input added the option for developers to use "Regional" offsite SCMs to provide treatment for projects. This option may be particularly useful for municipalities with limited space for SCMs in downtown are... [1]

Commented [A18]: Change: Added storm depth requirements for SCMs to be consistent with requirements in 2H stormwater rules.

Effect: Ensures proper SCM design and establishes consistency across stormwater rules.

Commented [A19]: Change: Added language addressing enforcement of rule requirements by local governments on state and federal entities within their jurisdiction (in cases where they do not already have an NPDES permit).

... [2]

Commented [A20]: Change: Moved expectation to demonstrate buffer rule compliance from model program.

Effect: Clarifies requirements addressed in local government programs. No Impact.

~~(i) (iii) there is no net increase in peak flow leaving the site from the predevelopment conditions for the 1-year, 24-hour storm.~~

~~(b) Review of new development plans for compliance with requirements for protecting and maintaining existing riparian areas as specified in 15A NCAC 02B .0233;~~

~~(c) Implementation of public education programs;~~

~~(d) Identification and removal of illegal discharges;~~

~~(e) Identification of suitable locations for potential stormwater retrofits (such as riparian areas) that could be funded by various sources; and~~

~~(f) Submittal of an annual report on October 30 in October to the Division documenting progress on and net changes to nitrogen load from the local government's planning jurisdiction.~~

~~(5) Local governments shall implement stormwater management programs according to their plans approved by the Commission as of March 2001. Local governments administering a stormwater management program shall submit annual reports to the Division documenting their progress and net changes to nitrogen load by October 30 of each year.~~

~~(6) If a local government fails to properly implement an approved plan, then stormwater management requirements for existing and new urban areas within its jurisdiction shall may be administered through the NPDES municipal stormwater permitting program per 15A NCAC 02H .0126.~~

~~(a) Subject local governments shall develop and implement comprehensive stormwater management programs, tailored toward nitrogen reduction, for both existing and new development.~~

~~(b) These stormwater management programs shall provide all components that are required of local government stormwater programs in Sub-items (4)(a) through (f) (5)(a) through (f) of this Rule.~~

~~(c) Local governments that are subject to an NPDES permit shall be covered by the permit for at least one permitting cycle (five years) before they are eligible to submit a local stormwater management program for consideration and approval by the EMC.~~

(6) RULE IMPLEMENTATION

(a) Within 4 months of the effective date of this Rule, the Division shall submit a model local stormwater program embodying the elements in Items (4) and (5) of this Rule to the Commission for approval. The Division shall work in cooperation with subject local governments in developing this model program.

(b) Local governments designated by the Commission in 1998 and additional local governments designated herein as subject to this Rule shall submit a local stormwater program for approval by the Commission within 6 months and 12 months, respectively, of the Commission's approval of the model local program. These local programs shall meet or exceed the requirements in Items (4) and (5) of this Rule.

Commented [A21]: Changed: Removed outdated peak flow requirement after consulting with NCDEMLR. Rule has been updated to include requirement in Sub-Item (5)(e) that SCMs be designed in accordance with requirements of 2H .1003 which includes the requirement that stormwater outlets to be designed so that they do not cause erosion downslope of the discharge point during peak flow from the 10-year storm event.

Effect: Updated requirement based on most recent science. Consistency between nutrient and state stormwater rules.

Commented [A22]: Change: This language was moved to Paragraph (c). Dropped the requirement for identifying stormwater retrofits based on stakeholder input.

Effect: Placement in Paragraph (c) provides better organization and clarity for local government responsibilities and elements to include in their local programs. Not change in implementation other than removing outdated and unnecessary requirement for identifying retrofit locations.

Commented [A23]: Change: Updated rule implementation timeline and added timeline for Division to develop model and new subject local governments to submit local programs.

Effect: Provides timeline for local governments who are added to this rule when they will be expected to begin implementing the requirements. Fiscal impact will be determined during the rulemaking process.

Commented [A24]: Change: Provide timelines for local governments to complete local programs allowing for more time for newly named communities.

Effect: Local governments that are already implementing will be provided 6 months to revise and submit their local programs. New subject communities will be provided more time – up to 12 months to develop and submit their programs for approval.

(c) The Division shall provide recommendations to the Commission regarding proposed local stormwater programs. The Commission shall either approve the programs or require changes based on the standards set out in Items (4) and (5) of this Rule. Should the Commission require changes, the applicable local government shall have three months to submit revisions, and the Division shall provide follow-up recommendations to the Commission within two months after receiving revisions;

(d) Within 6 months after the Commission's approval of a local program, the affected local government shall complete adoption of and implement its local stormwater management program.

(e) Local governments administering a stormwater management program shall submit annual reports in electronic format to the Division documenting their progress regarding each program implementation requirement in Item (4) and net changes to nitrogen load by October 30th of each year. Annual reports shall also include as appendices all data utilized by nutrient calculation tools for each development stormwater plan approved in accordance with this Rule.

(f) Any significant modifications to a local program subsequent to its approval pursuant to the requirements of this item shall be submitted to the Director for approval.

(7) COMPLIANCE. A local government's authority to approve new development stormwater plans for compliance with this Rule pursuant to Item (5) shall be contingent upon maintaining its own compliance with this Rule. A local government that fails to submit an acceptable local stormwater management program within the timeframe established in this Rule, fails to implement an approved program, or fails to comply with annual reporting requirements shall be in violation of this Rule.

History Note: *Authority G.S. 143-214.1; 143-214.7; 143-215.1; 143-215.3(a)(1); S.L. 1995, c. 572;*
Eff. August 1, 1998;
Amended Eff. January 15, 2011 (this permanent rule replaces the temporary rule approved by the RRC on December 16, 2010).
Amended Eff. [New Date].

Commented [A25]: **Change:** Added New Annual Reporting Language clarifying what needs to be included in the submittal.

Effect: Provides more useful information to the Division for tracking implementation and rule compliance

Commented [A26]: **Change:** Added stronger language to deal with noncompliance of the rule requirements.

Effect: Clarifies expectations and potential recourse for noncompliance with the rule requirements.

Page 4: [1] Commented [A17] **Author**

Change: Based on stakeholder input added the option for developers to use "Regional" offsite SCMs to provide treatment for projects. This option may be particularly useful for municipalities with limited space for SCMs in downtown areas.

Effect: Provides an additional option and improved flexibility for meeting the requirements of this rule.

Page 4: [2] Commented [A19] **Author**

Change: Added language addressing enforcement of rule requirements by local governments on state and federal entities within their jurisdiction (in cases where they do not already have an NPDES permit).

Effect: Recognizes local governments have the authority to require state and federal entities to meet the requirements of their local stormwater ordinances. In cases where Local governments do not enforce these requirements the Division shall do so. Fiscal impact will be evaluated during the rulemaking process.

15A NCAC 02B .0236 is proposed for repeal as follows:

15A NCAC 02B .0236 NEUSE RIVER BASIN-NUTRIENT SENSITIVE WATERS MANAGEMENT STRATEGY: AGRICULTURAL NITROGEN LOADING REDUCTION

History Note: *Authority G.S. 143.214.1; 143.214.7; 143.215.3(a)(1).*
Eff. August 1, 1998.
Repealed Eff. [New Date]

Commented [A1]: Change: Rule to be repealed.

Effect: Goals information moved to Agriculture Rule .0712

15A NCAC 02B .0237 is proposed for repeal as follows:

15A NCAC 02B .0237 BEST MANAGEMENT PRACTICE COST-EFFECTIVENESS RATE

History Note: *Authority G.S. 143-214.1;*
Eff. April 1, 1997.
Repealed Eff. [New Date]

Commented [A1]: Change: Rule to be repealed.

Effect: The BMP cost-effectiveness rate will be determined based on option selected and requirements of Rule .0703

[.0238 is proposed for amendment and transfer to 15A NCAC 02B .0712]

Last Revised August 18, 2017

15A NCAC 02B .0238 is proposed for amendment as follows:

15A NCAC 02B ~~.0238~~.0712 NEUSE RIVER ~~BASIN-NUTRIENT SENSITIVE WATERS MANAGEMENT BASIN~~ NUTRIENT STRATEGY: ~~AGRICULTURAL NITROGEN REDUCTION STRATEGY~~ AGRICULTURE

~~The following requirements apply to all persons in the Neuse River Basin who engage in agricultural operations. Agricultural operations are activities which relate to the production of crops, livestock, and poultry.~~ This Rule sets forth a process by which agricultural operations in the Neuse River Basin will collectively limit their nitrogen loading to the Neuse estuary, as prefaced in Rule .0710 of this Section. This process is as follows:

(1) ~~All persons engaging in agricultural operations in the Neuse River Basin shall collectively achieve and maintain a 30 percent net total nitrogen loading reduction from the cumulative average 1991-1995 nitrogen loadings within five years from the effective date of this Rule. Persons subject to this Rule are provided with two options for meeting the requirements of this Rule. The first option is to sign up for and participate in implementing a collective local strategy for agricultural nitrogen reduction as described in Item (7) of this Rule. This option allows site-specific plans to be developed for those operations where further nitrogen reduction practices are necessary to achieve the collective reduction goal. The second option requires the implementation of standard Best Management Practices as specified in Item (8) of this Rule. Failure to meet requirements of this Rule may result in 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).~~ PURPOSE. The purpose of this Rule is to maintain or exceed the percentage reduction goal defined in Rule .0710 of this Section on the collective loss of nitrogen from all lands used for agricultural production as described in Item (2) of this Rule from its 1991-1995 baseline level, as estimated by best available accounting practices.

(2) APPLICABILITY. This Rule shall apply to all persons engaging in agricultural operations, including those related to crops, horticulture, livestock, and poultry, in the geographic area subject to the Neuse nutrient strategy as described in Rule .0710 of this Section. This Rule applies to livestock and poultry operations above the size thresholds in this Item in addition to requirements for animal operations set forth in general permits issued pursuant to G.S. 143-215.10C. Nothing in this Rule shall be deemed to allow the violation of any assigned surface water, groundwater, or air quality standard by any agricultural operation, including any livestock or poultry operation below the size thresholds in this Item. For the purposes of this Rule, agricultural operations are activities that relate to any of the following pursuits:

(a) The commercial production of crops or horticultural products other than trees. As used in this Rule, commercial shall mean activities conducted primarily for financial profit.

(b) Research activities in support of such commercial production.

~~Commented [A1]:~~ Change: Revised to capture substance of proposed repealed rule 02B .0236, which set the reduction goal for agriculture.

Effect: Streamlined content. No substantive change.

~~Commented [A2]:~~ Change: Updated to reflect current implementation status and to eliminate individual option of standard BMPs vs. collective compliance.

Effect: No practical impact.

(c) The production or management of any of the following number of livestock or poultry at any time, excluding nursing young:

(i) 5 or more horses;

(ii) 20 or more cattle;

(iii) 20 or more swine not kept in a feedlot, or 150 or more swine kept in a feedlot;

(iv) 120 or more sheep;

(v) 130 or more goats;

(vi) 650 or more turkeys;

(vii) 3,500 or more chickens; or

(viii) Any single species of any other livestock or poultry, or any combination of species of livestock or poultry that exceeds 20,000 pounds of live weight at any time.

~~Commented [A3]:~~ **Change:** Added specificity to applicability description and size thresholds for livestock to conform with Tar-Pamlico ag rule.

Effect: Reduces uncertainty, narrows scope of applicability

(3) IMPLEMENTATION PROCESS. A Basin Oversight Committee and county-level Local Advisory Committees shall coordinate activities and account for progress. The membership, roles and responsibilities of these committees are set forth in Items (4) and (6) of this Rule. Accounting for nitrogen load-reducing actions on agricultural lands within the basin shall follow requirements set forth in Item (5) of this Rule. Producers may be eligible to obtain cost share and technical assistance from the NC Agriculture Cost Share Program and similar federal programs to contribute to their counties' ongoing nitrogen reductions. Committee activity shall be guided by the following:

~~Commented [A4]:~~ **Change:** Part of content reorganization/streamlining consistent with other ag rules.

Effect: Clarity, brevity. No substantive change

(a) OPTIONS FOR INDIVIDUAL OPERATIONS. Persons subject to this Rule may elect to implement practices meeting the standards identified in Item (7) of this Rule that contribute to maintenance of collective local compliance with the goal identified in Item (1) of this Rule, but are not required to implement any specific practices provided their basin collectively maintains compliance with the goal.

~~Commented [A5]:~~ **Change:** Added language clarifying individual's ability to meet requirements through the collective compliance approach.

Effect: Improved clarity. No Impact.

(b) MAINTENANCE OF GOAL. Accounting shall annually demonstrate maintenance or exceedence of the nitrogen reduction goal on a basin basis. Where three sequential annual reports show that the Basin did not meet its nitrogen reduction goal, the Basin Oversight Committee shall work with the Division of Soil and Water Conservation and Local Advisory Committees to seek reduction actions by operations to bring agriculture collectively back into compliance, and shall report on their efforts in subsequent annual reports. Should subsequent annual reports not reverse the trend of noncompliance, the Commission may seek a more specific implementation plan from the Basin Oversight Committee, which may include an assessment of need for specific action by the Commission.

~~Commented [A6]:~~ **Change:** Adds express ability for EMC to seek corrective action.

Effect: Probably no practical difference.

~~(2)~~ (4) BASIN OVERSIGHT COMMITTEE. The Basin Oversight Committee shall have the following membership, role and responsibilities: ~~Formation and membership of the Basin Oversight Committee. The Environmental Management Commission shall delegate to the Secretary of the Department of Environment and Natural Resources the responsibility of forming a Basin Oversight Committee.~~

~~(a) The Secretary shall solicit one nomination for membership on this Committee from each of the following agencies:~~ (a) MEMBERSHIP. The Director of the Division of Water Resources shall be responsible for maintaining the following membership composition. Until such time as the Commission determines that long-term compliance with this rule is assured, the Director shall solicit one nomination for membership on this Committee from each agency in Sub-Items (4)(a)(i) through (4)(a)(v). The Director may appoint a replacement at any time for an interest in Sub-Items (4)(a)(vi) through (4)(a)(viii) of this Rule upon request of representatives of that interest or by the request of the Commissioner of Agriculture:

(i) Division of Soil and Water Conservation,

(ii) United States Department of Agriculture- Natural Resources Conservation ~~Service,~~ Service (shall serve in an "ex-officio" non-voting capacity and shall function as a technical program advisor to the Committee),

(iii) North Carolina Department of ~~Agriculture,~~ Agriculture and Consumer Services,

(iv) North Carolina Cooperative Extension Service, ~~and~~

(v) Division of Water ~~Quality.~~ Resources,

(vi) Up to two environmental interests,

(vii) Up to two general farming interest, and

(viii) Scientific community with experience related to water quality problems in the Neuse River Basin.

~~(b) The Secretary shall also solicit one nomination that represents environmental interests, one nomination that represents agricultural interests, and one from the scientific community with experience related to water quality problems in the Neuse River Basin.~~

~~(c) The Secretary, Department of Environment and Natural Resources, shall appoint members of the Basin Oversight Committee from the nominees provided in Sub-Items (2)(a) and (2)(b) of this Rule. Members shall be appointed for a term not to exceed five years and shall serve at the pleasure of the Secretary. The United States Department of Agriculture Natural Resources Conservation Service member shall serve in an "ex-officio" non-voting capacity and shall function as a technical program advisor to the Committee.~~

~~(3) Role of the Basin Oversight Committee. The Environmental Management Commission shall delegate the following responsibilities to the Basin Oversight Committee.~~

~~(a) Develop a tracking and accounting methodology, as described below, for evaluating total nitrogen loading from agricultural operations and progress toward reaching the total nitrogen net loading reduction from the implementation BMPs within the Neuse River Basin. The accountability methodology must demonstrate how the nitrogen loading reduction can be met collectively by implementing best management practices approved by the Soil and Water

Conservation Commission that include, but are not limited to, water control structures, riparian area establishment, and nutrient management.

(b) Submit a draft accountability process in accordance with the requirements in Sub-Items (3)(a) and (3)(c) of this Rule to the Environmental Management Commission for review within six months after the effective date of the rule and the final accountability process to the Environmental Management Commission for approval within one year after the effective date of the rule. The Environmental Management Commission shall approve the accountability process if it meets requirements in Sub-Items (3)(a) and (3)(c) of this Rule. If the Basin Oversight Committee fails to submit an approvable accountability process to the Environmental Management Commission, then the Environmental Management Commission may accept alternative accountability process proposals within 15 months of the effective date of this Rule. If the Environmental Management Commission fails to receive an approvable accountability process, then the Environmental Management Commission may require all agricultural operations to follow the standard Best Management Practices option as specified in Item (8) of this Rule.

(c) Include in the accountability process a method to accurately track implementation of BMPs, including location and type of BMPs; to estimate nitrogen reductions from BMP implementation; to quantify increases or decreases in nitrogen loading due to changes in land use, modified agricultural activity, or atmospheric nitrogen loading, based on the best available scientific information; to ensure operation and maintenance of BMPs, including year round management for water control structures; to address life expectancy of BMPs; and a method to ensure maintenance of the nitrogen net loading reduction after the initial five years of this Rule, including substitute BMPs to replace expired practices and additional BMPs to offset new sources of nitrogen.

(d) Calculate a separate total nitrogen loading for agricultural lands in the Neuse River Basin above and below New Bern based on the average of 1991-1995 conditions. Based on this loading, calculate a separate 30 percent net reduction. Loading calculations must include atmospheric emissions and deposition of nitrogen from agricultural lands based on the best available scientific information. Allocate to counties or watersheds, as allowed in Sub-Item (4)(a) of this Rule, within the Neuse River Basin their portion of the calculated nitrogen loading reduction from agricultural operations, including any division of the reduction between specific categories of agricultural operations. Each county or watershed may not have to reduce individually its nitrogen loading by 30 percent; however, the nitrogen loading reduction from all counties or watershed above New Bern shall collectively meet their total nitrogen reduction and all counties or watersheds below New Bern shall collectively meet their total nitrogen reduction. If the Basin Oversight Committee fails to allocate the nitrogen

~~loading reductions from agricultural operations to counties or watersheds within the Neuse River Basin, the Environmental Management Commission may assign the agricultural nitrogen reductions based on the approved accountability process as described in Sub-Items (3)(a) and (3)(c) of this Rule.~~

~~(e) Review, approve and summarize county nitrogen reduction strategies and present these strategies to the Environmental Management Commission for approval within two years from the effective date of this Rule.~~

~~(f) Review, approve and summarize local nitrogen reduction annual reports and present these reports to the Environmental Management Commission each October. Information to be included in the Annual Report is described in Item (5)(d) of this Rule.~~

(b) ROLE. The Basin Oversight Committee shall:

(i) Continue to review, approve and summarize local nitrogen loss annual reports to ensure ongoing implementation of the accounting method approved by the Commission in July 1999 as conforming to the requirements of Item (5) of this Rule. Continue to submit these reports as initiated in 2002, to the Director annually;

(ii) Take actions called for under Sub-Item (3)(b) as needed to address maintenance of the nitrogen reduction goal; and

(iii) Identify and implement refinements to the accounting method as needed to reflect advances in scientific understanding, including establishment or refinement of nutrient reduction efficiencies for BMPs.

(5) ACCOUNTING METHODOLOGY. Success in meeting this Rule's purpose will be gauged by estimating percentage changes in nitrogen loss from agricultural lands in the Neuse Basin. The Basin Oversight Committee shall develop maintain, and update as indicated elsewhere in this Item, accounting methods that meet the following requirements:

(a) The nitrogen method shall estimate baseline and annual total nitrogen losses from agricultural operations in each county and for the entire Neuse Basin. Baseline losses and relative loss reduction progress shall be adjusted as frequently as can be supported by available data to account for lands permanently removed from agricultural control through development;

(b) The nitrogen method shall include a means of tracking implementation of BMPs, including number, type, and area affected;

(c) The nitrogen method shall include a means of estimating incremental nitrogen loss reductions from implementation of BMPs that conform to requirements of Item (7) of this Rule and of evaluating progress toward and maintenance of the nutrient goal from changes in BMP implementation, fertilization, and changes in individual crop acres; and

(d) The nitrogen method shall be refined as research and technical advances allow.

~~Commented [A7]:~~ Change: Added an additional environmental representative and farming interest to the Committee Membership. Provided process for appointing members to fill empty seats.

Effect: Provides consistency of interests represented on oversight committees across watersheds. Improved clarity on process for appointing new members. No Impact on rule implementation.

~~Commented [A8]:~~ Change: Reorganized and updated role and responsibilities of the Basin Oversight Committee recognizing several of the responsibilities previously listed in rule have already been addressed during the earlier years of rule implementation.

Effect: Brings responsibilities up to date. Provides Consistency across watersheds. No impact on rule implementation.

~~Commented [A9]:~~ Change: Updated the language addressing accounting methodologies recognizing the Basin Oversight Committee has developed tools currently used for tracking progress with the required reduction goals.

Effect: Improved clarity and brings the rule language up to date reflecting how the rule requirements are being implemented.

~~Commented [A10]:~~ Change: Added language requiring evaluation and adjustment of baseline losses and relative loss reduction progress based on data availability to address agricultural land lost to development.

Effect: Agriculture's reduction progress will be measured against an updated baseline that reflects the nutrient contributions from lands still within the Agriculture universe. Fiscal impact will be evaluated during rulemaking process.

~~(4)~~ (6) ~~Formation and membership of the Local Advisory Committees.~~ LOCAL ADVISORY COMMITTEES. The ~~Environmental Management Commission shall delegate to the~~ Directors of the Division of Water ~~Quality~~ Resources and Division of Soil and Water Conservation ~~the responsibility of forming~~ shall maintain Local Advisory ~~Committees.~~ Committees initially established in February and March, 1999, as follows:

(a) ~~The Directors shall form Local Advisory Committees in~~ MEMBERSHIP. For each county ~~(or~~ or watershed specified by the Basin Oversight ~~Committee)~~ Committee within the Neuse River ~~Basin. The~~ Basin, the Directors shall ~~solicit nominations for~~ jointly maintain membership on the Local Advisory Committee from each of the following local ~~agencies:~~ entities, whose appointees shall serve at the pleasure of the Directors:

(i) Soil and Water Conservation District,

(ii) United States Department of Agriculture- Natural Resources Conservation Service,

(iii) North Carolina Department of Agriculture,

(iv) North Carolina Cooperative Extension Service,

(v) North Carolina Division of Soil and Water Conservation, and

(vi) ~~The Directors shall also solicit at least two nominations that represents a local farmer in the county watershed.~~ At least two farmers that reside in the county.

~~The Soil and Water Conservation District may be designated by the Basin Oversight Committee as the lead agency on the Local Advisory Committee.~~

(b) ROLE. Local Advisory Committees shall:

(i) Continue to submit annual reports to the Basin Oversight Committee estimating total crop production on agricultural operations for the preceding calendar year, summarizing land use changes in the county and making recommendations to the Basin Oversight Committee on the need for updates to the accounting methodology. Reports shall include documentation on the BMPs implemented, including type and location, that satisfy the requirements identified in item (6) of this Rule and documentation of any expired contracts for BMPs; and

(ii) Take actions called for under Sub-Item (3)(b) to address maintenance of the nitrogen reduction goal.

(7) PRACTICE STANDARDS. To receive nutrient reduction credit under the accounting methods described elsewhere in this Rule, a BMP shall be included in the Commission-approved accounting method, or in a subsequent revision to that method identified in annual reporting, and it shall be implemented according to the applicable nutrient-related standards identified by the BOC and established by the NC Soil and Water Conservation Commission or the USDA-Natural Resources Conservation Service in North Carolina.

~~Commented [A11]:~~ Change: Technical corrections updating Session Law References and Agency names.

Effect: No Impact. Improved Clarity

~~Commented [A12]:~~ Change: Updates role of the local advisory committees LACs.

Effect: No Impact. Brings rule language up to date and better reflects how requirements are currently being implemented.

~~Commented [A13]:~~ Change: Adds practice standards requirements for BMPs

Effect: Ensures proper BMP implementation and use of approved accounting methods to earn nutrient reduction credit.

~~(b) The Environmental Management Commission and Soil and Water Conservation Commission shall appoint members of Local Advisory Committee from the nominees provided in Sub-Item (4)(a) of this Rule and shall be appointed for a term not to exceed five years and shall serve at the pleasure of the Commissions.~~

~~(5) Role of the Local Advisory Committees. The Environmental Management Commission shall delegate the following responsibilities to employees of the Department who are members of the Local Advisory Committees and employees of the Division of Soil and Water Conservation or its designee. These employees shall act with advice from the Local Advisory Committees.~~

~~(a) Conduct a sign-up process for persons wishing to voluntarily implement the local nitrogen reduction strategy as specified in Item (7) of this Rule. This sign-up process shall be completed within one year following the effective date of this Rule.~~

~~(b) Develop local nitrogen reduction strategies that meet the nitrogen loading reduction goal for agricultural operations assigned by the Basin Oversight Committee. The local strategies shall be designed to achieve the required nitrogen loading reduction within five years from the effective date of this Rule. A matrix of best management practice options, which account for stream order, floodplain width, and regional variations in soil types and topography, may be used in developing the local nitrogen reduction strategies. Local nitrogen reduction strategies must specify the name and location of participant agricultural farming operations, BMPs which will be required as part of the plan, estimated nitrogen reduction, schedule for BMP implementation, and operation and maintenance requirements. If the Local Advisory Committee fails to develop the local nitrogen reduction strategy, the Environmental Management Commission may develop the strategy based on the tracking and accounting method approved by the Environmental Management Commission.~~

~~(c) Submit an annual report to the Basin Oversight Committee each May on net total nitrogen loading reductions from agricultural operations, the implementation of BMPs for nitrogen control, and progress towards the total nitrogen loading reduction requirements in the Neuse River Basin above and below New Bern.~~

~~(d) Include in the annual report, at a minimum, documentation on the BMPs implemented (including type and location), their costs, documentation of any expired contracts for BMPs, estimated nitrogen net loading reductions achieved as a result of those BMPs, any increases or decreases in nitrogen loading resulting from changes in land use or modified agricultural-related activity, discussion of operation and maintenance of BMPs, and a summary of the estimated load from agricultural operations for the previous year, and any modifications to the accounting methodology. Information shall be provided in the annual report on the status of BMP implementation and estimated total nitrogen reduction by all agricultural operations~~

~~Commented [A14]:~~ Change: Local advisory Committee roles and responsibility language has been updated and reorganized in new Item (6).

Effect: No practical impact. Brings rule text up to date.

~~within the Neuse River Basin in each county or watershed. The annual report shall also be summarized separately for cropland, livestock and poultry activities.~~

~~(6) Options for meeting the collective total nitrogen net loading reduction requirement. Each agricultural operation in the Neuse River Basin shall have two options for meeting the requirements of this Rule. The options are to either implement a local nitrogen reduction strategy, specified by Item (7) of this Rule, or implement standard Best Management Practices specified by Item (8) of this Rule.~~

~~(7) Local nitrogen reduction strategy option. All persons subject to this Rule that choose to implement the county nitrogen reduction plan must complete the sign-up process that will be conducted per the requirements of Item (5)(a) of this Rule. This sign-up process will be completed within one year from the effective date of this Rule. If a person subject to this Rule does not complete the sign-up process, he shall be subject to implementation of Best Management Practices as specified in Item (8) of this Rule. Persons who choose to participate in the local nitrogen reduction strategy must commit and implement their portion of the plan within five years of the effective date of this Rule. A person may withdraw from the local nutrient reduction strategy up until the time that the local strategy is finalized by the Local Advisory Committee and the person signs the specific plan for his property, which represents his commitment to implement the plan within five years of the effective date of the rules. After a person has made the commitment to implement the local strategy by signing the plan for his property, then such persons may not withdraw from the local nitrogen reduction strategy during the initial five-year period. The local nitrogen reduction strategy is not required to be more stringent than the standard best management practice option provided that the net nitrogen reduction goals are met collectively; however, the Local Advisory Committees may develop strategies that achieve reductions of greater than 30 percent.~~

~~(8) Standard best management practice option. If a person subject to this Rule does not complete the sign-up process for implementation of the local nitrogen reduction strategy, then he shall implement the following best management practices within four years following the effective date of this Rule.~~

~~(a) A forested riparian area, as described in Sub-Item (8)(a)(i) (ii) of this Rule, is required on all sides of surface waters in the Neuse River Basin (intermittent streams, perennial streams, lakes, ponds and estuaries) as indicated on the most recent versions of U.S.G.S. 1:24,000 scale (7.5 minute quadrangle) topographic maps or other site-specific evidence. Design and installation of the forested riparian area shall be such that, to the maximum extent possible, sheet flow of surface water is achieved. Any activities that would result in water quality standard violations or disrupt the structural or functional integrity of the forested riparian area are prohibited. The protected riparian area shall have two zones as follows:~~

~~(i) Zone 1 shall be undisturbed forest. Zone 1 begins at the top of bank for intermittent streams and perennial streams without tributaries and extends landward a distance of 30 feet on each side of the waterbody, measured horizontally on a line~~

~~Commented [A15]:~~ Change: Removed outdated individual standard BMP option to reflect current implementation status of collective compliance.

Effect: No practical impact.

perpendicular to the waterbody. For all other waterbodies, Zone 1 begins at the top of bank or the mean high water line and extends landward a distance of 30 feet, measured horizontally on a line perpendicular to the waterbody. Forest vegetation of any width that exists in Zone 1 as of July 22, 1997 must be preserved and maintained in accordance with Sub-Items (8)(a)(i)(A) (E) of this Rule. The application of fertilizer in Zone 1 is prohibited. The following practices and activities are allowed in Zone 1:

(A) Natural regeneration of forest vegetation and planting vegetation to enhance the riparian area if disturbance is minimized, provided that any plantings shall primarily consist of locally native trees and shrubs;

(B) Selective cutting of individual trees of high value in the outer 20 feet of Zone 1, provided that the basal area of this outer 20 foot wide area remains at or above 75 square feet per acre and is computed according to the following method. Basal area of this outer 20 foot wide area shall be computed every 100 feet along the stream to ensure even distribution of forest vegetation and shall be based on all trees measured at 4.5 feet from ground level. No tracked or wheeled equipment is allowed in Zone 1 except at stream crossings which are designed, constructed and maintained in accordance with Forest Practice Guidelines Related to Water Quality (15A NCAC 1J .0201 - .0209);

(C) Horticulture or silvicultural practices to maintain the health of individual trees;

(D) Removal of individual trees which are in danger of causing damage to dwellings, other structures, or the stream channel; and

(E) Removal of dead trees and other timber cutting techniques necessary to prevent extensive pest or disease infestation if recommended by the Director, Division of Forest Resources and approved by the Director, Division of Water Quality.

(ii) Zone 2: begins at the outer edge of Zone 1 and extends landward a minimum of 20 feet as measured horizontally on a line perpendicular to the waterbody. The combined minimum width of Zones 1 and 2 shall be 50 feet on all sides of the waterbody. Vegetation in Zone 2 shall consist of a dense ground cover composed of herbaceous or woody species which provides for diffusion and infiltration of runoff and filtering of pollutants. The following practices and activities are allowed in Zone 2 in addition to those allowed in Zone 1: Periodic mowing and removal of plant products such as timber, nuts, and fruit is allowed on a periodic basis provided

the intended purpose of the riparian area is not compromised by harvesting, disturbance, or loss of forest or herbaceous ground cover. Forest vegetation in Zone 2 may be managed to minimize shading on adjacent land outside the riparian area if the water quality function of the riparian area is not compromised.

(iii) The following practices and activities are not allowed in Zone 1 and Zone 2:

(A) Land disturbing activities and placement of fill and other materials, other than those allowed in Items (8)(a)(i) and (8)(b) of this Rule;

(B) New development;

(C) New on-site sanitary sewage systems which use ground absorptions;

(D) Any activity that threatens the health and function of the vegetation including, but not limited to, application of fertilizer or chemicals in amounts exceeding the manufacturer's recommended rate, uncontrolled sediment sources on adjacent lands, and the creation of any areas with bare soil.

(iv) Timber removal and skidding of trees in the riparian area shall be directed away from the water course or water body. Skidding shall be done in a manner to prevent creation of ephemeral channels perpendicular to the water body. Any tree removal must be performed in a manner that does not compromise the intended purpose of the riparian area and is in accordance with the Forest Practices Guidelines Related to Water Quality (15A NCAC 1J .0201 .0209).

(b) The following waterbodies and land uses are exempt from the riparian area requirement:

(i) Ditches and manmade conveyances, other than modified natural streams, which under normal conditions do not receive drainage waters from any tributary ditches, canals, or streams, unless the ditch or manmade conveyance delivers runoff directly to waters classified in accordance with 15A NCAC 2B .0100;

(ii) Ditches and manmade conveyances other than modified natural streams which are used exclusively for drainage of silvicultural land or naturally forested areas. All forest harvesting operations shall be in compliance with North Carolina's Forest Practices Guidelines Related to Water Quality;

(iii) Areas mapped as perennial streams, intermittent streams, lakes, ponds or estuaries on the most recent versions of United States Geological Survey 1:24,000 scale (7.5 minute quadrangle) topographic maps where no perennial, intermittent waterbody, or lakes, ponds or estuaries exists on the ground;

(iv) Ponds and lakes created for animal watering, irrigation, or other agricultural uses that are not part of a natural drainage way that is classified in accordance with 15A NCAC 2B .0100;

(v) Water dependent structures as defined in 15A NCAC 2B .0202 provided that they are located, designed, constructed and maintained to provide maximum nutrient removal, to have the least adverse effects on aquatic life habitat and to protect water quality;

(vi) The following uses may be allowed where no practical alternative exists. A lack of practical alternatives may be shown by demonstrating that, considering the potential for a reduction in size, configuration or density of the proposed activity and all alternative designs, the basic project purpose cannot be practically accomplished in a manner which would avoid or result in less adverse impact to surface waters. Also, these structures shall be located, designed, constructed, and maintained to have minimal disturbance, to provide maximum nutrient removal and erosion protection, to have the least adverse effects on aquatic life and habitat, and to protect water quality to the maximum extent practical through the use of best management practices:

(A) Road crossings, railroad crossings, bridges, airport facilities, and utility crossings may be allowed if conditions specified in Sub-Item (8)(b)(vi) of this Rule are met;

(B) Stormwater management facilities and ponds, and utility construction and maintenance corridors for utilities such as water, sewer or gas, may be allowed in Zone 2 of the riparian area as long as the conditions specified in Sub-Item (8)(b)(vi) of this Rule are met and they are located at least 30 feet from the top of bank or mean high water line. Additional requirements for utility construction and maintenance corridors are listed in Sub-Item (8)(b)(vi) of this Rule.

(vii) A corridor for the construction and maintenance of utility lines, such as water, sewer or gas, (including access roads and stockpiling of materials) may run parallel to the stream and may be located within Zone 2 of the riparian area, as long as no practical alternative exists and they are located at least 30 feet from the top of bank or mean high water line and best management practices are installed to minimize runoff and maximize water quality protection to the maximum extent practicable. Permanent, maintained access corridors shall be restricted to the minimum width practicable and shall not exceed 10 feet in width except at manhole locations. A 10 feet by 10 feet perpendicular vehicle turnaround is allowed provided they are spaced at least 500 feet apart along the riparian area;

(viii) Stream restoration projects, scientific studies, stream gauging, water wells, passive recreation facilities such as boardwalks, trails, pathways, historic preservation and

archaeological activities are allowed; provided that they are located in Zone 2 and are at least 30 feet from the top of bank or mean high water line and are designed, constructed and maintained to provide the maximum nutrient removal and erosion protection, to have the least adverse effects on aquatic life and habitat, and to protect water quality to maximum extent practical through the use of best management practices. Activities that must cross the stream or be located within Zone 1 are allowed as long as all other requirements of this Item are met;

(ix) Stream crossings associated with timber harvesting are allowed if performed in accordance with the Forest Practices Guidelines Related to Water Quality (15A NCAC 1J.0201 .0209); and

(x) In addition to exceptions included in Sub-Item (8)(b)(i) (ix), canals, ditches, and other drainage conveyances are exempt from the riparian area requirement if both water control structures with a water control structure management plan and a nutrient management plan, are implemented on the adjacent agricultural land according to the standards and specifications of the USDA – Natural Resources Conservation Service or the standards and specifications adopted by the NC Soil and Water Conservation Commission. The water control structures and nutrient management practices must provide equivalent protection and directly affect the land and waterbodies draining into the waterbody exempted from the riparian area requirement. To the maximum extent practical, water control structures shall be managed to maximize nitrogen removal throughout the year. A technical specialist designated pursuant to rules adopted by the Soil and Water Conservation Commission must provide written approval that the nutrient management and water management plans meet the standards and specifications of the USDA – Natural Resources Conservation Service or the standards and specifications adopted by the NC Soil and Water Conservation Commission. If the nutrient management plans and water management plans are not implemented, then a riparian area pursuant to this Section is required.

(c) The following are modifications to the riparian area requirements.

(i) On agricultural land where either water control structures with a water control structure management plan, or a nutrient management plan is implemented according to the standards and specifications of the USDA – Natural Resources Conservation Service or the standards and specifications adopted by the NC Soil and Water Conservation Commission, then a 20 ft forested or a 30 ft vegetated buffer is required. The water control structures or nutrient management practices must provide equivalent protection and directly affect the land and waterbodies

draining into the waterbody with a modified buffer requirement. To the maximum extent practical, water control structures shall be managed to maximize nitrogen removal throughout the year. A technical specialist designated pursuant to rules adopted by the Soil and Water Conservation Commission must provide written approval that the nutrient management plan meets the standards and specifications of the USDA – Natural Resources Conservation Service or the standards and specifications adopted by the NC Soil and Water Conservation Commission.

(ii) A vegetated riparian area may be substituted for an equivalent width of forested riparian area within 100 feet of tile drainage.

(iii) Where the riparian area requirements would result in an unavoidable loss of tobacco allotments [(7 CFR 723.220(c)] and the BMPs of controlled drainage or nutrient management are not in place, forest cover is required only in the first 20 feet of the riparian area.

(d) Maintenance of Zones 1 and 2 is required in accordance with this Rule.

(i) Sheet flow must be maintained to the maximum extent practical through dispersing concentrated flow and re-establishment of vegetation to maintain the effectiveness of the riparian area.

(ii) Concentrated runoff from new ditches or manmade conveyances must be dispersed into sheetflow before the runoff enters Zone 2 of the riparian area. Existing ditches and manmade conveyances, as specified in Sub-Item (8)(b)(ii) of this Rule, are exempt from this requirement; however, care shall be taken to minimize pollutant loading through these existing ditches and manmade conveyances from fertilizer application or erosion.

(iii) Periodic corrective action to restore sheet flow shall be taken by the landowner if necessary to impede the formation of erosion gullies which allow concentrated flow to bypass treatment in the riparian area.

(e) Periodic maintenance of modified natural streams such as canals is allowed provided that disturbance is minimized and the structure and function of the riparian area is not compromised. A grassed travelway is allowed on one side of the waterbody when alternative forms of maintenance access are not practical. The width and specifications of the travelway shall be only that needed for equipment access and operation. The travelway shall be located to maximize stream shading.

(f) Where the standards and management requirements for riparian areas are in conflict with other laws, regulations, and permits regarding streams, steep slopes, erodible soils, wetlands, floodplains, forest harvesting, surface mining, land disturbance activities, development in

~~Coastal Area Management Act Areas of Environmental Concern, or other environmental protection areas, the more protective shall apply.~~

~~(g) The Environmental Management Commission acknowledges that best management practices under the standard management practice option of this Rule do not fully address nitrogen loading, including atmospheric emissions and deposition, from animal operations. As information becomes available on nitrogen loadings from animal operations and best management practices to control these loadings, other best management practices from animal operations may be required by the Commission as necessary to achieve equivalent reduction in nitrogen loadings therefrom. These additional best management practices shall be required if deemed necessary to achieve a net total nitrogen loading reduction from the animal operations based on average 1991-1995 conditions.~~

History Note: *Authority G.S. 143-214.1; 143-214.7; 143-215.3(a)(1);*
Eff. August 1, 1998.
Amended Eff. [New Date].

~~Commented [A16]:~~ Change: Removed unnecessary language for unused standard BMP option since producers in the watershed have chosen to comply with the rule requirements using the collective compliance approach.

Effect: No Impact

15A NCAC 02B .0239 is proposed for repeal as follows:

15A NCAC 02B .0239 NEUSE RIVER BASIN: NUTRIENT SENSITIVE WATERS MANAGEMENT STRATEGY: NUTRIENT MANAGEMENT

History Note: *Authority G.S. 143-214.1; 143-214.7; 143-215.3(a)(1);*
Eff. August 1, 1998.
Repealed Eff. [New Date]

Commented [A1]: Change: Rule to be repealed.

Effect: Removed both an unenforceable requirement (all fertilization according to approved plans) and already completed requirement (Extension training).

15A NCAC 02B .0241 is proposed for repeal as follows:

Commented [HK1]: moved to Rule .0715

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

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

~~(b) PROCEDURES FOR GRANTING AND RESCINDING DELEGATION. The Commission shall grant and rescind local government delegation of the Neuse River Basin Riparian Buffer Protection requirements according to the following procedures.~~

~~(1) Local governments within the Neuse River Basin may submit a written request to the Commission for authority to implement and enforce the State's riparian buffer protection requirements within their jurisdiction. The written request shall be accompanied by information that shows:~~

~~(A) The local government has land use jurisdiction for the riparian buffer demonstrated by delineating the local land use jurisdictional boundary on USGS 1:24,000 topographical map(s) or other finer scale map(s);~~

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

~~(C) The local government has adopted ordinances, resolutions, or regulations necessary to establish and maintain the State's riparian buffer protection requirements; and~~

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

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

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

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

~~(c) APPOINTMENT OF A RIPARIAN BUFFER PROTECTION ADMINISTRATOR. Upon receiving delegation, local governments shall appoint a Riparian Buffer Protection Administrator who shall coordinate the implementation and enforcement of the program. The Administrator shall attend an initial training session by the Division and subsequent annual training sessions. The Administrator shall ensure that local government staffs working directly with the program receive training to understand, implement and enforce the program.~~

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

~~(e) VARIANCES. After receiving delegation, local governments shall review variance requests, provide approvals for minor variance requests and make recommendations to the Commission for major variance requests pursuant to the State's riparian buffer protection program.~~

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

- ~~(1) Activities conducted under the authority of the State;~~
- ~~(2) Activities conducted under the authority of the United States;~~
- ~~(3) Activities conducted under the authority of multiple jurisdictions; and~~
- ~~(4) Activities conducted under the authority of local units of government.~~

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

- ~~(1) A copy of variance requests;~~
- ~~(2) The variance request's finding of fact;~~
- ~~(3) The result of the variance proceedings;~~
- ~~(4) A record of complaints and action taken as a result of the complaint;~~
- ~~(5) Records for stream origin calls and stream ratings; and~~
- ~~(6) Copies of request for authorization, records approving authorization and Authorization Certificates.~~

History Note: *Authority 143-214.1; 143-214.7; 143-215.3(a)(1); S.L. 1998 c. 221; Eff. August 1, 2000.*

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[.0248 is proposed for amendment and transfer to 15A NCAC 02B .0720]
Last Revised August 18, 2017

15A NCAC 02B .0248 is proposed for amendment as follows:

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

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

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

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

~~(1) Rule .0249 of this Section for Wastewater Discharges,~~

~~(2) Rule .0250 of this Section for Protection and Maintenance of Riparian Areas, and~~

~~(3) Rule .0251 of this Section for Urban Stormwater Management.~~

(1) Rule .0721 of this Section for Urban Stormwater Management.

(2) Rule .0722 of this Section for Wastewater Discharges, and

(3) Rule .0723 of this Section for Protection and Maintenance of Riparian Areas

~~(b)~~(d) PENALTIES. Failure to meet the requirements of the Rules in this Section may result in the 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; 143-214.5; 143-215.3(a)(1); 143-215.6A; 143-215.6B; 143-215.6C;
Eff. April 1, 1999;
Amended Eff. May 1, 2010;
Amended Eff. [New Date]

Commented [HJ1]: Change: Added purpose statement to provide clarity to purpose of the nutrient management strategy

Effect: No Impact

Commented [HJ2]: Change: Added Scope & Limitation Language explaining what sources are addressed under the rules and the Commissions ability to undertake additional rulemaking.

Effect: No impact on implementation.
Consistency across watersheds and improved clarity.

Commented [HJ3]: Change: Provides updated Rule References to point to new .0700 Rule numbers

Effect: No Impact

Commented [HJ4]: Change: Added title to paragraph

Effect: No Impact

15A NCAC 02B .0250 is proposed for repeal as follows:

Commented [HK1]: moved to RuUle .0705, .0706 and .0724

15A NCAC 02B .0250 RANDLEMAN LAKE WATER SUPPLY WATERSHED: PROTECTION AND MAINTENANCE OF EXISTING RIPARIAN BUFFERS

Protection of the pollutant removal and other water quality services provided by riparian buffers throughout the watershed is an important element of the overall Randleman water supply pollutant strategy. The following is the management strategy for maintaining and protecting riparian areas in the Randleman Lake watershed:

(1) PURPOSE. The purposes of this Rule shall be for the local governments listed in this Rule, and in certain cases stated in this Rule the Division, to protect and preserve existing riparian buffers throughout the Randleman Lake watershed as generally described in this Rule, in order to maintain their nutrient removal and stream protection functions. Additionally this Rule will help protect the water supply uses of Randleman Lake and of designated water supplies throughout the Randleman Lake water supply watershed. Local governments with jurisdictions in Randleman Lake watershed shall establish programs to meet or exceed the minimum requirements of this Rule. However, the Division shall assume responsibility for applying the requirements of this Rule to activities listed in Item (3) of this Rule. The requirements of this Rule shall supersede all buffer requirements stated in Rules 15A NCAC 02B .0214 through .0216 as applied to WS-II, WS-III, and WS-IV waters in the Randleman Lake watershed. Parties subject to this Rule may choose to implement more stringent rules, including the one hundred foot buffer requirement set out in Sub-item (3)(b)(i) of Rules 15A NCAC 02B .0214 through .0216 for high density developments.

(2) DEFINITIONS. For the purpose of this Rule, these terms shall be defined as follows:

(a) 'Access Trails' means pedestrian trails constructed of pervious or impervious surfaces, and related structures to access a surface water including (but not limited to) boardwalks, steps, rails, signage;

(b) 'Archaeological Activities' means activities conducted by a Registered Professional Archaeologist (RPA);

(c) 'Airport Facilities' means all properties, facilities, buildings, structures, and activities that satisfy or otherwise fall within the scope of one or more of the definition or uses of the words or phrases 'air navigation facility', 'airport', or 'airport protection privileges' under G.S. 63-1; the definition of 'aeronautical facilities' in G.S. 63-79(1); the phrase 'airport facilities' as used in G.S. 159-48(b)(1); the phrase 'aeronautical facilities' as defined in G.S. 159-81 and G.S. 159-97; and the phrase 'airport facilities and improvements' as used in Article V, Section 13, of the North Carolina Constitution. Airport facilities shall include without limitation, any and all of the following: airports, airport maintenance facilities, clear zones, drainage ditches, fields, hangars, landing lighting, airport and airport related offices, parking facilities, related navigational and signal systems, runways, stormwater outfalls, terminals, terminal shops, and all appurtenant areas used or suitable for airport

~~buildings or other airport facilities, and all appurtenant rights-of-way; restricted landing areas; any structures, mechanisms, lights, beacons, marks, communicating systems, or other instrumentalities or devices used or useful as an aid, or constituting an advantage or convenience to the safe taking off, navigation, and landing of aircraft, or the safe and efficient operation or maintenance of an airport or restricted landing area; easements through, or interests in, air space over land or water, interests in airport hazards outside the boundaries of airports or restricted landing areas, and other protection privileges, the acquisition or control of which is necessary to ensure safe approaches to the landing areas of airports and restricted landing areas, and the safe and efficient operation thereof and any combination of any or all of such facilities. Notwithstanding the foregoing, the following shall not be included in the definition of 'airport facilities':~~

~~(i) Satellite parking facilities;~~

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

~~(iii) Other secondary development, such as hotels, industrial facilities, free standing offices and other similar buildings, so long as these facilities are not directly associated with the operation of the airport, and are not operated by a unit of government or special governmental entity such as an airport authority;~~

~~(d) 'Channel' means a natural water carrying trough cut vertically into low areas of the land surface by erosive action of concentrated flowing water or a ditch or canal excavated for the flow of water;~~

~~(e) 'DBH' means diameter at breast height of a tree measured at 4.5 feet above ground surface level;~~

~~(f) Ditch means a man-made, open drainage way in or into which excess surface water or groundwater from land, stormwater runoff, or floodwaters flow either continuously or intermittently;~~

~~(g) 'Ephemeral stream' means a feature that carries stormwater in direct response to precipitation with water flowing only during and shortly after large precipitation events. An ephemeral stream may or may not have a well-defined channel, the aquatic bed is always above the water table, and stormwater runoff is the primary source of water. An ephemeral stream typically lacks the biological, hydrological, and physical characteristics commonly associated with the continuous or intermittent conveyance of water;~~

~~(h) 'Forest plantation' means an area of planted trees that may be conifers (pines) or hardwoods. On a plantation, the intended crop trees are planted rather than naturally regenerated from seed on the site, coppice (sprouting), or seed that is blown or carried into the site;~~

~~(i) 'Greenway / Hiking Trails' means pedestrian trails constructed of pervious and impervious surfaces and related structures including but not limited to boardwalks, steps, rails, and signage, and that generally run parallel to the surface water;~~

~~(j) 'High Value Tree' means a tree that meets or exceeds the following standards: for pine species, 14 inch DBH or greater or 18 inch or greater stump diameter; and, for hardwoods and wetland species, 16 inch DBH or greater or 24 inch or greater stump diameter;~~

~~(k) 'Intermittent stream' means a well-defined channel that contains a continuous flow of water for only part of the year, typically during winter and spring when the aquatic bed is below the 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;~~

~~(l) 'Modified natural stream' means an on-site channelization or relocation of a stream channel and subsequent relocation of the intermittent or perennial flow as evidenced by topographic alterations in the immediate watershed. A modified natural stream must have the typical biological, hydrological, and physical characteristics commonly associated with the continuous conveyance of water;~~

~~(m) 'Perennial stream' means a well-defined channel that contains water year-round during a year of normal rainfall with the aquatic bed located below the water table for most of the year. Groundwater is the primary source of water for a perennial stream, but it also carries stormwater runoff. A perennial stream exhibits the typical biological, hydrological, and physical characteristics commonly associated with the continuous conveyance of water;~~

~~(n) 'Perennial waterbody' means a natural or man-made watershed that stores surface water permanently at depths sufficient to preclude growth of rooted plants, including lakes, ponds, sounds, non-stream estuaries and ocean. For the purpose of the State's riparian buffer protection program, the waterbody must be part of a natural drainage way (i.e., connected by surface flow to a stream);~~

~~(o) 'Shoreline stabilization' is the in-place stabilization of an eroding shoreline. Stabilization techniques which include "soft" methods or natural materials (such as root wads, or rock vanes) may be considered as part of a restoration design. However, stabilization techniques that consist primarily of "hard" engineering, such as concrete lined channels, rip-rap, or gabions, while providing bank stabilization, shall not be considered stream restoration;~~

~~(p) 'Stream restoration' is defined as the process of converting an unstable, altered or degraded stream corridor, including adjacent riparian zone and flood-prone areas to its natural or referenced, stable conditions considering recent and future watershed conditions. This process also includes restoring the geomorphic dimension, pattern, and profile as well as biological and chemical integrity, including transport of water and sediment produced by the stream's watershed in order to achieve dynamic equilibrium. 'Referenced' or 'referenced~~

~~reach' means a stable stream that is in dynamic equilibrium with its valley and contributing watershed. A reference reach can be used to develop natural channel design criteria for stream restoration projects. 'Stream' means a body of concentrated flowing water in a natural low area or natural channel on the land surface;~~

~~(q) 'Stump diameter' means the diameter of a tree measured at six inches above the ground surface level;~~

~~(r) 'Surface waters' means all waters of the state as defined in G.S. 143-212 except underground waters and wetlands;~~

~~(s) 'Temporary road' means a road constructed temporarily for equipment access to build or replace hydraulic conveyance structures such as bridges, culverts or pipes or water dependent structures, or to maintain public traffic during construction; and~~

~~(t) 'Tree' means a woody plant with a DBH equal to or exceeding five inches or a stump diameter exceeding six inches.~~

~~(3) APPLICABILITY. This Rule shall apply to all local governments with jurisdictions in the Randleman Lake watershed. Local governments shall develop riparian buffer protection programs for approval by the Division incorporating the minimum standards set out throughout this Rule and shall apply the requirements of this Rule throughout their jurisdictions within the Randleman watershed except where the Division shall exercise jurisdiction. For the following types of buffer activities in the Randleman watershed, wherever local governments are referenced in this Rule, the Division shall implement applicable requirements to the exclusion of local governments:~~

~~(a) Activities conducted under authority of the State;~~

~~(b) Activities conducted under the authority of the United States;~~

~~(c) Activities conducted under the authority of multiple jurisdictions;~~

~~(d) Activities conducted under the authority of local units of government;~~

~~(e) Forest harvesting activities described in Item 16 of this Rule; and~~

~~(f) Agricultural activities.~~

~~(4) REQUIREMENTS. The following minimum criteria shall be used for identifying regulated buffers. All local governments subject to this Rule shall develop riparian buffer protection programs and ordinances for approval by the Commission, incorporating the minimum standards contained in Rule. This Rule shall apply to 50 foot wide riparian buffers directly adjacent to surface waters in the Randleman watershed (intermittent and perennial streams, lakes, reservoirs, and ponds) excluding wetlands. Wetlands adjacent to surface waters or within 50 feet of surface waters, shall be considered as part of the riparian buffer but are regulated pursuant to 15A NCAC 02H. 0506.~~

~~(a) Surface waters shall be subject to this Rule if the feature is approximately shown on any of the following references, or if there is other site specific evidence that indicates to the Division or local government the presence of waters not shown on any of these maps:~~

(i) The most recent version of the United States Geological Survey 1:24,000 scale (7.5 minute quadrangle) topographic maps;

(ii) The most recent version of the hardcopy soil survey maps developed by USDA-Natural Resource Conservation Service; or

(iii) A map approved by the Geographic Information Coordinating Council and by the Commission. Prior to approving a map under this sub-division the Commission shall provide a 30-day public notice and opportunity for comment;

(b) Where the specific origination point of an intermittent or perennial stream is in question, parties subject to this Rule shall use the Division publication, *Identification Methods for the Origins of Intermittent and Perennial Streams, v 3.1 February 28, 2005* available at: http://portal.ncdenr.org/web/wq/swp/ws/401/waterresources/streamdeterminations to establish that point;

(c) Local governments may develop stream network maps for the watershed based on maps referenced in Sub-Item (4)(a) of this Rule or criteria identified in Sub-Item (4)(b) and of this Rule. These maps shall be submitted to the Director for review to establish that proper methods were used by any local government wishing to use such maps for implementation of riparian area protection. The local map must be at least as accurate as the map identified in Sub-Items (4)(a)(i) and (4)(a)(ii) and must use the stream identification manual as referenced in Item (4)(b) of this Rule. Riparian areas shall be protected and maintained in accordance with this Rule on all sides of surface waters in the Randleman Lake watershed as delineated on these approved stream network maps;

(d) Personnel from delegated local governments that are assigned to perform stream determinations, shall successfully complete the Division's Surface Water Identification Training and Certification Class within three years of the effective revision date of this Rule. A delegated local government shall retain personnel on staff who have successfully completed the Division's class at all times with the exception of staff vacancies and class scheduling problems. At any time that a local government does not have a certified individual retained on staff they shall notify the Division and indicate a proposed schedule to secure a certified staff member;

(e) All local governments that have land use authority within the Randleman Lake water supply watershed shall adopt and enforce this Rule through local water supply and other local ordinances. Ordinances shall require that all riparian protection areas are recorded on new or modified plats. No new clearing, grading, or development shall take place and no new building permits shall be issued in violation of this Rule; and

(f) Parties subject to this Rule shall abide by all State rules and laws regarding waters of the state including Rules 15A NCAC 02H .0500, 15A NCAC 02H .1300, and Sections 401 and 404 of the Federal Clean Water Act.

(5) EXEMPTION REQUIREMENTS TO WHEN AN ON-SITE DETERMINATION SHOWS THAT SURFACE WATERS ARE NOT PRESENT. When a landowner or other affected party believes that the maps have inaccurately depicted surface waters, he or she shall consult the delegated local authority. Upon request, the delegated local authority shall make on-site determinations. Local governments may also accept the results of site assessments made by other parties who have successfully completed the Division's Surface Water Identification Training Certification course and are sanctioned by the Division to make such determinations. Any disputes over on-site determinations shall be referred to the local Board of Adjustment or other local appeals process in writing. For projects proposed for state and federal lands, any disputes shall be referred to the Director in writing. A determination of the Director as to the accuracy or application of the maps is subject to review as provided in Articles 3 and 4 of G.S. 150B. Surface waters that appear on the maps shall not be subject to this Rule if an on-site determination shows that they fall into one of the following categories:

(a) Ditches and manmade conveyances, to include manmade stormwater conveyances, other than modified natural streams, unless the ditch or manmade conveyance delivers untreated stormwater runoff from an adjacent source directly to an intermittent or perennial stream;

(b) Areas mapped as intermittent streams, perennial streams, lakes, ponds, or estuaries on the most recent versions of United States Geological Survey 1:24,000 scale (7.5 minute quadrangle) topographic maps, hard-copy soil survey maps or other EMC approved stream maps where no perennial waterbody, intermittent waterbody, lake, pond or estuary actually exists on the ground;

(c) Ephemeral streams; and

(d) Ponds and lakes created for animal watering, irrigation, or other agricultural uses that are not part of a natural drainage way that is classified in accordance with 15A NCAC 02B .0100. Ponds are part of a natural drainage way when they are hydrologically connected (i.e. the pond is fed by an intermittent or perennial stream) or when they have a direct discharge point to an intermittent or perennial stream.

(6) EXEMPTION TO REQUIREMENTS WHEN EXISTING USES ARE PRESENT AND ONGOING. This Rule shall not apply to portions of the riparian buffer where a use is existing and ongoing according to the following:

(a) A use shall be considered existing and ongoing if it was present within the riparian buffer as of the effective date of the local ordinance or local ordinances enforcing this Rule and has continued to exist since that time. For state and federal entities, a use shall be considered existing and ongoing if it was present within the riparian buffer as of the effective date of this Rule and has continued to exist since that time. Existing uses shall include, but not limited to, agriculture, buildings, industrial facilities, commercial areas, transportation facilities, maintained lawns, utility lines and on-site sanitary sewage systems

any of which involve either specific, periodic management of vegetation or displacement of vegetation by structures or regular activity. Only the portion of the riparian buffer that contains the footprint of the existing use is exempt from this Rule. Change of ownership through purchase or inheritance is not a change of use. Activities necessary to maintain uses are allowed provided that the site remains similarly vegetated, no impervious surface is added within 50 feet of the surface water where it did not previously exist as of the effective date of the local ordinance or local ordinances enforcing this Rule, and existing diffuse flow is maintained. Grading and revegetating Zone 2 is allowed provided that the health of the vegetation in Zone 1 is not compromised, the ground is stabilized and existing diffuse flow is maintained;

(b) A use shall be considered existing if projects or proposed development are determined by the local government, or the Director for the cases involving state or federal entities, to meet at least one of the following criteria:

(i) Project requires a 401 Certification/404 permit and these were issued prior to the effective date of the local program enforcing this Rule, and prior to the effective date of this Rule for Division-administered activities listed in Item (3) of this Rule;

(ii) Projects that require a state permit, such as landfills, NPDES wastewater discharges, land application of residuals and road construction activities, have begun construction or are under contract to begin construction and had received all required state permits and certifications prior to the effective date of the local program implementing this Rule, and prior to the effective date of this Rule for Division-administered activities listed in Item (3) of this Rule;

(iii) Projects that are being reviewed through the Clean Water Act Section 404/National Environmental Policy Act Merger 01 Process (published by the US Army Corps of Engineers and Federal Highway Administration, 2003) or its immediate successor and that have reached agreement with DENR on avoidance and minimization by the effective date of the local program enforcing this Rule, and prior to the effective date of this Rule for state and federal entities; or

(iv) Projects that are not required to be reviewed by the Clean Water Act Section 404/National Environmental Policy Act Merger 01 Process (published by the US Army Corps of Engineers and Federal Highway Administration, 2003) or its immediate successor if a Finding of No Significant Impact has been issued for the project and the project has the written approval of the local government prior to the effective date of the local program enforcing this Rule, or the written approval of the Division prior to the effective date of this Rule for state and federal entities: and

(c) This Rule shall apply at the time an existing use is changed to another use. Change of use shall include, but not limited to the initiation of any activity not defined as existing and ongoing in either Sub-Item (6)(a) or (6)(b) of this Rule.

(7) ZONES OF THE RIPARIAN BUFFER. The protected riparian buffer shall have two zones as follows:

(a) Zone 1 shall consist of a vegetated area that is undisturbed except for uses provided for in Item (9) of this Rule. The location of Zone 1 shall be as follows:

(i) For intermittent and perennial streams, Zone 1 shall begin at the most landward limit of the top of the bank or the rooted herbaceous vegetation and extend landward a distance of 30 feet on all sides of the surface water, measured horizontally on a line perpendicular to a vertical line marking the edge of the top of the bank; and

(ii) For ponds, lakes and reservoirs located within a natural drainage way, Zone 1 shall begin at the most landward limit of the normal water level or the rooted herbaceous vegetation and extend landward a distance of 30 feet, measured horizontally on a line perpendicular to a vertical line marking the edge of the surface water or rooted herbaceous vegetation: and

(b) Zone 2 shall consist of a stable, vegetated area that is undisturbed except for uses provided for in Item (9) of this Rule. Grading and revegetating Zone 2 is allowed provided that the health of the vegetation in Zone 1 is not compromised. Zone 2 shall begin at the outer edge of Zone 1 and extend landward 20 feet as measured horizontally on a line perpendicular to the surface water. The combined width of Zones 1 and 2 shall be 50 feet on all sides of the surface water.

(8) DIFFUSE FLOW REQUIREMENT. Diffuse flow of runoff shall be maintained in the riparian buffer by dispersing concentrated flow and reestablishing vegetation.

(a) Concentrated runoff from new ditches or manmade conveyances shall be converted to diffuse flow at non-erosive velocities before the runoff enters Zone 2 of the riparian buffer;

(b) Periodic corrective action to restore diffuse flow shall be taken if necessary to impede the formation of erosion gullies; and

(c) No new stormwater conveyances are allowed through the buffers except for those specified in Item (9) of this Rule addressing stormwater management ponds drainage ditches, roadside ditches, and stormwater conveyances.

(9) TABLE OF USES. The following chart sets out the uses and their designation under this Rule as exempt, potentially allowable, or potentially allowable with mitigation. All uses not designated as exempt, potentially allowable, or potentially allowable with mitigation are considered prohibited and may not proceed within the riparian buffer unless a variance is granted pursuant to Item (12) of this Rule. The requirements for each category are given in Item (10) of this Rule.

Use	Exempt	Potentially Allowable	Potentially Allowable with Mitigation
Access trails: Pedestrian access trails leading to the surface water, docks, fishing piers, boat ramps and other water dependent activities: • Pedestrian access trails that are restricted to the minimum width practicable and do not exceed 4 feet in width of buffer disturbance, and provided that installation and use does not result in removal of trees as defined in this Rule and no impervious surface is added to the riparian buffer • Pedestrian access trails that exceed 4 feet in width of buffer disturbance, the installation or use results in removal of trees as defined in this Rule or impervious surface is added to the riparian buffer	X	X	
Airport facilities: • Airport facilities that impact equal to or less than 150 linear feet or one-third of an acre of riparian buffer • Airport facilities that impact greater than 150 linear feet or one-third of an acre of riparian buffer • Activities necessary to comply with FAA requirements (e.g. radar uses or landing strips)[1]		X X	X
Archaeological activities: • In Zones 1 and 2 and are designed, constructed and maintained to provide the maximum sediment removal and erosion protection, to have the least adverse effects on aquatic life and habitat, and to protect water quality to the maximum extent practical.	X		
Bridges		X	
Canoe access provided that installation and use does not result in removal of trees as defined in the Rule and no impervious surface is added to the buffer.	X		
Dam maintenance activities: • Dam maintenance activities that do not cause additional buffer disturbance beyond the footprint of the existing dam or those covered under a U.S. Army Corps of Engineers Nationwide Permit • Dam maintenance activities that do cause additional buffer disturbance beyond the footprint of the existing dam or those not covered under a U.S. Army Corps of Engineers Nationwide Permit	X	X	
Drainage ditches, roadside ditches and stormwater conveyances through riparian buffers: • New stormwater flows to existing drainage ditches, roadside ditches, and stormwater conveyances provided flows do not alter or result in the need to	X		

Use	Exempt	Potentially Allowable	Potentially Allowable with Mitigation
alter the conveyance and are managed to minimize the sediment, nutrients and other pollution that convey to waterbodies • Realignment of existing roadside drainage ditches retaining the design dimensions, provided that no additional travel lanes are added and the minimum required roadway typical section is used based on traffic and safety considerations • New or altered drainage ditches, roadside ditches and stormwater outfalls provided that a stormwater management facility is installed to control nitrogen and attenuate flow before the conveyance discharges through the riparian buffer • New drainage ditches, roadside ditches and stormwater conveyances applicable to linear projects that do not provide a stormwater management facility due to topography constraints provided that other practicable BMPs are employed		X X	X
Drainage of a pond in a natural drainage way provided that a new riparian buffer that meets the requirements of Items (7) and (8) of this Rule is established adjacent to the new channel.	X		
Driveway crossings of streams and other surface waters subject to this Rule: • Driveway crossings on single family residential lots that disturb equal to or less than 25 linear feet or 2,500 square feet of riparian buffer • Driveway crossings on single family residential lots that disturb greater than 25linear feet or 2,500 square feet of riparian buffer • In a subdivision that cumulatively disturb equal to or less than 150 linear feet or one third of an acre of riparian buffer • In a subdivision that cumulatively disturb greater than 150 linear feet or one third of an acre of riparian buffer	X	X X	X
Driveway impacts other than crossing of a stream or other surface waters subject to this Rule			X
Fences: • Fences provided that disturbance is minimized and installation does not result in removal of trees as defined in this Rule • Fences provided that disturbance is minimized and installation results in removal of trees as defined in this Rule	X	X	
Forest harvesting - see Item (16) of this Rule			

Use	Exempt	Potentially Allowable	Potentially Allowable with Mitigation
Fertilizer Application: One-time fertilizer application to establish vegetation	X		
Grading and revegetation in Zone 2 provided that diffuse flow and the health of existing vegetation in Zone 1 is not compromised and disturbed areas are revegetated with native vegetation	X		
Greenway / hiking trails: Designed, constructed and maintained to provide the maximum nutrient removal and erosion protection, to have the least adverse effects on aquatic life and habitat, and to protect water quality to the maximum extent practical.		X	
Historic preservation: Designed, constructed and maintained to provide the maximum nutrient removal and erosion protection, to have the least adverse effects on aquatic life and habitat, and to protect water quality to the maximum extent practical	X		
Maintenance access of modified natural streams: a grassed travel way on one side of the water body when less impacting alternatives are not practical. The width and specifications of the travel way shall be only that needed for equipment access and operation. The travel way shall be located to maximize stream shading.		X	
Mining activities: • Mining activities that are covered by the Mining Act provided that new riparian buffers that meet the requirements of Items (7) and (8) of this Rule are established adjacent to the relocated channels • Mining activities that are not covered by the Mining Act or where new riparian buffers that meet the requirements or Items (7) and (8) of this Rule are not established adjacent to the relocated channels • Wastewater or mining dewatering wells with approved NPDES permit	X	X	X
Playground equipment:	X		

Use	Exempt	Potentially Allowable	Potentially Allowable with Mitigation
• Playground equipment on single family lots provided that installation and use does not result in removal of vegetation • Playground equipment installed on lands other than single family lots or that requires removal of vegetation		X	
Ponds in natural drainage ways, excluding dry ponds: • New ponds provided that a riparian buffer that meets the requirements of Items (7) & (8) of this Rule is established adjacent to the pond • New ponds where a riparian buffer that meets the requirements of Items (7) & (8) of this Rule is NOT established adjacent to the pond		X	X
Protection of existing structures, facilities and stream banks when this requires additional disturbance of the riparian buffer or the stream channel		X	
Railroad impacts other than crossings of streams and other surface waters subject to this Rule.			X
Railroad crossings of streams and other surface waters subject to this Rule: • Railroad crossings that impact equal to or less than 40 linear feet of riparian buffer • Railroad crossings that impact greater than 40 linear feet but equal to or less than 150 linear feet or one-third of an acre of riparian buffer • Railroad crossings that impact greater than 150 linear feet or one-third of an acre of riparian buffer	X	X	X
Recreational and accessory structures: • Total footprint of gazebos and sheds in Zone 2, provided they are not prohibited under local water supply ordinance less than or equal to 150 square feet per lot • Total footprint gazebos and sheds in Zone 2, provided they are not prohibited under local water supply ordinance of more than 150 square feet per lot • Wooden slatted decks (and associated steps) that are at least 8 feet in height and vegetation is not removed from Zone 1 for the installation and that it meets the requirements of Items (7) and (8) of this Rule • Wooden slatted decks (and associated steps) that are not at least 8 feet in height or vegetation is removed from Zone 1 for the installation and that it meets the requirements of Items (7) and (8) of this Rule		X X	X X

Use	Exempt	Potentially Allowable	Potentially Allowable with Mitigation
Removal of previous fill or debris provided that diffuse flow is maintained and vegetation is restored	X		
Road crossings of streams and other surface waters subject to this Rule: • Road crossings that impact equal to or less than 40 linear feet of riparian buffer • Road crossings that impact greater than 40 linear feet but equal to or less than 150 linear feet or one-third of an acre of riparian buffer • Road crossings that impact greater than 150 linear feet or one-third of an acre of riparian buffer	X	X	X
Road impacts other than crossings of streams and other surface waters subject to this Rule			X
Road relocation of existing private access roads associated with public road projects where necessary for public safety: • Less than or equal to 2,500 square feet of buffer impact • Greater than 2,500 square feet of buffer impact		X	X
Stormwater BMPs: • Wet detention, bioretention, and constructed wetlands in Zone 2 if diffuse flow of discharge is provided into Zone 1 • Wet detention, bioretention, and constructed wetlands in Zone 1		X	X
Scientific studies and stream gauging: • In Zones 1 and 2 if they are designed, constructed and maintained to protect water quality to the maximum extent practical.	X		
Streambank or shoreline stabilization		X	
Temporary roads provided that the disturbed area is restored to pre-construction topographic and hydrologic conditions immediately after construction is complete and replanted immediately with comparable vegetation, except that the tree planting may occur during the dormant season. A one-time application of fertilizer may be utilized to establish vegetation. At the end of five years the restored buffer shall comply with the restoration criteria in Item (9) of Rule 15A NCAC 02B .0252:	X	X X	

Use	Exempt	Potentially Allowable	Potentially Allowable with Mitigation
• Less than or equal to 2,500 square feet of buffer disturbance • Greater than 2,500 square feet of buffer disturbance • Associated with culvert installation, bridge construction or replacement			
Temporary sediment and erosion control devices provided that the disturbed area is restored to pre-construction topographic and hydrologic conditions immediately after construction is complete and replanted immediately with comparable vegetation, except that tree planting may occur during the dormant season. A one-time application of fertilizer may be used to establish vegetation. At the end of five years the restored buffer shall comply with the restoration criteria in Item (9) of Rule 15A NCAC 02B .0252: • In Zone 2 only provided ground cover is established within the timeframes required by the Sedimentation and Erosion Control Act and that the vegetation in Zone 1 is not compromised and that discharge is released as diffuse flow in accordance with Item (8) of this Rule • In Zones 1 and 2 to control impacts associated with uses approved by the local government or that have received a variance provided that sediment and erosion control for upland areas is addressed to the maximum extent practical outside the buffer • In-stream temporary erosion and sediment control measures for work within a stream channel that is authorized under Section 401 and 404 of the Federal Water Pollution Control Act • In-stream temporary erosion and sediment control measures for authorized work within a stream channel	X X	X X	
Utility. Non-electric utility lines: • Impacts other than perpendicular crossings in Zone 2 only[4,5] • Impacts other than perpendicular crossings in Zone 1 only[4,5]		X	X
Utility. Non-electric utility line perpendicular crossings of streams and other surface waters subject to this Rule[4,5].	X		

Use	Exempt	Potentially Allowable	Potentially Allowable with Mitigation
• Perpendicular crossings that disturb equal to or less than 40 linear feet of riparian buffer with a maintenance corridor equal to or less than 10 feet in width • Perpendicular crossings that disturb equal to or less than 40 linear feet of riparian buffer with a maintenance corridor greater than 10 feet in width • Perpendicular crossings that disturb greater than 40 linear feet but equal to or less than 150 linear feet of riparian buffer with a maintenance corridor equal to or less than 10 feet in width • Perpendicular crossings that disturb greater than 40 linear feet but equal to or less than 150 linear feet of riparian buffer with a maintenance corridor greater than 10 feet in width • Perpendicular crossings that disturb greater than 150 linear feet of riparian buffer		X X	 X X
Utility Overhead electric utility lines: • Impacts other than perpendicular crossings in Zone 2 only[4, 5] • Impacts other than perpendicular crossings in Zone 1[2,3,4, 5]		X	X
Utility Overhead electric utility line perpendicular crossings of streams and other surface waters subject to this Rule[2, 3,4, 5]: • Perpendicular crossings that disturb equal to or less than 150 linear feet of riparian buffer • Perpendicular crossings that disturb greater than 150 linear feet of riparian buffer	X	X	
Utility Underground electric utility lines: • Impacts other than perpendicular crossings in Zone 2 only[2] • Impacts other than perpendicular crossings in Zone 1[1,4]	X X		
Utility Underground electric utility line perpendicular crossings of streams and other surface waters subject to this Rule: • Perpendicular crossings that disturb less than or equal to 40 linear feet of riparian buffer[3, 4, 5]	X	X	

Use	Exempt	Potentially Allowable	Potentially Allowable with Mitigation
• Perpendicular crossings that disturb greater than 40 linear feet of riparian buffer[3, 4, 5]			
Vegetation management: • Emergency fire control measures provided that topography is restored • Periodic mowing and harvesting of plant products in Zone 2 only • Planting vegetation to enhance the riparian buffer • Pruning forest vegetation provided that the health and function of the forest vegetation is not compromised • Removal of individual trees which are in danger of causing damage to dwellings, other structures or human life • Removal of individual trees that are dead, diseased or damaged. • Removal of poison ivy • Removal of understory nuisance vegetation as defined in: Smith, Cherri L. 1998. Exotic Plant Guidelines. Dept. of Environment and Natural Resources. Division of Parks and Recreation. Raleigh, NC. Guideline #30	X X X X X X X X		
Vehicle access to water dependent structures • Vehicular access roads leading to water dependent structures as defined in 15A NCAC 02B .0202, provided they do not cross the surface water and have a minimum practicable width not exceeding ten feet		X	
Water dependent structures as defined in 15A NCAC 02B .0202		X	
Water supply reservoirs: • New reservoirs provided that a riparian buffer that meets the requirements of Items (7) and (8) of this Rule is established adjacent to the reservoir • New reservoirs where a riparian buffer that meets the requirements of Items (7) and (8) of this Rule is not established adjacent to the reservoir		X	X
Water wells • Single family water wells • All water wells other than single family water wells	X	X	
Wetland stream and buffer restoration	X		

Use	Exempt	Potentially Allowable	Potentially Allowable with Mitigation
• Wetland, stream and buffer restoration that requires DWQ approval for the use of a 401 Water Quality Certification • Wetland, stream and buffer restoration that does NOT require DWQ approval for the use of a 401 Water Quality Certification		X	
Wildlife passage structures		X	

[1] Provided that:

- Heavy equipment is not used in Zone 1
- Vegetation is not compromised in the portions of Zone 1 and Zone 2 that are not impacted
- Trees that are cut down are removed by chain
- No permanent felling of trees occurs in the protected buffers or in the streams
- Stump removal is performed only by grinding
- At the completion of the project the disturbed area is stabilized with native vegetation
- Zones 1 & 2 meet the requirements of (7) and (8) of this Rule.

[2] Provided that, in Zone 1, all of the following BMPs for overhead utility lines are used. If all of these BMPs are not used, then the overhead utility lines shall require a no practical alternative evaluation by the local government, or the Director for the cases involving activities listed in Item (3) of this Rule.

- A minimum zone of 10 feet wide immediately adjacent to the water body shall be managed such that only vegetation that poses a hazard or has the potential to grow tall enough to interfere with the line is removed.
- Woody vegetation shall be cleared by hand. No land grubbing or grading is allowed.
- Vegetative root systems shall be left intact to maintain the integrity of the soil. Stumps shall remain where trees are cut.
- Riprap shall not be used unless it is necessary to stabilize a tower.
- No fertilizer shall be used other than a one-time application to re-establish vegetation.
- Construction activities shall minimize the removal of woody vegetation, the extent of the disturbed area, and the time in which areas remain in a disturbed state.
- Active measures shall be taken after construction and during routine maintenance to ensure diffuse flow of stormwater through the buffer.
- In wetlands, mats shall be utilized to minimize soil disturbance.

[3] Provided that poles or towers shall not be installed within 10 feet of a water body unless the local government or the Director for the cases involving activities listed in Item (3) of this Rule completes a no practical alternative evaluation as defined in Item (11) of this Rule.

[4] Provided that, in Zone 1, all of the following BMPs for underground utility lines are used. If all of these BMPs are not used, then the underground utility line shall require a no practical alternative evaluation by the local government or the Director for the cases involving activities listed in Item (3) of this Rule, as defined in Item (11) of this Rule.

- Woody vegetation shall be cleared by hand. No land grubbing or grading is allowed.
- Vegetative root systems shall be left intact to maintain the integrity of the soil. Stumps shall remain, except in the trench, where trees are cut.
- Underground cables shall be installed by vibratory plow or trenching.
- The trench shall be backfilled with the excavated soil material immediately following cable installation.
- No fertilizer shall be used other than a one-time application to re-establish vegetation.

- Construction activities shall minimize the removal of woody vegetation, the extent of the disturbed area, and the time in which areas remain in a disturbed state.
- Active measures shall be taken after construction and during routine maintenance to ensure diffuse flow of stormwater through the buffer.
- In wetlands, mats shall be utilized to minimize soil disturbance.

[5] Perpendicular crossings are those that intersect the surface water at an angle between 75 degrees and 105 degrees.

(10) REQUIREMENTS FOR CATEGORIES OF USES. Uses designated as exempt, potentially allowable, and potentially allowable with mitigation in Item (9) of this Rule shall have the following requirements:

(a) EXEMPT. Uses designated as exempt are allowed within the riparian buffer. Exempt uses shall be designed, constructed and maintained to minimize soil disturbance and to provide the maximum water quality protection practicable, including construction, monitoring, and maintenance activities. In addition, exempt uses shall meet requirements listed in Item (9) of this Rule for the specific use;

(b) POTENTIALLY ALLOWABLE. Uses designated as potentially allowable require a written buffer authorization from the local government, or the Director for the cases involving activities listed in Item (3) of this Rule for impacts within the riparian buffer provided that there are no practical alternatives to the requested use pursuant to Item (11) of this Rule;

(c) POTENTIALLY ALLOWABLE WITH MITIGATION. Uses designated as potentially allowable with mitigation require written authorization from the local government, or the Director for the cases involving activities listed in Item (3) of this Rule for impacts within the riparian buffer provided that there are no practical alternatives to the requested use pursuant to Item (11) of this Rule and an appropriate mitigation strategy has been approved pursuant to Item (15) of this Rule; and

(d) PROHIBITED. Uses that are not designated in Item (9) of this Rule are considered prohibited in the riparian buffers.

(11) DETERMINATION OF "NO PRACTICAL ALTERNATIVES." Persons who wish to undertake uses designated as allowable or allowable with mitigation shall submit a request for a "no practical alternatives" determination to the local government or the Director for the cases involving activities listed in Item (3) of this Rule. The applicant shall certify that the criteria identified in Sub-Item (a) of this Item are met. The local government, or the Director for the cases involving activities listed in Item (3) of this Rule, shall grant an Authorization Certificate upon a "no practical alternatives" determination. The procedure for making an Authorization Certificate shall be as follows:

(a) For any request for an Authorization Certificate, the local government, or the Director for the cases involving activities listed in Item (3) of this Rule, shall review the entire project and make a finding of fact as to whether the following requirements have been met in support of a "no practical alternatives" determination:

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

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

(iii) Best management practices shall be used if required to minimize disturbance, preserve aquatic life and habitat, and protect water quality;

(b) Requests for an Authorization Certificate shall be reviewed and either approved or denied within 60 days of receipt of a complete submission based on the criteria in Sub-Item (a) of this Item and the local ordinance or ordinances enforcing this Rule by the local government, or the Director for the cases involving activities listed in Item (3) of this Rule. Failure to issue an approval or denial within 60 days shall constitute that the applicant has demonstrated "no practical alternatives." An Authorization Certificate shall be issued to the applicant, unless:

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

(ii) Applicant fails to furnish requested information necessary to the local government's decision or the Director's decision for the cases involving activities listed in Item (3) of this Rule;

(c) The local government, or the Director for the cases involving activities listed in Item (3) of this Rule, may attach conditions to the Authorization Certificate that support the purpose, spirit and intent of the riparian buffer protection program. Complete submissions shall include the following:

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

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

(iii) The location of the activity, including the jurisdiction;

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

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

(vi) Plans for any best management practices proposed to be used to control the impacts associated with the activity: and

(d) Any disputes over determinations regarding Authorization Certificates shall be referred to the local government's appeals process for a decision, or to the Director for determinations

involving lands of activities listed in Item (3) of this Rule. The Director's decision is subject to review as provided in G.S. 150B Articles 3 and 4.

(12) VARIANCES. Persons who wish to undertake prohibited uses may pursue a variance. The local government may grant only minor variances. For major variances, local governments shall prepare preliminary findings and submit them to the Commission for approval. The variance request procedure shall be as follows:

(a) There are practical difficulties or unnecessary hardships that prevent compliance with the riparian buffer protection requirements. Practical difficulties or unnecessary hardships shall be evaluated in accordance with all of the following:

(i) If the applicant complies with the provisions of this Rule, he or she can secure no reasonable return from, nor make reasonable use of, his or her property. Merely proving that the variance would permit a greater profit from the property shall not be considered adequate justification for a variance. Moreover, the local government, or the Director for the cases involving activities listed in Item (3) of this Rule, shall consider whether the variance is the minimum possible deviation from the terms of this Rule that shall make reasonable use of the property possible;

(ii) The hardship results from application of this Rule to the property rather than from other factors such as deed restrictions or other hardship;

(iii) The hardship is due to the physical nature of the applicant's property, such as its size, shape, or topography, and is unique to the applicant's property rather than the result of conditions that are widespread. If other properties are equally subject to the hardship created in the restriction, then granting a variance would be a special privilege denied to others, and would not promote equal justice; and

(iv) The applicant did not cause the hardship by knowingly or unknowingly violating this Rule.

(b) The variance is in harmony with the general purpose and intent of the State's riparian buffer protection requirements and preserves its spirit; and

(c) In granting the variance, the public safety and welfare have been assured, water quality has been protected, and substantial justice has been done.

(13) MINOR VARIANCES. A minor variance request pertains to activities that are proposed to impact only Zone 2 or any portion of Zone 2 of the riparian buffer. Minor variance requests shall be reviewed and approved based on the criteria in Sub-Item (12)(a) of this Rule by the local government pursuant to G.S. 153A-Article 18, or G.S. 160A-Article 19. The local government may attach conditions to the variance approval that support the purpose, spirit and intent of the riparian buffer protection program. Request for appeals to decisions made by the local government shall be made through the local government's appeals process, or to the Director for determinations involving

activities listed in Item (3) of this Rule. The Director's decision is subject to review as provided in G.S. 150B Articles 3 and 4.

(14) MAJOR VARIANCES. A major variance request pertains to activities that are proposed to impact any portion of Zone 1 of the riparian buffer. If the local government, or the Director for the cases involving activities listed in Item (3) of this Rule, has determined that a major variance request meets the requirements in Sub-Item (12)(a) of this Rule, then it shall prepare a preliminary finding and submit it to the Commission for approval. Within 90 days after receipt by the local government, or the Director for the cases involving activities listed in Item (3) of this Rule, the Commission shall review preliminary findings on major variance requests. The Commission may choose to approve, approve with conditions, or deny the major variance.

(15) MITIGATION. Persons who wish to undertake uses designated as allowable with mitigation shall meet the following requirements in order to proceed with their proposed use.

(a) Obtain a determination of "no practical alternatives" to the proposed use pursuant to Item (11) of this Rule; and

(b) Obtain approval for a mitigation proposal pursuant to 15A NCAC 02B .0252.

(16) REQUIREMENTS SPECIFIC TO FOREST HARVESTING. The following requirements shall apply for forest harvesting operations and practices:

(a) The following measures shall apply in the entire riparian buffer:

(i) Logging decks and sawmill sites shall not be placed in the riparian buffer;

(ii) Access roads and skid trails shall be prohibited except for temporary and permanent stream crossings established in accordance with 15A NCAC 01I .0203. Temporary stream crossings shall be permanently stabilized after any site disturbing activity is completed;

(iii) Timber felling shall be directed away from the stream or water body;

(iv) Skidding shall be directed away from the stream or water body and shall be done in a manner that minimizes soil disturbance and prevents the creation of channels or ruts;

(v) Individual trees may be treated to maintain or improve their health, form or vigor;

(vi) Harvesting of dead or infected trees or other timber cutting techniques necessary to prevent or control extensive tree pest and disease infestation shall be allowed. These practices must be approved by the Division of Forest Resources for a specific site pursuant to 15A NCAC 01I .0100 .0209. The Division of Forest Resources must notify the local government of all approvals;

(vii) Removal of individual trees that are in danger of causing damage to structures or human life shall be allowed;

(viii) Natural regeneration of forest vegetation and planting of trees, shrubs, or ground cover plants to enhance the riparian buffer shall be allowed provided that soil disturbance is minimized. Plantings shall consist primarily of native species;

(ix) High intensity prescribed burns shall not be allowed;

(x) Application of fertilizer shall not be allowed except as a one time use that is necessary for permanent stabilization; and

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

(b) In Zone 1, forest vegetation shall be protected and maintained. Selective harvest as provided for below is allowed on forest lands that have a deferment for use value under forestry in accordance with G.S. 105-277.2 through 277.6 or on forest lands that have a forest management plan prepared or approved by a registered professional forester. Copies of either the approval of the deferment for use value under forestry or the forest management plan shall be produced upon request. For such forest lands, selective harvest is allowed in accordance with the following:

(i) Tracked or wheeled vehicles are permitted for the purpose of selective timber harvesting where there is no other practical alternative for removal of individual trees provided activities comply with forest practices guidelines for water quality as defined in Rule 15A NCAC 01I .0101 through .0209, and provided no equipment shall operate within the first 10 feet immediately adjacent to the stream except at stream crossings designed, constructed and maintained in accordance with Rule 15A NCAC 01I .0203;

(ii) Soil disturbing site preparation activities are not allowed; and

(iii) Trees shall be removed with the minimum disturbance to the soil and residual vegetation: and

(c) In addition to the requirements of (b) in this Item, the following provisions for selective harvesting shall be met:

(i) The first 10 feet of Zone 1 directly adjacent to the stream or waterbody shall be undisturbed except for the removal of individual high value trees as defined provided that no trees with exposed primary roots visible in the streambank be cut unless listed as an exempt activity under Vegetation Management in the Table of Uses (9) of this Rule.

(ii) In the outer 20 feet of Zone 1, a maximum of 50 percent of the trees greater than five inches DBH may be cut and removed. The reentry time for harvest shall be no more frequent than every 15 years, except on forest plantations where the

reentry time shall be no more frequent than every five years. In either case, the trees remaining after harvest shall be as evenly spaced as possible; and

(iii) In Zone 2, harvesting and regeneration of the forest stand shall be allowed in accordance with 15A NCAC 01I .0100 through .0209 as enforced by the Division of Forest Resources.

(17) RULE IMPLEMENTATION. This Rule shall be implemented as follows:

(a) For activities listed in Item (3) of this Rule, the Division shall implement the requirements of this Rule as of its effective date;

(b) Within six months of the effective revision date of this Rule, local governments shall review, revise as necessary, and submit a local program including all necessary ordinances to the Division for review. The local program shall detail local government buffer program implementation including but not limited to such factors as a method for resolution of disputes involving Authorization Certificate or variance determinations, a plan for record keeping, and a plan for enforcement. Local governments shall use the Division's publication, *Identification Methods for the Origins of Intermittent and Perennial Streams, v 3.1 February 28, 2005* available at http://portal.ncdenr.org/web/wq/swp/ws/401/waterresources/streamdeterminations to establish the existence of streams;

(c) Within six months of the Division approval of the revised local ordinance, the local government shall implement their revised buffer program;

(d) Upon implementation, subject local governments shall submit annual reports to the Division summarizing their activities in implementing each of the requirements in Item (4) of this Rule;

(e) The Division shall regularly audit local programs to ensure rule implementation; and

(f) If a local government fails to adopt or adequately implement its program as called for in this Rule, the Division may take appropriate enforcement action as authorized by statute, and may choose to assume responsibility for implementing that program until such time as it determines that the local government is prepared to comply with its responsibilities.

(18) Where the standards and management requirements for riparian areas are in conflict with other laws, regulations, and permits regarding streams, steep slopes, erodible soils, wetlands, floodplains, forest harvesting, surface mining, land disturbance activities, or other environmental protection areas, the more restrictive shall apply.

(19) The existing water supply requirement in Rule .0216(3)(b) of this Section that stipulates a 100 foot vegetated buffer, adjacent to perennial streams, for all new development activities which utilize the high density option, applies to the entire Randleman Lake watershed. The first 50 feet of these riparian areas on either side of these waters must also be protected in accordance with all the requirements of this Rule.

~~(20) OTHER LAWS, REGULATIONS AND PERMITS. In all cases, compliance with this Rule does not preclude the requirement to comply with all other federal, state and local regulations and laws.~~

History Note: *Authority G.S. 143-214.1; 143-214.5; 143-215.3(a)(1);*
Eff. April 1, 1999;
Amended Eff. June 1, 2010.

15A NCAC 02B .0255 is proposed for repeal as follows:

15A NCAC 02B .0255 TAR-PAMLICO RIVER BASIN - NUTRIENT SENSITIVE WATERS MANAGEMENT STRATEGY: AGRICULTURAL NUTRIENT LOADING GOALS

History Note: *Authority G.S. 143-214.1; 143-214.7; 143-215.3(a)(1); 143-215.6A; 143-215.6B; 143-215.6C;*
Eff. April 1, 2001.
Repealed Eff. [New Date]

Commented [A1]: Change: Rule to be repealed.

Effect: Goals information moved to Agriculture Rule .0732

[.0256 is proposed for amendment and transfer to 15A NCAC 02B .0732]

Last Revised August 18, 2017

15A NCAC 02B .0256 is proposed for amendment as follows:

15A NCAC 02B ~~.0256~~ .0732 TAR-PAMLICO RIVER ~~BASIN-NUTRIENT SENSITIVE WATERS MANAGEMENT~~ ~~BASIN-~~NUTRIENT STRATEGY: ~~AGRICULTURAL NUTRIENT CONTROL STRATEGY~~ AGRICULTURE

(a) PURPOSE. ~~The purpose of this Rule is to set forth a process by which agricultural operations in the Tar-Pamlico River Basin will collectively limit their nitrogen and phosphorus loading to the Pamlico estuary. The purpose is to achieve and maintain a 30 percent reduction in collective nitrogen loading from 1991 levels within five to eight years and to hold phosphorus loading at or below 1991 levels within four years of Commission approval of a phosphorus accounting methodology.~~ The purpose of this Rule is to maintain or exceed the percentage reduction goals defined in Rule .0730 of this Section for the collective agricultural loading of nitrogen and phosphorus from the 1991 baseline levels, to the extent that best available accounting practices will allow, on all lands used for agricultural production as described in Paragraph (b) of this Rule, This Rule requires persons engaging in agricultural operations in the Basin to implement land management practices that will collectively, on a basin basis, achieve and maintain strategy nutrient reduction goals of a 30 percent reduction in nitrogen loading from 1991 levels and no increase in phosphorus loading from 1991 levels. Local committees and a Basin committee will coordinate activities and account for progress.

~~(1) PROCESS. This Rule requires farmers in the Basin to implement land management practices that collectively, on a county or watershed basis, will achieve the nutrient goals. Local committees and a Basin committee will develop strategies, coordinate activities and account for progress.~~

~~(2) LIMITATION. This Rule may not fully address the agricultural nitrogen reduction goal of the Tar-Pamlico Nutrient Sensitive Waters Strategy in that it does not address atmospheric sources of nitrogen to the Basin, including atmospheric emissions of ammonia from sources located both within and outside of the Basin. As better information becomes available from ongoing research on atmospheric nitrogen loading to the Basin from these sources, and on measures to control this loading, the Commission may undertake separate rule-making to require such measures it deems necessary from these sources to support the goals of the Tar-Pamlico Nutrient Sensitive Waters Strategy.~~

(b) APPLICABILITY. ~~This Rule shall apply to all persons engaging in agricultural operations in the Tar-Pamlico River Basin except certain persons engaged in such operations for educational purposes. Persons engaged for educational purposes shall be those persons involved in secondary school or lesser grade level activities that are a structured part of an organized program conducted by a public or private educational institution or by an agricultural organization. Educational activities shall not include research activities in support of commercial production.~~ This Rule shall apply to all persons engaging in agricultural operations, generally including those related to crops, horticulture, livestock, and poultry, in the geographic area subject to the Tar-Pamlico nutrient strategy as described in Rule .0730 of this Section. This Rule applies to livestock and poultry operations above the size thresholds in this Item in addition to requirements for animal operations set forth in general permits issued pursuant to G.S. 143-215.10C. Nothing in this Rule shall be deemed to allow the violation of any assigned surface water, groundwater, or air quality standard by any agricultural operation,

Commented [A1]: Change: Revised to capture substance of proposed repealed rule 02B .0255, which set the reduction goal for agriculture.

Effect: Streamlined content. No substantive change.

including any livestock or poultry operation below the size thresholds in this Item. Nothing in this Rule shall be deemed to allow the violation of any assigned surface water, groundwater, or air quality standard by any agricultural operation, including any livestock or poultry operation below the size thresholds in this Item. For the purposes of this Rule, agricultural operations are activities that relate to any of the following pursuits:

(1) The commercial production of crops or horticultural products other than trees. As used in this Rule, commercial shall mean activities conducted primarily for financial profit.

(2) Research activities in support of such commercial production.

(3) The production or management of any of the following number of livestock or poultry at any time, excluding nursing young:

(A) ~~20~~5 or more horses;

(B) 20 or more cattle;

(C) 20 or more swine not kept in a feedlot, or150 or more swine;

(D) 120 or more sheep;

(E) 130 or more goats;

(F) 650 or more turkeys;

(G) 3,500 or more chickens; or

(H) ~~A number of any~~ Any single species of any other livestock or poultry, or any combination of species of livestock or poultry that exceeds 20,000 pounds of live weight at any time.

(4) Certain tree-harvesting activities described and defined as follows.

(A) The one-time harvest of trees on land within a riparian buffer described in 15A NCAC 02B ~~.0259~~ .0734 that was open farmland on September 1, 2001. This one-time harvest of trees may be conducted within one tree cropping interval only under a verifiable farm plan that received final approval from a local agricultural agency on or after September 1, 2001 and that expressly allowed the harvest of trees no earlier than 10 years after the trees are established and the return of the land to another agricultural pursuit.

(B) The one-time harvest of trees on land within a riparian buffer described in 15A NCAC 02B ~~0259~~ .0734 that had trees established under an agricultural incentive program as of September 1, 2001.

(C) All tree harvesting described in Subparagraphs (b)(4)(A) and (b)(4)(B) of this Rule shall comply with Forest Practices Guidelines Related to Water Quality codified at 15A NCAC 01I. The nutrient removal functions that were provided by trees prior to their harvest shall be replaced by other measures that are implemented by the owner of the land from which the trees are harvested.

(D) The following definitions shall apply to terms used in Subparagraphs (b)(4)(A) through (b)(4)(C) of this Rule.

Commented [A2]: Change: Added specificity to applicability description and size thresholds for livestock to conform with Tar-Pamlico ag rule.

Effect: Reduces uncertainty, narrows scope of applicability

(i) "Agricultural incentive program" means any of the following programs and any predecessor program to any of the following programs:

(I) Agriculture Cost Share Program for Nonpoint Source Pollution Control established by G.S. 143-215.74.

(II) Conservation Reserve Enhancement Program established by 7 C.F.R. Part 1410 (January 1, 2001 Edition) and 15A NCAC 06G .0101 through 15A NCAC 06G .0106.

(III) Conservation Reserve Program established by 7 C.F.R. Part 1410 (January 1, 2001 Edition).

(IV) Environmental Quality Incentives Program established by 7 C.F.R. Part 1466 (January 1, 2001 Edition).

(V) Wetlands Reserve Program established by 7 C.F.R. Part 1467 (January 1, 2001 Edition).

(VI) Wildlife Habitat Incentives Program established by 7 C.F.R. Part 636 (January 1, 2001 Edition).

(ii) "Local agricultural agency" means the North Carolina Cooperative Extension Service, the Farm Services Agency of the United States Department of Agriculture, the Natural Resources Conservation Service of the United States Department of Agriculture, a Soil and Water Conservation District created pursuant to G.S. 139-5, or their successor agencies.

(iii) "Open farmland" means the footprint of land used for pasture or for crops or horticultural products other than trees. Open farmland may contain scattered trees if an open canopy existed on September 1, 2001 as determined from the most recent aerial photographs taken prior to September 1, 2001 for the Farm Services Agency of the United States Department of Agriculture.

(iv) "Tree" means a woody plant with a diameter equal to or greater than five inches when measured at a height of four and one-half feet above the ground.

(v) "Tree cropping interval" means the time required to establish and grow trees that are suitable for harvesting. The tree-cropping interval shall be set out in the farm plan and shall be no less than 10 years after the trees are established.

(c) IMPLEMENTATION PROCESS. ~~This Rule shall be implemented through a cooperative effort between a Basin Oversight Committee and Local Advisory Committees in each county or watershed.~~ A Basin Oversight Committee and county-level Local Advisory Committees shall coordinate activities and account for progress. The membership, roles and responsibilities of these committees are set forth in Paragraphs ~~(f)~~ (d) and ~~(g)~~ (e) of this Rule. ~~Committees' activities shall be guided by the following constraints:~~ Accounting for nutrient-reducing actions on agricultural lands within the basin shall follow requirements set forth in Subparagraph (d)(3) of this Rule. Producers may be eligible to obtain cost

share and technical assistance from the NC Agriculture Cost Share Program and similar federal programs to contribute to their counties' ongoing nutrient reductions. Committee activity shall be guided by the following:

~~(1) The Commission shall determine whether each Local Advisory Committee has achieved its nitrogen reduction goal within five years of the effective date of this Rule, and its phosphorus loading goal within four years of the date that a phosphorus accounting method is approved by the Commission, both based on the accounting process described in Paragraphs (f) and (g) of this Rule. Should the Commission determine that a Local Advisory Committee has not achieved its nitrogen goal within five years, then the Commission shall require additional BMP implementation as needed to ensure that the goal is met within eight years of the effective date of this Rule. The Commission shall similarly review compliance with the phosphorus goal four years after it approves a phosphorus accounting method, and shall require additional BMP implementation as needed to meet that goal within an additional three years from that date. All persons subject to this Rule who have not implemented BMPs in accordance with an option provided in Subparagraphs (d)(1) or (d)(2) of this Rule shall be subject to such further requirements deemed necessary by the Commission for any Local Advisory Committee that has not achieved a nutrient goal.~~

~~(2) Should a committee not form or not follow through on its responsibilities such that a local strategy is not implemented in keeping with Paragraph (g) of this Rule, the Commission may require all persons subject to this Rule in the affected area to implement BMPs as set forth in Paragraph (e) of this Rule.~~

(1) OPTIONS FOR INDIVIDUAL OPERATIONS. Persons subject to this Rule may elect to implement practices meeting the standards identified in Paragraph (f) of this Rule that contribute to maintenance of collective local compliance with the goal identified in Paragraph (a) of this Rule, but are not required to implement any specific practices provided their basin collectively maintains compliance with the goal.

(2) MAINTENANCE OF GOAL. Accounting shall annually demonstrate maintenance or exceedence of the nitrogen reduction goal for the basin. Where three sequential annual reports show that the Basin did not meet its nitrogen and phosphorus reduction goals, the Basin Oversight Committee shall work with the Division of Soil and Water Conservation and Local Advisory Committees, particularly those representing counties not meeting the goals, to seek reduction actions by operations to bring agriculture collectively back into compliance, and shall report on their efforts in subsequent annual reports. Should subsequent annual reports not reverse the trend of non-compliance, the Commission may seek a more specific implementation plan from the Basin Oversight Committee, which may include an assessment of need for specific action by the Commission.

~~(d) OPTIONS FOR MEETING RULE REQUIREMENTS. Persons subject to this Rule shall register their operations with their Local Advisory Committee according to the requirements of Paragraph (g) of this Rule within one year of the effective date of this Rule. Such persons may elect to implement any BMPs they choose that are recognized by the Basin~~

Commented [A3]: **Change:** Part of content reorganization/streamlining consistent with other ag rules.

Effect: Clarity, brevity. No substantive change

Commented [A4]: **Change:** Added language clarifying individual's ability to meet requirements through the collective compliance approach.

Effect: Improved clarity. No Impact.

Commented [A5]: **Change:** Adds express ability for EMC to seek corrective action.

Effect: Probably no practical difference.

~~Oversight Committee as nitrogen-reducing BMPs within five years of the effective date of this Rule. Persons who implement one of the following two options within five years of the effective date of this Rule for nitrogen-reducing BMPs and within four years of the date that a phosphorus accounting method is approved by the Commission shall not be subject to any additional requirements that may be placed on persons under Paragraph (e) of this Rule. Persons subject to this Rule shall be responsible for implementing and maintaining the BMPs used to meet the requirements of this Rule for as long as they continue their agricultural operation. If a person ceases an operation and another person assumes that operation, the new operator shall be responsible for implementing BMPs that meet the requirements of this Paragraph.~~

~~(1) Option 1 is to implement site-specific BMPs that are accepted by the Local Advisory Committee as fully satisfying a person's obligations under this Rule based on BMP implementation needs identified in the local nutrient control strategy required under Subparagraph (g)(3)of this Rule and on nutrient reduction efficiencies established by the Basin Oversight Committee as called for under Subparagraphs (f)(2) and (f)(3) of this Rule.~~

~~(2) Option 2 is to implement standard BMPs that persons subject to this Rule choose from the alternatives established pursuant to Paragraph (e) of this Rule.~~

~~(e) STANDARD BEST MANAGEMENT PRACTICES (BMPs). Standard BMPs shall be individual BMPs or combinations of BMPs that achieve at least a 30 percent reduction in nitrogen loading and no increase in phosphorus loading relative to conditions that lack such BMPs. Standard BMPs shall be established for the purposes of this Rule by one of the following processes:~~

~~(1) The Soil and Water Conservation Commission may elect to approve, under its own authorities, standard BMP options for the Tar-Pamlico River Basin based on nutrient reduction efficiencies established by the Basin Oversight Committee pursuant to Subparagraph (f)(3) of this Rule and using criteria for nitrogen- and phosphorus-reducing BMPs as described in rules adopted by the Soil and Water Conservation Commission, including 15A NCAC 06E .0104 and 15A NCAC 06F .0104. One purpose of this process is to provide persons subject to this Rule the opportunity to work with the Soil and Water Conservation Commission in its development of standard BMP options; or~~

~~(2) In the unlikely event that the Soil and Water Conservation Commission does not approve an initial set of standard BMP options for the Tar-Pamlico River Basin within one year of the effective date of this Rule, then the Environmental Management Commission may approve standard BMP options within eighteen months of the effective date of this Rule. In that event, the standard BMP options approved by the Commission shall be designed to reduce nitrogen and phosphorus loading, as specified at the beginning of Paragraph (e) of this Rule, from agricultural sources through structural, management, or buffering farming BMPs or animal waste management plan components.~~

~~(f)~~ (d) BASIN OVERSIGHT COMMITTEE. The Basin Oversight Committee shall have the following membership, role and responsibilities:

(1) MEMBERSHIP. ~~The Commission shall~~ ~~delegate to the Secretary the responsibility of forming a Basin Oversight Committee within two months of the effective date of this Rule. Members shall be~~

Commented [A6]: **Change:** Language removed to reflect current implementation status through the collective compliance approach. Eliminates individual option of standard BMPs vs. collective compliance.

Effect: No practical Impact

~~appointed for five-year terms and shall serve at the pleasure of the Secretary. Until such time as the Commission determines that long-term maintenance of the nutrient loads is assured, the Secretary shall either reappoint members or replace members every five years. The Secretary~~ shall ~~solicit nominations for membership on this Committee to represent each of the following interests, from interested parties, and shall appoint one nominee to represent~~ maintain one member for each ~~interest. The Secretary may appoint a replacement at any time for an interest in Parts (f)(1)(F) through (f)(1)(J) of this Rule upon request of representatives of that interest:~~ The Director of the Division of Water Resources shall be responsible for maintaining the following membership composition. Until such time as the Commission determines that long-term compliance with this rule is assured, the Director shall solicit one nomination for membership on this Committee from each agency in Sub-Paragraphs (d)(1)(A) through (d)(1)(E). The Director may appoint a replacement at any time for an interest in Sub-Paragraphs (d)(1)(F) through (d)(1)(I) upon request of representatives of that interest or by the request of the Commissioner of Agriculture:

(A) Division of Soil and Water Conservation;

(B) United States Department of Agriculture-Natural Resources Conservation Service (shall serve in an "ex-officio" non-voting capacity and shall function as a technical program advisor to the Committee);

(C) North Carolina Department of Agriculture and Consumer Services;

(D) North Carolina Cooperative Extension Service;

(E) Division of Water ~~Quality;~~ Resources.

(F) Up to two ~~Environmental~~ environmental interests;

(G) Basinwide farming interests;

(H) Pasture-based livestock interests; ~~and~~

~~(I) Cropland farming interests; and~~ General farming interests; and

~~(J)~~(I) The scientific community with experience related to water quality problems in the Tar-Pamlico River Basin.

(2) ROLE. The Basin Oversight Committee shall:

~~(A) Develop a tracking and accounting methodology pursuant to Subparagraph (f)(3) of this Rule. A final nitrogen methodology shall be submitted to the Commission for approval within one year after the effective date of this Rule. A final methodology for phosphorus shall be submitted at the earliest date possible as determined by the Basin Oversight Committee with input from the technical advisory committee described in Part (f)(2)(D) of this Rule.~~

(A) Continue to review, approve and summarize local nitrogen and phosphorus reduction annual reports to ensure ongoing implementation of the accounting methods approved by the Commission in October 2002 for nitrogen and November 2005 for phosphorus as conforming

Commented [A7]: **Change:** Added an additional environmental representative and to the Committee Membership. Provided process for appointing members to fill empty seats.

Effect: Consistency of interests represented across watersheds. Improved clarity on process for appointing new members. No Impact on rule implementation.

Commented [A8]: **Change:** Updated the language addressing accounting methodologies recognizing the Basin Oversight Committee has developed tools currently used for tracking progress with the required reduction goals.

Effect: Improved clarity and brings the rule language up to date reflecting how the rule requirements are being implemented.

to the requirements of Subparagraph (d)(3) of this Rule. Continue to present these reports as initiated in 2002, to the Director annually;

(B) Take actions called for under Subparagraphs (c)(2) as needed to address maintenance of the nitrogen and phosphorus reductions goals;

(C) Identify and implement future refinements to the accounting methodology as needed to reflect advances in scientific understanding, including establishment of nutrient reduction efficiencies for BMPs.

(D) ~~Appoint a~~ Reassemble as needed a phosphorus technical advisory committee ~~within 6 months of the effective date of this Rule~~ to update the qualitative phosphorus method approved by the Commission in October 2005, titled Accounting Method for Tracking Relative Changes in Agricultural Phosphorus Loading to the Tar-Pamlico River, in order to revise phosphorus baseline values and annual changes in factors affecting agricultural phosphorus loss. ~~to inform the Basin Oversight Committee on rule related issues. The Basin Oversight Committee shall direct the committee to take the following actions at a minimum: monitor advances in scientific understanding related to phosphorus loading, evaluate the need for additional management action to meet the phosphorus loading goal, and report its findings to the Basin Oversight Committee on an annual basis. The Basin Oversight Committee shall in turn report these findings and its recommendations to the Commission on an annual basis following the effective date of this Rule, until such time as the Commission, with input from the Basin Oversight Committee, determines that the technical advisory committee has fulfilled its purpose. The Basin Oversight Committee shall solicit nominations for this committee from the Division of Soil and Water Conservation, United States Department of Agriculture Natural Resources Conservation Service, North Carolina Department of Agriculture and Consumer Services, North Carolina Cooperative Extension Service, Division of Water Quality, environmental interests, agricultural interests, and the scientific community with experience related to the committee's charge.~~

~~(D) Review, approve and summarize county or watershed local strategies and present these strategies to the Commission for approval within two years after the effective date of this Rule.~~

~~(E) Establish minimum requirements for, review, approve and summarize local nitrogen and phosphorus loading annual reports as described under Subparagraph (g)(5) of this Rule, and present these reports to the Commission each October, until such time as the Commission determines that annual reports are no longer needed to assure long-term maintenance of the nutrient goals.~~

(3) ACCOUNTING METHODOLOGY. ~~The Basin Oversight Committee shall develop an accounting methodology that meets the following requirements:~~

Commented [A9]: **Change:** Updated the language addressing accounting methodologies recognizing the Basin Oversight Committee has developed tools currently used for tracking progress with the required reduction goals.

Effect: Improved clarity and brings the rule language up to date reflecting how the rule requirements are being implemented.

~~(A) The methodology shall quantify baseline total nitrogen and phosphorus loadings from agricultural operations in each county and for the entire basin.~~

~~(B) The methodology shall include a means of tracking implementation of BMPs, including number, type, and area affected.~~

~~(C) The methodology shall include a means of estimating incremental nitrogen and phosphorus reductions from actual BMP implementation and of evaluating progress toward the nutrient goals from BMP implementation. The methodology shall include nutrient reduction efficiencies for individual BMPs and combinations of BMPs that can be implemented toward the nitrogen and phosphorus goals.~~

~~(D) The methodology shall allow for future refinements to the nutrient baseline loading determinations, and to the load reduction accounting methodology.~~

~~(E) The methodology shall provide for quantification of changes in nutrient loading due to changes in agricultural land use, modifications in agricultural activity, or changes in atmospheric nitrogen loading to the extent allowed by advances in technical understanding.~~

~~(F) The methodology shall include a method to track maintenance of the nutrient net loads after the initial eight years of this Rule, including tracking of changes in BMPs and additional BMPs to offset new or increased sources of nutrients from agricultural operations.~~

Success in meeting this Rule's purpose will be gauged by estimating percentage changes in nitrogen loss from agricultural lands in the Tar-Pamlico Basin and by evaluating broader trends in indicators of phosphorus loss from agricultural lands in the Tar-Pamlico Basin. The Basin Oversight Committee shall develop maintain, and update as indicated elsewhere in this Paragraph, accounting methods that meet the following requirements:

(A) The nitrogen method shall estimate baseline and annual total nitrogen losses from agricultural operations in each county and for the entire Tar-Pamlico Basin. Baseline losses and relative loss reduction progress shall be adjusted as frequently as can be supported by available data to account for lands permanently removed from agricultural control through development;

(B) The nitrogen and phosphorus methods shall include a means of tracking implementation of BMPs, including number, type, and area affected;

(C) The nitrogen method shall include a means of estimating incremental nitrogen loss reductions from implementation of BMPs that conform to requirements of Paragraph (g) of this Rule and of evaluating progress toward and maintenance of the nutrient objectives from changes in BMP implementation, fertilization, and changes in individual crop acres;

(D) The nitrogen and phosphorus methods shall be refined as research and technical advances allow; and

Commented [A10]: Change: Added language requiring evaluation and adjustment of baseline losses and relative loss reduction progress based on data availability to address agricultural land lost to development.

Effect: Agriculture's reduction progress will be measured against an updated baseline that reflects the nutrient contributions from lands still within the Agriculture universe. Fiscal impact will be evaluated during rulemaking process.

(E) The phosphorus method shall quantify baseline values for and annual changes in factors affecting agricultural phosphorus loss as identified in the report by the phosphorus technical advisory committee described elsewhere in this Paragraph.

~~(g)~~(e) LOCAL ADVISORY COMMITTEES. The Local Advisory Committees shall have the following membership, roles, and responsibilities:

(1) MEMBERSHIP. ~~A~~ Per S.L. 2001, c. 355, a Local Advisory Committee shall be ~~appointed~~ maintained as provided in this Paragraph in each county ~~(or~~ or watershed as specified by the Basin Oversight ~~Committee)~~ Committee, within the Tar-Pamlico River Basin. ~~As directed by S.L. 2001, c. 355, the Local Advisory Committees shall be appointed on or before November 1, 2001.~~ They shall terminate upon a finding by the ~~Environmental Management~~ Commission that the long-term maintenance of nutrient loads in the Tar-Pamlico River Basin is assured. Each Local Advisory Committee shall consist of:

(A) One representative of the local Soil and Water Conservation District;

(B) One local representative of the United States Department of Agriculture- Natural Resources Conservation Service;

(C) One local representative of the North Carolina Department of Agriculture and Consumer Services;

(D) One local representative of the North Carolina Cooperative Extension Service;

(E) One local representative of the North Carolina Division of Soil and Water Conservation; and

(F) ~~At least five, but not more than 10 farmers who reside in the county or watershed.~~ At least two farmers that reside in the county.

(2) APPOINTMENT OF MEMBERS. ~~The~~ Per S.L. 2001, c. 355, the Director of the Division of Water ~~Quality~~ Resources and the Director of the Division of Soil and Water Conservation of the Department of ~~Environment and Natural Resources~~ Agriculture and Consumer Services shall jointly appoint members described in Subparagraphs (e)(1)(A), (e)(1)(B), (e)(1)(D), and (e)(1)(E) of this Rule. As directed by S.L. 2001, c. 355, the Commissioner of Agriculture shall appoint the members described in Subparagraphs (e)(1)(C) and (e)(1)(F) of this Rule from persons nominated by nongovernmental organizations whose members produce or manage significant agricultural commodities in each county or watershed. Members of the Local Advisory Committees shall serve at the pleasure of their appointing authority.

(3) ROLE. The Local Advisory Committees shall:

(A) Continue to submit annual reports to the Basin Oversight Committee estimating total crop production on agricultural operations for the preceding calendar year, summarizing land use changes in the county and making recommendations to the Basin Oversight Committee on the need for updates to the accounting methodology. Reports shall include documentation on the BMPs implemented, including type and location, that satisfy the requirements identified in Paragraph (f) of this Rule and documentation of any expired contracts for BMPs; and

Commented [A11]: **Change:** Technical corrections updating Session Law References and Agency names.

Effect: No Impact. Improved Clarity

(B) Take actions called for under Subparagraph (c)(2) as needed to address maintenance of the nitrogen and phosphorus reduction goals.

~~(A) Conduct a registration process for persons subject to this Rule. This registration process shall be completed within one year after the effective date of this Rule. It shall obtain information that shall allow Local Advisory Committees to develop local strategies in accordance with Subparagraph (g)(4) of this Rule. At minimum, the registration process shall request the type and acreage of agricultural operations, nutrient reducing BMPs implemented since January 1, 1992 and their operational status, and the acres affected by those BMPs. It shall provide persons with information on requirements and options under this Rule, and on available technical assistance and cost share options;~~

~~(B) Designate a member agency to compile and retain copies of all individual plans produced to comply with this Rule;~~

~~(C) Develop local nutrient control strategies for agricultural operations, pursuant to Subparagraph (g)(4) of this Rule, to meet the nitrogen and phosphorus goals assigned by the Basin Oversight Committee. The nitrogen component of the control strategy shall be submitted to the Basin Oversight Committee no later than twenty-three months from the effective date of this Rule. The phosphorus component of the control strategy shall be submitted within one year of the date that the Commission approves a phosphorus accounting methodology as described in Part (f)(2)(A) of this Rule;~~

~~(D) Ensure that any changes to the design of the local strategy will continue to meet the nutrient goals of this Rule; and~~

~~(E) Submit annual reports to the Basin Oversight Committee, pursuant to Subparagraph (g)(5) of this Rule, each May until such time as the Commission determines that annual reports are no longer needed to assure long-term maintenance of the nutrient goals.~~

~~(4) LOCAL NUTRIENT CONTROL STRATEGIES. The Local Advisory Committees shall be responsible for developing county or watershed nutrient control strategies that meet the following requirements. If a Local Advisory Committee fails to submit a nutrient control strategy as required in Part (g)(3)(C) of this Rule, the Commission may develop one based on the accounting methodology that it approves pursuant to Part (f)(2)(A) of this Rule.~~

~~(A) Local nutrient control strategies shall be designed to achieve the required nitrogen reduction goals within five years after the effective date of this Rule, and to maintain those reductions in perpetuity or until such time as this Rule is revised to modify this requirement. Strategies shall be designed to meet the phosphorus loading goals within four years of the date that the Commission approves a phosphorus accounting methodology as described in Part (f)(2)(A) of this Rule.~~

~~(B) Local nutrient control strategies shall specify the numbers and types of all agricultural operations within their areas, numbers of BMPs that will be implemented by enrolled~~

Commented [A12]: **Change:** Updates role of the local advisory committees LACs.

Effect: No Impact. Brings rule language up to date and better reflects how requirements are currently being implemented.

~~operations and acres to be affected by those BMPs, estimated nitrogen and phosphorus reductions, schedule for BMP implementation, and operation and maintenance requirements.~~

~~(C) Local nutrient control strategies may prioritize BMP implementation to establish the most efficient and effective means of achieving the nutrient goals.~~

~~(5) ANNUAL REPORTS. The Local Advisory Committees be responsible for submitting annual reports for their counties or watersheds. Annual reports shall be submitted to the Basin Oversight Committee each May until such time as the Commission determines that annual reports are no longer needed to assure long-term maintenance of the nutrient goals. Annual reports shall quantify progress toward the nutrient goals with sufficient detail to allow for compliance monitoring at the farm level. The Basin Oversight Committee shall determine reporting requirements to meet these objectives. Those requirements may include information on BMPs implemented by individual farms, proper BMP operation and maintenance, BMPs discontinued, changes in agricultural land use or activity, and resultant net nutrient loss changes.~~

(f) PRACTICE STANDARDS. To receive nutrient reduction credit under the accounting methods described elsewhere in this Rule, a BMP shall be included in the Commission-approved accounting method, or in a subsequent revision to that method identified in annual reporting, and it shall be implemented according to applicable nutrient-related standards identified by the BOC and established by the NC Soil and Water Conservation Commission or the USDA-Natural Resources Conservation Service in North Carolina.

History Note: *Authority G.S. 143-214.1; 143-214.7; 143-215.3(a)(1); 143-215.6A; 143-215.6B; 143-215.6C; S.L. 2001-355;*
Eff. September 1, 2001;
Temporary Amendment Eff. January 1, 2002 (exempt from 270 day requirement-S.L. 2001-355).
Amended Eff. [New Date].

Commented [A13]: Change: Removed language related to activities the Local Advisory Committees have already completed. Updated language on LAC's role provided in Sub-paragraph (e)(3)(A).

Effect: No practical impact. Brings rule language up to date.

Commented [A14]: Change: Annual Reporting language has been moved to Subparagraph (d)(2)(a).

Effect: No Impact

Commented [A15]: Change: Added practice standards requirements for BMPs

Effect: Ensures proper BMP implementation and use of approved accounting methods to earn nutrient reduction credit.

15A NCAC 02B .0257 is proposed for repeal as follows:

15A NCAC 02B .0257 TAR-PAMLICO RIVER BASIN - NUTRIENT SENSITIVE WATERS MANAGEMENT STRATEGY: NUTRIENT MANAGEMENT

History Note: *Authority G. S. 143-214.1; 143-214.7; 143-215.3(a)(1); 143-215.6A; 143-215.6B; 143-215.6C; 143B-282(d);*
Eff. April 1, 2001.
Repealed Eff. [New Date]

Commented [A1]: Change: Rule to be repealed.

Effect: Removed both an unenforceable requirement (all fertilization according to approved plans) and already completed requirement (Extension training).

[.0258 is proposed for amendment and transfer to 15A NCAC 02B .0731]
Last Revised August 18, 2017

15A NCAC 02B .0258 is proposed for amendment as follows:

15A NCAC 02B ~~.0258~~ .0731 TAR-PAMLICO RIVER ~~BASIN-~~NUTRIENT ~~SENSITIVE WATERS MANAGEMENT~~ STRATEGY: ~~BASINWIDE~~ STORMWATER ~~REQUIREMENTS~~

(a) PURPOSE. The purpose of this Rule ~~are as follows.~~is to achieve and maintain the nitrogen and phosphorus loading reduction goals for the Tar-Pamlico River Estuary set out in Rule .0730 of this Section from an undeveloped condition on lands in the Tar-Pamlico River Basin on which new development occurs. Nothing in this Rule preempts local governments from implementing requirements that are more restrictive than those set forth in this Rule.

~~(1) To achieve and maintain a reduction in nitrogen loading to the Pamlico estuary from lands in the Tar-Pamlico River Basin on which new development occurs. The goal of this Rule is to achieve a 30 percent reduction relative to pre-development levels;~~

~~(2) To limit phosphorus loading from these lands to the estuary. The goal of this Rule is to limit phosphorus loading to pre-development levels;~~

~~(3) To provide control for peak stormwater flows from new development lands to ensure that the nutrient processing functions of existing riparian buffers and streams are not compromised by channel erosion; and~~

~~(4) To minimize, to the greatest extent practicable, nitrogen and phosphorus loading to the estuary from existing developed areas in the basin.~~

(b) APPLICABILITY. The following local governments shall implement stormwater management requirements as part of the Tar-Pamlico River Nutrient Sensitive Waters stormwater management strategy. Municipalities shall implement this rule throughout their corporate limits and extraterritorial jurisdiction, while counties shall implement this rule throughout their direct territorial jurisdictions. Counties named in this Item may implement this rule within municipalities not named in this Item in accordance with G.S. 160A-360(d).~~This Rule shall apply to local governments in the Tar-Pamlico basin according to the following criteria.~~

(1) Local governments designated by the Commission in 2001 as subject to this Rule:~~This Rule shall apply to the following municipal areas:~~

(A) Greenville
(B) Henderson
(C) Oxford
(D) Rocky Mount
(E) Tarboro
(F) Washington
(G) Beaufort County
(H) Edgecombe County
(I) Franklin County
(J) Nash County
(K) Pitt County

Commented [A1]: Change: Updated Purpose statement to clarify goal of this rule is to achieve reductions from new development and point to overall strategy reduction goals established in Rule .0730.

Effect: No substantive change. Improved clarity of rule purpose.

Commented [A2]: Change: Added additional local governments to which the requirements of this rule shall apply based on assessment of growth by looking at overall populations and growth rate over the past 15 years. Added counties and municipalities with populations greater than 20K and 5K respectively that have a growth rate of approximately 200 or more people a year.

Effect: Improved coverage of rule requirements. Addresses holes in strategy coverage where larger and fast growing communities were previously left out of the original rule. These newly named local governments will be required to develop and adopt local programs including local ordinances to implement the rule requirements. Fiscal impact will be determined during the rulemaking process.

(2) Additional local government designated by the Commission in 2018 as subject to this Rule:~~This Rule shall apply to the following counties:~~

(A) Granville County ~~Beaufort~~

(B) Vance County ~~Edgecombe~~

(C) Wilson County~~Franklin~~

~~(D) Nash~~

~~(E) Pitt~~

~~(3) The Environmental Management Commission may designate additional local governments as subject to this Rule by amending this Rule based on the potential of those jurisdictions to contribute significant nutrient loads to the Tar-Pamlico River. At a minimum, the Commission shall review the need for additional designations as part of the Basinwide process for the Tar-Pamlico River Basin. The Commission shall consider, at a minimum, the following criteria related to local governments: population within the basin, population density, past and projected growth rates, proximity to the estuary, and the designation status of municipalities within candidate counties.~~

(3) EXEMPTION. A stormwater management plan is not required for new development on an individual single family lots if the development meets the following criteria:

(A) It is not part of a larger common plan of development or sale; and

(B) The project does not result in greater than 5 percent built upon area on the lot or it is for purposes of a single family residence on a lot 5 acres in size or greater.

(c) LOCAL PROGRAM IMPLEMENTATION REQUIREMENTS. All local governments subject to this Rule shall ~~develop stormwater management programs for submission to and approval by the Commission according to the following minimum standards:~~ implement stormwater management programs approved by the Commission pursuant to the timeframes set out in Paragraph (e) of this Rule, or any subsequent modification to those plans approved by the Director, according to the following requirements and the standards contained in Paragraph (d) of this Rule:

(1) ~~A~~ The requirement ~~that a stormwater management plan~~ for local government approval of a stormwater plan for all proposed ~~new developments proposed within their jurisdictions.~~ new development projects disturbing one acre or more for single family and duplex residential property and recreational facilities, and one-half acre or more for commercial, industrial, institutional, multifamily residential, or local government property. Where proposed new development on an existing developed lot not part of a larger common plan of development results in built-upon area exceeding 24 percent, a stormwater plan addressing the new built-upon area shall be required. ~~These stormwater plans shall not be approved by the subject local governments unless the following criteria are met:~~

(2) A plan to ensure maintenance of stormwater control measures (SCMs) implemented to comply with this rule for the life of the development;

(3) A plan to ensure enforcement and compliance with the provisions in Paragraph (d) of this Rule for the life of the development;

Commented [A3]: **Change:** Provided exemption for individual single lot residential projects under a 5% BUA or of a certain size and not part of a larger common plan of development. Addition in response to stakeholder input and based on scenarios run using the latest accounting tool, projects meeting these criteria are assumed to already be meeting the required export rate targets.

Effect: Provides straightforward path for projects meeting these criteria to show compliance with the rule export targets without the cost of having to run export calculations and submitting a stormwater plan.

Commented [A4]: **Change:** Reorganized rule text to clearly state the requirements subject local governments must meet in their local implementation programs.

Effect: Provides clear separation between local government and developer requirements under the rule. Makes rule text current and clarifies that all local governments implementing programs continue to implement. Improved clarity. No substantive impact.

Commented [A5]: **Change:** Included land disturbance thresholds previously included in model program to provide information in one location.

Effect: Improved clarity and ease of finding information. No change in thresholds.

Commented [A6]: **Change:** Language added to address cumulative impacts in cases where small land disturbances add up over time to exceeded land disturbance thresholds that require a stormwater plan to be submitted.

Effect: Captures projects with cumulative impacts over land disturbance thresholds over time that would previously have been missed under the rule. Only requires the new BUA to be treated. Addresses loophole in previous rule language.

(4) A public education program to inform citizens how to reduce nutrient pollution and to inform developers about the nutrient set forth in Paragraph (d);

(5) A mapping program that includes major components of the municipal separate storm sewer system, waters of the State, land use types, and location of sanitary sewers; and

(6) A program to identify and remove illegal discharges.

(d) DEVELOPMENT PROJECT REQUIREMENTS. A proposed development project shall be approved by a subject local government when the applicable requirements of Paragraph (c) and the following criteria are met:

~~(A) The nitrogen load contributed by the proposed new development activity shall not exceed 70 percent of the average nitrogen load contributed by the non-urban areas in the Tar-Pamlico River basin based on land use data and nitrogen export research data. Based on 1995 land use data and available research, the nitrogen load value shall be 4.0 pounds per acre per year;~~

~~(B) The phosphorus load contributed by the proposed new development activity shall not exceed the average phosphorus load contributed by the non-urban areas in the Tar-Pamlico River basin based on land use data and phosphorus export research data. Based on 1995 land use data and available research, the phosphorus load value shall be 0.4 pounds per acre per year;~~

~~(C) The new development shall not cause erosion of surface water conveyances. At a minimum, the new development shall not result in a net increase in peak flow leaving the site from pre-development conditions for the 1-year, 24-hour storm event; and~~

(1) The project area shall meet either a nitrogen loading rate target of 4.0 pounds/acre/year and a phosphorus loading rate target of 0.8 pounds/acre/year or the definition of runoff volume match provided in 15A NCAC 02H .1002. Except as otherwise stated in this Paragraph, the project may meet the loading rate target through use of nutrient offset credit pursuant to Rule .0703 of this Section

(2) Nutrient loading rates, and reductions resulting from the use of SCMs, shall be determined through the use of the tool most recently approved by the Division for stormwater nutrient accounting or an alternative method at least as protective as accepted by the Divisions;

(3) Projects resulting in greater than 24 percent built-upon area shall install a primary SCM that meets the design specifications provided in 15A NCAC 02H .1003 for all impervious area on the project site;

(4) Projects with less than 24 percent built upon area shall meet the low density design requirements provided in 15A NCAC 02H .1003 for dispersed flow, vegetative conveyances, and curb outlet systems;

(5) Proposed new development undertaken by a local government solely as a public road or public sidewalk project or proposed new development subject to the jurisdiction of the Surface Transportation Board shall be exempt from the requirements of Sub-Paragraphs (d)(3) and (d)(4) of this Rule;

(6) Proposed development projects that would replace or expand existing structures and would result in a net increase in built-upon area shall be responsible for nutrient loading from the area of disturbance less any preexisting built-upon area located in the disturbance area. The developer shall have the

Commented [A7]: Change: This language was moved up to this location from elsewhere in the rule.

Effect: Improved clarity concerning local government responsibilities.

Commented [A8]: Change: Reorganized this section to make it easier for the development community to identify the requirements their development projects need to meet.

Effect: Provides clear separation between local government and developer requirements under the rule. Improved Clarity.

Commented [A9]: Change: Updated this language to recognize there are multiple ways for a developer to meet runoff requirements for a proposed project including meeting the export rates targets as well as meeting the requirements through runoff volume match or the use of offsite nutrient offsets.

Effect: Improved clarity and added flexibility by providing multiple pathways for compliance.

Commented [A10]: Change: Increased phosphorus loading rate target from 0.4 to .08 lbs/acre/year based on additional science the Division has compiled since the rules were originally adopted regarding export rates from crop, pasture, and forest lands - which are used in developing the target export rate.

Effect: Phosphorus export rate target based on more recent science and better reflects actual loading rates and requires less treatment / offset credit and will also reduce cost of meeting the rule requirements.

Commented [A11]: Change: Added requirement that only the most recently approved stormwater accounting tool (or Division approved equivalent) is to be used for calculating loading rates and reductions to ensure all developers and local governments are using the same accounting tool based on the most recent available data.

Effect: Provides improved consistency of rule implementation.

Commented [A12]: Change: Eliminated outdated onsite treatment threshold pounds and replaced with onsite treatment requirement of one SCM minimum for projects exceeding 24% BUA or not meeting loading rate targets.

Effect: Eliminates the 6 & 10 lbs/ac/yr onsite treatment thresholds required before developer could go offsite for a nutrient reduction buydown. Improves agreement of Neuse rule with Phase II Stormwater requirements. Fiscal impact will be determined during the rulemaking process.

Commented [A13]: Change: Added low density option to better align rule with options provided under Phase II stormwater requirements.

... [1]

Commented [A14]: Change: In response to stakeholder input added option for local government road and sidewalk projects that have limited or no space for SCMs to meet export targets entirely through the use of offsite nutrient offsets.

... [2]

Commented [A15]: Change: Updated language addressing redevelopment scenarios per new definition of development in Session Law 2014-90 to make it clear that the area of disturbance minus any preexisting BUA must be treated when development replaces or expands existing development resulting in net increase in BUA.

... [3]

option to either achieve the nutrient percent loading reduction goals established in Rule .0730 of this Section or meet the nutrient loading rate targets of this Paragraph;

(7) Proposed new development projects that utilize an offsite SCM that meets the design specifications provided in 15A NCAC 02H .1003 and is dedicated to treating an area encompassing the project shall be considered compliant with the treatment requirements Subparagraph (d)(3) of this Rule;

(8) SCMs shall meet a required storm depth of one inch in non-coastal counties and one and one-half inches in coastal counties;

~~(D) Developers shall have the option of partially offsetting their nitrogen and phosphorus loads by providing treatment of off-site developed areas. The off-site area must drain to the same classified surface water, as defined in the Schedule of Classifications, 15A NCAC 2B .0316, that the development site drains to most directly. The developer must provide legal assurance of the dedicated use of the off-site area for the purposes described here, including achievement of specified nutrient load reductions and provision for regular operation and maintenance activities, in perpetuity. The legal assurance shall include an instrument, such as a conservation easement, that maintains this restriction upon change of ownership or modification of the off-site property. Before using off-site treatment, the new development must attain a maximum nitrogen export of six pounds/acre/year for residential development and 10 pounds/acre/year for commercial or industrial development.~~

(9) Where pursuant to G.S. 153A-454 and G.S. 160A-459 a local government program does not review a development project proposed by a state or federal entity, the entity shall obtain Department review and approval; and

(10) Proposed new development shall demonstrate compliance with the riparian buffer protection requirements of Rule .0734 of this Section or subsequent amendments or replacements to those requirements.

~~(2) A public education program to inform citizens of how to reduce nutrient pollution and to inform developers about the nutrient and flow control requirements set forth in Part (e)(1).~~

~~(3) A mapping program that includes major components of the municipal separate storm sewer system, waters of the State, land use types, and location of sanitary sewers.~~

~~(4) A program to identify and remove illegal discharges.~~

~~(5) A program to identify and prioritize opportunities to achieve nutrient reductions from existing developed areas.~~

~~(6) A program to ensure maintenance of BMPs implemented as a result of the provisions in Subparagraphs (e)(1) and (e)(5).~~

~~(7) A program to ensure enforcement and compliance with the provisions in Subparagraph (e)(1).~~

~~(8) Local governments may include regional or jurisdiction-wide strategies within their stormwater programs as alternative means of achieving partial nutrient removal or flow control. At a minimum, such strategies shall include demonstration that any proposed measures will not contribute to degradation of surface water quality, degradation of aquatic or wetland habitat or biota, or~~

Commented [A16]: Change: Based on stakeholder input added the option for developers to use "Regional" offsite SCMs to provide treatment for projects. This option may be particularly useful for municipalities with limited space for SCMs in downtown areas.

Effect: Provides an additional option and improved flexibility for meeting the requirements of this rule.

Commented [A17]: Change: Added storm depth requirements for SCMs to be consistent with requirements in 2H stormwater rules.

Effect: Ensures proper SCM design and establishes consistency across stormwater rules

Commented [A18]: Change: Added language addressing enforcement of rule requirements by local governments on state and federal entities within their jurisdiction (in cases where they do not already have an NPDES permit).

Effect: Recognizes local governments have the authority to require state and federal entities to meet the requirements of their local stormwater ordinances. In cases where Local governments do not enforce these requirements the Division shall do so. Fiscal impact will be evaluated during the rulemaking process.

Commented [A19]: Change: Moved expectation to demonstrate buffer rule compliance from model program.

Effect: Clarifies requirements addressed in local government programs. No Impact.

~~destabilization of conveyance structure of involved surface waters. Such local governments shall also be responsible for including appropriate supporting information to quantify nutrient and flow reductions provided by these measures and describing the administrative process for implementing such strategies.~~

(e) RULE IMPLEMENTATION

(1) Within 4 months of the effective date of this Rule, the Division shall submit a model local stormwater program embodying the elements in Paragraphs (c) and (d) of this Rule to the Commission for approval. The Division shall work in cooperation with subject local governments in developing this model program.

(3) Local governments designated by the Commission in 1998 and additional local governments designated herein as subject to this Rule shall submit a local stormwater program for approval by the Commission within 6 months and 12 months, respectively, of the Commission's approval of the model local program. These local programs shall meet or exceed the requirements in Paragraphs (c) and (d) of this Rule.

(4) The Division shall provide recommendations to the Commission regarding proposed local stormwater programs. The Commission shall either approve the programs or require changes based on the standards set out in Paragraphs (c) and (d) of this Rule. Should the Commission require changes, the applicable local government shall have three months to submit revisions, and the Division shall provide follow-up recommendations to the Commission within two months after receiving revisions;

(5) Within six months after the Commission's approval of a local program, the affected local government shall complete adoption of and implement its local stormwater management program.

(6) Local governments administering a stormwater management program shall submit annual reports in electronic format to the Division documenting their progress regarding each program implementation requirement in Paragraph (c) and net changes to nitrogen load by October 30 of each year. Annual reports shall also include as appendices all data utilized by nutrient calculation tools for each development stormwater plan approved in accordance with this rule.

(7) Any significant modifications to a local government's program shall be submitted to the Director for approval.

~~(d) TIMEFRAME FOR IMPLEMENTATION. The timeframe for implementing the stormwater management program shall be as follows:~~

~~(1) Within 12 months of the effective date of this Rule, the Division shall submit a model local stormwater program that embodies the minimum criteria described in Paragraph (c) of this Rule to the Commission for approval. The Division shall work in cooperation with subject local governments in developing this model program.~~

~~(2) Within 12 months of the Commission's approval of the model local stormwater program or within 12 months of a local government's later designation pursuant to Subparagraph (b)(3), subject local governments shall submit their local stormwater management programs to the Commission for review~~

Commented [A20]: Change: This language was moved to Paragraph (c). Dropped the requirement for identifying stormwater retrofits based on stakeholder input.

Effect: Placement in Paragraph (c) provides better organization and clarity for local government responsibilities and elements to include in their local programs. Not change in implementation other than removing outdated and unnecessary requirement for identifying retrofit locations.

Commented [A21]: Change: Updated rule implementation timeline and added timeline for Division to develop model and new subject local governments to submit local programs.

Effect: Provides timeline for local governments who are added to this rule when they will be expected to begin implementing the requirements. Fiscal impact will be determined during the rulemaking process.

Commented [A22]: Change: Provide timelines for local governments to complete local programs allowing for more time for newly named communities.

Effect: Local governments that are already implementing will be provided 6 months to revise and submit their local programs. New subject communities will be provided more time – up to 12 months to develop and submit their programs for approval.

Commented [A23]:
Change: Added New Annual Reporting Language clarifying what needs to be included in the submittal.

Effect: Provides more useful information to the Division for tracking implementation and rule compliance

~~and approval. These local programs shall meet or exceed the requirements in Paragraph (c) of this Rule.~~

~~(3) Within 18 months of the Commission's approval of the model local stormwater program or within 18 months of a local government's later designation pursuant to Subparagraph (b)(3), subject local governments shall adopt and implement their approved local stormwater management program.~~

~~(4) Local governments administering a stormwater management program shall submit annual reports to the Division documenting their progress and net changes to nitrogen load by October 30 of each year.~~

(f) COMPLIANCE. A local government's authority to approve new development stormwater plans for compliance with this rule pursuant to Paragraph (d) shall be contingent upon maintaining its own compliance with this rule. A local government that fails to submit an acceptable local stormwater management program within the timeframe established in this Rule, ~~or~~ fails to implement an approved program, or fails to comply with annual reporting requirements shall be in violation of this Rule. ~~In this case, the stormwater management requirements for its jurisdiction shall be administered through the NPDES municipal stormwater permitting program per 15A NCAC 2H .0126. Any local government that is subject to an NPDES municipal stormwater permit pursuant to this Rule shall:~~

~~(1) Develop and implement comprehensive stormwater management program to reduce nutrients from both existing and new development. This stormwater management program shall meet the requirements of Paragraph (c) of this Rule for new and existing development.~~

~~(2) Be subject to the NPDES permit for at least one permitting cycle (five years) before it is eligible to submit a local stormwater management program to the Commission for consideration and approval.~~

History Note: *Authority G.S. 143-214.1; 143-214.7; 143-215.3(a)(1); 143-215.6A; 143-215.6B; 143-215.6C; 143-282(d);*
Eff. April 1, 2001.
Amended Eff. [New Date]

Commented [A24]: **Change:** Added stronger language to deal with noncompliance of the rule requirements.

Effect: Clarifies expectations and potential recourse for noncompliance with the rule requirements.

Page 3: [1] Commented [A13] **Author**

Change: Added low density option to better align rule with options provided under Phase II stormwater requirements.

Effect: Establishes minimum site design requirements for low density projects. Fiscal impact will be determined during the rulemaking process.

Page 3: [2] Commented [A14] **Author**

Change: In response to stakeholder input added option for local government road and sidewalk projects that have limited or no space for SCMs to meet export targets entirely through the use of offsite nutrient offsets.

Effect: Provides flexibility and potentially more cost-effective ways for projects meeting these criteria to meet the requirements of the rule.

Page 3: [3] Commented [A15] **Author**

Change: Updated language addressing redevelopment scenarios per new definition of development in Session Law 2014-90 to make it clear that the area of disturbance minus any preexisting BUA must be treated when development replaces or expands existing development resulting in net increase in BUA.

Effect: Reduces the area and amount of treatment required under redevelopment scenarios. Aligns rule with session law.

15A NCAC 02B .0259 is proposed for repeal as follows:

Commented [HK1]: moved to rules .0705, .0706, .0734

~~**15A NCAC 02B .0259 TAR-PAMLICO RIVER BASIN: NUTRIENT SENSITIVE WATERS MANAGEMENT STRATEGY: PROTECTION AND MAINTENANCE OF EXISTING RIPARIAN BUFFERS**~~

~~The following is the management strategy for maintaining and protecting existing riparian buffers in the Tar-Pamlico River Basin.~~

~~(1) PURPOSE. The purpose of this Rule shall be to protect and preserve existing riparian buffers, to maintain their nutrient removal functions, in the entire Tar-Pamlico River Basin, whose surface waters are described in the Schedule of Classifications, 15A NCAC 02B .0316.~~

~~(2) DEFINITIONS. For the purpose of this Rule, these terms shall be defined as follows:~~

~~(a) "Channel" means a natural water-carrying trough cut vertically into low areas of the land surface by erosive action of concentrated flowing water or a ditch or canal excavated for the flow of water. (current definition in Forest Practice Guidelines Related to Water Quality, 15A NCAC 01I .0102)~~

~~(b) "DBH" means Diameter at Breast Height of a tree, which is measured at 4.5 feet above ground surface level.~~

~~(c) "Ditch or canal" means a man-made channel other than a modified natural stream constructed for drainage purposes that is typically dug through inter-stream divide areas. A ditch or canal may have flows that are perennial, intermittent, or ephemeral and may exhibit hydrological and biological characteristics similar to perennial or intermittent streams.~~

~~(d) "Ephemeral (stormwater) stream" means a feature that carries only stormwater in direct response to precipitation with water flowing only during and shortly after large precipitation events. An ephemeral stream may or may not have a well-defined channel, the aquatic bed is always above the water table, and stormwater runoff is the primary source of water. An ephemeral stream typically lacks the biological, hydrological, and physical characteristics commonly associated with the continuous or intermittent conveyance of water.~~

~~(e) "Forest plantation" means an area of planted trees that may be conifers (pines) or hardwoods. On a plantation, the intended crop trees are planted rather than naturally regenerated from seed on the site, coppice (sprouting), or seed that is blown or carried into the site.~~

~~(f) "High-Value Tree" means a tree that meets or exceeds the following standards: for pine species, 14-inch DBH or greater or 18-inch or greater stump diameter; and, for hardwoods and wetland species, 16-inch DBH or greater or 24-inch or greater stump diameter.~~

(g) "Intermittent stream" means a well-defined channel that contains water for only part of the year, typically during winter and spring when the aquatic bed is below the 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 conveyance of water.

(h) "Modified natural stream" means an on-site channelization or relocation of a stream channel and subsequent relocation of the intermittent or perennial flow as evidenced by topographic alterations in the immediate watershed. A modified natural stream must have the typical biological, hydrological, and physical characteristics commonly associated with the continuous conveyance of water.

(i) "Perennial stream" means a well-defined channel that contains water year round during a year of normal rainfall with the aquatic bed located below the water table for most of the year. Groundwater is the primary source of water for a perennial stream, but it also carries stormwater runoff. A perennial stream exhibits the typical biological, hydrological, and physical characteristics commonly associated with the continuous conveyance of water.

(j) "Perennial waterbody" means a natural or man-made basin that stores surface water permanently at depths sufficient to preclude growth of rooted plants, including lakes, ponds, sounds, non-stream estuaries and ocean. For the purpose of the State's riparian buffer protection program, the waterbody must be part of a natural drainageway (i.e., connected by surface flow to a stream).

(k) "Stream" means a body of concentrated flowing water in a natural low area or natural channel on the land surface.

(l) "Surface waters" means all waters of the state as defined in G.S. 143-212 except underground waters.

(m) "Tree" means a woody plant with a DBH equal to or exceeding five inches.

(3) APPLICABILITY. This Rule shall apply to 50-foot wide riparian buffers directly adjacent to surface waters in the Tar-Pamlico River Basin (intermittent streams, perennial streams, lakes, ponds, and estuaries), excluding wetlands. Except as described in Sub-Item (4)(a)(iii) of this Rule, wetlands adjacent to surface waters or within 50 feet of surface waters shall be considered as part of the riparian buffer but are regulated pursuant to 15A NCAC 02H .0506. The riparian buffers protected by this Rule shall be measured pursuant to Item (4) of this Paragraph. For the purpose of this Rule, a surface water shall be present if the feature is approximately shown on either the most recent version of the soil survey map prepared by the Natural Resources Conservation Service of the United States Department of Agriculture or the most recent version of the 1:24,000 scale (7.5 minute) quadrangle topographic maps prepared by the United States Geologic Survey (USGS). Riparian buffers adjacent to surface waters that do not appear on either of the maps shall not be subject to

this Rule. Riparian buffers adjacent to surface waters that appear on the maps shall be subject to this Rule unless one of the following applies.

(a) EXEMPTION WHEN AN ON-SITE DETERMINATION SHOWS THAT SURFACE WATERS ARE NOT PRESENT. When a landowner or other affected party believes that the maps have inaccurately depicted surface waters, he or she shall consult the Division or the appropriate delegated local authority. Upon request, the Division or delegated local authority shall make on-site determinations. Any disputes over on-site determinations shall be referred to the Director in writing. A determination of the Director as to the accuracy or application of the maps is subject to review as provided in Articles 3 and 4 of G.S. 150B. Surface waters that appear on the maps shall not be subject to this Rule if an on-site determination shows that they fall into one of the following categories.

(i) Ditches and manmade conveyances other than modified natural streams unless constructed for navigation or boat access.

(ii) Manmade ponds and lakes that are located outside natural drainage ways.

(iii) Ephemeral (stormwater) streams.

(b) EXEMPTION WHEN EXISTING USES ARE PRESENT AND ONGOING. This Rule shall not apply to portions of the riparian buffer where a use is existing and ongoing according to the following:

(i) A use shall be considered existing if it was present within the riparian buffer as of January 1, 2000. Existing uses shall include, but not be limited to, agriculture, buildings, industrial facilities, commercial areas, transportation facilities, maintained lawns, utility lines and on-site sanitary sewage systems. Only the portion of the riparian buffer that contains the footprint of the existing use is exempt from this Rule. Activities necessary to maintain uses are allowed provided that no additional vegetation is removed from Zone 1, except that grazed or trampled by livestock, and existing diffuse flow is maintained. Grading and revegetating Zone 2 is allowed provided that the health of the vegetation in Zone 1 is not compromised, the ground is stabilized and existing diffuse flow is maintained.

(ii) At the time an existing use is proposed to be converted to another use, this Rule shall apply. An existing use shall be considered to be converted to another use if any of the following applies:

(A) Impervious surface is added to the riparian buffer in locations where it did not exist previously.

(B) An agricultural operation within the riparian buffer is converted to a non-agricultural use.

(C) A lawn within the riparian buffer ceases to be maintained.

(4) ZONES OF THE RIPARIAN BUFFER. The protected riparian buffer shall have two zones as follows:

(a) Zone 1 shall consist of a vegetated area that is undisturbed except for uses provided for in Item (6) of this Rule. The location of Zone 1 shall be as follows:

(i) For intermittent and perennial streams, Zone 1 shall begin at the most landward limit of the top of bank or the rooted herbaceous vegetation and extend landward a distance of 30 feet on all sides of the surface water, measured horizontally on a line perpendicular to the surface water.

(ii) For ponds, lakes and reservoirs located within a natural drainage way, Zone 1 shall begin at the most landward limit of the normal water level or the rooted herbaceous vegetation and extend landward a distance of 30 feet, measured horizontally on a line perpendicular to the surface water.

(iii) For surface waters within the 20 Coastal Counties (defined in 15A NCAC 02B .0202) within the jurisdiction of the Division of Coastal Management, Zone 1 shall begin at the most landward limit of:

(A) the normal high water level;

(B) the normal water level; or

(C) the landward limit of coastal wetlands as defined by the Division of Coastal Management;

and extend landward a distance of 30 feet, measured horizontally on a line perpendicular to the surface water, whichever is more restrictive.

(b) Zone 2 shall consist of a stable, vegetated area that is undisturbed except for activities and uses provided for in Item (6) of this Rule. Grading and revegetating Zone 2 is allowed provided that the health of the vegetation in Zone 1 is not compromised. Zone 2 shall begin at the outer edge of Zone 1 and extend landward 20 feet as measured horizontally on a line perpendicular to the surface water. The combined width of Zones 1 and 2 shall be 50 feet on all sides of the surface water.

(5) DIFFUSE FLOW REQUIREMENT. Diffuse flow of runoff shall be maintained in the riparian buffer by dispersing concentrated flow and reestablishing vegetation.

(a) Concentrated runoff from new ditches or manmade conveyances shall be converted to diffuse flow before the runoff enters Zone 2 of the riparian buffer.

(b) Periodic corrective action to restore diffuse flow shall be taken if necessary to impede the formation of erosion gullies.

(6) TABLE OF USES. The following chart sets out the uses and their designation under this Rule as exempt, allowable, allowable with mitigation, or prohibited. The requirements for each category are given in Item (7) of this Rule.

	Exempt	Allowable	Allowable with Mitigation	Prohibited
Airport facilities: • Airport facilities that impact equal to or less than 150 linear feet or one-third of an acre of riparian buffer • Airport facilities that impact greater than 150 linear feet or one-third of an acre of riparian buffer		X	X	
Archaeological activities	X			
Bridges		X		
Dam maintenance activities	X			
Drainage ditches, roadside ditches and stormwater outfalls through riparian buffers: • Existing drainage ditches, roadside ditches, and stormwater outfalls provided that they are managed to minimize the sediment, nutrients and other pollution that convey to waterbodies • New drainage ditches, roadside ditches and stormwater outfalls provided that a stormwater management facility is installed to control nitrogen and attenuate flow before the conveyance discharges through the riparian buffer • New drainage ditches, roadside ditches and stormwater outfalls that do not provide control for nitrogen before discharging through the riparian buffer • Excavation of the streambed in order to bring it to the same elevation as the invert of a ditch	X	X		X X
Drainage of a pond in a natural drainage way provided that a new riparian buffer that meets the requirements of Items (4) and (5) of this Rule is established adjacent to the new channel	X			
Driveway crossings of streams and other surface waters subject to this Rule: • Driveway crossings on single family residential lots that disturb equal to or less than 25 linear feet or 2,500 square feet of riparian buffer • Driveway crossings on single family residential lots that disturb greater than 25 linear feet or 2,500 square feet of riparian buffer • In a subdivision that cumulatively disturb equal to or less than 150 linear feet or one-third of an acre of riparian buffer • In a subdivision that cumulatively disturb greater than 150 linear feet or one-third of an acre of riparian buffer	X	X X	X	
Fences provided that disturbance is minimized and installation does not result in removal of forest vegetation	X			
Forest harvesting – see Item (11) of this Rule				
Fertilizer application: • One-time fertilizer application to establish replanted vegetation X Ongoing fertilizer application	X			X

Grading and revegetation in Zone 2 only provided that diffuse flow and the health of existing vegetation in Zone 1 is not compromised and disturbed areas are stabilized	X			
Greenway / hiking trails		X		
Historic preservation	X			
Landfills as defined by G..S. 130A-290.				X
Mining activities: • Mining activities that are covered by the Mining Act provided that new riparian buffers that meet the requirements of Items (4) and (5) of this Rule are established adjacent to the relocated channels • Mining activities that are not covered by the Mining Act OR where new riparian buffers that meet the requirements or Items (4) and (5) of this Rule are not established adjacent to the relocated channels • Wastewater or mining dewatering wells with approved NPDES permit	 X	X	 X	
Non-electric utility lines: • Impacts other than perpendicular crossings in Zone 2 only[3] • Impacts other than perpendicular crossings in Zone 1[3]		X	 X	
Non-electric utility line perpendicular crossings of streams and other surface waters subject to this Rule[3]: •Perpendicular crossings that disturb equal to or less than 40 linear feet of riparian buffer with a maintenance corridor equal to or less than 10 feet in width • Perpendicular crossings that disturb equal to or less than 40 linear feet of riparian buffer with a maintenance corridor greater than 10 feet in width • Perpendicular crossings that disturb greater than 40 linear feet but equal to or less than 150 linear feet of riparian buffer with a maintenance corridor equal to or less than 10 feet in width • Perpendicular crossings that disturb greater than 40 linear feet but equal to or less than 150 linear feet of riparian buffer with a maintenance corridor greater than 10 feet in width • Perpendicular crossings that disturb greater than 150 linear feet of riparian buffer	X	X X	X X	
On-site sanitary sewage systems B new ones that use ground absorption				X
Overhead electric utility lines: • Impacts other than perpendicular crossings in Zone 2 only[3] • Impacts other than perpendicular crossings in Zone 1[1,2,3]	X X			
Overhead electric utility line perpendicular crossings of streams and other surface waters subject to this Rule[3]: • Perpendicular crossings that disturb equal to or less than 150 linear feet of riparian buffer[1] • Perpendicular crossings that disturb greater than 150 linear feet of riparian buffer [1,2]	X	 X		

Periodic maintenance of modified natural streams such as canals and a grassed travelway on one side of the surface water when alternative forms of maintenance access are not practical		X		

[1] Provided that, in Zone 1, all of the following BMPs for overhead utility lines are used. If all of these BMPs are not used, then the overhead utility lines shall require a no practical alternative evaluation by the Division.

- A minimum zone of 10 feet wide immediately adjacent to the water body shall be managed such that only vegetation that poses a hazard or has the potential to grow tall enough to interfere with the line is removed.
- Woody vegetation shall be cleared by hand. No land grubbing or grading is allowed.
- Vegetative root systems shall be left intact to maintain the integrity of the soil. Stumps shall remain where trees are cut.
- Rip rap shall not be used unless it is necessary to stabilize a tower.
- No fertilizer shall be used other than a one-time application to re-establish vegetation.
- Construction activities shall minimize the removal of woody vegetation, the extent of the disturbed area, and the time in which areas remain in a disturbed state.
- Active measures shall be taken after construction and during routine maintenance to ensure diffuse flow of stormwater through the buffer.
- In wetlands, mats shall be utilized to minimize soil disturbance.

[2] Provided that poles or towers shall not be installed within 10 feet of a water body unless the Division completes a no practical alternative evaluation.

[3] Perpendicular crossings are those that intersect the surface water at an angle between 75° and 105°.

	Exempt	Allowable	Allowable with Mitigation	Prohibited
Playground equipment:				
• Playground equipment on single family lots provided that installation and use does not result in removal of vegetation	X			
• Playground equipment installed on lands other than single family lots or that requires removal of vegetation		X		
Ponds in natural drainage ways, excluding dry ponds:				
• New ponds provided that a riparian buffer that meets the requirements of Items (4) and (5) of this Rule is established adjacent to the pond		X		
• New ponds where a riparian buffer that meets the requirements of Items (4) and (5) of this Rule is NOT established adjacent to the pond			X	
Protection of existing structures, facilities and streambanks when this requires additional disturbance of the riparian buffer or the stream channel		X		
Railroad impacts other than crossings of streams and other surface waters subject to this Rule.			X	
Railroad crossings of streams and other surface waters subject to this Rule:				
• Railroad crossings that impact equal to or less than 40 linear feet of riparian buffer	X			
• Railroad crossings that impact greater than 40 linear feet but equal to or less than 150 linear feet or one-third of an acre of riparian buffer		X		
• Railroad crossings that impact greater than 150 linear feet or one-third of an acre of riparian buffer			X	

~~Removal of previous fill or debris provided that diffuse flow is maintained and any vegetation removed is restored~~	~~X~~			
~~Road impacts other than crossings of streams and other surface waters subject to this Rule~~			~~X~~	
~~Road crossings of streams and other surface waters subject to this Rule:~~ ~~•Road crossings that impact equal to or less than 40 linear feet of riparian buffer~~ ~~•Road crossings that impact greater than 40 linear feet but equal to or less than 150 linear feet or one-third of an acre of riparian buffer~~ ~~•Road crossings that impact greater than 150 linear feet or one-third of an acre of riparian buffer~~	 ~~X~~	 ~~X~~	 ~~X~~	
~~Scientific studies and stream gauging~~	~~X~~			
~~Stormwater management ponds excluding dry ponds:~~ ~~§New stormwater management ponds provided that a riparian buffer that meets the requirements of Items (4) and (5) of this Rule is established adjacent to the pond~~ ~~§New stormwater management ponds where a riparian buffer that meets the requirements of Items (4) and (5) of this Rule is NOT established adjacent to the pond~~	 	 ~~X~~	 ~~X~~	
~~Stream restoration~~	~~X~~			
~~Streambank stabilization~~		~~X~~		
~~Temporary roads:~~ ~~•Temporary roads that disturb less than or equal to 2,500 square feet provided that vegetation is restored within six months of initial disturbance~~ ~~•Temporary roads that disturb greater than 2,500 square feet provided that vegetation is restored within six months of initial disturbance~~ ~~•Temporary roads used for bridge construction or replacement provided that restoration activities such as soil stabilization and revegetation, occur immediately after construction~~	 ~~X~~	 ~~X~~ ~~X~~		
~~Temporary sediment and erosion control devices:~~ ~~• In Zone 2 only provided that the vegetation in Zone 1 is not compromised and that discharge is released as diffuse flow in accordance with Item (5) of this Rule~~ ~~• In Zones 1 and 2 to control impacts associated with uses approved by the Division or that have received a variance provided that sediment and erosion control for upland areas is addressed to the maximum extent practical outside the buffer~~ ~~• In-stream temporary erosion and sediment control measures for work within a stream channel~~	 ~~X~~ ~~X~~	 ~~X~~		
~~Underground electric utility lines:~~ ~~• Impacts other than perpendicular crossings in Zone 2 only[3]~~ ~~• Impacts other than perpendicular crossings in Zone 1[4]~~	 ~~X~~ ~~X~~			
~~Underground electric utility line perpendicular crossings of streams and other surface waters subject to this Rule:~~				

• Perpendicular crossings that disturb less than or equal to 40 linear feet of riparian buffer[4] • Perpendicular crossings that disturb greater than 40 linear feet of riparian buffer[4]	X X			

[4] Provided that, in Zone 1, all of the following BMPs for underground utility lines are used. If all of these BMPs are not used, then the underground utility line shall require a no practical alternative evaluation by the Division.

- Woody vegetation shall be cleared by hand. No land grubbing or grading is allowed.
- Vegetative root systems shall be left intact to maintain the integrity of the soil. Stumps shall remain, except in the trench, where trees are cut.
- Underground cables shall be installed by vibratory plow or trenching.
- The trench shall be backfilled with the excavated soil material immediately following cable installation.
- No fertilizer shall be used other than a one-time application to re-establish vegetation.
- Construction activities shall minimize the removal of woody vegetation, the extent of the disturbed area, and the time in which areas remain in a disturbed state.
- Active measures shall be taken after construction and during routine maintenance to ensure diffuse flow of stormwater through the buffer.
- In wetlands, mats shall be utilized to minimize soil disturbance.

	Exempt	Allowable	Allowable with Mitigation	Prohibited
Vegetation management: • Emergency fire control measures provided that topography is restored • Periodic mowing and harvesting of plant products in Zone 2 only • Planting vegetation to enhance the riparian buffer • Pruning forest vegetation provided that the health and function of the forest vegetation is not compromised • Removal of individual trees which are in danger of causing damage to dwellings, other structures or human life • Removal or poison ivy • Removal of understory nuisance vegetation as defined in: Smith, Cherri L. 1998. Exotic Plant Guidelines. Dept. of Environment and Natural Resources. Division of Parks and Recreation. Raleigh, NC. Guideline #30	 X X X X X X X			
Water dependent structures as defined in 15A NCAC 2B .0202		X		
Water supply reservoirs: • New reservoirs provided that a riparian buffer that meets the requirements of Items (4) and (5) of this Rule is established adjacent to the reservoir • New reservoirs where a riparian buffer that meets the requirements of Items (4) and (5) of this Rule is NOT established adjacent to the reservoir		 X	 X	
Water wells	X			
Wetland restoration	X			

(7) REQUIREMENTS FOR CATEGORIES OF USES. Uses designated as exempt, allowable, allowable with mitigation and prohibited in Item (6) of this Rule shall have the following requirements:

(a) EXEMPT. Uses designated as exempt are allowed within the riparian buffer. Exempt uses shall be designed, constructed and maintained to minimize soil disturbance and to provide the maximum water quality protection practicable. In addition, exempt uses shall meet requirements listed in Item (6) of this Rule for the specific use.

(b) ALLOWABLE. Uses designated as allowable may proceed within the riparian buffer provided that there are no practical alternatives to the requested use pursuant to Item (8) of this Rule. These uses require written authorization from the Division or the delegated local authority.

(c) ALLOWABLE WITH MITIGATION. Uses designated as allowable with mitigation may proceed within the riparian buffer provided that there are no practical alternatives to the requested use pursuant to Item (8) of this Rule and an appropriate mitigation strategy has been approved pursuant to Item (10) of this Rule. These uses require written authorization from the Division or the delegated local authority.

(d) PROHIBITED. Uses designated as prohibited may not proceed within the riparian buffer unless a variance is granted pursuant to Item (9) of this Rule. Mitigation may be required as one condition of a variance approval.

(8) DETERMINATION OF ANO PRACTICAL ALTERNATIVES." Persons who wish to undertake uses designated as allowable or allowable with mitigation shall submit a request for a "no practical alternatives" determination to the Division or to the delegated local authority. The applicant shall certify that the criteria identified in Sub-Item (8)(a) of this Rule are met. The Division or the delegated local authority shall grant an Authorization Certificate upon a "no practical alternatives" determination. The procedure for making an Authorization Certificate shall be as follows:

(a) For any request for an Authorization Certificate, the Division or the delegated local authority shall review the entire project and make a finding of fact as to whether the following requirements have been met in support of a "no practical alternatives" determination:

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

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

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

(b) Requests for an Authorization Certificate shall be reviewed and either approved or denied within 60 days of receipt of a complete submission based on the criteria in Sub-Item (8)(a) of this Rule by either the Division or the delegated local authority. Failure to issue an approval or denial within 60 days shall constitute that the applicant has demonstrated "no practical alternatives." The Division or the delegated local authority may attach conditions to the Authorization Certificate that support the purpose, spirit and intent of the riparian buffer protection program. Complete submissions shall include the following:

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

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

(iii) The location of the activity, including the jurisdiction;

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

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

(vi) Plans for any best management practices proposed to be used to control the impacts associated with the activity.

(c) Any disputes over determinations regarding Authorization Certificates shall be referred to the Director for a decision. The Director's decision is subject to review as provided in Articles 3 and 4 of G.S. 150B.

(9) VARIANCES. Persons who wish to undertake uses designated as prohibited may pursue a variance. The Division or the appropriate delegated local authority may grant minor variances. The variance request procedure shall be as follows:

(a) For any variance request, the Division or the delegated local authority shall make a finding of fact as to whether the following requirements have been met:

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

(A) If the applicant complies with the provisions of this Rule, he/she can secure no reasonable return from, nor make reasonable use of, his/her property. Merely proving that the variance would permit a greater profit from the property shall not be considered adequate justification for a variance. Moreover, the Division or delegated local authority shall consider whether the variance is the minimum possible deviation from

the terms of this Rule that shall make reasonable use of the property possible.

(B) The hardship results from application of this Rule to the property rather than from other factors such as deed restrictions or other hardship.

(C) The hardship is due to the physical nature of the applicant's property, such as its size, shape, or topography, which is different from that of neighboring property.

(D) The applicant did not cause the hardship by knowingly or unknowingly violating this Rule.

(E) The applicant did not purchase the property after the effective date of this Rule, and then request an appeal.

(F) The hardship is unique to the applicant's property, rather than the result of conditions that are widespread. If other properties are equally subject to the hardship created in the restriction, then granting a variance would be a special privilege denied to others, and would not promote equal justice;

(ii) The variance is in harmony with the general purpose and intent of the State's riparian buffer protection requirements and preserves its spirit; and

(iii) In granting the variance, the public safety and welfare have been assured, water quality has been protected, and substantial justice has been done.

(b) MINOR VARIANCES. A minor variance request pertains to activities that are proposed only to impact any portion of Zone 2 of the riparian buffer. Minor variance requests shall be reviewed and approved based on the criteria in Sub-Item (9)(a) of this Rule by the either the Division or the delegated local authority pursuant to G.S. 153A Article 18, or G.S. 160A Article 19. The Division or the delegated local authority may attach conditions to the variance approval that support the purpose, spirit and intent of the riparian buffer protection program. Requests for appeals of decisions made by the Division shall be made to the Office of Administrative Hearings. Request for appeals made by the delegated local authority shall be made to the appropriate Board of Adjustment under G.S. 160A 388 or G.S. 153A 345.

(c) MAJOR VARIANCES. A major variance request pertains to activities that are proposed to impact any portion of Zone 1 or any portion of both Zones 1 and 2 of the riparian buffer. If the Division or the delegated local authority has determined that a major variance request meets the requirements in Sub-Item (9)(a) of this Rule, then it shall prepare a preliminary finding and submit it to the Commission. Preliminary findings on major variance requests shall be reviewed by the Commission within 90 days after receipt by the Director. Requests for appeals of determinations that the requirements of Sub-Item (9)(a) of this Paragraph

have not been met shall be made to the Office of Administrative Hearings for determinations made by the Division or the appropriate Board of Adjustments under G.S. 160A-388 or G.S. 153A-345 for determinations made by the delegated local authority. The purpose of the Commission's review is to determine if it agrees that the requirements in Sub-Item (9)(a) of this Rule have been met. Requests for appeals of decisions made by the Commission shall be made to the Office of Administrative Hearings. The following actions shall be taken depending on the Commission's decision on the major variance request:

(i) Upon the Commission's approval, the Division or the delegated local authority shall issue a final decision granting the major variance.

(ii) Upon the Commission's approval with conditions or stipulations, the Division or the delegated local authority shall issue a final decision, which includes these conditions or stipulations.

(iii) Upon the Commission's denial, the Division or the delegated local authority shall issue a final decision denying the major variance.

(10) MITIGATION. Persons who wish to undertake uses designated as allowable with mitigation shall meet the following requirements in order to proceed with their proposed use.

(a) Obtain a determination of "no practical alternatives" to the proposed use pursuant to Item (8) of this Rule.

(b) Obtain approval for a mitigation proposal pursuant to 15A NCAC 02B .0260.

(11) REQUIREMENTS SPECIFIC TO FOREST HARVESTING. The following requirements shall apply for forest harvesting operations and practices.

(a) The following measures shall apply in the entire riparian buffer:

(i) Logging decks and sawmill sites shall not be placed in the riparian buffer.

(ii) Access roads and skid trails shall be prohibited except for temporary and permanent stream crossings established in accordance with 15A NCAC 01I .0203. Temporary stream crossings shall be permanently stabilized after any site disturbing activity is completed.

(iii) Timber felling shall be directed away from the stream or water body.

(iv) Skidding shall be directed away from the stream or water body and shall be done in a manner that minimizes soil disturbance and prevents the creation of channels or ruts.

(v) Individual trees may be treated to maintain or improve their health, form or vigor.

(vi) Harvesting of dead or infected trees or application of pesticides necessary to prevent or control extensive tree pest and disease infestation shall be allowed. These practices must be approved by the Division of Forest Resources for a

specific site. The Division of Forest Resources must notify the Division of all approvals.

(vii) Removal of individual trees that are in danger of causing damage to structures or human life shall be allowed.

(viii) Natural regeneration of forest vegetation and planting of trees, shrubs, or ground cover plants to enhance the riparian buffer shall be allowed provided that soil disturbance is minimized. Plantings shall consist primarily of native species.

(ix) High intensity prescribed burns shall not be allowed.

(x) Application of fertilizer shall not be allowed except as necessary for permanent stabilization. Broadcast application of fertilizer or herbicides to the adjacent forest stand shall be conducted so that the chemicals are not applied directly to or allowed to drift into the riparian buffer.

(b) In Zone 1, forest vegetation shall be protected and maintained. Selective harvest as provided for below is allowed on forest lands that have a deferment for use value under forestry in accordance with G.S. 105-277.2 through G.S. 277.6 or on forest lands that have a forest management plan prepared or approved by a registered professional forester. Copies of either the approval of the deferment for use value under forestry or the forest management plan shall be produced upon request. For such forest lands, selective harvest is allowed in accordance with the following:

(i) Tracked or wheeled vehicles are not permitted except at stream crossings designed, constructed and maintained in accordance with 15A NCAC 01I .0203.

(ii) Soil disturbing site preparation activities are not allowed.

(iii) Trees shall be removed with the minimum disturbance to the soil and residual vegetation.

(iv) The following provisions for selective harvesting shall be met:

(A) The first 10 feet of Zone 1 directly adjacent to the stream or waterbody shall be undisturbed except for the removal of individual high value trees as defined provided that no trees with exposed primary roots visible in the streambank be cut.

(B) In the outer 20 feet of Zone 1, a maximum of 50 percent of the trees greater than five inches dbh may be cut and removed. The reentry time for harvest shall be no more frequent than every 15 years, except on forest plantations where the reentry time shall be no more frequent than every five years. In either case, the trees remaining after harvest shall be as evenly spaced as possible.

(C) In Zone 2, harvesting and regeneration of the forest stand shall be allowed provided that sufficient ground cover is maintained to provide for diffusion and infiltration of surface runoff.

(12) REQUIREMENTS SPECIFIC TO LOCAL GOVERNMENTS WITH STORMWATER PROGRAMS FOR NITROGEN CONTROL. Local governments in the Tar-Pamlico River Basin that are required to have local stormwater programs to control nitrogen loading shall have two options for ensuring protection of riparian buffers on new developments within their jurisdictions as follows.

(a) Obtain authority to implement a local riparian buffer protection program pursuant to 15A NCAC 02B .0261.

(b) Refrain from issuing local approvals for new development projects unless either:

(i) The person requesting the approval does not propose to impact the riparian buffer of a surface water that appears on either the most recent versions of the soil survey maps prepared by the Natural Resources Conservation Service of the United States Department of Agriculture or the most recent versions of the 1:24,000 scale (7.5 minute quadrangle) topographic maps prepared by the United States Geologic Survey (USGS).

(ii) The person requesting the approval proposes to impact the riparian buffer of a surface water that appears on the maps described in Sub-Item (12)(b)(i) of this Paragraph and either:

(A) Has received an on-site determination from the Division pursuant to Sub-Item (3)(a) of this Rule that surface waters are not present;

(B) Has received an Authorization Certificate from the Division pursuant to Item (8) of this Rule for uses designated as Allowable under this Rule;

(C) Has received an Authorization Certificate from the Division pursuant to Item (8) of this Rule and obtained the Division's approval on a mitigation plan pursuant to Item (10) of this Rule for uses designated as Allowable with Mitigation under this Rule; or

(D) Has received a variance from the Commission pursuant to Item (9) of this Rule.

(13) OTHER LAWS, REGULATIONS AND PERMITS. In all cases, compliance with this Rule does not preclude the requirement to comply with all federal, state and local regulations and laws.

History Note: *Authority 143-214.1; 143-214.7; 143-215.3(a)(1); 143-215.6A; 143-215.6B; 143-215.6C; 143B-282(d); S.L. 1999, c. 329, s. 7.1;*
Temporary Adoption Eff. January 1, 2000;
Eff. August 1, 2000.

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15A NCAC 02B .0261 is proposed for repeal as follows:

Commented [HK1]: moved to rule .0735

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

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

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

~~(a) Local governments within the Tar-Pamlico River Basin may submit a written request to the Commission for authority to implement and enforce the Tar-Pamlico Basin riparian buffer protection requirements within their jurisdiction. The written request shall be accompanied by information which shows:~~

~~(i) The local government has land use jurisdiction for the riparian buffer demonstrated by delineating the local land use jurisdictional boundary on USGS 1:24,000 topographical map(s) or other finer scale map(s);~~

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

~~(iii) The local government has adopted ordinances, resolutions, or regulations necessary to establish and maintain the Tar-Pamlico Basin riparian buffer protection requirements; and~~

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

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

~~(c) The Commission, upon determination that a delegated local authority is failing to implement or enforce the Tar-Pamlico Basin riparian buffer protection requirements in keeping with a request approved under Sub-item (1)(b) of this Rule, shall notify the delegated local authority in writing of the local program's inadequacies. If the delegated~~

local authority has not corrected the deficiencies within 90 days of receipt of the written notification, then the Commission shall rescind the delegation of authority to the local government and shall implement and enforce the Tar-Pamlico Basin riparian buffer protection requirements.

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

(2) APPOINTMENT OF A RIPARIAN BUFFER PROTECTION ADMINISTRATOR. Upon receiving delegation, local governments shall appoint a Riparian Buffer Protection Administrator who shall coordinate the implementation and enforcement of the program. The Administrator shall attend an initial training session by the Division and subsequent annual training sessions. The Administrator shall ensure that local government staff working directly with the program receive training to understand, implement and enforce the program.

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

(4) VARIANCES. After receiving delegation, local governments shall review variance requests, provide approvals for minor variance requests and make recommendations to the Commission for major variance requests pursuant to the Tar-Pamlico Basin riparian buffer protection program.

(5) LIMITS OF DELEGATED LOCAL AUTHORITY. The Commission shall have jurisdiction to the exclusion of local governments to implement the Tar-Pamlico Basin riparian buffer protection requirements for the following types of activities:

(a) Activities conducted under the authority of the State;

(b) Activities conducted under the authority of the United States;

(c) Activities conducted under the authority of multiple jurisdictions;

(d) Activities conducted under the authority of local units of government.

(6) RECORD-KEEPING REQUIREMENTS. Delegated local authorities shall maintain on-site records for a minimum of 5 years. Delegated local authorities must furnish a copy of these records to the Director within 30 days of receipt of a written request for the records. The Division shall inspect local riparian buffer protection programs to ensure that the programs are being implemented and

~~enforced in keeping with a request approved under Sub-item (1)(b) of this Rule. Each delegated local authority's records shall include the following:~~

~~(a) A copy of variance requests;~~

~~(b) The variance request's finding of fact;~~

~~(c) The result of the variance proceedings;~~

~~(d) A record of complaints and action taken as a result of the complaint;~~

~~(e) Records for stream origin calls and stream ratings; and~~

~~(f) Copies of request for authorization, records approving authorization and Authorization Certificates.~~

History Note: *Authority G S. 143-214.1; 143-214.7; 143-215.3(a)(1); 143-215.6A; 143-215.6B; 143-215.6C; 143B-282(d); S.L. 1999; c. 329, s. 7.1;*
Temporary Adoption Eff. January 1, 2000;
Eff. August 1, 2000.

15A NCAC 02B .0301 is proposed for amendment 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;~~

Commented [A1]: All of (a) through (e) are streamlining and organizational updates, web links and new references.

Commented [A2]: Removed (b) because the authority is with USGS for naming streams.

Commented [A3]: All usage information moved to individual classification rules which are referenced below.

~~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;

Commented [A4]: Deleted obsolete terminology. Retained relevant language into .0224.

Commented [A5]: FWS deleted because not used.

(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) Index Number.~~

~~(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);

Commented [A6]: Removed (A) because it is covered in (1). Other changes are for clarity and references. No substantive changes.

Commented [A7]: November 1, 1986 was the exception provided by the coastal stormwater rules. Removing it creates anti-degradation issues.

Commented [A8]: Format changes only.

(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.

15A NCAC 02B .0302 is proposed for amendment 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

Commented [A1]: Streamlining and address updates. No substantive changes.

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.

15A NCAC 02B .0303 is proposed for amendment 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;

Commented [A1]: Streamlining and address updates. No substantive changes.

(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 (c) 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.

15A NCAC 02B .0304 is proposed for amendment 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 ~~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 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.

Commented [A1]: Streamlining and address updates. No substantive changes.

Commented [A2]: Information removed because language is in history note.

(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.

History Note: *Authority G.S. 143-214.1; 143-215.1; 143-215.3(a)(1);*
Eff. February 1, 1976;
Amended Eff. 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.

15A NCAC 02B .0305 is proposed for amendment 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;

Commented [A1]: Streamlining and address updates. No substantive changes.

(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.

15A NCAC 02B .0306 is proposed for amendment 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

Commented [A1]: Streamlining and address updates. No substantive changes.

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.

15A NCAC 02B .0307 is proposed for amendment 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;

Commented [A1]: Streamlining and address updates. No substantive changes.

(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.

15A NCAC 02B .0308 is proposed for amendment 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);

Commented [A1]: Streamlining and address updates. No substantive changes.

(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 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 mile downstream of SR 1501 to a point 0.21 mile upstream of I-221 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.

15A NCAC 02B .0309 is proposed for amendment 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
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;

Commented [A1]: Streamlining and address updates. No substantive changes.

(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:

(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 .0101Rule .0202 of this Subchapter~~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 .0101Rule .0202 of this Subchapter~~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.

15A NCAC 02B .0310 is proposed for amendment 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.

Commented [A1]: Streamlining and address updates. No substantive changes.

(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. Rule .0202 of this Subchapter~~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. Rule .0202 of this Subchapter~~ 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. Rule .0202 of this Subchapter~~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. Rule .0202 of this Subchapter~~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. Rule .0202 of this Subchapter~~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. Rule .0202 of this Subchapter~~ 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. Rule .0202 of this Subchapter~~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. Rule .0202 of this Subchapter~~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. Rule .0202 of this Subchapter~~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. Rule .0202 of this Subchapter~~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. Rule .0202 of this Subchapter~~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.

15A NCAC 02B .0312 is proposed for amendment 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:

Commented [A1]: Streamlining and address updates. No substantive changes.

Commented [A2]: Information removed because language is in history note.

(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. Rule .0202 of this Subchapter~~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. Rule .0202 of this Subchapter~~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.

15 NCAC 02B .0313 is proposed for amendment 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.

Commented [A1]: Streamlining and address updates. No substantive changes.

Commented [A2]: Information removed because language is in history note.

(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.

15A NCAC 02B .0314 is proposed for amendment as follows:

Commented [A1]: Streamlining and address updates. No substantive changes.

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;

(B) Washington Regional Office

~~1502 North Market Street~~943 Washington Square Mall

Washington, 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.

15A NCAC 02B .0316 is proposed for amendment as follows:

Commented [A1]: Streamlining and address updates. No substantive changes.

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:

(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. Rule .0202 of this Subchapter~~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. Rule .0202 of this Subchapter~~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.

15A NCAC 02B .0317 is proposed for amendment as follows:

Commented [A1]: Streamlining and address updates. No substantive changes.

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:~~Classifications 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. Rule .0202 of this Subchapter~~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. Rule .0202 of this Subchapter~~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.

15A NCAC 02B .0402 is proposed for readoption without substantive changes as follows:

15A NCAC 02B .0402 SCOPE

Effluent limits established herein shall apply to all effluents discharged from pretreatment facilities and from outlets and point sources to the waters of the state.

History Note: *Authority G.S. 143-215; 143-215.1; 143-215.3(a)(1);*
Eff. February 1, ~~1976.~~1976;
Readopted Eff. <date>.

15A NCAC 02B .0403 is proposed for readoption with substantive changes as follows:

15A NCAC 02B .0403 DEFINITION OF TERMS

The terms used in this Section shall be as defined in G.S. ~~143-213~~143-212 and 143-213; the federal Clean Water Act (33 U.S.C. 1251 et seq.); 40 CFR Parts 122, 124, and 125; and as follows:

(1) ~~The term "commission"~~"Commission" means the Environmental Management Commission or its successor.

(2) ~~The term "director"~~"Director" means the Director of the Division of ~~Environmental Management,~~Water Resources or Division of Energy, Mineral and Land Resources, Department of ~~Natural Resources and Community Development.~~Environmental Quality, whichever is the permitting authority in a particular instance; or his designee.

(3) "Division" means the Division of Water Resources or the Division of Energy, Mineral and Land Resources, Department of Environmental Quality, whichever is the permitting authority in a particular instance. In this Section, "Division" or "Division of Water Resources" can generally be read to mean either Division as the context requires.

(4) ~~The term "staff"~~"Staff" means the ~~division of environmental management,~~Division of Water Resources, or its successor.

~~(4) The term "BPCTCA" shall mean best practicable control technology currently available. Effluent limitations determined as BPCTCA are immediately applicable and shall be complied with not later than July 1, 1977.~~

~~(5) The term "BPWTT" shall mean best practicable waste treatment technology. Effluent limitations established by this designation shall be complied with not later than July 1, 1983.~~

~~(6) The term "BCT" shall mean best conventional pollutant control technology. Effluent limitations designated as BCT will control the discharge of pollutants determined to be conventional in nature and these limitations shall be complied with not later than July 1, 1984.~~

~~(7) The term "BAT" shall mean best available technology economically achievable. Effluent limitations designated as BAT will control the discharge of pollutants determined to be nonconventional in nature and these limitations will come into effect on July 1, 1984, and shall be complied with not later than July 1, 1987.~~

~~(8) The term "BAT/BMP'S" shall mean best available technology economically achievable/best management practices. Effluent limitations designated as BAT/BMP's will control the discharge of pollutants determined to be toxic in nature. Compliance with these designated effluent limitations must be maintained not later than three years after such limitations are developed, or not later than July 1, 1984, whichever is later, but in no case later than July 1, 1987.~~

(5) "Technology-based effluent limitations (or limits)," or "TBELs," means those effluent limits that are established based on a required level of treatment performance. TBELs can be further defined for specific types of dischargers or types of pollutants or parameters, including the following:

Commented [A1]: Change: Updated references to DENR and DWR; made minor punctuation corrections.
Effect: Technical corrections.

Change: Updated several existing definitions, added others. Deleted references to long-past compliance dates.
Effect: Technical change.

Commented [TM2]: Change: Expanded to include other applicable definitions, many established since original rule was established. Federal rules are also incorporated by reference at 2B .0408.
Effect: Technical corrections

Commented [A3]: Change: Revised definition to include directors of both divisions that have permitting authority under these rules. The intent of 2nd sentence is to avoid having to name both divisions in every case.
Effect: Technical correction.

Commented [TM4]: Change: Combined these five terms into new definition for TBELs.
Effect: Technical corrections and updates.

(a) “Secondary treatment” is a minimum technology-based standard of treatment for POTWs.

(b) “Best practicable waste treatment technology,” or "BPWTT," is an advanced standard of treatment for POTWs.

(c) “Best practicable control technology currently available,” or "BPT," is the minimum standard of treatment for dischargers other than POTWs.

(d) “Best conventional pollutant control technology,” or “BCT," is a standard of treatment for dischargers other than POTWs and applies to conventional pollutants.

(e) “Best available technology economically achievable,” or “BAT” is a standard of treatment for dischargers other than POTWs and applies to nonconventional pollutants.

(6) “Water quality-based effluent limitations (or limits),” or “WQBELs,” means those effluent limits that are established to ensure that a discharge does not cause or contribute to a contravention of state surface water quality standards.

~~(9)~~(7) ~~The term "new~~“New source performance standards" ~~shall mean~~means the effluent limitations required of an industrial discharger determined under the guidance of 15A NCAC 2B .0407 to be a new source.

(8) “Publicly owned treatment works,” or “POTW,” means a treatment works owned by a State or a municipality and is as defined more fully in 40 CFR 403.3, which is hereby incorporated by reference including any subsequent amendments or editions. This regulation can be accessed free of charge at http://www.gpo.gov/fdsys/.

~~(10)~~(9) ~~The term "waste~~“Waste stabilization pond" (also called "lagoons" or "oxidation ponds") ~~shall mean~~means a large, relatively shallow basin designed for long term detention of wastewater which may or may not have received prior treatment. While in the basin, the wastewater is biologically treated to reduce biochemical oxygen demand and suspended solids. Stabilization ponds are further defined as:

(a) Photosynthetic Pond. A pond which is designed to rely on photosynthetic oxygenation (i.e., oxygen from algae) for any portion of the oxygen needed for waste treatment; This includes oxidation ponds and facultative lagoons. These ponds may have supplemental aeration by mechanical means. With regard to hydraulic flow, photosynthetic ponds are either of the:

(i) flow-through type, in which the pond discharges relatively continuously throughout the year; or

(ii) controlled-discharge type, in which the pond is designed to retain the wastewater without discharge from six months to one year, followed by controlled discharge over a short time interval (typically about one to three weeks);

(b) Aerated Pond. A pond which is not designed to rely on any photosynthetic oxygenation to provide oxygen needed for biological waste treatment; Air is supplied by mechanical means. Aerated ponds are either:

(i) complete mix, in which sufficient energy is imparted to the wastewater to prevent deposition of solids in the pond; or

(ii) partial-mix, in which only sufficient energy is used to dissolve and mix oxygen in the wastewater. Solid materials settle in the partial-mix pond and are decomposed anaerobically. There will be algae in the partial-mix aerated pond, but usually far fewer than in a photosynthetic pond.

This definition does not include polishing or holding ponds which are preceded by other biochemical or physical/chemical secondary treatment processes and designed to increase their efficiency. The pond may be single-cell or multi-cell.

~~(11)~~(10) ~~The term "best~~ "Best waste stabilization pond technology" ~~shall mean~~means a monthly average effluent suspended solids concentration of 90 ~~mg/l~~mg/L and a weekly maximum average effluent suspended solids concentration of 135 ~~mg/l~~mg/L for those waste stabilization ponds that are achieving the level of effluent quality established for biochemical oxygen demand in .0406(a)(2) of this Section.

~~(12)~~(11) ~~The term "minimum~~"Minimum treatment requirements" means the minimum technology-based effluent limitations ~~required to comply with the designations secondary treatment~~that result from the application of "secondary treatment" as defined in 15A NCAC 2B .0406, BPWTT, ~~BPCTCA,~~BPT, BCT, ~~BAT~~ and/or ~~BMP's~~ BAT standards of treatment ~~as required of~~to a specific wastewater discharge. Minimum treatment requirements must be met even if the receiving waters affected can or are expected to be able to accept higher pollutant-load levels and still meet applicable water quality standards.

~~(13)~~(12) ~~The term "water~~"Water quality limited segment" means a segment where it is known that water quality does not meet applicable water quality standards or is not expected to meet them even after the application of minimum treatment requirements.

~~(14)~~(13) ~~The term "effluent~~"Effluent limited segment" means a segment where it is known that water quality is meeting and will continue to meet applicable water quality standards or where there is adequate demonstration that water quality will meet applicable water quality standards after the application of minimum treatment requirements.

~~(15)~~(14) ~~The term "settleable~~"Settleable solids" means the volumetric measurement of solids after a specified settling time. The determination of settleable solids shall be made in the following manner: one liter of the wastewater is placed in a standard Imhoff cone and allowed to settle for 45 minutes. After 45 minutes settling, the liquid layer is gently stirred and allowed to settle for 15 additional minutes. The volume of solids is immediately read in milliliter per liter (ml/l).

~~(16)~~(15) ~~The term "oxygen~~"Oxygen consuming wastes" means those wastewater discharge components recognized as being oxygen demanding in the aquatic environment. These are generally limited by BOD(5) and NH(3)-N.

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Commented [TM5]: Change: Edited form to be consistent with other definitions here and in other permitting rules.
Effect: Improved readability.

(16) "Conventional pollutants" means biochemical oxygen demand (BOD(5)), Total Suspended Solids (TSS), pH, fecal coliform, and oil and grease.

(17) "Toxic pollutant" means any pollutant listed as toxic under Section 307(a)(1) of the Clean Water Act.

(18) "Nonconventional pollutant" means any pollutant not categorized as conventional or toxic.

Commented [TM6]: Change: New definitions of terms used elsewhere.
Effect: Clarification.

History Note: *Authority G.S. 143--215; 143--215.1; 143--215.3(a)(1);*
Eff. February 1, 1976;
Amended Eff. <date>; August 12, 1979; November 1, 1978; December 1, 1976.

15A NCAC 02B .0404 is proposed for readoption with substantive changes as follows:

15A NCAC 02B .0404 WATER QUALITY BASED EFFLUENT LIMITATIONS ~~IN WATER QUALITY LIMITED SEGMENTS~~

(a) Effluent limitations more stringent than minimum treatment requirements shall be developed by the staff and approved by the Director for all existing or proposed ~~dischargers~~discharges to water quality limited segments of the surface waters of the ~~state.~~state and for discharges that are found, through statistical analysis of effluent data or other appropriate means, to have a reasonable potential to cause or contribute to an exceedance of applicable water quality standards. The basis of these water quality effluent limitations shall be maintenance of water quality standards.

(b) The staff shall also provide on a case-by-case basis for seasonal variation in the discharge of oxygen-consuming wastes. In order to be considered eligible for seasonal effluent limitations, a request must be submitted to the Director along with a rationale as to the need for such limitations. Permit reissuance or modification during the remaining time of an existing permit will be considered on the basis of demonstrated need. In no case shall this variation cause or be expected to cause a receiving water body to violate applicable water quality standards.

(c) For the purpose of determining seasonal effluent limitations, the year shall consist of a summer and a winter discharge period. The summer period will begin April 1 and extend through October 31. The winter period shall be that portion of the year from November 1 to March 31. The summer oxygen-consuming wasteload allocation shall be developed using the flow criteria specified in 15A NCAC 2B .0206. The winter oxygen-consuming wasteload allocation shall in no case be less stringent than two times the summer oxygen-consuming waste load limitations nor shall it be less restrictive than minimum treatment requirements.

(d) No domestic sewage regardless of the treatment proposed and no other wastes which could adversely affect the taking of shellfish for market purposes shall be discharged into water classified "SA", into unnamed waters tributary to "SA" waters classified "C" or "SC" in accordance with Rule 2B .0301(i)(1)(B) and (C), or into other waters in such close proximity as to adversely affect such "SA" waters. Wastes discharged into other waters tributary to waters classified "SA" shall be treated in such manner as to assure that no impairment of water quality in the "SA" segments shall occur. No permits shall be issued for discharges into waters classified "SA" unless Shellfish Sanitation, Division of Marine Fisheries, Department of Environmental Quality, provides written concurrence that the discharge would not adversely affect shellfish water quality or the propagation of shellfish.

(e) The discharge of wastewaters to the Atlantic Ocean shall follow the guidelines and requirements set forth in the United States Environmental Protection Agency regulation Ocean Discharge Criteria, 40 C.F.R. 125.120 through 125.124, which is hereby adopted by reference, including any subsequent amendments and editions.

History Note: *Authority G.S. 143-215; 143-215.1; 143-215.3(a)(1); 143-214.2(c)*
Eff. February 1, 1976;
Amended Eff. <date>; August 12, 1979.

Commented [TM1]: Change: Changed title to reflect current terminology.
Effect: Clarification and update.

Commented [TM2]: Change: Expanded to include other common source of WQBELs.
Effect: Clarification and update.

Commented [TM3]: Note: This requirement is consistent with 2H .0401, which is proposed for repeal: all wastewater generated in the State of North Carolina shall be treated to such an extent as to ensure compliance with water quality standards promulgated by the Commission.

Commented [A4]: Change: Para. (d) is recodified from 02H .0404(a), and the reference to Shellfish Sanitation in that rule updated.
Effect: Consolidation of water quality-based discharge requirements.

Commented [A5]: Change: Paragraph (e) recodified from 2H .0404(d). Broadened to include amendments to federal regulation.
Effect: Consolidation of water quality-based discharge requirements.

15A NCAC 02B .0406 is proposed for readopton with substantive changes as follows:

15A NCAC 02B .0406 TECHNOLOGY BASED EFFLUENT ~~LIMITS IN EFFLUENT LIMITED SEGMENTS~~LIMITATIONS

(a) Municipal (POTW) Wastewaters and Other Similar Discharges

(1) Applicability. This Regulation is applicable to all municipal wastewater treatment discharges and all discharges consisting primarily of domestic sewage. In addition to the limits contained herein, limits applicable to industrial categories contained in .0406(b) of this Section will be applicable to any municipality ~~having industrial~~if influent waste discharges from industries in any single category ~~which discharges~~account for 10 or more percent of ~~the~~its average daily wastewater flow ~~to the municipal system~~ or ~~where~~ the industrial discharges significantly impact the municipal system ~~and the~~ or its effluent ~~discharge is significantly impacted.~~discharge.

(2) Effluent Limitations Except for Waste Stabilization Ponds ~~Included in (3) of This Subsection~~Subject to Subparagraph (3) of this Rule. In ~~mg/l~~mg/L expressed as monthly average and weekly maximum average:

~~SECONDARY "BPWTT"~~

~~Effluent Characteristic Monthly Avg. Weekly Avg. Max. Avg. Max.~~

~~BOD(5) 30 mg/l 45 mg/l Reserved~~

~~TSS 30 mg/l 45 mg/l Reserved~~

~~Fecal Coliform (Effluent limitations for coliform bacteria and pH shall be imposed only if necessary to maintain compliance with applicable water quality standards.) Reserved~~

~~pH Reserved~~

	SECONDARY		"BPWTT"	
Effluent Characteristic	Monthly Avg.	Weekly Avg. Max.	Avg.	Max.
BOD(5)	30 mg/L	45 mg/L	Reserved	
TSS	30 mg/L	45 mg/L	Reserved	
Fecal Coliform	(Effluent limitations for coliform bacteria and pH shall be imposed only		Reserved	
pH			Reserved	

Commented [TM1]: Change: Changed title to reflect current terminology.
Effect: Clarification and update.

Commented [TM2]: Change: Paragraph (a) revised for clarity.
Effect: Clarification.

Commented [TM3]: Change: General edits, reformatting of table .
Effect: Clarification.

	if necessary to maintain compliance with applicable water quality standards.)	

(3) Effluent limitations for waste stabilization ponds provided that:

(A) Waste stabilization ponds are the sole process used for secondary treatment;

(B) The maximum facility design capacity is two million gallons per day or less; and

(C) Operation and maintenance data indicate that the requirements for TSS of Part (2) of this Subsection cannot be achieved. In ~~mg/l~~mg/L expressed as monthly average and weekly maximum average:

~~Effluent Characteristic~~	~~SECONDARY Monthly Avg.~~	~~Weekly Avg. Max.~~	~~"BPWTT" Avg.~~	~~Max.~~
~~BOD(5)~~	~~30 mg/l~~	~~45 mg/l~~	~~Reserved~~	
~~TSS~~	~~90 mg/l~~	~~135 mg/l~~	~~Reserved~~	
~~Fecal Coliform~~	~~(Effluent limitations for coliform bacteria and pH shall be imposed only if necessary to maintain compliance with applicable water quality standards.)~~		~~Reserved~~	
~~pH~~			~~Reserved~~	

Effluent Characteristic	SECONDARY Monthly Avg.	Weekly Avg. Max.	"BPWTT" Avg.	Max.
BOD(5)	30 mg/L	45 mg/L	Reserved	
TSS	90 mg/L	135 mg/L	Reserved	
Fecal Coliform	(Effluent limitations for coliform bacteria and pH shall be imposed only if necessary to maintain compliance with applicable water quality standards.)		Reserved	
pH			Reserved	

(b) Industrial Waste Discharges. Effluent limits for industrial waste discharges are set forth in ~~the Environmental Protection Agency~~ guidelines and standards ~~listed in this Rule which~~promulgated by the Environmental Protection

Commented [TM4]: Change: General edits, reformatting of table .
Effect: Clarification

Commented [A5]: Change: References to federal Effluent Limitations Guidelines are updated and revised to include subsequent amendments.
Effect: Technical corrections plus automatic incorporation of future requirements.

Change: Updated list of federal Effluent Limitations Guidelines.
Effect: Technical corrections.

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Agency, including those in 40 CFR Chapter I, Subpart N – Effluent Guidelines and Standards. Such guidelines and standards are ~~adopted~~hereby incorporated by ~~reference as amended through June 1, 1984:~~reference, including any subsequent amendments and editions.

40 CFR 129 -- EPA Toxic Pollutant Effluent Standards
40 CFR 401 -- EPA General Provisions for Effluent Guidelines and Standards
40 CFR 405 -- EPA Effluent Guidelines and Standards for Dairy Products
40 CFR 406 -- EPA Effluent Guidelines and Standards for Grain Mills
40 CFR 407 -- EPA Effluent Guidelines and Standards for Canned and Preserved Fruits and Vegetables
40 CFR 408 -- EPA Effluent Guidelines and Standards for Canned and Preserved Seafood
40 CFR 409 -- EPA Effluent Guidelines and Standards for Sugar Processing
40 CFR 410 -- EPA Effluent Guidelines and Standards for Textiles
40 CFR 411 -- EPA Cement Manufacturing Effluent Guidelines and Standards
40 CFR 412 -- EPA Effluent Guidelines and Standards for Concentrated Animal Feeding Operations (CAFO)
40 CFR 413 -- EPA Effluent Guidelines and Standards for Electroplating
40 CFR 414 -- EPA Effluent Guidelines and Standards for Organic Chemicals
40 CFR 415 -- EPA Effluent Guidelines and Standards for Inorganic Chemicals
~~40 CFR 416 -- EPA Effluent Guidelines and Standards for Plastics and Synthetics~~
40 CFR 417 -- EPA Effluent Guidelines and Standards for Soaps and Detergents
40 CFR 418 -- EPA Effluent Guidelines and Standards for Fertilizer Manufacturing
40 CFR 419 -- EPA Effluent Guidelines and Standards for Petroleum Refining
40 CFR 420 -- EPA Effluent Guidelines and Standards for Iron and Steel Manufacturing
40 CFR 421 -- EPA Effluent Guidelines and Standards for Nonferrous Metals
40 CFR 422 -- EPA Phosphate Manufacturing Effluent Guidelines and Standards
40 CFR 423 -- EPA Effluent Guidelines and Standards for Steam Electric Power Generating
40 CFR 424 -- EPA Effluent Guidelines for Ferroalloy Manufacturing
40 CFR 425 -- EPA Effluent Guidelines and Standards for Leather Tanning and Finishing
40 CFR 426 -- EPA Effluent Guidelines and Standards for Glass Manufacturing
40 CFR 427 -- EPA Effluent Guidelines and Standards for Asbestos Manufacturing
40 CFR 428 -- EPA Effluent Guidelines for Rubber Processing
40 CFR 429 -- EPA Effluent Guidelines and Standards for Timber Products
40 CFR 430 -- EPA Effluent Guidelines and Standards for Pulp, Paper, and Paper Board
~~40 CFR 431 -- EPA Effluent Guidelines and Standards for Builders Paper and Board Mills~~
40 CFR 432 -- EPA Effluent Guidelines and Standards for Meat Products
40 CFR 433 -- EPA Effluent Guidelines and Standards for Metal Finishing
40 CFR 434 -- EPA Effluent Guidelines and Standards for Coal Mining
40 CFR 435 -- EPA Effluent Guidelines and Standards for Offshore Oil and Gas Extraction

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40 CFR 436 -- EPA Effluent Guidelines and Standards for Mineral Mining and Processing
40 CFR 437 -- EPA Effluent Guidelines and Standards for Centralized Waste Treatment
40 CFR 438 -- EPA Effluent Guidelines and Standards for Metals Products and Machinery
40 CFR 439 -- EPA Effluent Guidelines and Standards for Pharmaceutical Manufacturing
40 CFR 440 -- EPA Effluent Guidelines and Standards for Ore Mining and Dressing
40 CFR 441 – EPA Effluent Limitations Guidelines and Standards for the Dental Category
40 CFR 442 -- EPA Effluent Guidelines and Standards for Transportation Equipment Cleaning
40 CFR 443 -- EPA Effluent Guidelines and Standards for Paving and Roofing Materials
40 CFR 444 -- EPA Effluent Guidelines and Standards for Waste Combustors
40 CFR 445 -- EPA Effluent Guidelines and Standards for Landfills
40 CFR 446 -- EPA Effluent Guidelines and Standards for Paint Formulating
40 CFR 447 -- EPA Effluent Guidelines and Standards for Ink Formulating
40 CFR 449 -- EPA Effluent Guidelines and Standards for Airport Deicing
40 CFR 450 -- EPA Effluent Guidelines and Standards for Construction and Development
40 CFR 451 -- EPA Effluent Guidelines and Standards for Concentrated Aquatic Animal Production (Aquaculture)
40 CFR 454 -- EPA Effluent Guidelines and Standards for Gum and Wood Chemicals Manufacturing
40 CFR 455 -- EPA Effluent Guidelines for Pesticide Chemicals Manufacturing
40 CFR 457 -- EPA Effluent Guidelines and Standards for Explosives Manufacturing
40 CFR 458 -- EPA Effluent Guidelines and Standards for Carbon Black Manufacturing
40 CFR 459 -- EPA Effluent Guidelines and Standards for Photographic Processing
40 CFR 460 -- EPA Effluent Guidelines and Standards for Hospitals
40 CFR 461 -- EPA Effluent Guidelines and Standards for Battery Manufacturing
40 CFR 463 -- EPA Effluent Guidelines and Standards for Plastic Molding and Forming
40 CFR 464 -- EPA Effluent Guidelines and Standards for Metal Molding and Casting (Foundries)
40 CFR 465 -- EPA Effluent Guidelines and Standards for Coil Coating
40 CFR 466 -- EPA Effluent Guidelines and Standards for Porcelain Enameling
40 CFR 467 -- EPA Effluent Guidelines and Standards for Aluminum Forming
40 CFR 468 -- EPA Effluent Guidelines and Standards for Copper Forming
40 CFR 469 -- EPA Effluent Guidelines and Standards for Electrical and Electronic Components
40 CFR 471 -- EPA Effluent Guidelines and Standards for Nonferrous Metals Forming and Metal Powders

(c) ~~Copies of these~~These Federal Regulations can be accessed at http://www.gpo.gov/fdsys/, and copies are on file at:

(1) Division of ~~Environmental Management~~Water Resources, Water Quality Permitting Section, Archdale Building
Department of ~~Natural Resources and Community Development~~Environmental Quality
512 N. Salisbury St.
~~P.O. Box 27687,~~ Raleigh, N.C. ~~27611~~27604

Commented [A6]: Change: In Paragraph (c), added reference to EPA website as source for federal regulations. **Effect:** Provides an additional source for reference materials – technical correction.

Change: Updated organizational names and addresses. **Effect:** Technical corrections.

(2) Asheville Regional Office
~~Interchange Building, 59 Woodfin Place~~2090 US HWY 70
~~Asheville, N.C. 28802~~Swannanoa, N.C. 28778
(3) Fayetteville Regional Office
~~Wachovia Building,~~225 Green Street, Systel Bldg., Suite 714
Fayetteville, N.C. 28301
(4) Mooresville Regional Office
~~919 North Main Street~~610 East Center Ave., Suite301
Mooresville, N.C. 28115
(5) Raleigh Regional Office
3800 Barrett Drive
Raleigh, N.C. ~~27609~~27611
(6) Washington Regional Office
~~1502 North Market Street~~943 Washington Square Mall
Washington, N.C. 27889
(7) Wilmington Regional Office
~~7225 Wrightsville Avenue~~127 Cardinal Drive Extension
Wilmington, N.C. ~~28403.~~28405-3845
(8) Winston-~~-~~Salem Regional Office
~~8003 North Point Boulevard~~585 Waughtown Street
Winston-~~-~~Salem, N.C. ~~27106~~27107

(d) In cases where effluent limits established by Paragraph (b) of this Rule are not adequate to control settleable solids, the staff shall establish effluent limits for settleable solids. Such effluent limitations for settleable solids will be applicable only when the projected average solids concentration exceeds 5.0 ml/l and the limitations established shall lie within the range of 0.1 ml/l to 5.0 ml/l. The establishment of such limitations for any discharge shall be approved by the Director of the Division of ~~Environmental Management~~Water Resources or the Division.

(e) For industrial categories or parts of categories for which effluent limits and guidelines have not been published and adopted, effluent limitations for existing industrial waste discharges, or new industrial waste discharges shall be calculated by the staff using the projected limits of the Environmental Protection Agency, the Environmental Protection Agency development document and other available information in order to achieve the purposes of Article 21. Such limits developed by the staff shall be subject to approval by the Director.

History Note: *Authority G.S. 143-~~-~~215; 143-~~-~~215.1; 143-~~-~~215.3(a)(1), (4);*
Eff. February 1, 1976;
Amended Eff. <date>; July 1, 1988; December 1, 1984; November 1, 1978; December 1, 1976.

15A NCAC 02B .0407 is proposed for readoption without substantive changes as follows:

15A NCAC 02B .0407 GUIDANCE FOR DETERMINING A NEW SOURCE

(a) A source should be considered a new source by the Director provided on the date of publication of any applicable new source performance standard there has not been any:

(1) significant site preparation work, such as major clearing or excavation; or

(2) placement, assembly, or installation of unique facilities or equipment at the premises where such facilities or equipment will be used; or

(3) contractual obligation to purchase such unique facilities or equipment; Facilities and equipment shall include only the major items listed below, provided that the value of such items represents a substantial commitment to construct the facility:

(A) structures, or

(B) structural materials, or

(C) machinery, or

(D) process equipment, or

(E) construction equipment.

(4) contractual obligation with a firm to design, engineer and erect a completed facility (i.e., a turnkey plant).

(b) A modification to an existing source will be considered a new source if the alteration is of such magnitude to, in effect, create a new facility. In making such a determination, the Director shall find that the permit modification procedures are not appropriate and shall consider, among other relevant factors, whether as a result of the alteration, the source can reasonably achieve the standard of performance. Only those portions of a facility determined to be a new source shall be required to achieve new source performance standards.

History Note: *Authority G.S. 143-215; 143-215.1; 143-215.3(a)(1), (4);*
Eff. December 1, ~~1976.~~1976;
Readopted Eff. <date>.

15A NCAC 02B .0408 is proposed for adoption as follows:

15A NCAC 02B .0408 INCORPORATION BY REFERENCE

(a) The following sections of Title 40 of the Code of Federal Regulations (CFR) are incorporated by reference, including subsequent amendments and editions, and shall apply throughout this Section except where procedural details of the federal rules differ from procedures adopted elsewhere in this section, in which case the separately adopted procedure governs. These regulations can be accessed free of charge at http://www.gpo.gov/fdsys/.

(1) 40 CFR Parts 122.2, 124.2, and 125.2: Definitions;

(2) §122.4: Prohibitions):

(3) §122.5(a) and (b): Effect of permit;

(4) §122.7(b) and (c): Confidential information;

(5) §122.21 (a)-(b), (c)(2), (e)-(k), (m)-(p), (q), and (r): Application for a permit;

(6) §122.22: Signatories;

(7) §122.23: Concentrated animal feeding operations;

(8) §122.24: Concentrated aquatic animal production facilities;

(9) §122.25: Aquaculture projects;

(10) §122.26: Storm water discharges;

(11) §122.27: Silviculture;

(12) §122.28: General permits;

(13) §122.29 (a), (b), and (d): New sources and new dischargers;

(14) §122.30: NPDES stormwater regulations for small MS4s: objectives;

(15) §122.31: NPDES stormwater regulations: role of Tribes;

(16) §122.32: NPDES stormwater regulations for small MS4s: applicability;

(17) §122.33: NPDES stormwater regulations for small MS4s: application for permit;

(18) §122.34: NPDES stormwater regulations for small MS4s: permit requirements;

(19) §122.35: NPDES stormwater regulations for small MS4s: shared responsibilities;

(20) §122.36: NPDES stormwater regulations for small MS4s: compliance;

(21) §122.37: NPDES stormwater regulations for small MS4s: evaluation;

(22) §122.41 (a)(1) and (b) through (n): Applicable permit conditions;

(23) §122.42: Conditions applicable to specified categories of permits;

(24) §122.43: Establishing permit conditions;

(25) §122.44: Establishing NPDES permit conditions;

(26) §122.45: Calculating permit conditions;

(27) §122.46: Duration;

(28) §122.47(a): Schedules of compliance;

(29) §122.48: Monitoring requirements;

(30) §122.50: Disposal into wells;

Commented [TM1]: Change: Proposed rule incorporates multiple federal rules by reference. 40 CFR 123.25 requires approved states to implement most of these regulations, and NC has done so, but the state has yet to formally adopt them. (The same rule is proposed in Subchapter 02B, Sections 02B .0500 and 02H .0100.)
Effect: In essence, a technical correction, as the state has implemented these rules for decades.

(31) §122.61: Permit transfer;
(32) §122.62: Permit modification;
(33) §122.64: Permit termination;
(34) §124.3(a): Application for a permit;
(35) §124.5 (a), (c), (d), and (f): Modification of permits;
(36) §124.6 (a), (c), (d), and (e): Draft permit;
(37) §124.8: Fact sheets;
(38) §124.10 (a)(1)(ii), (a)(1)(iii), (a)(1)(v), (b), (c), (d), and (e): Public notice;
(39) §124.11: Public comments and requests for hearings;
(40) §124.12(a): Public hearings;
(41) §124.17 (a) and (c): Response to comments;
(42) §124.56: Fact sheets;
(43) §124.57(a): Public notice;
(44) §124.59: Comments from government agencies;
(45) §124.62: Decision on variances;
(46) 40 CFR Part 125, Subparts A (Technology-Based Treatment Requirements), B (Aquaculture), D (Fundamentally Different Factors), H (Alternative Limitations, CWA Section 316(a)), I (Cooling Water Intake Structures, New Facilities, CWA Section 316(b)), J (Cooling Water Intake Structures, Existing Facilities, CWA Section 316(b)), and N (Cooling Water Intake Structures, Offshore Oil and Gas Facilities, CWA Section 316(b));
(47) 40 CFR Parts 129 (Toxic Pollutant Effluent Standards) and 133 (Secondary Treatment Regulation), and Subchapter N (Effluent Guidelines and Standards);
(48) 40 CFR Part 3: Electronic reporting;
(49) 40 CFR Part 136: Guidelines for establishing test procedures for the analysis of pollutants; and
(50) 40 CFR 401.15: List of toxic pollutants pursuant to CWA Section 307(a)(1).

(b) This rule is not an exclusive list of federal regulations adopted by reference in this Section. Other rules of the Section incorporate some of these same federal regulations for clarity or emphasis and may incorporate additional regulations not listed in Paragraph (a).

History Note: *Authority G.S. 143-211(c); 143-215.1(b)(4); 143B-282(5);*
Eff. <date>.

15A NCAC 02B .0501 is proposed for readoption without substantive changes as follows:

15A NCAC 02B .0501 PURPOSE

The purpose of this Section is to set forth the requirements of the Environmental Management Commission for monitoring and reporting the quantity and quality of wastewater discharges to, and their effects upon, the water resources of the state.

History Note: *Authority G.S. 143-215.64; 143-215.68;*
Eff. February 1, 1976;
Amended Eff. December 1, ~~1984.~~1984;
Readopted Eff. <date>.

15A NCAC 02B .0502 is proposed for readoption without substantive changes as follows:

15A NCAC 02B .0502 SCOPE

This Section shall apply to all persons subject to the provisions of G.S. 143-215.1.

History Note: *Authority G.S. 143-215.64; 143-215.68;*
Eff. February 1, ~~1976.~~1976;
Readopted Eff. <date>.

15A NCAC 02B .0503 is proposed for readoption with substantive changes as follows:

15A NCAC 02B .0503 DEFINITIONS

Unless the context otherwise requires, the terms used herein shall be as defined in G.S. ~~143-213~~143-212 and 143-213; the federal Clean Water Act (33 U.S.C. 1251 et seq.); 40 CFR Parts 122, 124, and 125; and as follows:

(1) "Biological monitoring" shall mean the sampling or testing of the biological integrity of surface waters and measurements of impacts including accumulations of pollutants in tissue, toxicity monitoring, and characterization of instream biological populations.

(2) "Classified water pollution control facility" means a treatment works classified by the Water Pollution Control System Operator Certification Commission pursuant to Chapter 90A of the North Carolina General Statutes as class I, class II, class III, or class IV facility, or such other classifications as the Water Pollution Control System Operator Certification Commission may hereafter adopt.

(3) "Commercial laboratory" means any laboratory which analyzes water samples for a fee.

(4) "Composite sample" ~~means:~~means a sample gathered over a 24 hour period by continuous sampling or combining grab samples in such a manner as to result in a total sample which is representative of the wastewater discharge during the sample period. This sample may be obtained by methods given below, however, the Director may designate the most appropriate method, number and size of aliquots necessary and the time interval between grab samples on a case-by-case basis. Samples may be collected manually or automatically.

(a) Continuous - a single, continuous sample collected over a 24 hour period proportional to the rate of flow.

(b) Constant time/variable volume - a series of grab samples collected at equal time intervals over a 24 hour period of discharge and combined proportional to the rate of flow measured at the time of individual sample collection, or

(c) Variable time/constant volume - a series of grab samples of equal volume collected over a 24 hour period with the time intervals between samples determined by a preset number of gallons passing the sampling point. Flow measurement between sample intervals shall be determined by use of a flow recorder and totalizer, and the preset gallon interval between sample collection fixed at no greater than 1/24 of the expected total daily flow at the treatment system, or

(d) Constant time/constant volume - a series of grab samples of equal volume collected over a 24 hour period at a constant time interval. This method may be used in situations where effluent flow rates vary less than 15 percent. The grab samples shall be taken at intervals of no greater than 20 minutes apart during any 24 hour period and must be of equal size and of no less than 100 milliliters. Use of this method requires prior approval by the Director.

Commented [TM1]: Change: Updated organizational names and addresses (8, 9, 22). Updated sources of materials (22). Corrected punctuation (4).
Effect: Ttechnical corrections.

Commented [TM2]: Change: Expanded to include other applicable definitions, many established since original rule was established. Federal rules are also incorporated by reference at 2B .0511.
Effect: Technical corrections

(5) "Daily" means every day on which a wastewater discharge occurs except Saturdays, Sundays and legal holidays unless otherwise specified by the Director.

(6) "Design flow" means the average daily volume of wastewater which a water pollution control facility was designed, approved and constructed to treat.

(7) "Design treatment capability" means a water pollution control facility's capacity to achieve a specified degree of reduction in waste constituents at a specified design flow, to meet specified limits or removal efficiencies.

(8) "Director" means the Director of the Division of ~~Environmental Management,~~Water Resources or the Division of Energy, Mineral and Land Resources, Department of ~~Environment, Health, and Natural Resources.~~Environmental Quality, whichever is the permitting authority in a particular instance; or his designee.

(9) "Division" means the Division of ~~Environmental Management,~~Water Resources or the Division of Energy, Mineral and Land Resources, Department of ~~Environment, Health, and Natural Resources.~~Environmental Quality, whichever is the permitting authority in a particular instance. In this Section, "Division" or "Division of Water Resources" can generally be read to mean either Division as the context requires.

(10) "Domestic wastewater" means water-carried human wastes together with all other water-carried wastes normally present in wastewater from non-industrial processes.

(11) "Downstream" means locations in the receiving waters below (downstream of) a point of waste discharge after a reasonable opportunity for dilution and mixture as specified in the Commission's "Rules, Regulations, Classifications and Water Quality Standards Applicable to the Surface Waters of North Carolina."

(12) "Effluent" means wastewater discharged following all treatment processes from a water pollution control facility or other point source whether treated or untreated.

(13) "Flow" means the total volume of wastewater discharged from an outlet during any given period.

(14) "Grab sample" means an individual sample collected instantaneously. Samples of this type must be representative of the discharge or the receiving waters.

(15) "Industrial establishment" means any industrial, business, commercial or governmental enterprise which produces water carried wastes.

(16) "Influent" means the wastewater entering a water pollution control facility.

(17) "Monitoring" means a program of sample collection, analysis, and observation sufficient to quantify various aspects of waste streams, treatment plant operations and environmental impacts.

(18) "Point source" means any discernible, confined, and discrete conveyance, including, but not specifically limited to, any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, or concentrated animal feeding operation from which waste is or may be discharged to the waters of the state.

Commented [A3]: Change: Added reference to DEMLR, since the stormwater permitting program is no longer a part of DWR. The intent of 2nd sentence is to avoid having to name both divisions in every case.
Effect: Technical correction.

(19) "Quarterly" means occurring four times during a 12-month period at a frequency of once per each interval of three consecutive months.

(20) "Quarterly Average" means the average of all samples taken over a quarterly period.

(21) "Sample" means a representative portion of the wastewater from water pollution control facilities or of receiving waters.

(22) "Standard Industrial Classification" (SIC) code means those four-digit numerical designations set forth in "The Standard Industrial Classification Manual," ~~(Superintendent of Documents, U.S. Government Printing Office)~~ classifying industries according to the type of activity (relating to major products manufactured or principle services furnished) in which they are engaged. For the purposes of this Section, each industry or unit of government shall be classified by SIC numbers applicable to each activity carried on by such establishment or unit which results in a discharge of wastewater. In addition, any industrial establishment or unit of government which collects or discharges domestic sewage is hereby assigned SIC number 4952. The Standard Industrial Classification Manual, as used in this Section, is hereby incorporated by reference, including any subsequent amendments and editions. A copy is available for inspection at the central office of the Division of ~~Environmental Management~~Water Resources, 512 North Salisbury Street, Raleigh, North Carolina. ~~Copies~~The classifications found in the manual may also be ~~obtained~~accessed at ~~the GPO Bookstore, Room 100, 275 Peachtree Street NE, or Post Office Box 56445, Atlanta GA 30343 at a cost of twenty-four dollars ($24.00).~~https://www.osha.gov/pls/imis/sic_manual.html.

(23) "Storet number" means a number which designates a test or measurement according to the analytical procedure used or a method of measurement and units of measurement. Storet is an acronym for the water quality data storage and retrieval computer system of the Environmental Protection Agency.

(24) "Toxic substances" means any substance, or combinations of substances, including disease-causing agents, which, 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 of reproduction or growth) or physical deformities in such organisms or their offspring or other adverse health effects.

(25) "Toxicity monitoring" means controlled toxicity testing procedures employed to measure lethality or other harmful effects as measured by either aquatic populations or indicator species used as test organisms from exposure to a specific chemical or mixture of chemicals (as in an effluent) or ambient stream conditions.

(26) "Unit of government" means any incorporated city, town or village, county, sanitary district, metropolitan sewerage district, water or sewer authority, special purpose district, other municipality, or any agency, board, commission, department or political subdivision or public corporation of the state, now or hereafter created or established, empowered to provide wastewater collection systems or wastewater treatment works.

(27) "Upstream" means locations in the receiving waters near but above (upstream of) a point of wastewater discharge and unaffected by the discharge.

(28) "Water pollution control facilities" or "facility" means "treatment works" as defined in G.S. 143-213.

() "North American Industry Classification System" (NAICS) code means those six-digit numeric designations used to classify business establishments according to the processes employed to produce goods or services. For the purposes of this Section, each industry or unit of government shall be classified by NAICS codes applicable to each activity carried on by such establishment or unit which results in a discharge of wastewater. In addition, any industrial establishment or unit of government which collects or discharges domestic sewage is hereby assigned NAICS number 221320. The North American Industry Classification System Manual, as used in this Section, is hereby incorporated by reference, including any subsequent amendments and editions. The classifications found in the manual may also be accessed at https://www.census.gov/eos/www/naics/.

History Note: *Authority G.S. 143-213; 143-215.68;*
Eff. February 1, 1976;
Amended Eff. <date>; April 1, 1993; December 1, 1984.

Commented [TM4]: Change: EPA rules now refer to this system in addition to, or in lieu of SIC codes.
Effect: Technical correction/ update.

15A NCAC 02B .0504 is proposed for readoption with substantive changes as follows:

15A NCAC 02B .0504 CLASSIFICATION OF WASTE SOURCES

(a) All persons subject to the requirements of these Rules shall determine the standard industrial classification (SIC) number or North American Industry Classification System number or both, as specified by the Director, for each type of activity (required to be reported under Rule .0506 of this Section) in which they are engaged by reference to the ~~Standard Industrial Classification Manual~~appropriate classification manuals.

(b) Environmental Management Commission hereby assigns SIC number 4952 and NAICS number 221320 to every industrial establishment or unit of government which collects or discharges domestic wastewater, whether from on-premises bathrooms, restrooms, kitchens, dining rooms, water pollution control facilities, or from any other source.

(c) The owner or person in responsible charge of every water pollution control ~~facility,~~facility which receives a wastewater influent from more than one ~~source,~~source shall determine and report to the Department of ~~Environment, Health, and Natural Resources~~Environmental Quality the name and ~~standard~~ industrial classification number(s) for each applicable activity(ies) of every industrial establishment contributing wastes containing toxic substances, in toxic quantities, and also every industrial establishment contributing an average daily wastewater influent of one percent or more of the design flow of the facility or in excess of 100,000 gallons per day, whichever is less, and shall report such other information as is required by Rule .0505 of this Section; provided; however, that it is not required that the name and SIC or NAICS number of any source contributing domestic sewage influent only be reported hereunder.

(d) The average daily influent volume contributed by any one source may be computed by dividing the total volume of wastewater discharged by the source during the reporting year by the total number of days that the source operated during the reporting year.

History Note: *Authority G.S. 143-215.64; 143-215.68;*
Eff. February 1, 1976;
Amended Eff. <date>; April 1, 1993; December 1, 1984; November 1, 1978.

Commented [TM1]: Change: Updated agency name.
Effect: None – technical correction.

Commented [TM2]: Change: Added reference to the new system, for completeness.
Effect: Ensure consistency with federal requirements.

15A NCAC 02B .0505 is proposed for readoption with substantive changes as follows:

15A NCAC 02B .0505 MONITORING REQUIREMENTS

(a) General. Every person subject to this Section shall be required to establish, operate and maintain a monitoring program consistent with their National Pollutant Discharge Elimination System (NPDES) Permit or as required by the Director.

(b) Wastewater and Stream Flow Measurement.

(1) A device or method, approved by the Director for determining the rate of flow of all discharges of wastewater whether treated or untreated shall be provided at those point sources of which monthly reports of monitoring tests and measurements are required unless specifically excepted by the Director as not significant. All water pollution control facilities shall install, operate, and maintain continuous flow measuring with recording devices or totalizing devices, if approved by the Director, or shall employ other flow measuring or flow control methods approved by the Director and shall submit monthly reports of such data as required in Rule .0506 of this Section. The permittee shall install appropriate flow measurement devices consistent with approved engineering and scientific practices to ensure the accuracy and reliability of measurements of the volume of monitored discharges. Devices selected shall be capable of measuring flows with a maximum deviation of less than 10 percent from true discharge volumes. Flow measurement devices shall be accurately calibrated at a minimum of once per year and maintained to ensure that the accuracy of the measurements is consistent with the accepted capability of that type of device. The flow measurement device and location shall be approved by the Director prior to installation. Records of flow measurement device calibration shall be kept on file by the permittee for a period of at least three years. At a minimum, data to be included in this documentation shall be:

(A) Date of flow measurement device calibration

(B) Name of person performing calibration.

(2) A reading of the U.S. Geological Survey stream flow staff gauge or reference point shall be made at the time of stream sampling in those instances so determined the Director.

(c) Sampling.

(1) Frequency and Location. Except as otherwise provided herein, all industrial establishments and units of government shall take influent, effluent and stream samples at such locations and with such frequency as shall be necessary to conduct the tests and analyses required by Rule .0508 of this Section.

(2) Establishment of Sampling Points:

(A) Sampling points as required in Rule .0508 of this Section shall be established for collecting influent and effluent samples for each facility.

Commented [TM1]: Change: Updated organizational names and addresses, and updated sources of materials (d)(4).
Effect: Technical corrections.

(B) Sampling points shall be established in the receiving waters at one or more upstream locations and at one or more downstream locations. These locations shall be specified by the Director.

(3) Collection of Samples:

(A) Samples collected in receiving waters shall be grab samples.

(B) Samples of the influent and effluent of the water pollution control facility or other point source shall be composite samples, except as provided in Rule .0505 (c)(3)(C) of this Section, or for facilities with design flows of 30,000 gallons per day or less unless required by the Director. The Director may specify the methods of sample collection as to type of sample and type of composite sampling required.

(C) The following influent and effluent tests shall be made on grab samples and shall not be made on composite samples:

(i) dissolved oxygen,

(ii) temperature,

(iii) settleable matter,

(iv) turbidity,

(v) pH,

(vi) residual chlorine,

(vii) coliform bacteria (fecal or total),

(viii) cyanide,

(ix) oil and grease,

(x) sulfides,

(xi) phenols,

(xii) volatile organics.

(4) Stream sampling may be discontinued at such times as flow conditions in the receiving waters or extreme weather conditions will result in a substantial risk of injury or death to persons collecting samples. In such cases, on each day that sampling is discontinued, written justification for the discontinuance shall be specified in the monitoring report for the month in which the event occurred. This provision shall be strictly construed and may not be utilized to avoid the requirements of this Section when performance of these requirements is attainable. When there is a discontinuance pursuant to this provision, stream sampling shall be resumed at the first opportunity after the risk period has ceased.

(d) Biological and Toxicity Monitoring. Biological and Toxicity monitoring may be required when, in the opinion of the Director, such monitoring is necessary to establish whether the designated best use of the waters as determined by the Environmental Management ~~Commission,~~Commission is being or may be impaired or when toxic substances are known or suspected to be present in the facility's discharge.

(e) Tests and Analyses.

(1) If a water pollution control facility receives waste influent from two or more sources, every test required by Rule .0508 of this Section for the standard industrial classification number applicable to the sources shall be performed one time, and it shall not be necessary to repeat such tests for each source; however, the tests shall be performed at the intervals specified by Rule .0508 of this Section for the applicable industrial classification requiring the most frequent test interval.

(2) If analyses of samples of any effluent or any receiving water (collected by the state or a public agency) indicate a violation of effluent ~~limitations,~~limitations or water quality standards ~~or indicate exceedances of stream action levels~~ or that a violation of water quality standards ~~or exceedances of stream action levels~~ may result under any projected ~~conditions~~conditions, including minimum stream flow and temperature extremes, the Director may require the person responsible for the violation or potential violation to monitor the pollutants or parameters at such points and with such frequency as he determines appropriate. If the source of the pollutant is unknown, the Director may require monitoring for specific pollutants from any suspected discharger.

Commented [TM2]: Change: Removed references to NC's action level policy, disapproved by EPA in latest triennial review.
Effect: Consistency with NC water quality standards rules.

(3) If the wastewaters discharged by any water pollution control facility violate any effluent limitations or water quality standards ~~or exceeds any stream action levels~~ or contribute to the violation of water quality standards ~~or exceedance of stream action levels~~ established by the Environmental Management ~~Commission~~Commission, the facility shall perform and report such additional tests and measurements at such frequencies and for such periods of time as the Director may require.

(4) Approved Methods of Analysis. The methods used in collection, preservation and analysis of samples shall conform to the guidelines of the Environmental Protection Agency codified as 40 CFR Part 136, which is hereby incorporated by reference including any subsequent amendments and editions. ~~Copies may be obtained from the New Orders, Superintendent of Documents, PO Box 371954, Pittsburgh, PA 15250-7954 at a cost of three hundred forty dollars ($340.00) per edition. The single volume containing 40 CFR Part 136 may be obtained at a cost of thirty dollars ($30.00).~~ These regulations can be accessed free of charge at http://www.gpo.gov/fdsys/. Other analytical procedures shall conform to those found in either the most recent approved edition of "Standard Methods for the Examination of Water and Wastewater", (published jointly by the American Public Health Association, the American Water Works Association, and the Water Environment Federation), or "Methods for Chemical Analysis of Waters and Wastes", 1983, or subsequent editions or other methods as approved by the Director. Standard Methods for the Examination of Water and Wastewater is hereby incorporated by reference including any subsequent approved amendments and approved editions. ~~Copies may be obtained from the American Water Works Association, 6666 West Quincy Avenue, Denver CO 82535 at a cost of one hundred sixty dollars ($160.00) per edition.~~ These methods may be viewed at http://www.standardmethods.org. Methods for Chemical Analysis of Waters and Wastes is hereby incorporated by reference including any subsequent amendments and editions. These methods (document EPA-600-4-79-020) can be accessed free of charge at http://nepis.epa.gov. ~~Copies may be obtained from the NTIS, 5285 Port~~

~~Royal Road, Springfield, VA 22161 at a cost of fifty dollars ($50.00) per edition.~~ All material incorporated by reference in this Rule is available for inspection at the Central office of the Division of ~~Environmental Management~~Water Resources, 512 North Salisbury Street, Raleigh, North Carolina ~~27626-0535~~27604. All test procedures shall be "sufficiently sensitive," as defined in 40 CFR 122.21(e)(3), to establish that the results ~~must produce detection and reporting levels that~~ are below the permit discharge ~~requirements~~ limitations or applicable water quality standards.~~and all data generated must be reported to the approved detection level or lower reporting level of the procedure.~~ If no approved methods are determined capable of achieving such detection and reporting ~~levels below permit discharge requirements~~levels, then the approved method with the lowest detection and reporting level must be used. Biological testing shall be performed in accordance with 15A NCAC 2B .0103(b).

(5) Approval of Laboratories. Analytical determinations made pursuant to the monitoring and reporting requirements of this Section shall be made in adequately equipped laboratories staffed by person(s) competent to perform tests. Only monitoring programs which provide for the making of analytical determinations by qualified employees of the owner or by a laboratory certified by the Division under 15A NCAC 2H .0800 or 15A NCAC 2H .1100 will be considered adequate.

(f) Process Control Monitoring Testing: The Director may require, on a case-by-case basis, process control monitoring testing suitable for the size and classification of the facility.

History Note: *Authority G.S. 143--215.64; 143--215.66; 143--215.68;*
Eff. February 1, 1976;
Amended Eff. <date>; April 1, 1993; December 1, 1984; November 1, 1978.

Commented [TM3]: Change: Edited and updated to reflect applicable federal regulations, and edited for clarification.
Effect: Technical correction and clarification.

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15A NCAC 02B .0506 is proposed for readopton with substantive changes as follows:

15A NCAC 02B .0506 REPORTING REQUIREMENTS

(a) General:

(1) Every person subject to this Section shall file certified monitoring reports setting forth the results of tests and measurements conducted pursuant to NPDES permit monitoring requirements.

(A) Monthly monitoring reports shall be filed no later than 30 calendar days after the end of the reporting period for which the report is made.

(B) Reports filed pursuant to the requirements of Subparagraph (a)(1) of this Rule shall be submitted in a manner consistent with the requirements of 40 CFR Part 3, which is hereby incorporated by reference including subsequent amendments and additions. Where submittal of printed documents is allowed, ~~of~~ such submittals shall be made on forms ~~furnished~~ or in a format provided or approved by the Director and shall be submitted in duplicate to:

ATTN: CENTRAL FILES

DIVISION OF ~~ENVIRONMENTAL MANAGEMENT~~WATER RESOURCES

~~POST OFFICE BOX 29535~~

MAIL SERVICE CENTER 1617

RALEIGH, NORTH CAROLINA ~~27626-0535.~~27699-1617

(C) A copy of all reports submitted to the Director pursuant to this Section shall be retained by the owner of each ~~water pollution control~~permitted facility for a period of at least three years from the date of submission and be readily available to the Division for inspection.

(D) In order to document information contained in reports submitted to the Director pursuant to this Section, the owner of each pollution control facility is required to retain or have readily available for inspection by the ~~Division,~~Division the following items for a period of at least three years from report submission:

(i) the original laboratory reports from any certified laboratory utilized for sample analysis. Such reports must be signed by the laboratory supervisor, and must indicate the date and time of sample collection and analysis, and the analysts' name;

(ii) bench notes and data logs for sample analyses performed by the pollution control facility staff or operator in responsible charge, whether or not the facility has a certified lab; and

(iii) copies of all process control testing.

(E) In situations where no discharge has occurred from the facility during the report period, the permittee is required to submit a monthly monitoring report giving all required

Commented [TM1]: Change: Updated organizational names and addresses.
Effect: Technical corrections.

Change: Revised to allow for electronic submittal of reports.
Effect: Reflects promulgation of 40 CFR 3, Electronic Reporting, which is incorporated by reference in 2B .0511, etc.

information and indicating "NO FLOW" unless the Director agrees to waive the reporting requirement during extended conditions of no discharge.

(2) Every person subject to this Section shall report by telephone to either the central office or appropriate regional office of the Division as soon as possible but no later than 24 hours after occurrence or on the next working day ~~(however, if the occurrence is one which may endanger the public health, or fish or wildlife, and contact with the central office or the appropriate regional office cannot be made, such person shall report as soon as possible to the State Highway Patrol Warning Point in state 1-800-662-7956 or out-of-state 919-733-3861)~~ following the occurrence or first knowledge of the occurrence of any of the following:

(A) Any failure of a collection system, pumping station or treatment facility resulting in a by-pass without treatment of all or any portion of the ~~wastewater.~~wastewater;

(B) Any occurrence at the water pollution control facility which results in the discharge of significant amounts of wastes which are abnormal in quantity or characteristic, such as the dumping of the contents of a sludge digester, the known passage of a hazardous substance through the facility, or any other unusual ~~circumstances.~~circumstances; or

(C) Any process unit failure, due to known or unknown reasons, that renders the facility incapable of adequate wastewater treatment, such as mechanical or electrical failures of pumps, aerators, compressors, etc.;

except that if the occurrence is one which may endanger the public health or fish or wildlife, and if contact with the central office or the appropriate regional office cannot be made, such person shall report as soon as possible to the NC Emergency Operations Center 24/7 at 1-800-858-0368 (toll-free) or 919-733-3300.

(3) Persons reporting such occurrences by telephone shall also provide a written report to the Division in letter or electronic form setting out the information required in Subparagraph (a)(4) of this Rule and pertinent information pertaining to the occurrence. This report must be received by the Division within five days following first knowledge of the occurrence.

(4) All reports required to be filed by this Section shall contain the following information in addition to such other information as is required for the particular report:

(A) name of facility,

(B) water pollution control facility location,

(C) the class assigned to the water pollution control facility,

(D) the water pollution control facility permit number assigned by the Department of ~~Environment, Health, and Natural Resources~~Environmental Quality to the permit or other approval document issued by the Environmental Management Commission under which the discharge is made,

(E) contact ~~name and~~name, telephone ~~number~~number, email address, and mailing address,

(F) estimated nature and extent of environmental damage caused by the incident.

Commented [TM2]: Change: Updated contact information and reordered the SubParagraph for clarity. **Effect:** Technical corrections.

(5) Any person desiring confidentiality for any influent information submitted shall specify the influent information for which confidentiality is sought and shall justify such request to the Department of ~~Environment, Health, and Natural Resources,~~Environmental Quality, ~~and~~and, if such request is approved by the ~~Director~~Director, shall by an appropriate ~~stamp,~~stamp indicate the location of such information on each report filed thereafter.

(b) Monthly Monitoring Reports:

(1) Every person operating a monitoring system required by this Section shall file a monitoring report once each month which includes the data for the samples collected during the month. This report shall be filed no later than 30 calendar days after the end of the reporting period for which the report is made.

(2) Monthly monitoring reports shall be reviewed, compliance status determined, certified by signature, and submitted by the following:

(A) For a corporation: by a responsible corporate officer. For the purpose of the Section, a responsible corporate officer means:

(i) a president, secretary, treasurer or vice president of the corporation in charge of a principal business function, or any other person who performs similar policy or decision-making functions for the corporation, or

(ii) the manager of one or more manufacturing production or operating facilities employing more than 250 persons or having gross annual sales or expenditures exceeding twenty-five million dollars ($25,000,000) (in second quarter 1980 dollars), if authority to sign documents had been assigned or delegated to the manager in accordance with corporate procedures.

(B) For a partnership or sole proprietorship: by a general partner or the proprietor, respectively; or

(C) For a municipality, State, Federal, County, or other public agency: by either a principal executive officer or ranking elected official;

(D) Duly authorized representative of the person described in Paragraphs (b)(2)(A), (B) and (C). A person is a duly authorized representative only if:

(i) The authorization is made in writing by a person described in Paragraphs (b)(2)(A), (B) and (C);

(ii) The authorization specified either an individual or a position having responsibility for the overall operation of the regulated facility or activity, such as the position of plant manager, operator of a well or well field, superintendent, a position of equivalent responsibility, or an individual or position having overall responsibility for environmental matters for the company. (A duly authorized representative may thus be either a named individual or any individual occupying a named position.); and

(iii) The written authorization is submitted to the Permit Issuing Authority. ~~Permittees~~A permittee authorizing another individual to sign as representative in no way relinquishes any responsibility for the permit or his responsibility to remain familiar with the permit ~~conditions,~~conditions and limits, including any modifications, and for the compliance data reports for the permit.

~~(E)~~(3) ~~Permittee~~Certification by Signature.

(A) The permittee signing the report certifies to the following statement: "I certify, under penalty of law, that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who managed the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fines and imprisonment for knowing violations."

(B) The monthly report shall also be certified by the operator in responsible charge of a classified treatment facility or by the manager of an industrial establishment which has a point source of waste discharge and which does not have a classified water pollution control facility.

~~(3)~~(4) In addition to the information required on all reports [see Subparagraph (a)(4) of this Rule] the following information shall be submitted in monthly monitoring reports:

(A) ~~name~~Name of person or group collecting sample or making observation;

(B) ~~name~~ Name of person or group that analyzed sample;

(C) ~~name~~ Name of operator in responsible charge of the facility and the grade certificate held;

(D) ~~sampling~~ Sampling point for each sample;

(E) ~~date~~ Date and time (on 2400 hour clock basis) at which each grab sample was collected;

(F) For composite samples:

(i) date on which collection of composite samples is commenced,

(ii) time of starting and ending of composite sample period on 2400 hour clock basis;

(G) ~~wastewater~~Wastewater flow in million gallons per day ~~(MGD);~~(MGD), or as specified in the permit;

(H) Results of analyses (reported to the designated number of figures with a properly placed decimal point as indicated on each report sheet) together with the proper storet number (to be furnished by the Division) for the analytical procedure used and the reporting units shall be those specified by the NPDES permit or current enforcement document, unless modified by the Director;

(I) Only numeric values will be accepted in reporting results of fecal coliform testing. The reporting of "too numerous to count" (TNTC) as a value will constitute a violation;

(J) The results of all tests on the characteristics of the effluent, including but not limited to NPDES Permit Monitoring Requirements, shall be reported on monthly report forms;

(K) The monthly average of analysis for each parameter and the maximum and minimum values for the month shall be reported;

(L) Certification by the Operator in Responsible Charge (ORC) as to the accuracy and completeness of the report and that he/she has performed and documented the required visitation and process control.

(c) Additional Reporting/Monitoring Requirements:

(1) When a facility is operated on an independent contract basis, the operator in responsible charge shall notify the owner of the facility in writing of any existing or anticipated conditions at the facility which may interfere with its proper operation and which need corrective action by the owner. The notice shall include recommendations for corrective action.

(2) Two ~~copies~~printed copies, or an electronic copy, of the signed notice to the owner shall be sent to the Division ~~as an attachment to~~no later than the next monthly monitoring report.

(3) A log demonstrating visitation at the proper frequency for the assigned classification, including dates and times of visits, and documentation of proper process control monitoring shall be maintained and shall be submitted to the Division upon request. Copies of all information must be readily available for inspection for a period of three years.

(d) All information submitted will be classified as public information unless determined otherwise by the ~~Director.~~Director in accordance with 15A NCAC 02H .0115.

History Note: *Authority G.S. 143-215.1(b); 143-215.64; 143-215.65; 143-215.68;*
Eff. February 1, 1976;
Amended Eff. <date>; August 2, 1993; April 1, 1993; December 1, 1984; November 1, 1978.

Commented [TM3]: Change: Added cross-reference to the rule pertaining to confidential information
Effect: Clarification.

15A NCAC 02B .0508 is proposed for readoption with substantive changes as follows:

15A NCAC 02B .0508 TESTS AND MEASUREMENTS APPLICABLE TO SICS

Commented [TM1]: **Change:** Minor punctuation, capitalization changes.
Effect: Technical corrections.

(a) Determination of Type and Frequency of Tests and Measurements:

(1) Introduction. The tables set forth in this Rule are designed to indicate, for any particular water pollution control facility or point source, the minimum standard tests and measurements which are to be performed, the minimum frequency with which the tests and measurements are to be conducted, and the location and minimum number of sampling points that are required.

(2) Determination of Facility Class and SIC Numbers. Before these tables may be applied, the standard industrial classification(s) of the activities discharging to the water pollution control facility must be determined from The Standard Industrial Classification Manual. The classification of the facility as determined by the Water Pollution Control System Operators Certification Commission, must also be known.

(b) Modification of Test(s) or Measurement(s) Requirements:

(1) If it is demonstrated to the satisfaction of the Director that any of the tests and measurements, sampling points, or frequency of sampling requirements, as required in this Rule for a particular SIC group, are not applicable to the discharge of a particular water pollution control facility, or if it can be demonstrated that the objectives of this Section can be achieved by other acceptable means, then such requirements may be waived or modified to the extent that the Director determines to be appropriate.

(2) In addition to the tests and measurements as listed in this Rule applicable to each of the SIC groups, persons subject to this Section may be required to perform such additional tests and measurements at such sampling points and with such frequency as are determined by the Director to be necessary to adequately monitor constituents of the waste discharge and their effect upon the receiving waters. This monitoring may ~~include,~~include but not be limited to weekends and holidays as deemed necessary by the Director to ensure representative sampling and proper operation and maintenance of any facility.

(c) Unclassified Activities:

(1) Any person owning or operating a water pollution control facility who determines that a major SIC group(s) is not listed in this Rule for an activity subject to this Section shall so notify the Division.

(2) The Director shall prescribe the number and location of sampling points and the frequency with which tests and measurements must be made for such pollutant or pollutant effects as it shall deem necessary to properly monitor the quantity or quality of waste discharges resulting from any activity subject to this Section which is not included in the major SIC groups set forth in this Rule and to properly monitor effects of the discharges upon the waters of this state.

(d) Index of Major Standard Industrial Groups:

SIC Number	Major Products or Services
1400-1499	Mining
2000-2199	Food, Beverage and Tobacco Processing
2200-2299	Textile Processing
2400-2599	Lumber and Wood Products Except Wet Decking
2600-2699	Paper and Allied Products
2800-2899	Chemical and Allied Products
2900-2999	Petroleum Refining and Related Industries
3100-3199	Leather and Leather Products
3400-3699	Fabricated Metal Products Except Ordnance, Machinery and Transportation Equipment
	Machinery Electrical Machinery, Equipment and Supplies
4900-4939	Electric, and Gas Services
4941	Water Supply
4952	Wastewater and all facilities discharging primarily domestic wastewater
7000-8999	Services

Abbreviations for sampling locations and frequencies to be used with SIC monitoring requirements:

"I" means influent "E" means effluent "U" means upstream "D" means downstream

"2/month" means samples are collected twice per month with a required 10 day interval between the collection of the samples

"3/week" means samples are collected three times per week on three separate days

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MINING

MINIMUM REQUIREMENTS FOR SIC 1400-1499

	REQUIRED TEST	LOCATION	FREQUENCY			
			CLASS I	CLASS II	CLASS III	CLASS IV
1.	Turbidity	E	Monthly	Monthly	Monthly	Monthly
2.	Settleable Matter	E	Monthly	Monthly	Monthly	Monthly
3.	TSS	E	Monthly	Monthly	Monthly	Monthly
4.	pH	E	Monthly	Monthly	Monthly	Monthly
5.	Toxics and Toxicity		**	**	**	**

FOOD AND BEVERAGE PROCESSING AND TOBACCO PROCESSING

MINIMUM REQUIREMENTS FOR SIC 2000-2199

EFFLUENT LIMITED

	REQUIRED TEST	LOCATION	FREQUENCY			
			CLASS I	CLASS II	CLASS III	CLASS IV
1.	pH	E	Weekly	Weekly	3/week	Daily
2.	Temperature, °C	E	Weekly	Weekly	3/week	Daily
3.	BOD, 5-day, 20°C	E	2/month	Weekly	3/week	Daily
4.	TSS	E	2/month	Weekly	3/week	Daily
5.	Ammonia Nitrogen	E	Monthly	2/month	Weekly	Weekly
6.	Total Nitrogen	E	*	*	*	*
7.	Total Phosphorus	E	*	*	*	*
8.	Toxics and Toxicity		**	**	**	**

WATER QUALITY LIMITED

1.	Dissolved Oxygen	E	Weekly	Weekly	3/week	Daily
2.	Dissolved Oxygen	U,D	Weekly	Weekly	3/week+	3/week+
3.	pH	E	Weekly	Weekly	3/week	Daily
4.	Temperature, °C	E	Weekly	Weekly	3/week	Daily
5.	Temperature, °C	U,D	Weekly	Weekly	3/week+	3/week+
6.	BOD, 5-day, 20°C	E	2/month	Weekly	3/week	Daily
7.	TSS	E	2/month	Weekly	3/week	Daily
8.	Ammonia Nitrogen	E	2/month	Weekly	3/week	Daily
9.	Total Nitrogen	E	*	*	*	*
10.	Total Phosphorus	E	*	*	*	*
11.	Toxics and Toxicity		**	**	**	**
12.	Conductivity	E	Weekly	Weekly	3/week	Daily
13.	Conductivity	U,D	Weekly	Weekly	3/week+	3/week+

TEXTILE PROCESSING

MINIMUM REQUIREMENTS FOR SIC 2200-2299

EFFLUENT LIMITED

	REQUIRED TEST	LOCATION	FREQUENCY			
			CLASS I	CLASS II	CLASS III	CLASS IV
1.	pH	E	Weekly	Weekly	3/week	Daily
2.	Temperature, °C	E	Weekly	Weekly	3/week	Daily
3.	BOD, 5-day, 20°C	E	2/month	Weekly	3/week	Daily
4.	COD	E	2/month	Weekly	3/week	Daily
5.	TSS	E	2/month	Weekly	3/week	Daily
6.	Total Nitrogen	E	*	*	*	*
7.	Total Phosphorus	E	*	*	*	*
8.	Toxics and Toxicity		**	**	**	**

WATER QUALITY LIMITED

	REQUIRED TEST	LOCATION	FREQUENCY			
			CLASS I	CLASS II	CLASS III	CLASS IV
1.	Dissolved Oxygen	E	Weekly	Weekly	3/week	Daily
2.	Dissolved Oxygen	U,D	Weekly	Weekly	3/week+	3/week+
3.	pH	E	Weekly	Weekly	3/week	Daily
4.	Temperature, °C	E	Weekly	Weekly	3/week	Daily
5.	Temperature, °C	U,D	Weekly	Weekly	3/week+	3/week+
6.	BOD, 5-day, 20°C	E	2/month	Weekly	3/week	Daily
7.	COD	E	2/month	Weekly	Weekly	Weekly
8.	TSS	E	2/month	Weekly	3/week	Daily
9.	Total Nitrogen	E	*	*	*	*
10.	Total Phosphorus	E	*	*	*	*
11.	Toxics and Toxicity		**	**	**	**
12.	Conductivity	E	Weekly	Weekly	3/week	Daily
13.	Conductivity	U,D	Weekly	Weekly	3/week+	3/week+

LUMBER AND WOOD PRODUCTS (EXCLUDING WET DECKING)

MINIMUM REQUIREMENTS FOR SIC 2400-2599

EFFLUENT LIMITED

	REQUIRED TEST	LOCATION	FREQUENCY			
			CLASS I	CLASS II	CLASS III	CLASS IV
1.	pH	E	Weekly	Weekly	3/week	Daily
2.	Temperature, °C	E	Weekly	Weekly	3/week	Daily
3.	BOD, 5-day, 20°C	E	2/month	Weekly	3/week	Daily
4.	COD	E	Monthly	2/month	Weekly	3/week
5.	Total Phenols	E	2/month	Weekly	3/week	Daily
6.	TSS	E	2/month	Weekly	3/week	Daily
7.	Total Nitrogen	E	*	*	*	*
8.	Total Phosphorus	E	*	*	*	*
9.	Toxics and Toxicity		**	**	**	**

WATER QUALITY LIMITED

1.	Dissolved Oxygen	E	Weekly	Weekly	3/week	Daily
2.	Dissolved Oxygen	U,D	Weekly	Weekly	3/week+	3/week+
3.	pH	E	Weekly	Weekly	3/week	Daily
4.	Temperature, 0C	E	Weekly	Weekly	3/week	Daily
5.	Temperature, 0C	U,D	Weekly	Weekly	3/week+	3/week+
6.	BOD, 5-day, 200C	E	2/month	Weekly	3/week	Daily
7.	COD	E	2/month	Weekly	3/week	Daily
8.	Total Phenols	E	2/month	Weekly	3/week	Daily
9.	TSS	E	2/month	Weekly	3/week	Daily
10.	Total Nitrogen	E	*	*	*	*
11.	Total Phosphorus	E	*	*	*	*
12.	Toxics and Toxicity		**	**	**	**
13.	Conductivity	E	Weekly	Weekly	3/week	Daily
14.	Conductivity	U,D	Weekly	Weekly	3/week+	3/week+

PAPER AND ALLIED PRODUCTS

MINIMUM REQUIREMENTS FOR SIC 2600-2699

EFFLUENT LIMITED

	REQUIRED TEST	LOCATION	FREQUENCY			
			CLASS I	CLASS II	CLASS III	CLASS IV
1.	pH	E	Weekly	Weekly	3/week	Daily
2.	Temperature, °C	E	Weekly	Weekly	3/week	Daily
3.	BOD, 5-day, 20°C	E	2/month	Weekly	3/week	Daily
4.	TSS	E	2/month	Weekly	3/week	Daily
5.	Total Nitrogen	E	*	*	*	*
6.	Total Phosphorus	E	*	*	*	*
7.	Toxics and Toxicity		**	**	**	**

WATER QUALITY LIMITED

1.	Dissolved Oxygen	E	Weekly	Weekly	3/week	Daily
2.	Dissolved Oxygen	U,D	Weekly	Weekly	3/week+	3/week+
3.	pH	E	Weekly	Weekly	3/week	Daily
4.	Temperature, °C	E	Weekly	Weekly	3/week	Daily
5.	Temperature, °C	U,D	Weekly	Weekly	3/week+	3/week+
6.	BOD, 5-day, 20°C	E	2/month	Weekly	3/week	Daily
7.	TSS	E	2/month	Weekly	3/week	Daily
8.	Total Nitrogen	E	*	*	*	*
9.	Total Phosphorus	E	*	*	*	*
10.	Toxics and Toxicity		**	**	**	**
11.	Conductivity	E	Weekly	Weekly	3/week	Daily
12.	Conductivity	U,D	Weekly	Weekly	3/week+	3/week+

CHEMICAL AND ALLIED PRODUCTS

MINIMUM REQUIREMENTS FOR SIC 2800-2899

EFFLUENT LIMITED

	REQUIRED TEST	LOCATION	FREQUENCY			
			CLASS I	CLASS II	CLASS III	CLASS IV
1.	pH	E	Weekly	Weekly	3/week	Daily

2.	Temperature, °C	E	Weekly	Weekly	3/week	Daily
3.	BOD, 5-day, 20°C	E	2/month	Weekly	3/week	Daily
4.	TSS	E	2/month	Weekly	3/week	Daily
5.	Total Nitrogen	E	*	*	*	*
6.	Total Phosphorus	E	*	*	*	*
7.	Toxics and Toxicity		**	**	**	**

WATER QUALITY LIMITED

1.	Dissolved Oxygen	E	Weekly	Weekly	3/week	Daily
2.	Dissolved Oxygen	U,D	Weekly	Weekly	3/week+	3/week+
3.	pH	E	Weekly	Weekly	3/week	Daily
4.	Temperature, °C	E	Weekly	Weekly	3/week	Daily
5.	Temperature, °C	U,D	Weekly	Weekly	3/week+	3/week+
6.	BOD, 5-day, 20°C	E	2/month	Weekly	3/week	Daily
7.	TSS	E	2/month	Weekly	3/week	Daily
8.	Total Nitrogen	E	*	*	*	*
9.	Total Phosphorus	E	*	*	*	*
10.	Toxics and Toxicity		**	**	**	**
11.	Conductivity	E	Weekly	Weekly	3/week	Daily
12.	Conductivity	U,D	Weekly	Weekly	3/week+	3/week+

PETROLEUM REFINING AND RELATED INDUSTRIES

MINIMUM REQUIREMENTS FOR SIC 2900-2999

EFFLUENT LIMITED

	REQUIRED TEST	LOCATION	FREQUENCY			
			CLASS I	CLASS II	CLASS III	CLASS IV
1.	pH	E	Weekly	Weekly	3/week	Daily
2.	Temperature, °C	E	Weekly	Weekly	3/week	Daily
3.	BOD, 5-day, 20°C	E	2/month	Weekly	3/week	Daily
4.	TSS	E	2/month	Weekly	3/week	Daily
5.	Total Phenols	E	2/month	Weekly	3/week	Daily
6.	Oil and Grease	E	2/month	Weekly	3/week	Daily

7.	Total Nitrogen	E	*	*	*	*
8.	Total Phosphorus	E	*	*	*	*
9.	Toxics and Toxicity		**	**	**	**

WATER QUALITY LIMITED

1.	Dissolved Oxygen	E	Weekly	Weekly	3/week	Daily
2.	Dissolved Oxygen	U,D	Weekly	Weekly	3/week+	3/week+
3.	pH	E	Weekly	Weekly	3/week	Daily
4.	Temperature, °C	E	Weekly	Weekly	3/week	Daily
5.	Temperature, °C	U,D	Weekly	Weekly	3/week+	3/week+
6.	BOD, 5-day, 20°C	E	2/month	Weekly	3/week	Daily
7.	TSS	E	2/month	Weekly	3/week	Daily
8.	Total Phenols	E	2/month	Weekly	3/week	Daily
9.	Oil and Grease	E	2/month	Weekly	3/week	Daily
10.	Total Nitrogen	E	*	*	*	*
11.	Total Phosphorus	E	*	*	*	*
12.	Toxics and Toxicity		**	**	**	**
13.	Conductivity	E	Weekly	Weekly	3/week	Daily
14.	Conductivity	U,D	Weekly	Weekly	3/week+	3/week+

LEATHER AND LEATHER PRODUCTS

MINIMUM REQUIREMENTS FOR SIC 3100-3199

EFFLUENT LIMITED

	REQUIRED TEST	LOCATION	FREQUENCY			
			CLASS I	CLASS II	CLASS III	CLASS IV
1.	pH	E	Weekly	Weekly	3/week	Daily
2.	Temperature, °C	E	Weekly	Weekly	3/week	Daily
3.	BOD, 5-day, 20°C	E	2/month	Weekly	3/week	Daily
4.	TSS	E	2/month	Weekly	3/week	Daily
5.	COD	E	2/month	Weekly	Weekly	Daily
6.	Ammonia Nitrogen	E	Monthly	Weekly	Weekly	Weekly
7.	Oil and Grease	E	2/month	Weekly	3/week	Daily

8.	Turbidity	E	Weekly	3/week	Daily	Daily
9.	Total Nitrogen	E	*	*	*	*
10.	Total Phosphorus	E	*	*	*	*
11.	Toxics and Toxicity		**	**	**	**

WATER QUALITY LIMITED

1.	Dissolved Oxygen	E	Weekly	Weekly	3/week	Daily
2.	Dissolved Oxygen	U,D	Weekly	Weekly	3/week+	3/week+
3.	pH	E	Weekly	Weekly	3/week	Daily
4.	Temperature, °C	E	Weekly	Weekly	3/week	Daily
5.	Temperature, °C	U,D	Weekly	Weekly	3/week+	3/week+
6.	BOD, 5-day, 20°C	E	2/month	Weekly	3/week	Daily
7.	TSS	E	2/month	Weekly	3/week	Daily
8.	COD	E	2/month	Weekly	3/week	Daily
9.	Ammonia Nitrogen	E	2/month	Weekly	3/week	Daily
10.	Oil and Grease	E	2/month	Weekly	3/week	Daily
11.	Turbidity	E	Weekly	Weekly	3/week	Daily
12.	Total Nitrogen	E	*	*	*	*
13.	Total Phosphorus	E	*	*	*	*
14.	Toxics and Toxicity		**	**	**	**
15.	Conductivity	E	Weekly	Weekly	3/week	Daily
16.	Conductivity	U,D	Weekly	Weekly	3/week+	3/week+

FABRICATED METAL PRODUCTS EXCEPT ORDINANCE:MACHINERY AND TRANSPORTATION EQUIPMENT MACHINERYELECTRICAL MACHINERY, EQUIPMENT AND SUPPLIES

MINIMUM REQUIREMENTS FOR SIC 3400-3699

EFFLUENT LIMITED

	REQUIRED TEST	LOCATION	FREQUENCY			
			CLASS I	CLASS II	CLASS III	CLASS IV
1.	pH	E	Weekly	Weekly	3/week	Daily
2.	Temperature, °C	E	Weekly	Weekly	3/week	Daily
3.	Oil and Grease	E	2/month	Weekly	3/week	Daily

4.	Total Nitrogen	E	*	*	*	*
5.	Total Phosphorus	E	*	*	*	*
6.	Toxics and Toxicity		**	**	**	**
7.	Dissolved Oxygen	E	Weekly	Weekly	3/week	Daily

WATER QUALITY LIMITED

1.	Dissolved Oxygen	E	Weekly	Weekly	3/week	Daily
2.	pH	E	Weekly	Weekly	3/week	Daily
3.	Temperature, °C	E	Weekly	Weekly	3/week	Daily
4.	Oil and Grease	E	2/month	Weekly	3/week	Daily
5.	Total Nitrogen	E	*	*	*	*
6.	Total Phosphorus	E	*	*	*	*
7.	Toxics and Toxicity		**	**	**	**

ELECTRICAL AND GAS SERVICES

MINIMUM REQUIREMENTS FOR SIC 4900-4939

EFFLUENT LIMITED

	REQUIRED TEST	LOCATION	FREQUENCY			
			CLASS I	CLASS II	CLASS III	CLASS IV
1.	pH	E	Weekly	Weekly	Weekly	Weekly
2.	Temperature, °C	E	Weekly	Weekly	Weekly	Weekly
3.	Total Nitrogen	E	*	*	*	*
4.	Total Phosphorus	E	*	*	*	*
5.	Toxics and Toxicity		**	**	**	**

WATER QUALITY LIMITED

1.	Dissolved Oxygen	E	Weekly	Weekly	Weekly	Weekly
2.	pH	E	Weekly	Weekly	Weekly	Weekly
3.	Temperature, °C	E	Weekly	Weekly	Weekly	Weekly
4.	Total Nitrogen	E	*	*	*	*
5.	Total Phosphorus	E	*	*	*	*

6.	Toxics and Toxicity		**	**	**	**

Note: The following monitoring for steam electric generating establishments discharging once through cooling water or cooling tower blowdown shall be required whether or not the discharge is from a classified facility.

	REQUIRED TEST	LOCATION	FREQUENCY			
			CLASS I	CLASS II	CLASS III	CLASS IV
1.	Temperature, °C	E	Cont.	Cont.	Cont.	Cont.
2.	Temperature, °C	U, D	3/week+	3/week+	3/week+	3/week+
3.	Flow		Continuous during discharge	Continuous during discharge	Continuous during discharge	Continuous during discharge

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WATER SUPPLY PLANTS

MINIMUM REQUIREMENTS FOR SIC 4941

EFFLUENT LIMITED

	REQUIRED TEST	LOCATION	FREQUENCY			
			CLASS I	CLASS II	CLASS III	CLASS IV
1.	Settleable Solids	E	Weekly	Weekly	Weekly	Weekly
2.	TSS	E	2/month	2/month	2/month	2/month
3.	Turbidity	E	Weekly	Weekly	Weekly	Weekly
4.	pH	E	Weekly	Weekly	Weekly	Weekly
5.	Chloride	E	Weekly	Weekly	Weekly	Weekly

DOMESTIC WASTEWATER AND OTHER FACILITIES DISCHARGING PRIMARILY DOMESTIC

MINIMUM REQUIREMENTS FOR SIC 4952

EFFLUENT LIMITED

REQUIRED TEST	LOCATION	FREQUENCY			
		CLASS	CLASS	CLASS	CLASS

			I	II	III	IV
1.	pH	E	2/month	Weekly	3/week	Daily
2.	Temperature, °C	E	Weekly	Weekly	3/week	Daily
3.	BOD, 5-day, 20°C	I,E	2/month	Weekly	3/week	Daily
4.	TSS	I,E	2/month	Weekly	3/week	Daily
5.	Ammonia Nitrogen	E	Monthly	2/month	Weekly	3/week
6.	Fecal Coliform	E	2/month	Weekly	3/week	Daily
7.	Total Nitrogen	E	*	*	*	*
8.	Total Phosphorus	E	*	*	*	*
9.	Toxics and Toxicity		**	**	**	**

WATER QUALITY LIMITED

1.	Dissolved Oxygen	E	Weekly	Weekly	3/week	Daily
2.	Dissolved Oxygen	U,D	Weekly	Weekly	3/week+	3/week+
3.	pH	E	2/month	Weekly	3/week	Daily
4.	Temperature, °C	E	Daily	Daily	Daily	Daily
5.	Temperature, °5	U,D	Weekly	Weekly	3/week+	3/week+
6.	BOD, 5-day, 20°C	~~E,I~~I,E	2/month	Weekly	3/week	Daily
7.	TSS	~~E,I~~I,E	2/month	Weekly	3/week	Daily
8.	Ammonia Nitrogen	E	2/month	Weekly	3/week	Daily
9.	Residual Chlorine	E	2/week	2/week	3/week	Daily
10.	Fecal Coliform	E	2/month	Weekly	3/week	Daily
11.	Fecal Coliform	U,D	2/month	Weekly	3/week+	3/week+
12.	Conductivity	E	Weekly	Weekly	3/week	Daily
13.	Conductivity	U,D	Weekly	Weekly	3/week+	3/week+
14.	Total Nitrogen	E	*	*	*	*
15.	Total Phosphorus	E	*	*	*	*
16.	Toxics and Toxicity		**	**	**	**

SERVICES

MINIMUM REQUIREMENTS FOR SIC 7000-8999

EFFLUENT LIMITED

REQUIRED TEST	LOCATION	FREQUENCY

			CLASS I	CLASS II	CLASS III	CLASS IV
1.	pH	E	Weekly	Weekly	3/week	Daily
2.	Temperature, °C	E	Weekly	Weekly	3/week	Daily
3.	BOD, 5-day, 20°C	E	2/month	Weekly	3/week	Daily
4.	TSS	E	2/month	Weekly	3/week	Daily
5.	Ammonia Nitrogen	E	Monthly	2/month	Weekly	3/week
6.	Detergents (MBAS)	E	2/month	Weekly	3/week	Daily
7.	Fecal Coliform	E	2/month	Weekly	3/week	Daily
8.	Total Nitrogen	E	*	*	*	*
9.	Total Phosphorus	E	Monthly	2/month	Weekly	3/week
10.	Toxics and Toxicity		**	**	**	**

WATER QUALITY LIMITED

1.	Dissolved Oxygen	E	Weekly	Weekly	3/week	Daily
2.	Dissolved Oxygen	U,D	Weekly	Weekly	3/week+	3/week+
3.	pH	E	Weekly	Weekly	3/week	Daily
4.	Temperature, °C	E	Weekly	Weekly	3/week	Daily
5.	Temperature, °C	U,D	Weekly	Weekly	3/week+	3/week+
6.	BOD, 5-day, 20°C	E	2/month	Weekly	3/week	Daily
7.	TSS	E	2/month	Weekly	3/week	Daily
8.	Ammonia Nitrogen	E	Monthly	2/month	Weekly	3/week
9.	Detergents (MBAS)	E	2/month	Weekly	3/week	Daily
10.	Fecal Coliform	E	2/month	Weekly	3/week	Daily
11.	Total Nitrogen	E	*	*	*	*
12.	Total Phosphorus	E	*	*	*	*
13.	Toxics and Toxicity		**	**	**	**
14.	Conductivity	E	Weekly	Weekly	3/week	Daily
15.	Conductivity	U,D	Weekly	Weekly	3/week+	3/week+

+ Upstream and Downstream monitoring in water quality limited waters is to be conducted three times per week during June, July, August, and September, and once per week during the rest of the year.

* Total Nitrogen and Phosphorus Monitoring

(1) Monitoring Requirements

(A) All facilities equal to or greater than 50,000 gpd, shall monitor for total N and P.

(B) Facilities less than 50,000 gpd shall monitor for total N and P when discharging into nutrient sensitive waters as designated by the Division.

(2) Monitoring frequency for total N and P is based on river subbasins in two separate areas of the state as follows:

(A) Western area includes the French Broad, Broad, Savannah, New, Watauga, Little Tennessee, and Hiwassee:

Facility Design Capacity:	Frequency
(i) 50,000 gpd or higher	Semi-annually
(ii) 1,000,000 gpd or higher	Quarterly.

(B) Piedmont and Eastern area includes the Catawba, Lumber, Yadkin, Cape Fear, Chowan, Neuse, Pasquotank, Roanoke, Tar-Pamlico, and White Oak:

Facility Design Capacity	Frequency
(i) 50,000 gpd or higher	Quarterly
(ii) 1,000,000 gpd or higher	Monthly.

(3) Definition for Total Nitrogen and Total Phosphorus:

(A) Total Nitrogen shall be the sum of total ~~kjeldahl~~Kjeldahl nitrogen, nitrate nitrogen, and nitrite nitrogen expressed as "N" in milligrams per liter ~~(mg/l).~~(mg/L).

(B) Total Phosphorus shall include all orthophosphates and condensed phosphates, both dissolved and particulate, organic and inorganic, expressed as "P" in milligrams per liter ~~(mg/l).~~(mg/L).

** Specific test type, conditions, and limitations will be defined by permit. Toxicity limits will be applied to all major discharges and all discharges of complex wastewater. Toxicity limitations and monitoring requirements may be applied to permits for other discharges when, in the opinion of the Director, such discharge may impair the best use of the receiving water by the discharge of toxic substances in toxic amounts.

Specific frequency will be defined by individual permit conditions. For most facilities with continuous and regularly occurring discharges, frequency will be defined as a minimum of quarterly.

History Note: *Authority G.S. 143-215.65; 143-215.66; 143-215.68;*
Eff. February 1, 1976;

Amended Eff. <u><date></u>; April 1, 1993; December 1, 1984; November 1, 1978.

15A NCAC 02B .0511 is proposed for adoption as follows:

15A NCAC 02B .0511 INCORPORATION BY REFERENCE

(a) The following sections of Title 40 of the Code of Federal Regulations (CFR) are incorporated by reference, including subsequent amendments and editions, and shall apply throughout this Section except where procedural details of the federal rules differ from procedures adopted elsewhere in this section, in which case the separately adopted procedure governs. These regulations can be accessed free of charge at http://www.gpo.gov/fdsys/.

(1) 40 CFR Parts 122.2, 124.2, and 125.2: Definitions;

(2) §122.4: Prohibitions):

(3) §122.5(a) and (b): Effect of permit;

(4) §122.7(b) and (c): Confidential information;

(5) §122.21 (a)-(b), (c)(2), (e)-(k), (m)-(p), (q), and (r): Application for a permit;

(6) §122.22: Signatories;

(7) §122.23: Concentrated animal feeding operations;

(8) §122.24: Concentrated aquatic animal production facilities;

(9) §122.25: Aquaculture projects;

(10) §122.26: Storm water discharges;

(11) §122.27: Silviculture;

(12) §122.28: General permits;

(13) §122.29 (a), (b), and (d): New sources and new dischargers;

(14) §122.30: NPDES stormwater regulations for small MS4s: objectives;

(15) §122.31: NPDES stormwater regulations: role of Tribes;

(16) §122.32: NPDES stormwater regulations for small MS4s: applicability;

(17) §122.33: NPDES stormwater regulations for small MS4s: application for permit;

(18) §122.34: NPDES stormwater regulations for small MS4s: permit requirements;

(19) §122.35: NPDES stormwater regulations for small MS4s: shared responsibilities;

(20) §122.36: NPDES stormwater regulations for small MS4s: compliance;

(21) §122.37: NPDES stormwater regulations for small MS4s: evaluation;

(22) §122.41 (a)(1) and (b) through (n): Applicable permit conditions;

(23) §122.42: Conditions applicable to specified categories of permits;

(24) §122.43: Establishing permit conditions;

(25) §122.44: Establishing NPDES permit conditions;

(26) §122.45: Calculating permit conditions;

(27) §122.46: Duration;

(28) §122.47(a): Schedules of compliance;

(29) §122.48: Monitoring requirements;

(30) §122.50: Disposal into wells;

Commented [TM1]: Change: Proposed rule incorporates multiple federal rules by reference. 40 CFR 123.25 requires approved states to implement most of these regulations, and NC has done so, but the state has yet to formally adopt them. (The same rule is proposed in Subchapter 02B, Sections 02B .0400 and 02H .0100.)
Effect: In essence, a technical correction, as the state has implemented these rules for decades.

(31) §122.61: Permit transfer;
(32) §122.62: Permit modification;
(33) §122.64: Permit termination;
(34) §124.3(a): Application for a permit;
(35) §124.5 (a), (c), (d), and (f): Modification of permits;
(36) §124.6 (a), (c), (d), and (e): Draft permit;
(37) §124.8: Fact sheets;
(38) §124.10 (a)(1)(ii), (a)(1)(iii), (a)(1)(v), (b), (c), (d), and (e): Public notice;
(39) §124.11: Public comments and requests for hearings;
(40) §124.12(a): Public hearings;
(41) §124.17 (a) and (c): Response to comments;
(42) §124.56: Fact sheets;
(43) §124.57(a): Public notice;
(44) §124.59: Comments from government agencies;
(45) §124.62: Decision on variances;
(46) 40 CFR Part 125, Subparts A (Technology-Based Treatment Requirements), B (Aquaculture), D (Fundamentally Different Factors), H (Alternative Limitations, CWA Section 316(a)), I (Cooling Water Intake Structures, New Facilities, CWA Section 316(b)), J (Cooling Water Intake Structures, Existing Facilities, CWA Section 316(b)), and N (Cooling Water Intake Structures, Offshore Oil and Gas Facilities, CWA Section 316(b));
(47) 40 CFR Parts 129 (Toxic Pollutant Effluent Standards) and 133 (Secondary Treatment Regulation), and Subchapter N (Effluent Guidelines and Standards);
(48) 40 CFR Part 3: Electronic reporting;
(49) 40 CFR Part 136: Guidelines for establishing test procedures for the analysis of pollutants; and
(50) 40 CFR 401.15: List of toxic pollutants pursuant to CWA Section 307(a)(1).

(b) This rule is not an exclusive list of federal regulations adopted by reference in this Section. Other rules of the Section incorporate some of these same federal regulations for clarity or emphasis and may incorporate additional regulations not listed in Paragraph (a).

History Note: *Authority G.S. 143-211(c); 143-215.1(b)(4); 143B-282(5);*
Eff. <date>.

15A NCAC 02B .0601 is proposed for amendment as follows:

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

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

Commented [A1]: Reference correction. .0609 was repealed. No, effect.

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

(1) control stormwater for projects disturbing one acre or more of land as described in Rule ~~.0602.~~.0602 of this Section;

(2) control wastewater discharges as described in Rule ~~.0603,~~ .0603 of this Section;

(3) control toxicity to streams supporting the Carolina heelsplitter as described in Rule ~~.0604,~~ .0604 of this Section; and

(4) maintain riparian buffers as described in Rules .0605 through ~~.0609.~~ .0608 of this Section.

Commented [A2]: Added "of this section" to rule reference for clarity. No effect

History Note: *Authority G.S. 143-214.1; 143-215.3(a)(1); 143-215.8A;*
Eff. January 1, 2009.

15A NCAC 02B .0602 is proposed for amendment as follows:

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

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

Commented [A1]: NC Turnpike Authority is now part of NCDOT. No effect.

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

(1) Remove an 85 percent average annual amount of Total Suspended Solids;

(2) Draw down the treatment volume no faster than 48 hours, but no slower than 120 hours, for detention ponds;

(3) Discharge the storage volume at a rate equal or less than the pre-development discharge rate for the one-year, 24-hour storm; and

(4) Meet Design of Stormwater Management Measures set forth in 15A NCAC 02H .1008.

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

(1) The local government has land use jurisdiction for the riparian buffer demonstrated by delineating the local land use jurisdictional boundary on USGS 1:24,000 topographical map(s) or other finer scale map(s);

(2) The local government has the administrative organization, staff, legal authority, financial and other resources necessary to implement and enforce the state's stormwater requirements based on its size and projected amount of development;

(3) The local government has adopted ordinances, resolutions, or regulations necessary to establish and maintain the state's stormwater requirements; and

(4) The local government has provided a plan to address violations with civil or criminal remedies and actions as well as remedies that shall restore buffer functions on violation sites and provide a deterrent against the occurrence of future violations.

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

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

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

(1) Activities undertaken by the State;

(2) Activities undertaken by the United States;

(3) Activities undertaken by multiple jurisdictions; and

(4) Activities undertaken by local units of government.

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

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

15A NCAC 02B .0603 proposed for amendment as follows:

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

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

History Note: *Authority G.S. 143-214.1; 143-215.3(a)(1); 143-215.8A;*
Eff. January 1, 2009.

15A NCAC 02B .0604 is proposed for amendment as follows:

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

No activity that results in direct or indirect discharge is allowed if it causes toxicity to the Carolina heelsplitter (*Lasmigona decorata)* endangered mussel. For any direct or indirect discharge that may cause ammonia toxicity to the Carolina heelsplitter freshwater mussel, action shall be taken to reduce ammonia (NH_3-N) inputs to achieve 0.5 milligrams per liter or less of total ammonia based on chronic toxicity defined in ~~15A NCAC 02B .0202.~~ Rule .0202 of this Subchapter. This level of total ammonia is based on ambient water temperature equal to or greater than 25 degrees Celsius.

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

Commented [A1]: Formatting change for rule reference. No effect.

15A NCAC 02B .0605 is proposed for amendment as follows:

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

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

History Note: *Authority G.S. 143-214.1; 143-215.3(a)(1); 143-215.8A;*
Eff. January 1, 2009.

Commented [HK1]: No effect - clarification

Commented [HK2]: No effect – moved to below

Commented [HK3]: No effect – clarification/reorganization

Commented [HK4]: Moved to Rule .0607

Commented [HK5]: No effect – clarification/reorganization

Commented [HK6]: Moved to Rule .0607

15A NCAC 02B .0606 is proposed for amendment as follows:

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

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

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

(1) The application shall specify:

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

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

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

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

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

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

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

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

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

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

Commented [HK1]: update terminology; moved authorization certificate langauge from .0607 into this Rule

Commented [HK2]: no effect – added header

Commented [HK3]: no effect - grammar

Commented [HK4]: no effect – update terminology

Commented [HK5]: moved from Rule .0607

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Commented [HK6]: clarification – similar to requirement for 401 WQC

Commented [HK7]: moved from Rule .0607

Commented [HK8]: no effect – clarification

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

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

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

(3) The Authority must consider the impacts that may affect conditions required to sustain and recover the federally endangered Carolina heelsplitter (*Lasmigona decorata*).

(4) Within 60 calendar days of receipt of a complete application package that addresses Subparagraph (b)(1) and (b)(2) of this Rule, the Authority shall issue an Authorization Certificate if the Authority makes a finding of "no practical alternatives" and the applicant also satisfies other applicable requirements as described in Subparagraph (b)(1) through (b)(3) of this Rule. Failure to act within 60 calendar days of receipt of a complete application shall be construed as a finding of "no practical alternatives" and an Authorization Certificate shall be issued by the Authority to the applicant unless one of the following occurs:

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

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

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

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

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

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

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

(1) ~~For any variance request, the Division of Water Quality shall make a finding of fact as to whether the following requirements have been met:~~An Authorization Certificate with Exception shall require that all of the following conditions are met:

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

~~(i)~~(B) If the applicant complies with the provisions of the buffer requirements, ~~he/she~~he or she can secure no reasonable return from, nor make reasonable use of, ~~his/her~~his or her property. Merely proving that the ~~variance~~ Authorization Certificate with Exception would

Commented [HK9]: moved from Rule .0607

Commented [HK10]: clarification

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Commented [HK12]: clarification – similar to 401 WQC rules

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Commented [HK14]: for uses not listed in the table, instead of requesting a major variance, applicants will request an authorization certificate with exception.

Commented [HK15]: Clarify that these conditions must be met to receive an authorization certificate with exception.

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~~permit~~ allow a greater profit from the property is not adequate justification ~~for a variance.~~for an Authorization Certificate with Exception. Moreover, the ~~Division of Water Quality~~Authority shall consider whether the ~~variance~~ Authorization Certificate with Exception is the minimum possible deviation from the terms of the buffer requirements that will make reasonable use of the property possible.

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

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

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

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

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

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

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

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

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

(3) MAJOR EXCEPTIONS. ~~A variance~~An Authorization Certificate with Major Exception request pertains to ~~any activity that is proposed to impact any portion~~allowable with exception activities that are proposed to impact greater than one-third of an acre of the riparian buffer. ~~If the Division of~~

Commented [HK17]: Clarification

Commented [HK18]: Removed hardship

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Commented [HK20]: Removed language related to violations

Commented [HK21]: Removed hardship

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Commented [HK23]: Added new provision for a minor exception

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Commented [HK25]: Added threshold for major exception to only include impacts to greater than 1/3 acre of wetland.

~~Water Quality has determined that a major variance request meets the requirements in Item (1) of this Rule, then it~~

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

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

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

(D) ~~Preliminary findings on variance requests shall be reviewed by the Commission within 90 days after receipt by the Director. Requests for appeals of determinations that the requirements of Item (1) of this Rule have not been met shall be made to the Office of Administrative Hearings for determinations made by the Division of Water Quality or the appropriate Board of Adjustments under G.S. 160A 388 or G.S. 153A 345 for determinations made by the delegated local authority. The purpose of the Commission's review is to determine if it agrees.~~ Within 60 calendar days following the notice as described in SubPart (c)(3)(C) of this Rule, upon the Authority's determination that all of the requirements in ~~Item (1)~~Subparagraphs (b)(2) and (c)(1) of this Rule have been ~~met. Requests for appeals of decisions made by the Commission shall be made to the Office of Administrative Hearings.~~met, the Authority shall issue an Authorization Certificate with Major Exception. If the Authority determines that all of the requirements in Subparagraphs (b)(2) and (c)(1) of this Rule have not been met, the Authority shall issue a final decision denying the Authorization Certificate with Major Exception.~~The following actions shall be taken depending on the Commission's decision on the major variance request:~~

~~(a) Upon the Commission's approval, the Division of Water Quality shall issue a final decision granting the variance.~~

~~(b) Upon the Commission's approval with conditions or stipulations, the Division of Water Quality shall issue a final decision, which includes these conditions or stipulations.~~

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

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Commented [HK26]: No effect - reorganization

Commented [HK27]: Establishes a timeframe to process major exceptions

Commented [HK28]: Updated process for major exception requests

Commented [HK29]: Because these are not variances, they will not come before the EMC for a decision. A public notice will be provided of all major exception requests.

Commented [HK30]: Establishes a timeframe to process major exceptions

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Commented [HK31]: Updated process for major exception requests

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

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

Commented [HK32]: Clarification

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

15A NCAC 02B .0607 is proposed for amendment as follows:

15A NCAC 02B .0607 SITE SPECIFIC WATER QUALITY MANAGEMENT PLAN FOR THE GOOSE CREEK WATERSHED (YADKIN PEE-DEE RIVER BASIN): BUFFER TYPES AND MANAGING ACTIVITIES WITHIN RIPARIAN BUFFERS

(a) DEFINITIONS. For the purpose of this Rule and Rules .0605, .0606 and .0608 of this Section, these terms shall be defined as found in Rule .0701 of this Subchapter and as follows:

(1) 'Authority' means either the Division or a local government that has been delegated pursuant this Rule to implement the riparian buffer program.

(2) 'Riparian buffer' means the area as defined in Paragraph (c) of this Rule.

(b) 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 Paragraph (c) of this Rule in the Goose Creek Watershed.

~~(a)~~(c) ~~RIPARIAN BUFFER.~~BUFFERS PROTECTED. ~~The protected riparian buffer shall consist of an area that is undisturbed except for uses provided for in the table in this Rule. A waterbody shall be considered to be present if the feature is shown as described in the applicability paragraph of 15A NCAC 02B .0233 (3) and 02B .0233(3)(a)(i) (iii). The location of the riparian buffer shall be as follows:~~The following minimum criteria shall be used for identifying regulated buffers:

(1) A surface water shall be subject if the feature is approximately shown on any of the following references:

(A) The most recent version of the published manuscript of the soil survey map that shows stream layers prepared by the Natural Resources Conservation Service of the United States Department of Agriculture;

(B) The most recent version of the 1:24,000 scale (7.5 minute) quadrangle topographic maps prepared by the United States Geologic Survey (USGS); or

(C) Other maps approved by the Geographic Information Coordinating Council and by the Environmental Management Commission as more accurate than those identified in Subparagraph (c)(4)(A) and (c)(4)(B) of this Rule. Other maps may be submitted to the Division for review and recommendation to the Environmental Management Commission. Prior to recommendation to the Environmental Management Commission, the Division shall issue a 30-calendar day public notice through the Division's Mailing List in accordance with 15A NCAC 02H .0503. Division staff shall present recommendations including comments received during the public notice period to the Environmental Management Commission for a final decision. Maps approved under this Subparagraph shall not apply to projects that are existing and ongoing within the meaning of this Rule as set out in Paragraph (e) of this Rule.

Commented [HK1]: no effect - clarification

Commented [HK2]: no effect - reorganization

Commented [HK3]: no effect – moved from paragraph (a), which referenced neuse rule

Commented [HK4]: added flexibility for a 3rd map to be used – language from SL 2009-484 for Jordan buffer rules

(2) This Rule shall apply to activities conducted within riparian buffers as set forth in Rule .0605 of this Section.

(3) Wetlands adjacent to surface waters or within the buffer width as set forth in Rule .0605 of this Section shall be considered as part of the riparian buffer but are regulated pursuant to 15A NCAC 02H .0506.

(4) Stormwater runoff from activities conducted outside the riparian buffer shall comply with Paragraph (h) of this Rule.

~~(1)~~(5) For streams, the riparian buffer shall begin at the most landward limit of the top of bank or the rooted herbaceous vegetation and extend landward on all sides of the ~~surface water,~~stream, measured horizontally on a line perpendicular to the ~~surface water.~~stream (where a stream begins or ends, including when it goes underground, enters or exits a culvert, or enters or exits a wetland, the required distance shall be measured as a radius around the beginning or the end).

~~(2)~~(6) For ponds, lakes and reservoirs located within a natural drainage way, the riparian buffer shall begin at the most landward limit of the normal water level or the rooted herbaceous vegetation and extend landward, measured horizontally on a line perpendicular to the surface water.

(7) A riparian buffer may be exempt from this Rule as described in Paragraphs (e), (f) and (g) of this Rule.

(8) No new clearing, grading or development shall take place nor shall any new building permits be issued in violation of this Rule.

(d) ON-SITE DETERMINATION. When a landowner or other affected party believes that the maps listed in Sub-paragraph (c)(1) of this Rule have inaccurately depicted surface waters or the specific origination point of a stream, or the specific origination point of a stream is in question or unclear, he or she shall request the Authority to make an on-site determination. On-site determinations shall be made by Authority staff that are certified pursuant to G.S. 143-214.25A. Registered Foresters under Chapter 89B of the General Statutes who are employees of the North Carolina Forest Service of the Department of Agriculture and Consumer Services can make on-site determinations for forest harvesting operations and practices. On-site determinations shall expire five years from the date of the determination. Any disputes over on-site determinations shall be referred to the Director in writing within 60 calendar days of written notification from the Authority. The Director's determination is subject to review as provided in Articles 3 and 4 of G.S. 150B.

(e) EXEMPTION BASED ON ON-SITE DETERMINATION. Surface waters that appear on the maps listed in Sub-paragraph (c)(1) of this Rule shall not be subject to this Rule if an on-site determination shows that they fall into one of the following categories:

(1) Ditches and manmade conveyances other than modified natural streams unless constructed for navigation or boat access.

(2) Manmade ponds and lakes that are not fed by an intermittent or perennial stream nor have a direct discharge point to an intermittent or perennial stream.

(3) Ephemeral (stormwater) streams.

Commented [HK5]: no effect – reorganization and clarification

Commented [HK6]: no effect – codifying policy

Commented [HK7]: no effect - clarification

(4) The absence on the ground of a corresponding perennial waterbody, intermittent waterbody, lake, pond or estuary.

~~(b)~~(f) EXEMPTION WHEN EXISTING USES ARE PRESENT AND ONGOING. The buffer requirements in this Rule do not apply to portions of the riparian buffer where a use is existing and ongoing.

(1) A use ~~that~~shall be considered existing if:

(A) It was present within the riparian buffer as of the ~~effective date of this Rule~~January 1, 2009 and has continued to exist since that time.

(B) It was a deemed allowable activity as listed in Paragraph (i) of this Rule.

(C) It was conducted and maintained pursuant to an Authorization Certificate or Variance issued by the Authority.

(D) The project or proposed development are determined by the Authority to meet at least one of the following criteria:

(i) Project requires a 401 Certification/404 Permit and these were issued prior to January 1, 2009 and are still valid;

(ii) Project requires a state permit, such as a landfill, NPDES wastewater discharge, land application residuals and road construction activities, and has begun construction or is under contract to begin construction and has received all required state permits prior to January 1, 2009;

(iii) Project is being reviewed through the Clean Water Act Section 404/National Environmental Policy Act Merger 01 Process or Safe Accountable Flexible Efficient Transportation Equity Act; a Legacy for Users (published by the US Army Corps of Engineers and Federal Highway Administration, 2003) or its immediate successor and that have reached agreement with Department on avoidance and minimization by January 1, 2009; or

(iv) Project is not required to be reviewed by the Clean Water Act Section 404/National Environmental Policy Act Merger 01 Process or Safe Accountable Flexible Efficient Transportation Equity Act; a Legacy for Users (published by the US Army Corps of Engineers and Federal Highway Administration, 2003) or its immediate successor if a Finding of No Significant Impact has been issued for the project and the project has the written approval of the Division prior to January 1, 2009.

(2) Existing and ongoing uses shall ~~include~~ include, but not be limited to, agriculture, buildings, industrial facilities, commercial areas, transportation facilities, maintained lawns, maintained utility lines and on-site sanitary ~~sewage systems.~~sewage systems, any of which involve either specific periodic management of vegetation or displacement of vegetation by structures or regular activity.

Commented [HK8]: no effect – moved from paragraph (a), which referenced neuse rule

(3) Only the portion of the riparian buffer that contains the footprint of the existing and ongoing use is except from the buffer requirements of this Rule.

(4) Change of ownership through purchase or inheritance is not a change of use.

(5) Activities necessary to maintain existing and ongoing uses are allowed provided that the site remains similarly vegetated, no ~~impervious surface~~built upon area is added within the buffer area where it did not exist ~~as of the effective date of this Rule~~prior to January 1, 2009, and ~~existing diffuse flow is maintained.~~the site is in compliance with Paragraph (h) of this Rule.

~~(2) A use that can be documented to the Division of Water Quality that meets at least one of the following criteria:~~

~~(A) Project requires a 401 Certification/404 Permit, issued prior to the effective date of this Rule and are still valid;~~

~~(B) Project requires a state permit, such as a landfill, NPDES wastewater discharge, land application residuals and road construction activities, and has begun construction or is under contract to begin construction and has received all required state permits prior to the effective date of this Rule;~~

~~(C) Project is being reviewed through the Clean Water Act Section 404/National Environmental Policy Act Merger 01 Process or Safe Accountable Flexible Efficient Transportation Equity Act; a Legacy for Users (published by the US Army Corps of Engineers and Federal Highway Administration, 2003) or its immediate successor and that have reached agreement with Department of Environment and Natural Resources on avoidance and minimization by the effective date of this Rule; or~~

~~(D) Project is not required to be reviewed by the Clean Water Act Section 404/National Environmental Policy Act Merger 01 Process or Safe Accountable Flexible Efficient Transportation Equity Act; a Legacy for Users (published by the US Army Corps of Engineers and Federal Highway Administration, 2003) or its immediate successor if a Finding of No Significant Impact has been issued for the project and the project has the written approval of the Division of Water Quality prior to the effective date of this Rule.~~

~~(5)~~(6) ~~At~~ This Rule shall apply at the time an existing and ongoing use is changed to another use.~~use, the buffer requirement of this Rule shall apply. Change of use includes the following:~~ Change of use shall involved the initigation of any activity not defined as existing and ongoing in Sub-paragraphs (f)(1) through (f)(5) of this Rule.

~~(A) To add impervious surface within the riparian buffer;~~

~~(B) An agricultural operation within the riparian buffer is converted to a non-agricultural; or~~

~~(C) a lawn within the riparian buffer ceases to be maintained.~~

(g) EXEMPTION FOR PONDS CONSTRUCTED AND USED FOR AGRICULTURAL PURPOSES. This Rule shall not apply to a freshwater pond if all of the following conditions are met:

Commented [HK9]: no effect – reorganized and clarifications; updated terminology, dates and citations

(1) The property on which the pond is located is used for agriculture as that term is defined in G.S. 106-581.1.

(2) Except for this Rule, the use of the property is in compliance with all other water quality and water quantity statutes and rules applicable to the property before January 1, 2009.

(3) The pond is not a component of an animal waste management system as defined in G.S. 143-215.10B (3).

~~(c) DIFFUSE FLOW REQUIREMENT. Diffuse flow of runoff shall be maintained in the riparian buffer by dispersing concentrated flow and reestablishing vegetation, as follows:~~

~~(1) Concentrated runoff from new ditches or manmade conveyances shall be converted to diffuse flow before the runoff enters the riparian buffer; and~~

~~(2) Periodic corrective action to restore diffuse flow shall be taken if necessary to impede the formation of erosion gullies.~~

(h) STORMWATER RUNOFF THROUGH THE RIPARIAN BUFFER. Drainage conveyances include drainage ditches, roadside ditches, and stormwater conveyances. The following stormwater conveyances through the riparian buffer are either deemed allowable or allowable upon authorization, as defined in Subparagraph (i)(1) of this Rule, provided that they do not erode through the buffer and do not cause erosion to the receiving waterbody. Stormwater conveyances through the riparian buffer that are not listed below shall be allowable with exception as defined in Part (i)(1)(E) of this Rule

(1) The following are deemed allowable as defined in Part (i)(1)(A) of this rule:

(A) New drainage conveyances that comply with a stormwater management plan reviewed and approved under a state stormwater program or a state-approved local government stormwater program, which includes a Primary SCM, as defined in 15A NCAC 02H .1002, to treat the drainage area to the conveyance;

(B) New stormwater flow to existing drainage conveyances provided that the addition of new flow does not result in the need to alter the conveyance.

(2) The following are allowable upon authorization as defined in Part (i)(1)(B) of this Rule:

(A) New drainage conveyances when a Primary SCM as defined in 15A NCAC 02H .1002 is provided to treat the drainage area to the conveyance;

(B) New drainage conveyances when the flow rate of the conveyance is less than 0.5 cubic feet per second during the peak flow from the 0.75 inch per hour storm;

(C) New stormwater runoff that has been treated through a level spreader-filter strip that complies with 15A NCAC 02H .1059;

(D) Realignment of existing roadside drainage ditches retaining or improving the design dimensions provided that no additional travel lanes are added and the minimum required roadway typical section is used based on traffic and safety considerations;

Commented [HK10]: added per SL 2013-413

Commented [HK11]: removed diffuse flow requirement; instead provide options for stormwater discharges

Commented [HK12]: organization

Commented [HK13]: new use – allows for DWR to accept local government review of a SMP without having to review for meeting diffuse flow

Commented [HK14]: no change – moved from table

Commented [HK15]: organization

Commented [HK16]: no change moved from table

Commented [HK17]: new use

Commented [HK18]: no change – from diffuse flow

(E) Realignment of existing conveyances retaining or improving the design dimensions provided that the size of the drainage area and the percent built-upon area within the drainage area remain the same;

(F) New or altered drainage conveyances applicable to publicly funded and maintained linear transportation provided that SCMs, or BMPs from the NCDOT Stormwater Best Management Practices Toolbox, are employed;

(G) New drainage conveyances applicable to linear transportation projects that do not provide a stormwater management facility due to topography constraints provided other measures are employed to protect downstream water quality to the maximum extent practical;

(H) New drainage conveyances where the drainage area to the conveyance has no new built-upon area as defined in 15A NCAC 02H .1002 and the conveyance is necessary for bypass of existing drainage only.

~~(d)~~(i) ~~REQUIREMENTS FOR CATEGORIES OF USES AND MITIGATION.~~USES. Uses within the riparian buffer, or outside the buffer with hydrological impacts on the riparian buffer, shall be designated as ~~exempt,~~deemed allowable, ~~potentially allowable,~~ allowable upon authorization, allowable with mitigation upon authorization, allowable with exception or prohibited.~~and prohibited location in the chart of uses in this Rule shall have the following requirements:~~

(1) Potential new uses shall have the following requirements:

~~(1)~~(A) ~~EXEMPT.~~DEEMED ALLOWABLE. Uses designated as ~~exempt~~ deemed allowable in Subparagraphs (h)(1) and (i)(3) of this Rule may occur~~are allowed~~ within the riparian buffer. ~~Exempt~~ Deemed allowable uses shall be designed, constructed and maintained to minimize vegetation and soil disturbance and to provide the maximum water quality protection ~~practicable.~~practicable, including construction, monitoring and maintenance activities. In addition, ~~exempt~~ deemed allowable uses shall meet requirements listed in ~~the table~~Subparagraph (h)(3) of this Rule for the specific use.

~~(2)~~(B) ~~POTENTIALLY ALLOWABLE.~~ALLOWABLE UPON AUTHORIZATION. Uses designated as ~~potentially~~ allowable upon authorization in Subparagraphs (h)(2) and (i)(3) of this Rule require a written Authorization Certificate from the Authority for impacts~~may proceed~~ within the riparian buffer pursuant to Rule .0606 of this Section.~~provided that there are no practical alternatives to the requested use pursuant to this Rule. These uses require written authorization from the Division of Water Quality. Some of these uses require mitigation, as indicated in the chart in this Rule.~~

(C) ALLOWABLE WITH MITIGATION UPON AUTHORIZATION. Uses designated as allowable with mitigation upon authorization in Subparagraph (i)(3) of this Rule require a written Authorization Certificate from the Authority for impacts within the riparian buffer pursuant to Rule .0606 of this Section and an appropriate mitigation strategy has received written approval pursuant to Paragraph (j) of this Rule.

Commented [HK19]: new uses

Commented [HK20]: New Use

Commented [HK21]: New uses

Commented [HK22]: no effect – clarification

Commented [HK23]: updated terminology

Commented [HK24]: no effect - clarification

Commented [HK25]: no effect – updated terminology

Commented [HK26]: no effect clarification

Commented [HK27]: no effect – updated terminology

Commented [HK28]: moved from Subparagraph (B) above

~~(3)~~(D) PROHIBITED. Uses designated as prohibited ~~or not included in this table~~in Subparagraph (i)(3) of this Rule may not proceed within the riparian buffer unless a variance is granted pursuant to Rule ~~.0606. Site-specific mitigation.~~0226 of this Section. Mitigation may be required as ~~one~~ a condition of ~~a~~ variance approval.

(E) ALLOWABLE WITH EXCEPTION. Uses not designated as deemed allowable, allowable upon authorization, allowable with mitigation upon authorization or prohibited in Subparagraph (i)(3) of this Rule require a written Authorization Certificate with Exception from the Authority for impacts within the riparian buffer pursuant to Rule .0606 of this Section and an appropriate mitigation strategy that has received written approval pursuant to Paragraph (j) of this Rule.

~~(4) MITIGATION. Persons who wish to undertake uses designated as allowable with mitigation shall obtain approval for a mitigation proposal pursuant to 15A NCAC 02B .0609.~~

(2) The United States Environmental Protection Agency Endangered Species Protection Program at www.epa.gov/espp and NC Pesticide Board regulates pesticide application (see rules at 02 NCAC 09L .2201 through .2203).

(3) The following table sets out potential new uses within the riparian buffer, or outside the buffer with hydrological impacts on the riparian buffer, and designates them as deemed allowable, allowable upon authorization, allowable with mitigation upon authorization or prohibited:

	Deemed Allowable	Allowable Upon Authorization	Allowable with Mitigation Upon Authorization	Prohibited
Airport facilities:				
• Vegetation removal activities necessary to comply with Federal Aviation Administration requirements (e.g. line of sight requirements) provided the disturbed areas are stabilized and revegetated	X			
• Airport facilities that impact equal to or less than one-third of an acre of riparian buffer		X		
• Airport facilities that impact greater than one-third of an acre of riparian buffer			X	
Archaeological activities	X			

Commented [HK29]: no effect - clarification

Commented [HK30]: New category – instead of deeming all activities not listed in the table as "prohibited" they will go through buffer authorization process but still have to meet hardships

Commented [HK31]: no effect – moved to paragraph (j) below

Commented [HK32]: no effect – moved from paragraph (l)

Commented [HK33]: no effect – moved from paragraph (l)

Commented [HK34]: no effect – updated terminology

Commented [HK35]: codifying policy

Commented [HK36]: no effect – moved from paragraph (l)

Commented [HK37]: no effect – moved from paragraph (l)

	Deemed Allowable	Allowable Upon Authorization	Allowable with Mitigation Upon Authorization	Prohibited
Bridges				
• Impact equal to or less than one-tenth of an acre of riparian buffer	X			
• Impact greater than one-tenth of an acre of riparian buffer		X		
Dam maintenance activities				
• Dam maintenance activities that do not cause additional riparian buffer disturbance beyond the footprint of the existing dam or those covered under a U.S. Army Corps of Engineers permit	X			
• Dam maintenance activities that do cause additional riparian buffer disturbance beyond the footprint of the existing dam or those not covered under a U.S. Army Corps of Engineers permit		X		
Drainage of a pond subject to Paragraph (c) of this Rule provided that a new riparian buffer is established by natural regeneration or planting, within 50 feet of any stream which naturally forms or is constructed within the drained pond area. Drained ponds shall be allowed to naturalize for a minimum of six months from completion of the draining activity before a stream determination is conducted pursuant to Paragraph (d) of this Rule.	X			
Fences:				
• Fencing livestock out of surface waters	X			
• Installation does not result in removal of trees	X			
• Installation results in removal of trees		X		
Forest harvesting - see Rule .0608 of this Section				

Commented [HK34]: no effect – updated terminology

Commented [HK38]: added new use to allow bridges with less than 1/10 to be deemed allowable; consistent with road impacts

Commented [HK39]: no effect – moved from paragraph (l)

Commented [HK40]: no effect – moved from paragraph (l)

Commented [HK41]: require authorization certificate for new impacts to buffers

Commented [HK42]: no effect – moved from paragraph (l)

Commented [HK43]: new use

Commented [HK44]: no effect – moved from paragraph (l)

Commented [HK45]: new use

Commented [HK46]: no effect – moved from paragraph (l)

	Deemed Allowable	Allowable Upon Authorization	Allowable with Mitigation Upon Authorization	Prohibited
Fertilizer application: • One-time fertilizer application at agronomic rates to establish replanted vegetation. This only applies to the one-time application of fertilizer in the riparian buffer. No runoff from this one-time application in the riparian buffer is allowed in the applicable surface water. • Ongoing fertilizer application	X			X
Greenways, trails, sidewalks or linear pedestrian/bicycle transportation system: • In outer riparian buffer (landward of 50 feet) provided that no built upon area is added within the buffer • When built upon area is added to the buffer, equal to or less than ten (10) feet wide with two (2) foot wide shoulders. Must be located landward of 50 feet unless there is no practical alternative • When built upon area is added to the buffer, greater than ten (10) feet wide with two (2) foot wide shoulders. Must be located landward of 50 feet unless there is no practical alternative	X	X	X	
Historic preservation	X			
Landfills as defined by G.S. 130A-290				X
Mining activities: • Mining activities that are covered by the Mining Act provided that new riparian buffers that meet the requirements of Paragraph (h) of this Rule and Rule .0605 of this Section are established adjacent to the relocated channels • Wastewater or mining dewatering wells with approved NPDES permit		X	X	
On-site sanitary sewage systems - new ones that use ground absorption				X

Commented [HK34]: no effect – updated terminology

Commented [HK47]: no effect – moved from paragraph (l)

Commented [HK48]: codifying policy

Commented [HK49]: no effect – moved from paragraph (l)

Commented [HK50]: no effect – moved from paragraph (l)

Commented [HK51]: no effect – moved from paragraph (l)

Commented [HK52]: no effect – moved from paragraph (l)

	Deemed Allowable	Allowable Upon Authorization	Allowable with Mitigation Upon Authorization	Prohibited
Maintenance access on modified natural streams or canals: a grassed travelway on one side of the waterbody when less impacting alternative forms are not practical. The width and specifications of the travel way shall be only that needed for equipment access and operation. The travelway shall be located to maximize stream shading.		X		
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: • Pedestrian access trail equal to or less than six (6) feet wide that does not result in the removal of any tree(s) within the riparian buffer and does not result in any built upon area being added to the riparian buffer • Pedestrian access trail equal to or less than six (6) feet wide where the installation or use results in the removal of tree(s) or addition of built upon area to the riparian buffer • Pedestrian access trail greater than six (6) feet wide	X	X	X	
Playground equipment: • Playground equipment on single family lots provided that installation and use does not result in removal of vegetation • Playground equipment on single family lots where installation or use results in the removal of vegetation • Playground equipment installed on lands other than single-family lots	X	X X		
Ponds created or modified by impounding streams subject to buffers pursuant to Paragraph (c) of this Rule and not used as stormwater control measures (SCMs): • New ponds provided that a riparian buffer that meets the requirements of Paragraph (h) of this Rule and Rule .0605 of this Section is established adjacent to the pond		X		

Commented [HK34]: no effect – updated terminology

Commented [HK53]: no effect – moved from paragraph (l)

Commented [HK54]: new uses

Commented [HK55]: no effect – moved from paragraph (l)

Commented [HK56]: no effect – moved from paragraph (l)

	Deemed Allowable	Allowable Upon Authorization	Allowable with Mitigation Upon Authorization	Prohibited
Protection of existing structures and facilities, including existing utility lines, when this requires additional disturbance of the riparian buffer		X		
Removal of previous fill or debris provided that Paragraph (h) of this Rule is complied with and any vegetation removed is restored	X			
Restoration or enhancement (wetland, stream) as defined in 33 CFR Part 332 available free of charge on the internet at: http://water.epa.gov/lawsregs/guidance/wetlands/wetlandsmitigation_index.cfm: • Wetland or stream restoration that does not require written Division approval that results in impacts to the riparian buffer • Wetland or stream restoration that requires written Division approval that results in impacts to the riparian buffer	X	X		
Road, driveway or railroad impacts other than perpendicular crossings of streams and other surface waters subject to this Rule			X	

Commented [HK34]: no effect – updated terminology

Commented [HK57]: no effect – moved from paragraph (l)

Commented [HK58]: no effect – moved from paragraph (l)

Commented [HK59]: no effect – moved from paragraph (l)

Commented [HK60]: no effect – incorporating road, driveway and railroad into one row as requirements were all the same

	Deemed Allowable	Allowable Upon Authorization	Allowable with Mitigation Upon Authorization	Prohibited
Road, driveway or railroads: perpendicular crossings of streams and other surface waters subject to this Rule or perpendicular entry into the buffer that does not cross a stream or other surface water subject to this Rule: • Impact equal to or less than one-tenth of an acre of riparian buffer • Impact greater than one-tenth of an acre but equal to or less than one-third of an acre of riparian buffer • Impact greater than one-third of an acre of riparian buffer • Driveway crossings in a subdivision that cumulatively disturb equal to or less than one-third of an acre of riparian buffer • Driveway crossings in a subdivision that cumulatively disturb greater than one-third of an acre of riparian buffer	X	X X	X X	
Road relocation of existing private access roads associated with public road projects where necessary for public safety: • Less than or equal to 2,500 square feet of riparian buffer impact • Greater than 2,500 square feet of riparian buffer impact		X	X	
Scientific studies and stream gauging	X			
Slatted uncovered decks, including steps, which are associated with a dwelling, provided that it meets the requirements of Paragraph (h) of this Rule and Rule .0605 of this Section and installation does not result in removal of vegetation		X		
Stormwater Control Measure (SCM) as defined in 15A NCAC 02H .1002: • In the outer riparian buffer (landward of 50 feet) if Paragraph (h) of this Rule is complied with • In the outer riparian buffer (landward of 50 feet) if Paragraph (h) of this Rule is not complied with		X	X	
Streambank or shoreline stabilization		X		

Commented [HK34]: no effect – updated terminology

Commented [HK61]: no effect – incorporating road, driveway and railroad into one row as requirements were all the same

Commented [HK62]: new use

Commented [HK63]: no effect – moved from paragraph (l)

Commented [HK64]: new use

Commented [HK65]: no effect – moved from paragraph (l)

Commented [HK66]: no effect – moved from paragraph (l)

	Deemed Allowable	Allowable Upon Authorization	Allowable with Mitigation Upon Authorization	Prohibited
Temporary roads, provided that the disturbed area is restored to pre-construction topographic and hydrologic conditions and replanted with comparable vegetation within two (2) months of when construction is complete. Tree planting may occur during the dormant season. At the end of five years, the restored wooded buffer shall comply with the restoration criteria in Paragraph (i) of Rule .0295 of this Section:				
• Less than or equal to 2,500 square feet of riparian buffer disturbance	X			
• Greater than 2,500 square feet of riparian buffer disturbance		X		
• Associated with culvert installation or bridge construction or replacement		X		

Commented [HK34]: no effect – updated terminology

Commented [HK67]: no effect – moved from paragraph (l)

	Deemed Allowable	Allowable Upon Authorization	Allowable with Mitigation Upon Authorization	Prohibited
Temporary sediment and erosion control devices provided that the disturbed area is restored to preconstruction topographic and hydrologic conditions and replanted with comparable vegetation within two (2) months of when construction is complete. Tree planting may occur during the dormant season. At the end of five years, the restored buffer shall comply with the restoration criteria in Paragraph (i) of Rule .0295 of this Section:				
• In Zone 2 only provided ground cover is established within the timeframes required by the Sedimentation and Erosion Control Act, vegetation in Zone 1 is not compromised, and that discharge is released in accordance with Paragraph (h) of this Rule	X			
• In Zones 1 and 2 to control impacts associated with uses approved by the Authority or that have received an authorization certificate with exception provided that sediment and erosion control for upland areas is addressed outside the buffer		X		
• In-stream temporary erosion and sediment control measures for work within a stream channel that is authorized under Sections 401 and 404 of the Federal Water Pollution Control Act	X			
• In-stream temporary erosion and sediment control measures for work within a stream channel that has written approval from the Division and the U.S. Army Corps of Engineers under Sections 401 & 404 of the Federal Water Pollution Control Act		X		
Utility – Sewer lines, provided that both gravity and force main collection systems are made of ductile iron and 50% of the collection system is cleaned annual:				
• Perpendicular crossings of streams and other surface waters subject to this Rule or perpendicular entry into				

Commented [HK34]: no effect – updated terminology

Commented [HK68]: no effect – moved from paragraph (l)

Commented [HK69]: reorganized utility uses; incorporated language from old table

	Deemed Allowable	Allowable Upon Authorization	Allowable with Mitigation Upon Authorization	Prohibited
the buffer that does not cross a stream or other surface water subject to this Rule, provided that any of the installation methods are used to minimize the sediment, nutrient and other pollution through the riparian buffer: underground directional boring methods, bore-and-jack techniques or another appropriate microtunnelling method:				
○ Construction activities that disturb less than or equal to 40 linear feet of riparian buffer provided that vegetative root systems and stumps shall be left intact to maintain the integrity of the soil except in the trench where trees are cut and that vegetation is allowed to regenerate in disturbed areas with the exception of a maintenance corridor equal to or less than 20 feet in width	X			
○ Construction activities that disturb greater than 40 linear feet and less than or equal to 150 linear feet of riparian buffer provided that vegetative root systems and stumps shall be left intact to maintain the integrity of the soil except in the trench where trees are cut and that vegetation is allowed to regenerate in disturbed areas with the exception of a maintenance corridor equal to or less than 20 feet in width		X		
○ Construction activities that disturb greater than 150 linear feet of riparian buffer			X	
○ Any activities with a permanent maintenance corridor greater than 20 feet in width			X	
• Impacts other than perpendicular crossings:				
○ Impacts outside of the inner 50 feet nearest	X			

Commented [HK34]: no effect – updated terminology

Commented [HK70]: no effect – moved from paragraph (l)

Commented [HK71]: increased maintenance corridor from 10 feet to 20 feet

Commented [HK72]: changed from allowable with mitigation to allowable

Commented [HK73]: no effect – moved from paragraph (l)

Commented [HK74]: changed from allowable to allowable with mitigation. also expanded use for any perpendicular crossing, not just those less than 40 linear feet

Commented [HK75]: no effect – moved from paragraph (l)

	Deemed Allowable	Allowable Upon Authorization	Allowable with Mitigation Upon Authorization	Prohibited
the stream provided vegetation is re-established after disturbance and the function of the inner 50 feet nearest the stream is not compromised				
○ Less than 2,500 square feet of impacts in the inner 50 feet nearest the stream when impacts are solely the result of tying to an existing utility line and provided that land grubbing or grading is not conducted within 10 feet immediately adjacent to the water		X		
○ Impacts in the inner 50 feet nearest the stream for the replacement of an existing sewer line within the inner 50 feet nearest the stream provided that the new line is within an existing Right-of-Way and land grubbing or grading is not conducted within 10 feet immediately adjacent to the water		X		
○ Impacts in the inner 50 feet nearest the stream for the purpose of reclaiming a maintenance corridor for an existing sewer line provided that trees and shrubs are not cleared within 10 feet immediately adjacent to the water		X		
○ Impacts to the inner 50 feet nearest the stream other than noted above			X	
• Lift stations require Supervisory Control and Data Acquisition System (SCADA), telemetry, audio and visual alarms, signage with emergency contact, daily visitation (365 days/year), and documentation must be maintained for 3 years of all of the above and available upon request		X	X	
• Vegetation maintenance activities along an existing				

Commented [HK34]: no effect – updated terminology

Commented [HK76]: no effect – moved from paragraph (l)

Commented [HK77]: New uses to accommodate replacement of existing sewer lines within Zone 1

Commented [HK78]: changed from all impacts in inner 50 feet triggering mitigation to only impacts above 2,500 square feet when not tying into an existing line

Commented [HK79]: no effect – moved from paragraph (l)

	Deemed Allowable	Allowable Upon Authorization	Allowable with Mitigation Upon Authorization	Prohibited
utility line beyond the footprint of an existing utility line maintenance corridor where the total maintenance corridor is equal to or less than 20 linear feet in width • Vegetation maintenance activities along an existing utility line beyond the footprint of an existing utility line maintenance corridor where the total maintenance corridor is greater than 20 linear feet in width			X	

Commented [HK34]: no effect – updated terminology

Commented [HK80]: new uses to allow for vegetation maintenance beyond the maintenance corridor

Utilities – Non-sewer underground lines:				
• Perpendicular crossings of streams and other surface waters subject to this Rule or perpendicular entry into the buffer that does not cross a stream or other surface water subject to this Rule:				
○ Construction activities that disturb less than or equal to 50 linear feet of riparian buffer provided that vegetative root systems and stumps shall be left intact to maintain the integrity of the soil except in the trench where trees are cut and that vegetation is allowed to regenerate in disturbed areas with the exception of a maintenance corridor equal to or less than 30 feet in width	X			
○ Construction activities that disturb greater than 50 linear feet and less than or equal to 150 linear feet of riparian buffer provided that vegetative root systems and stumps shall be left intact to maintain the integrity of the soil except in the trench where trees are cut and that vegetation is allowed to regenerate in disturbed areas with the exception of a maintenance corridor equal to or less than 30 feet in width		X		
○ Construction activities that disturb greater than 150 linear feet of riparian buffer			X	
○ Any activities with a permanent maintenance corridor greater than 30 feet in width			X	
• Impacts other than perpendicular crossings:				
○ Impacts outside of the inner 50 feet nearest the stream provided vegetation is re-established after disturbance and the function of the inner 50 feet nearest the stream is not compromised	X			
○ Impacts in the inner 50 feet nearest the stream less than 2,500 square feet when impacts are a result of tying to an existing		X		

Commented [HK81]: reorganized utilities

Commented [HK82]: no effect – moved from paragraph (l)

Commented [HK83]: changed 40 feet to 50 feet

Commented [HK84]: no effect – moved from paragraph (l)

Commented [HK85]: no effect – moved from paragraph (l)

Commented [HK86]: new use

Commented [HK87]: no effect – moved from paragraph (l)

Commented [HK88]: no effect – moved from paragraph (l)

	Deemed Allowable	Allowable Upon Authorization	Allowable with Mitigation Upon Authorization	Prohibited
utility line and provided that land grubbing or grading is not conducted within 10 feet immediately adjacent to the water				
○ Impacts in the inner 50 feet nearest the stream other than listed above			X	
• Vegetation maintenance activities along an existing utility line beyond the footprint of an existing utility line maintenance corridor where the total maintenance corridor is equal to or less than 30 linear feet in width		X		
• Vegetation maintenance activities along an existing utility line beyond the footprint of an existing utility line maintenance corridor where the total maintenance corridor is greater than 30 linear feet in width			X	
Utilities – Non-sewer aerial lines:				
• Perpendicular crossings of streams and other surface waters subject to this Rule or perpendicular entry into the buffer that does not cross a stream or other surface water subject to this Rule:				
○ Disturb equal to or less than 150 linear feet of riparian buffer provided that a minimum zone of 10 feet wide immediately adjacent to the water body is managed such that only vegetation that poses a hazard or has the potential to grow tall enough to interfere with the line is removed, that no land grubbing or grading is conducted in the inner 50 feet nearest the stream, and that that poles or aerial infrastructure are not installed within 10 feet of a water body	X			
○ Disturb greater than 150 linear feet of buffer		X		
• Impacts other than perpendicular crossings:				
○ Impacts outside of the inner 50 feet nearest	X			

Commented [HK34]: no effect – updated terminology

Commented [HK89]: changed from all impacts in inner 50 feet triggering mitigation to only impacts above 2,500 square feet when not tying into an existing line

Commented [HK90]: no effect – moved from paragraph (l)

Commented [HK91]: new uses

Commented [HK92]: reorganized utilities

Commented [HK93]: no effect – moved from paragraph (l)

Commented [HK94]: no effect – moved from paragraph (l)

	Deemed Allowable	Allowable Upon Authorization	Allowable with Mitigation Upon Authorization	Prohibited
the stream ○ Impacts in the inner 50 feet nearest the stream provided that a minimum zone of 10 feet wide immediately adjacent to the water body is managed such that only vegetation that poses a hazard or has the potential to grow tall enough to interfere with the line is removed, that no land grubbing or grading is conducted in the inner 50 feet nearest the stream, and that that poles or aerial infrastructure are not installed within 10 feet of a water body		X		
Vehicle access roads and boat ramps (excluding parking areas) leading to surface water, docks, fishing piers, and other water dependent activities: • Single vehicular access road and boat ramp to the surface water but not crossing the surface water that are restricted to the minimum width practicable not to exceed 15 feet in width • Vehicular access roads and boat ramps to the surface water but not crossing the surface water that are restricted to the minimum width practicable and exceed 15 feet in width		X	X	
Vegetation management: • Emergency fire control measures provided that topography and hydrology are restored	X			
• Placement of mulch ring around restoration plantings for a period of five years from the date of planting	X			
• Planting non-invasive vegetation to enhance the riparian buffer	X			
• Pruning forest vegetation provided that the health and function of the forest vegetation is not compromised	X			
• Removal of individual trees which are in danger of causing	X			

Commented [HK34]: no effect – updated terminology

Commented [HK95]: new uses

Commented [HK96]: new uses

Commented [HK97]: no effect – moved from paragraph (l)

Commented [HK98]: new use

	Deemed Allowable	Allowable Upon Authorization	Allowable with Mitigation Upon Authorization	Prohibited
damage to dwellings, existing utility lines, other structures or human life, or are imminently endangering stability of the streambank provided that the stumps are left or ground in place without causing additional land disturbance.				
• Removal of individual trees that are dead, diseased or damaged	X			
• Removal of poison ivy, oak or sumac. If removal is significant, then the riparian buffer shall be replanted with non-invasive species.	X			
• Removal of understory nuisance vegetation as defined in: Smith, Cherri L. 2008. Invasive Plants of North Carolina. Dept. of Transportation. Raleigh, NC (available at http://portal.ncdenr.org/c/document_library/get_file?uuid=0acc6377-ea07-42dc-bb27-45a78d1c7ebe&groupId=38364). If removal is significant then the riparian buffer shall be replanted with non-invasive species.	X			
Water dependent structures (except for boat ramps) as defined in Rule .0202 of this Section		X		
Water wells	X			
Wildlife passage structures		X		

Commented [HK34]: no effect – updated terminology

Commented [HK99]: no effect – moved from paragraph (l)

Commented [HK100]: new use

Commented [HK101]: added poison oak and sumac

Commented [HK102]: no effect – updated citation

Commented [HK103]: no effect – moved from paragraph (l)

Commented [HK104]: no effect – moved from paragraph (l)

Commented [HK105]: new use

~~(e) DETERMINATION OF "NO PRACTICAL ALTERNATIVES." Persons who wish to undertake uses designated as potentially allowable shall submit a request for a "no practical alternatives" determination to the Division of Water Quality. The applicant shall certify that the criteria identified in Subparagraph (e)(1) of this Rule are met. The Division shall grant an Authorization Certificate upon a "no practical alternatives" determination. The procedure for making an Authorization Certificate shall be as follows:~~

~~(1) For any request for an Authorization Certificate, the Division shall review the entire project and make a finding of fact as to whether the following requirements have been met in support of a "no practical alternatives" determination:~~

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

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

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

~~(D) The Division of Water Quality must consider the impacts that may affect conditions required to sustain and recover the federally endangered Carolin heelsplitter (*Lasmigona decorata*).~~

~~(2) Requests for an Authorization Certificate shall be either approved or denied within 60 days of receipt of a complete submission based on the criteria in Subparagraph (e)(1) of this Rule by the Division. Failure to issue an approval or denial within 60 days shall constitute that the applicant has demonstrated "no practical alternatives." The Division of Water Quality may attach conditions to the Authorization Certificate that support the purpose, spirit and intent of the riparian buffer protection program. Complete submissions shall include the following:~~

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

~~(B) The nature of the activity to be conducted by the applicant;~~

~~(C) The location of the activity, including the jurisdiction;~~

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

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

~~(F) Plans for any practices proposed to be used to control the impacts associated with the activity.~~

~~(3) Any disputes over determinations regarding Authorization Certificates shall be referred to the Director for a decision. The Director's decision is subject to review as provided in Articles 3 and 4 of G.S. 150B.~~

Commented [HK106]: moved to Rule .0606

(j) MITIGATION. Persons who wish to undertake uses designated as allowable upon authorization with mitigation as defined in Part (i)(1)(C) of this Rule or allowable with exception as defined in Part (i)(1)(E) of this Rule shall meet the following requirements in order to proceed with their proposed use.

(1) Obtain an Authorization Certificate pursuant to Rule .0606 of this Section; and

(2) Obtain written approval for a mitigation proposal pursuant to Rule .0704 of this Subchapter.

Commented [HK107]: moved from paragraph (d)

~~(f)~~(k) DELEGATION OF AUTHORITY FOR THE PROTECTION AND MAINTENANCE OF EXISTING RIPARIAN BUFFERS. The following set out the requirements for delegation of the responsibility for implementing and enforcing the Goose Creek Watershed riparian buffer protection program, as described in Rules .0605 through .0608 of this Section, to local governments.

Commented [HK108]: clarification

(1) The Commission shall grant ~~and rescind~~ local government delegation of the Goose Creek Watershed Riparian Buffer Protection requirements as described in Rules .0605 through .0608 of this Section according to the following procedures:

~~(1)~~(A) Local governments within the Goose Creek Watershed may submit a written request to the Commission for authority to implement and enforce the ~~State's~~ Goose Creek Watershed riparian buffer protection requirements within their ~~jurisdiction.~~jurisdiction by establishing a riparian buffer program to meet the requirements of Rules .0605 through .0608 of this Section. The written request to establish a riparian buffer program shall ~~be accompanied by information that shows:~~include the following:

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

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

~~(C)~~(iii) The local government ~~has adopted~~ ordinances, resolutions, or regulations necessary to establish ~~and maintain the State's riparian buffer protection requirements; and~~a riparian buffer program to meet the requirements of Rules .0605 through .0608 of this Section, which shall include the following requirements:

(a) All riparian protection areas shall be recorded on all new or modified plats;

(b) The land within a riparian buffer area shall not be treated as if the land is the property of the state or any of its subdivisions unless the land or an interest therein has been acquired by the state or its subdivision by a conveyance or by eminent domain;

(c) Land within a riparian buffer area in which neither the State nor its subdivisions holds any property interest may be used by the property owner to satisfy any other development-related regulatory requirements based on property size, including, but not limited to, residential density and nonresidential intensity calculations and yields, tree conservation purposes, open space or conservation area requirements, setbacks, perimeter buffers, and lot area requirements;

(d) When riparian buffer requirements are placed outside of lots in portions of a subdivision that are designated as common areas or open space and

Commented [HK109]: moved rescission to Subparagraph (7) below

Commented [HK110]: no effect - clarification

Commented [HK111]: no effect - clarification

Commented [HK112]: no effect - grammar

Commented [HK113]: no effect - grammar

Commented [HK114]: no effect - grammar

Commented [HK115]: no effect - grammar

Commented [HK116]: no effect - grammar

Commented [HK117]: no effect - clarification

neither the State nor its subdivisions holds any property interest in that riparian buffer area, the local government shall attribute to each lot abutting the riparian buffer area a proportionate share based on the area of all lots abutting the riparian buffer area for purposes of development-related regulatory requirements based on property size, including, but not limited to, residential density and nonresidential intensity calculations and yields, tree conservation purposes, open space or conservation area requirements, setbacks, perimeter buffers, and lot area requirements; and

(e) A requirement that no new clearing, grading or development take place nor any new building permits be issued in violation of Rules .0605 through .0608 of this Section.

~~(D)~~(iv) The local government has provided a plan to address violations with civil or criminal remedies and actions as well as remedies that shall restore buffer functions on violation sites and provide a deterrent against the occurrence of future violations.

(B) If the local government is establishing a riparian buffer program that exceeds the requirements set forth in Rules .0605 through .0608 of this Section in order to comply with or implement federal or state law, or as a condition of a permit, certificate, or other approval issued by a federal or state agency, the local government shall provide supporting documentation with their request for Commission approval.

(C) If the local government is establishing a riparian buffer program that exceeds the requirements set forth in Rules .0605 through .0608 of this Section not as a requirement to comply with or implement federal or state law and not as a condition of a permit, certificate, or other approval issued by a federal or state agency, the local government shall provide scientific studies of the local environmental and physical conditions that support the necessity of the buffer requirements that exceed those established in Rules .0605 through .0608 of this Section. The Commission shall not approve the ordinance unless it finds that the scientific evidence presented by the local government supports the necessity of a riparian buffer program that exceeds the requirements set forth in Rules .0605 through .0608 of this Section.

~~(2)~~(D) Within 90 days after the Commission has received the request for delegation, the Commission shall ~~approve the request if the local government has complied with all of Subparagraph (f)(1) of this Rule and~~ notify the local government whether it has been approved, approved with modifications, or denied.

~~(3) The Commission, upon determination that a delegated local authority is failing to implement or enforce the riparian buffer protection requirements in keeping with an~~

Commented [HK118]: added to comply with SL 2015-246

Commented [HK119]: language from Jordan; helps landowners not get stuck between local approvals and state regulations

Commented [HK120]: added to comply with SL 2015-246

Commented [HK121]: no effect – unnecessary language

~~approved delegation, shall notify the delegated local authority in writing of the local program's inadequacies. If the delegated local authority has not corrected the deficiencies within 90 days of receipt of the written notification, then the Commission shall rescind the delegation of authority to the local government and shall implement and enforce the State's riparian buffer protection requirements.~~

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

~~(h)~~(3) PROCEDURES FOR USES WITHIN RIPARIAN BUFFERS THAT ARE ALLOWABLE UPON AUTHORIZATION, ~~AND~~ ALLOWABLE WITH ~~MITIGATION.~~MITIGATION UPON AUTHORIZATION AND ALLOWABLE WITH EXCEPTION. Upon receiving delegation, local governments shall review applications requesting Authorization Certificate pursuant to the requirements set forth in Rule .0606 of this Section.

~~(1) Upon receiving delegation, local authorities shall review proposed uses within the riparian buffer and issue approvals if the uses meet the riparian buffer protection requirements.~~

~~(2) Delegated local authorities shall issue an Authorization Certificate for uses if the proposed use meets the requirements including provisions for mitigation set forth in Rule .0609.~~

~~(3) The Division of Water Quality may challenge a decision made by a delegated local authority for a period of 30 days after the Authorization Certificate is issued. If the Division of Water Quality does not challenge an Authorization Certificate within 30 days of issuance, then the delegated local authority's decision shall stand.~~

~~(i) VARIANCES. After receiving delegation, local governments shall review variance requests and make recommendations to the Commission for approval.~~

~~(j)~~(4) LIMITS OF DELEGATED LOCAL AUTHORITY. The ~~Commission~~ Division has jurisdiction to the exclusion of local governments to implement the requirements of this Rule for the following types of activities:

~~(1)~~(A) Activities undertaken by the State;

~~(2)~~(B) Activities undertaken by the United States;

Commented [HK122]: moved to subparagraph (7) below

Commented [HK123]: no effect – update name

Commented [HK124]: the division is unable to provide subsequent annual training

Commented [HK125]: required by statute

Commented [HK126]: no effect - grammar

Commented [HK127]: Ensures on-site determinations continue when local governments don't have anyone on staff certified to make calls. This is codifying current practice.

Commented [HK128]: removed language to just reference Rule .0606

Commented [HK129]: no effect – update name

~~(3)~~(C) Activities undertaken by multiple jurisdictions; ~~and~~

~~(4)~~(D) Activities undertaken by local units of ~~government.~~government;

(E) Forest harvest activities described in Rule .0608 of this Section; and

(F) Agricultural activities.

~~(k)~~(5) RECORD-KEEPING REQUIREMENTS. Delegated local ~~authorities~~ governments shall maintain on-site records for a minimum of five years. Delegated local ~~authorities~~ governments must furnish a copy of these records to the ~~Director~~ Division within 30 calendar days of receipt of a written request for the records. ~~The Division of the Water Quality shall inspect local riparian buffer protection programs to ensure that the programs are being implemented and enforced.~~ Each delegated local ~~authority's~~ government's records shall include the following:

~~(1)~~(A) A copy of ~~variance~~ Authorization Certificate with exception requests;

~~(2)~~(B) The ~~variance~~ Authorization Certificate with exception request's finding of fact;

~~(3)~~(C) The result of the ~~variance~~ Authorization Certificate with exception proceedings;

~~(4)~~(D) A record of complaints and action taken as a result of the complaint;

~~(5)~~(E) Records for stream origin calls and stream ratings; and

~~(6)~~(F) Copies of request for authorization, records approving authorization and Authorization Certificates.

(6) AUDITS OF LOCAL AUTHORITIES. The Division shall regularly audit delegated local governments to ensure the local programs are being implemented and enforced in keeping with the requirements of Rules .0605 through .0608 of this Section.

(7) PROCEDURES FOR RESCINDING DELEGATION. Upon determination by the Division that a delegated local government is failing to implement or enforce the Goose Creek Watershed riparian buffer protection requirements in keeping with the request approved under Subparagraph (k)(1)(D) of this Rule, the Commission shall notify the delegated local government in writing of the local program's inadequacies. If the delegated local government has not corrected the deficiencies within 90 calendar days of receipt of the written notification, then the Commission shall rescind the delegation of authority to the local government and the Division shall implement and enforce the Goose Creek Watershed riparian buffer protection requirements within their jurisdiction.

(8) DELEGATION. The Commission may delegate its duties and powers for granting and rescinding local government delegation of the Goose Creek Watershed riparian buffer protection requirements, in whole or in part, to the Director.

(l) OTHER LAWS, REGULATIONS AND PERMITS. In all cases, compliance with this Rule does not preclude the requirement to comply with all federal, state and local regulations and laws.

~~(l) Riparian buffers along surface waters in this watershed shall be maintained. Some uses within riparian buffers are exempt and some uses are potentially allowable. Any exempt or potentially allowed use shall require stormwater control as outlined in Rule .0602 if the one acre threshold is met. The following chart sets out the uses and their designation under this Rule as exempt, potentially allowable requiring DWQ approval or potentially allowable~~

Commented [HK130]: no effect - punctuation

Commented [HK131]: updated to comply with SL 2005-447

Commented [HK132]: consistent with more recent buffer rules

Commented [HK133]: no effect – update name

Commented [HK134]: no effect – update name

Commented [HK135]: no effect – update name

Commented [HK136]: no effect - clarification

Commented [HK137]: moved to subparagraph (6) below

Commented [HK138]: no effect – update name

Commented [HK139]: no effect – update terminology

Commented [HK140]: moved from subparagraph (5); clarification

Commented [HK141]: moved from subparagraph (3) above

Commented [HK142]: added language to allow EMC to delegate authority to DWR; consistent with other buffer programs.

Commented [HK143]: clarification

requiring both DWQ approval and mitigation, or prohibited as described above. The United States Environmental Protection Agency Endangered Species Protection Program at www.epa.gov/espp and NC Pesticide Board regulates pesticide application (see rules at 02 NCAC 09L .2201 through .2203).

	Exempt	Potentially allowable requiring DWQ approval or Potentially allowable requiring both DWQ approval and mitigation* Note: the asterisk (X*) identifies those uses that require both DWQ approval and mitigation.	Prohibited
Airport facilities that impact equal to or less than 150 linear feet or one-third of an acre of riparian buffer Airport facilities that impact greater than 150 linear feet or one-third of an acre of riparian buffer		X X*	
Archaeological activities	X		
Bridges		X	
Dam maintenance activities	X		
Drainage ditches, roadside ditches and stormwater outfalls through riparian buffers: • Existing drainage ditches, roadside ditches, and stormwater outfalls provided that they are managed to minimize the sediment, nutrients including ammonia and other pollution that convey to waterbodies • New drainage ditches, roadside ditches and stormwater outfalls provided that a stormwater management facility is installed to minimize the sediment, nutrients including ammonia and other pollution and attenuate flow before the conveyance discharges through the riparian buffer • New drainage ditches, roadside ditches and stormwater outfalls that do not minimize the sediment, nutrients	X	X	X

including ammonia and other pollution and attenuate flow before discharging through the riparian buffer • Excavation of the streambed in order to bring it to the same elevation as the invert of a ditch			X
Drainage of a pond in a natural drainage way provided that a new riparian buffer that meets the diffuse flow requirements of this Rule is established adjacent to the new channel	X		
Driveway crossings of streams and other surface waters subject to this Rule: • Driveway crossings on single family residential lots that disturb equal to or less than 25 linear feet in width and are perpendicular [3] • Driveway crossings on single family residential lots that disturb greater than 25 linear feet in width and are perpendicular [3] • In a subdivision that cumulatively disturbs equal to or less than 150 linear feet in width and are perpendicular • In a subdivision that cumulatively disturbs greater than 150 linear feet in width and are perpendicular	X	X X X*	
Fences provided that disturbance is minimized and installation does not result in removal of forest vegetation	X		
Forest harvesting – see Rule .0608			
Fertilizer application: • One time fertilizer application at agronomic rates to establish replanted vegetation • Ongoing fertilizer application	X		X
Greenway/hiking trails		X	
Historic preservation	X		
Landfills as defined by G.S. 130A 290			X
Mining activities: • Mining activities that are covered by the Mining Act provided that new riparian buffers that meet the diffuse flow requirements of this Rule are established adjacent to the relocated channels		X	

• Mining activities that are not covered by the Mining Act OR where new riparian buffers that meet the diffuse flow requirements of this Rule are not established adjacent to the relocated channels • Wastewater or mining dewatering wells with approved NPDES permit		X*	X
Non-electric utility lines with impacts other than perpendicular crossings[2] • If activity is within 50 feet of the stream • If activity is outside of the inner 50 feet nearest the stream • Wastewater collection system utility lines and lift station lines may impact the riparian zone if both gravity and force main collections systems are made of ductile iron and 50% of the collection system is cleaned annually. • Lift Stations require Supervisory Control and Data Acquisition System (SCADA), telemetry, audio and visual alarms, signage with emergency contact, daily visitation (365 days/year), and documentation must be maintained for 3 years of all of the above and available upon request [note: this requirement also applies to collection system perpendicular crossings, detailed below.]		X* X X* X*	
Non-electric utility line perpendicular crossing of streams and other surface waters subject to this Rule that are not collection systems[3]: • Perpendicular crossings that disturb equal to or less than 40 linear feet of riparian buffer with a maintenance corridor equal to or less than 10 feet in width • Perpendicular crossings that disturb equal to or less than 40 linear feet of riparian buffer with a maintenance corridor greater than 10 feet in width • Perpendicular crossings that disturb greater than 40 linear feet but equal to or less than 150 linear feet of	X	X X	

riparian buffer with a maintenance corridor equal to or less than 10 feet in width • Perpendicular crossings that disturb greater than 40 linear feet but equal to or less than 150 linear feet of riparian buffer with a maintenance corridor greater than 10 feet in width • Perpendicular crossings that disturb greater than 150 linear feet of riparian buffer Non-electric perpendicular utility line crossings that are collections systems as defined in Rule 15A NCAC 02T .0300 (note: must follow constraints listed under wastewater collection system utility lines and lift stations, above): • That use any of the following installation methods to minimize the sediment, nutrient and other pollution through the riparian buffer: underground directional boring methods, bore and jack techniques or another appropriate microtunnelling method. • That does not minimize the sediment, nutrient and other pollution through the riparian buffer by the most appropriate exempt method.		X* X* X	X
On-site sanitary sewage systems - new ones that use ground absorption			X
Overhead electric utility lines[1,2,3]: • Stream crossings that disturb equal to or less than 150 linear feet of riparian buffer • Stream crossings that disturb greater than 150 linear feet of riparian buffer	X	X*	
Periodic maintenance of modified natural streams such as canals and a grassed travelway on one side of the surface water		X	
Playground equipment: • Playground equipment on single family lots provided that installation and use does not result in removal of vegetation • Playground equipment installed on lands other than single family lots or that requires removal of vegetation	X	X	

Ponds in natural drainage ways, excluding dry ponds: • New ponds provided that a riparian buffer that meets the diffuse flow requirements of this Rule is established adjacent to the pond • New ponds where a riparian buffer that meets the diffuse flow requirements of this Rule is NOT established adjacent to the pond		X X	
Protection of existing structures, facilities and streambanks when this requires additional disturbance of the riparian buffer or the stream channel		X	
Railroad impacts other than crossings of streams and other surface waters subject to this Rule			X
Railroad crossings of streams and other surface waters subject to this Rule: • Railroad crossings that impact equal to or less than 40 linear feet of riparian buffer • Railroad crossings that impact greater than 40 linear feet but equal to or less than 150 linear feet of riparian buffer • Railroad crossings that impact greater than 150 linear feet of riparian buffer	X	X	X
Removal of previous fill or debris provided that diffuse flow is maintained and any vegetation removed is restored	X		
Road impacts other than crossings of streams and other surface waters subject to this Rule		X*	
Road crossings of streams and other surface waters subject to this Rule: • Road crossings that impact equal to or less than 40 linear feet of riparian buffer and is perpendicular • Road crossings that impact greater than 40 linear feet but equal to or less than 150 linear feet and is perpendicular • Road crossings that impact greater than 150 linear feet of riparian buffer	X	X X*	
Scientific studies and stream gauging	X		
Stormwater management ponds excluding dry ponds:			

• New stormwater management ponds provided that a riparian buffer that meets the diffuse flow requirements of this Rule is established adjacent to the pond • New stormwater management ponds where a riparian buffer that meets the diffuse flow requirements of this Rule is NOT established adjacent to the pond		X	X
Stream restoration	X		
Streambank stabilization		X	
Temporary roads: • Temporary roads that disturb less than or equal to 2,500 square feet provided that vegetation is restored within six months of initial disturbance • Temporary roads that disturb greater than 2,500 square feet provided that vegetation is restored within six months of initial disturbance • Temporary roads used for bridge construction or replacement provided that restoration activities, such as soil stabilization and revegetation, are conducted immediately after construction	X	X X	
Temporary sediment and erosion control devices: • To control impacts associated with uses approved by the Division or that have received a variance provided that sediment and erosion control for upland areas is addressed to the maximum extent practical outside the buffer • In stream temporary erosion and sediment control measures for work within a stream channel	X	X	
Underground electric utility lines: • Impacts other than perpendicular crossings[3,4]	X		
Underground electric utility line perpendicular crossings of streams and other surface waters subject to this Rule: • Perpendicular crossings that disturb less than or equal to 40 linear feet of riparian buffer[3,4] • Perpendicular crossings that disturb greater than 40 linear feet of riparian buffer[3,4]	X	X	

Vegetation management: • Emergency fire control measures provided that topography is restored • Planting vegetation to enhance the riparian buffer • Pruning forest vegetation provided that the health and function of the forest vegetation is not compromised • Removal of individual trees which are in danger of causing damage to dwellings, other structures or human life • Removal of poison ivy • Removal of understory nuisance vegetation as defined in: Smith, Cherri L. 1998. Exotic Plant Guidelines. Department of Environment and Natural Resources. Division of Parks and Recreation. Raleigh, NC. Guideline #30	X X X X X X		
Water dependent structures as defined in 15A NCAC 02B .0202		X	
Water wells	X		
Wetland restoration	X		

[1] Provided that all of the following BMPs for overhead utility lines are used. If all of these BMPs are not used, then the overhead utility lines shall require a no practical alternatives evaluation by the Division of Water Quality.

- A minimum zone of 10 feet wide immediately adjacent to the water body shall be managed such that only vegetation that poses a hazard or has the potential to grow tall enough to interfere with the line is removed.
- Woody vegetation shall be cleared by hand. No land grubbing or grading is allowed.
- Vegetative root systems shall be left intact to maintain the integrity of the soil. Stumps shall remain where trees are cut.
- Rip rap shall not be used unless it is necessary to stabilize a tower.
- No fertilizer shall be used other than a one time application to re-establish vegetation.
- Construction activities shall minimize the removal of woody vegetation, the extent of the disturbed area, and the time in which areas remain in a disturbed state.
- Active measures shall be taken after construction and during routine maintenance to ensure diffuse flow of stormwater through the buffer.
- In wetlands, mats shall be utilized to minimize soil disturbance.

[2] Provided that poles or towers shall not be installed within 10 feet of a water body unless the Division of Water Quality completes a no practical alternatives evaluation.

[3] Perpendicular crossings are those that intersect the surface water at an angle between 75 degrees and 105 degrees.

[4] Provided that all of the following BMPs for underground utility lines are used. If all of these BMPs are not used, then the underground utility line shall require a no practical alternatives evaluation by the Division of Water Quality.

- Woody vegetation shall be cleared by hand. No land grubbing or grading is allowed.
- Vegetative root systems shall be left intact to maintain the integrity of the soil. Stumps shall remain, except in the trench, where trees are cut.
- Underground cables shall be installed by vibratory plow or trenching.
- The trench shall be backfilled with the excavated soil material immediately following cable installation.
- No fertilizer shall be used other than a one-time application to re-establish vegetation.
- Construction activities shall minimize the removal of woody vegetation, the extent of the disturbed area, and the time in which areas remain in a disturbed state.
- Active measures shall be taken after construction and during routine maintenance to ensure diffuse flow of stormwater through the buffer.
- In wetlands, mats shall be utilized to minimize soil disturbance.

Commented [HK144]: moved to paragraph (i) above

History Note: *Authority G.S. 143-214.1; 143-215.8A; 143-214.7; 143-214.23, 143-214.23A*
Eff. February 1, 2009.

15A NCAC 02B .0608 is proposed for amendment as follows:

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

(a) PURPOSE. The following requirements shall apply ~~for~~ to all forest harvesting operations and practices ~~in the riparian areas.~~ subject to riparian buffer requirements under Rules .0601 through .0608 of this Section.

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

(1) All forest harvest activities within the buffer shall comply with Forest Practice Guidelines Related to Water Quality as defined in Title 02 NCAC 60C;

~~(1)~~(2) Logging decks and sawmill sites shall not be placed in the riparian ~~buffer.~~buffer;

~~(2) Access roads and skid trails are prohibited except for temporary and permanent stream crossings established in accordance with 15A NCAC 01I .0203. Temporary stream crossings shall be permanently stabilized after any site disturbing activity is completed.~~

(3) Timber felling shall be directed away from the stream or water ~~body.~~body;

(4) Skidding shall be directed away from the stream or water body and shall be done in a manner that minimizes soil disturbance and prevents the creation of channels or ~~ruts.~~ruts;

(5) Individual trees may be treated to maintain or improve their health, form or ~~vigor.~~vigor;

(6) Harvesting of dead or infected trees or application of pesticides necessary to prevent or control extensive tree pest and disease infestation is allowed, when approved by the ~~Division of~~North Carolina Forest ~~Resources~~ Service for a specific site in accordance with G.S. 113-60.4. ~~A copy of the Division of Forest Resources approval must be provided to the Division of Water Quality in accordance with Session Law 2001-404.~~The North Carolina Forest Service must notify the Division of all approvals within 60 calendar days;

(7) Removal of individual trees that are in danger of causing damage to structures or human life is ~~allowed.~~allowed;

(8) Natural regeneration of forest vegetation and planting of trees, shrubs, or ground cover plants to enhance the riparian buffer is allowed provided that soil disturbance is ~~minimized.~~minimized; ~~Plantings shall consist primarily of native species.~~

(9) ~~High intensity prescribed~~Prescribed burns shall ~~not~~ be ~~allowed.~~allowed when conducted for forest management purposes; and

(10) ~~Application of~~One-time fertilizer ~~is not allowed except as necessary for permanent stabilization.~~to establish replanted vegetation. This only applies to the one-time application of fertilizer in the riparian buffer. No runoff from this one-time application in the riparian buffer is allowed in the applicable surface water.

Commented [HK1]: no effect – added header

Commented [HK2]: no effect - grammar

Commented [HK3]: no effect – clarification

Commented [HK4]: no change - added header

Commented [HK5]: no effect – split into two paragraphs

Commented [HK6]: no effect – clarification

Commented [HK7]: no effect – punctuation

Commented [HK8]: Removed prohibition to allow for access roads and skid trails (in compliance with FPGs)

Commented [HK9]: no effect – punctuation

Commented [HK10]: no effect – punctuation

Commented [HK11]: no effect – punctuation

Commented [HK12]: no effect – update name

Commented [HK13]: statute was not related to this topic; requirement consistent with other buffer rules.

Commented [HK14]: no effect – punctuation

Commented [HK15]: no effect – punctuation

Commented [HK16]: Removed requirement – addressed in Rule .0607

Commented [HK17]: "high intensity prescribed burns" is not a term used by NCFS

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

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

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

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

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

(3) Trees shall be removed with the minimum disturbance to the soil and ~~residual~~ remaining ~~vegetation.~~vegetation;

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

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

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

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

Commented [HK18]: Clarified use of fertilizer; consistent with other fertilizer requirements in the buffer rules.

Commented [HK19]: No effect – added header

Commented [HK20]: Removed repetitive language.

Commented [HK21]: no effect - grammar

Commented [HK22]: no effect – reorganization

Commented [HK23]: allow for tracked or wheeled vehicles within 50 feet is no practical alternative

Commented [HK24]: Clarify soil disturbance can occur but no tracked/wheeled vehicles for site prep

Commented [HK25]: No effect - grammar

Commented [HK26]: no effect – punctuation

Commented [HK27]: allow for removal of high value trees within first 10 feet

Commented [HK28]: no effect – clarification of terminology

Commented [HK29]: no effect – update citation

Commented [HK30]: no effect – punctuation

Commented [HK31]: no effect - grammar

Commented [HK32]: No effect – clarification

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

15A NCAC 02B .0610 is proposed for adoption as follows:

15A NCAC 02B ~~.0243~~.0610 CATAWBA RIVER BASIN: PROTECTION AND MAINTENANCE OF EXISTING RIPARIAN BUFFERS

The following is the management strategy for maintaining and protecting existing riparian buffers along the Catawba River mainstem below Lake James and along mainstem lakes from and including Lake James to the North Carolina and South Carolina border in the Catawba River Basin.

(1) PURPOSE. The purpose of this Rule shall be to maintain and protect ~~and preserve~~ existing riparian buffers along the Catawba River mainstem below Lake James and along mainstem lakes from and including Lake James to the North Carolina and South Carolina border in the Catawba River Basin in order to maintain their pollutant removal functions as an aid in protecting the water quality of the lakes and connecting river segments.

(2) DEFINITIONS. For the purpose of ~~Rules 15A NCAC 02B .0243 and 15A NCAC 02B .0244,~~this Rule, these terms shall be defined as found in Rule .0701 of this Subchapter and as follows:

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

(b) "Riparian buffer" means the area as defined in Item (4) of this Rule.

~~(a) "Access Trails" means pedestrian trails constructed of pervious or impervious surfaces, and related structures to access a surface water including boardwalks, steps, rails, signage, etc.~~

~~(b) "Archaeological Activities" means activities conducted by a Registered Professional Archaeologist (RPA).~~

~~(c) "Airport Facilities" means all properties, facilities, buildings, structures, and activities that satisfy or otherwise fall within the scope of one or more of the definitions or uses of the words or phrases "air navigation facility," "airport," or "airport protection privileges" under G.S. 63-1; the definition of "aeronautical facilities" in G.S. 63-79(1); the phrase "airport facilities" as used in G.S. 159-48(b)(1); the phrase "aeronautical facilities" as defined in G.S. 159-81 and G.S. 159-97; and the phrase "airport facilities and improvements" as used in Article V, Section 13, of the North Carolina Constitution, which shall include, without limitation, any and all of the following: airports, airport maintenance facilities, clear zones, drainage ditches, fields, hangars, landing lighting, airport and airport related offices, parking facilities, related navigational and signal systems, runways, stormwater outfalls, terminals, terminal shops, and all appurtenant areas used or suitable for airport buildings or other airport facilities, and all appurtenant rights-of-way; restricted landing areas; any structures, mechanisms, lights, beacons, marks, communicating systems, or other instrumentalities or devices used or useful as an aid, or constituting an advantage or convenience to the safe taking off, navigation, and landing of aircraft, or the safe and efficient operation or maintenance of an airport or restricted landing area; easements

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Commented [HK2]: No effect - grammar

Commented [HK3]: No effect - .0244 repealed

Commented [HK4]: No effect – moved definitions to .0701

Commented [HK5]: No effect - clarification

~~through, or other interests in, air space over land or water, interests in airport hazards outside the boundaries of airports or restricted landing areas, and other protection privileges, the acquisition or control of which is necessary to ensure safe approaches to the landing areas of airports and restricted landing areas, and the safe and efficient operation thereof; and any combination of any or all of such facilities. Notwithstanding the foregoing, the following shall not be included in the definition of "Airport Facilities":~~

~~(i) satellite parking facilities;~~

~~(ii) retail and commercial development outside of the terminal area, such as rental car facilities; and~~

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

~~(d) "Approved local government" means any government with a riparian buffer ordinance approved by the Division pursuant to Subparagraph (3)(b) of this Rule.~~

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

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

~~(g) "Forest plantation" means an area of planted trees that may be conifers (pines) or hardwoods. On a plantation, the intended crop trees are planted rather than naturally regenerated from seed on the site, coppice (sprouting), or seed that is blown or carried into the site.~~

~~(h)~~(c) "Full Pond Level" is a term used by Duke Energy Inc. that refers to the project water level, referenced to mean sea level, for each of the seven mainstem lakes along the Catawba River. The landward edge of the lakes at full pond level represents the project boundary for each lake.

~~(i) "Greenway / Hiking Trails" means pedestrian trails constructed of pervious and impervious surfaces and related structures including but not limited to boardwalks, steps, rails, signage, etc.~~

~~(j) "High Value Tree" means a tree whose stump diameter is equal to or exceeding 18 inches.~~

~~(k)~~(d) "Mainstem lakes" means the following impoundments created along the mainstem of the Catawba River: Lake James, Lake Rhodhiss, Lake Hickory, Lookout Shoals Lake, Lake Norman, Mountain Island Lake and Lake Wylie (North Carolina portion).

~~(l) "Riparian buffer enhancement" is defined as the process of converting a non-forested riparian area, where woody vegetation is sparse (greater than or equal to 100 trees per acre~~

~~but less than 200 trees per acre) to a forested riparian buffer area. The enhanced, forested riparian buffer area shall include a minimum of at least two native hardwood tree species planted at a density sufficient to provide 320 trees per acres at maturity, and diffuse flow through the riparian buffer shall be maintained.~~

~~(m) "Riparian buffer restoration" is defined as the process of converting a non-forested riparian area, where woody vegetation is absent (less than 100 trees per acre) to a forested riparian buffer area. The restored, forested riparian buffer area shall include a minimum of at least two native hardwood tree species planted at a density sufficient to provide 320 trees per acres at maturity, and diffuse flow through the riparian buffer shall be maintained.~~

~~(n) "Shoreline stabilization" is the in-place stabilization of an eroding shoreline. Stabilization techniques which include "soft" methods or natural materials (such as root wads, or rock vanes) may be considered as part of a restoration design. However, stabilization techniques that consist primarily of "hard" engineering, such as concrete lined channels, rip rap, or gabions, while providing bank stabilization, shall not be considered stream restoration.~~

~~(o) "Stream restoration" is defined as the process of converting an unstable, altered or degraded stream corridor, including adjacent riparian zone and flood prone areas to its natural or referenced, stable conditions considering recent and future watershed conditions. This process also includes restoring the geomorphic dimension, pattern, and profile as well as biological and chemical integrity, including transport of water and sediment produced by the stream's watershed in order to achieve dynamic equilibrium. "Referenced" or "referenced reach" means a stable stream that is in dynamic equilibrium with its valley and contributing watershed. A reference reach can be used to develop natural channel design criteria for stream restoration projects.~~

~~(p) "Stump diameter" means diameter of a tree measured at six inches above ground surface level.~~

~~(q) "Surface water" means all waters of the state as defined in G.S. 143-212 except underground waters.~~

~~(r) "Temporary road" means a road constructed temporarily for equipment access to build or replace hydraulic conveyance structures or water dependent structures, or to maintain public traffic during construction.~~

~~(s) "Tree" means a woody plant with a DBH equal to or exceeding five inches or a stump diameter equal to or exceeding six inches.~~

Commented [HK6]: No effect – moved definitions to .0701

(3) 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 (4) of this Rule in the Catawba River Basin.

Commented [HK7]: No effect – clarification

(4) BUFFERS PROTECTED. The following minimum criteria shall be used for identifying regulated buffers:

Commented [HK8]: No effect – reorganization

(a) This Rule shall apply to activities conducted within~~a~~ 50-foot wide riparian ~~buffer~~ buffers along the Catawba River mainstem below Lake James and along the mainstem lakes in the Catawba River Basin, excluding wetlands.

(b) Wetlands adjacent to surface waters or within 50 feet of surface waters shall be considered as part of the riparian buffer but are regulated pursuant to 15A NCAC 02H .0506.

(c) Stormwater runoff from activities conducted outside the riparian buffer shall comply with Item (8) of this Rule.

(d) Riparian~~The riparian~~ buffers protected by this Rule shall be measured pursuant to Item ~~(4)~~(7) of this Rule.

(e) A riparian buffer may be exempt from this Rule as described in Items (5) and (6) of this Rule.~~Riparian buffers along the Catawba River mainstem below Lake James and along mainstem lakes shall be subject to this Rule unless one of the following applies:~~

(f) No new clearing, grading or development shall take place nor shall any new building permits be issued in violation of this Rule.

~~(a)~~(5) EXEMPTION WHEN EXISTING USES ARE PRESENT AND ONGOING. This Rule shall not apply to portions of the riparian buffer where a use is existing and ongoing. ~~Only the portion of the riparian buffer that contains the footprint of the existing and ongoing use is exempt from this Rule. The determination of whether a use is existing and ongoing will be made either by the Division or approved local government; whichever is appropriate according to the administration of the buffer program. A use is existing and ongoing when it is a completed and maintained activity, an activity with appropriate valid permits, or an activity with documentation for unexpired vested rights, as described below:~~

~~(i)~~(a) A use ~~that~~shall be considered existing if:

(i) It was present within the riparian buffer as of June 30, 2001 and has continued to exist since that ~~time.~~time;

(ii) It was a deemed allowable activity as listed in Item (9) of this Rule;

(iii) It was conducted and maintained pursuant to an Authorization Certificate issued by the Authority; or

(iv) The project or proposed development are determined by the Authority to meet at least one of the following criteria:

(A) Project requires a 401 Certification/404 permit and these were issued prior to June 30, 2001 and are still valid;

(B) Projects that require a state permit, such as landfills, NPDES wastewater discharges, land application of residuals and road construction activities, have begun construction or are under contract to begin construction and had received all required state permits prior to June 30, 2001;

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Commented [HK10]: No effect - clarification

Commented [HK11]: No effect - grammar

Commented [HK12]: No effect - clarification

Commented [HK13]: No effect - reorganization

Commented [HK14]: No effect - punctuation

Commented [HK15]: No effect – updated citation

Commented [HK16]: No effect - reorganization

Commented [HK17]: Clarification – wording in Jordan buffer rules

Commented [HK18]: No effect – reorganized and deleted duplicative language

Commented [HK19]: No effect - grammar

Commented [HK20]: No effect - grammar

Commented [HK21]: No effect - punctuation

Commented [HK22]: No effect - clarification

(C) Projects that are being reviewed through the Clean Water Act Section 404/National Environmental Policy Act Merger 01 Process (published by the US Army Corps of Engineers and Federal Highway Administration, 2003) or its immediate successor and that have reached agreement with the Department on avoidance and minimization by June 30, 2003; or

(D) Projects that are not required to be reviewed by the Clean Water Act Section 404/National Environmental Policy Act Merger 01 Process (published by the US Army Corps of Engineers and Federal Highway Administration, 2003) or its immediate successor if a Finding of No Significant Impact has been issued for the project and the project has the written approval of the Division prior to June 30, 2001.

(b) Existing and ongoing uses shall ~~include~~ include, but not be limited to, agriculture, buildings, industrial facilities, commercial areas, transportation facilities, maintained lawns, maintained utility lines and on-site sanitary sewage ~~systems.~~systems, any of which involve either specific periodic management of vegetation or displacement of vegetation by structures or regular activity.

(c) Only the portion of the riparian buffer that contains the footprint of the existing and ongoing use is exempt from this Rule.

(d) Change of ownership through purchase or inheritance is not a change of use.

(e) Activities necessary to maintain existing and ongoing uses are allowed provided that the site remains similarly vegetated, no ~~impervious surface~~built upon area is added within ~~50 feet of the surface water~~the riparian buffer where it did not previously exist ~~as of the effective date of the Rule, prior to June 30, 2001,~~ and ~~existing diffuse flow is maintained.~~the site is in compliance with Item (8) of this Rule. ~~Grading and revegetating Zone 2 is allowed provided that the health of the vegetation in Zone 1 is not compromised, the ground is stabilized and existing diffuse flow is maintained.~~

~~(ii) A use that can be documented to the Division or the appropriate approved local government that meets at least one of the following criteria:~~

~~(A) Project requires a 401 Certification/404 Permit, these were issued prior to June 30, 2001 and are still valid;~~

~~(B) Projects that require a state permit, such as landfills, NPDES wastewater discharges, land application of residuals and road construction activities, have begun construction or are under contract to begin construction and had received all required state permits prior to June 30, 2001;~~

~~(C) Projects that are being reviewed through the Clean Water Act Section 404/National Environmental Policy Act Merger 01 Process (published by the US~~

Commented [HK23]: No effect – moved from below

Commented [HK24]: No effect - clarification

Commented [HK25]: No effect - clarification

Commented [HK26]: Clarification; codifying policy

Commented [HK27]: Clarification

Commented [HK28]: Clarification

Commented [HK29]: No effect - clarification

Commented [HK30]: No effect – updated terminology

Commented [HK31]: No effect - clarification

Commented [HK32]: No effect – referencing original adoption date of the Rule

Commented [HK33]: Referencing stormwater Item instead of "diffuse flow"

Commented [HK34]: No effect – language repeated below

~~Army Corps of Engineers and Federal Highway Administration, 2003) or its immediate successor and that have reached agreement with DENR on avoidance and minimization by June 30, 2003; and~~

~~(D) Projects that are not required to be reviewed by the Clean Water Act Section 404/National Environmental Policy Act Merger 01 Process (published by the US Army Corps of Engineers and Federal Highway Administration, 2003) or its immediate successor if a Finding of No Significant Impact has been issued for the project and the project has the written approval of the DWQ prior to June 30, 2001.~~

~~(iii)~~(f) A project that can be documented to the ~~Division or the appropriate approved local government~~Authority that has vested rights that were established or recognized for that project under the common law or by G.S. 153A-344(b), 153A-344.1, 160A-385(b), or 160A-385.1 prior to July 1, 2001. This Rule does not confer or restrict a vested right established or recognized under common law or G.S. 153A-344(b), 153A-344.1, 160A-385(b), or 160A-385.1.

~~(iv)~~(g) This Rule shall apply at the time an existing and ongoing use is changed to another use. Change of use ~~shall include the following:~~shall involve the initiation of any activity not defined as existing and ongoing in Sub-Items (5)(a) through (5)(f) of this Rule

~~(A) Impervious surface is added to the riparian buffer in locations where it did not exist previously either on the ground or in proposed site plans showing the locations of proposed impervious surfaces for uses defined as existing and ongoing in Subitem (3)(a)(ii) or Subitem (3)(a)(iii) of this Rule; or~~

~~(B) An agricultural operation within the riparian buffer is converted to a non-agricultural use.~~

(6) EXEMPTION FOR PONDS CONSTRUCTED AND USED FOR AGRICULTURAL PURPOSES. This Rule shall not apply to a freshwater pond if all of the following conditions are met:

(a) The property on which the pond is located is used for agriculture as that term is defined in G.S. 106-581.1.

(b) Except for this Rule, the use of the property is in compliance with all other water quality and water quantity statutes and rules applicable to the property before July 22, 1997.

(c) The pond is not a component of an animal waste management system as defined in G.S. 143-215.10B (3).

~~(b) LOCAL GOVERNMENTS THAT HAVE APPROVED RIPARIAN BUFFER ORDINANCES. All local governments that have land use authority along the Catawba River mainstem below Lake James and along mainstem lakes in the Catawba River Basin may adopt local riparian buffer ordinances to protect water quality. The Division shall approve the local riparian buffer ordinance within 30 days after receiving the request from~~

Commented [HK35]: No effect – moved above

Commented [HK36]: No effect – updated terminology

Commented [HK37]: No effect - clarification

Commented [HK38]: No effect – reorganized and reference language above instead of repeating info

Commented [HK39]: Added per SL 2013-413

~~local governments, if the Division determines that the local riparian buffer ordinance provides equal to or greater water quality protection than this Rule. This Rule shall not apply in any area where a local government has obtained the Division's approval of the local riparian buffer ordinance, provided that the local government is implementing and enforcing the approved local riparian buffer ordinance. The Division, upon determination that the local government is failing to implement or enforce the approved local buffer ordinance, shall notify the local government in writing of the local program inadequacies. If the local government has not corrected the deficiencies within 90 days of receipt of written notification, then the Division shall implement and enforce the provisions of this Rule.~~

~~(c) RIPARIAN AREAS AND ACTIVITIES NOT REGULATED UNDER AN APPROVED LOCAL GOVERNMENT ORDINANCE. The Division shall be responsible for the implementation of this rule for all riparian areas and activities not regulated under a Division approved local government ordinance.~~ **Commented [HK40]:** Moved to Item 11

~~(4)~~(7) ZONES OF THE RIPARIAN BUFFER. The protected riparian buffer shall have two zones as follows:

(a) Zone 1 shall consist of a ~~forested~~ vegetated area that is undisturbed except for uses provided for in Item ~~(6)~~(9) of this Rule. The location of Zone 1 shall be as follows: **Commented [HK41]:** No effect – updated terminology **Commented [HK42]:** No effect – updated citation

(i) For the Catawba River mainstem below Lake James, Zone 1 shall begin at the most landward limit of the top of the bank and extend landward a distance of 30 feet on all sides of the ~~surface water,~~river, measured horizontally on a line perpendicular to ~~a vertical line marking the edge of the top of the bank.~~the river. **Commented [HK43]:** No effect - clarification

(ii) For the mainstem lakes located on the Catawba River mainstem, Zone 1 shall begin at the ~~most landward limit of the~~ full pond level and extend landward a distance of 30 feet, measured horizontally on a line perpendicular to ~~a vertical line marking the edge of the full pond level.~~the lake. **Commented [HK44]:** No effect – grammar **Commented [HK45]:** No effect – grammar

(b) Zone 2 shall consist of a stable, vegetated area that is undisturbed except for uses provided for in Item ~~(6)~~(9) of this Rule. Grading and revegetating Zone 2 is allowed provided that the health of the vegetation in Zone 1 is not compromised. Zone 2 shall begin at the outer edge of Zone 1 and extend landward 20 feet as measured horizontally on a line perpendicular to ~~a vertical line marking the outer edge of Zone 1.~~the surface water. The combined width of Zones 1 and 2 shall be 50 feet on all sides of the surface water along the Catawba River mainstem below Lake James and along mainstem lakes in the Catawba River Basin. **Commented [HK46]:** No effect – updated citation **Commented [HK47]:** No effect - grammar

~~(5) DIFFUSE FLOW REQUIREMENT. Diffuse flow of runoff shall be maintained in the riparian buffer by dispersing concentrated flow and reestablishing vegetation.~~

~~(a) Concentrated runoff from new ditches or manmade conveyances shall be converted to diffuse flow at non-erosive velocities before the runoff enters Zone 2 of the riparian buffer.~~

~~(b) Periodic corrective action to restore diffuse flow shall be taken if necessary to impede the formation of erosion gullies.~~

~~(c) No new stormwater conveyances are allowed through the buffers except for stormwater management ponds provided for in Item (6) of this Rule.~~

(8) STORMWATER RUNOFF THROUGH THE RIPARIAN BUFFER. Drainage conveyances include drainage ditches, roadside ditches, and stormwater conveyances. The following stormwater conveyances through the riparian buffer are either deemed allowable or allowable upon authorization, as defined in Sub-Item (9)(a) of this Rule, provided that they do not erode through the buffer and do not cause erosion to the receiving waterbody. Stormwater conveyances through the riparian buffer that are not listed below shall be allowable with exception as defined in Sub-Item (9)(a)(v) of this Rule:

(a) The following are deemed allowable as defined in Sub-Item (9)(a)(i) of this rule:

(i) New drainage conveyances that comply with a stormwater management plan reviewed and approved under a state stormwater program or a state-approved local government stormwater program, which includes a Primary SCM, as defined in 15A NCAC 02H .1002, to treat the drainage area to the conveyance;

(ii) New stormwater flow to existing drainage conveyances provided that the addition of new flow does not result in the need to alter the conveyance.

(b) The following are allowable upon authorization as defined in Sub-Item (9)(a)(ii) of this Rule:

(i) New drainage conveyances when a Primary SCM as defined in 15A NCAC 02H .1002 is provided to treat the drainage area to the conveyance;

(ii) New drainage conveyances when the flow rate of the conveyance is less than 0.5 cubic feet per second during the peak flow from the 0.75 inch per hour storm;

(iii) New stormwater runoff that has been treated through a level spreader-filter strip that complies with 15A NCAC 02H .1059;

(iv) Realignment of existing roadside drainage ditches retaining or improving the design dimensions provided that no additional travel lanes are added and the minimum required roadway typical section is used based on traffic and safety considerations;

(v) Realignment of existing conveyances retaining or improving the design dimensions provided that the size of the drainage area and the percent built-upon area within the drainage area remain the same;

Commented [HK48]: Removed diffuse flow requirement; instead provide options for stormwater discharges

Commented [HK49]: Removed diffuse flow requirement; instead provide options for stormwater discharges

Commented [HK50]: Organization

Commented [HK51]: New use – allows for DWR to accept local government review of a SMP without having to review for meeting diffuse flow

Commented [HK52]: No change – moved from table of uses

Commented [HK53]: Organization

Commented [HK54]: No change – moved from table

Commented [HK55]: New use

Commented [HK56]: No change – from diffuse flow language above

Commented [HK57]: New use

Commented [HK58]: New use

(vi) New or altered drainage conveyances applicable to publicly funded and maintained linear transportation provided that SCMs, or BMPs from the NCDOT Stormwater Best Management Practices Toolbox, are employed;

(vii) New drainage conveyances applicable to linear transportation projects that do not provide a stormwater management facility due to topography constraints provided other measures are employed to protect downstream water quality to the maximum extent practical;

(viii) New drainage conveyances where the drainage area to the conveyance has no new built-upon area as defined in 15A NCAC 02H .1002 and the conveyance is necessary for bypass of existing drainage only.

~~(6)~~(9) TABLE OF USES. Uses within the riparian buffer, or outside the buffer with hydrological impacts on the riparian buffer, shall be designated as deemed allowable, allowable upon authorization, allowable with mitigation upon authorization, or prohibited.

(a) Potential new uses shall have the following requirements:

(i) DEEMED ALLOWABLE. Uses designated as deemed allowable in Sub-Items (8)(a) and (9)(b) of this Rule may occur within the riparian buffer. Deemed allowable uses shall be designed, constructed and maintained to minimize vegetation and soil disturbance and to provide the maximum water quality protection practicable, including construction, monitoring, and maintenance activities. In addition, deemed allowable uses shall meet requirements listed in Sub-Item (9)(b) of this Rule for the specific use.

(ii) ALLOWABLE UPON AUTHORIZATION. Uses designated as allowable upon authorization in Sub-Items (8)(b) and (9)(b) of this Rule require a written Authorization Certificate from the Authority for impacts within the riparian buffer pursuant to Rule .0705 of this Section.

(iii) ALLOWABLE WITH MITIGATION UPON AUTHORIZATION. Uses designated as allowable with mitigation upon authorization in Sub-Item (9)(b) of this Rule require a written Authorization Certificate from the Authority for impacts within the riparian buffer pursuant to Rule .0705 of this Section and an appropriate mitigation strategy has received written approval pursuant to Item (10) of this Rule.

(iv) PROHIBITED. Uses designated as Prohibited in Sub-Item (9)(b) of this Rule may not proceed within the riparian buffer unless a Variance is granted pursuant to Rule .0226 of this Section. Mitigation may be required as a condition of variance approval.

(v) ALLOWABLE WITH EXCEPTION. Uses not designated as deemed allowable, allowable upon authorization, allowable with mitigation upon authorization or

Commented [HK59]: New Use

Commented [HK60]: New use

Commented [HK61]: New use

Commented [HK62]: Moved from (7) below

Commented [HK63]: Updated terminology

Commented [HK64]: No effect – moved from (7) below

Commented [HK65]: Updated terminology

Commented [HK66]: No effect – moved from (7) below

Commented [HK67]: Updated terminology

Commented [HK68]: No effect – moved from (7) below

Commented [HK69]: Changed to variance process set out in Rule .0226

prohibited in Sub-Item (9)(b) of this Rule require a written Authorization Certificate with Exception from the Authority for impacts within the riparian buffer pursuant to Rule .0705 of this Section and an appropriate mitigation strategy that has received written approval pursuant to Item (10) of this Rule.

(b) The following ~~chart~~ table sets out ~~the~~ potential new uses within the riparian buffer, or outside the buffer with hydrological impacts on the riparian buffer, and ~~their category designation under this Rule~~designates them as ~~exempt, allowable, or allowable with mitigation. Any uses, which are not listed in the table, are prohibited. The requirements for each category listed in the table as well as prohibited uses not set out in the table are given in Item (7) of this Rule.~~deemed allowable, allowable upon authorization, allowable with mitigation upon authorization, or prohibited:

Use	~~Exempt~~ Deemed Allowable	Allowable Upon Authorization	Allowable with Mitigation Upon Authorization	Pr~~o~~
~~Access trails: Pedestrian access trails leading to the surface water, docks, fishing piers, boat ramps and other water dependent activities:~~ ~~• Pedestrian access trails that are restricted to the minimum width practicable and do not exceed4 feet in width of buffer disturbance, and provided that installation and use does not result in removal of trees as defined in this Rule and no impervious surface is added to the riparian buffer~~ ~~• Pedestrian access trails that exceed 4 feet in width of buffer disturbance, the installation or use results in removal of trees as defined in this Rule or impervious surface is added to the riparian buffer~~	~~X~~	~~X~~	~~X~~	
Airport facilities: • Vegetation removal activities necessary to comply with Federal Aviation Administration requirements (e.g. line of sight requirements) provided the disturbed areas are stabilized and revegetated	X	X		

Commented [HK70]: New category – instead of deeming all activities not listed in the table as "prohibited" they will go through the buffer authorization process but still have to meet hardships

Commented [HK71]: No effect - grammar

Commented [HK72]: No effect - clarification

Commented [HK73]: No effect – clarification

Commented [HK74]: No effect - grammar

Commented [HK75]: No effect – updated terminology

Commented [HK76]: No effect – updated terminology

Commented [HK77]: Combined all access trails uses into one use later in the table

Commented [HK78]: Codifying policy

Use	~~Exempt~~ Deemed Allowable	Allowable Upon Authorization	Allowable with Mitigation Upon Authorization	Pr
• Airport ~~or airstrip~~ facilities that impact equal to or less than ~~150 linear feet or~~ one-third of an acre of riparian buffer			X	
• Airport ~~or airstrip~~ facilities that impact greater than ~~150 linear feet or~~ one-third of an acre of riparian buffer				
Archaeological activities	X			
Bridges • Impact equal to or less than one-tenth of an acre of riparian buffer	X			
• Impact greater than one-tenth of an acre of riparian buffer		X		
~~Canoe Access provided that installation and use does not result in removal of trees as defined in this Rule and no impervious surface is added to the buffer~~	~~X~~			
Dam maintenance activities: • Dam maintenance activities that do not cause additional riparian buffer disturbance beyond the footprint of the existing dam or those covered under ~~the~~ a U.S. Army Corps of Engineers ~~Nationwide~~ Permit ~~No. 3~~	X	X		
• Dam maintenance activities that do cause additional riparian buffer disturbance beyond the footprint of the existing dam or those not covered under ~~the~~ a U.S. Army Corps of Engineers ~~Nationwide~~ Permit ~~No. 3~~				
~~Drainage ditches, roadside ditches and stormwater outfalls through riparian buffers:~~ ~~• Existing drainage ditches, roadside ditches, and stormwater outfalls provided that they are managed to minimize the sediment, nutrients and other pollution that convey to waterbodies~~ ~~• New drainage ditches, roadside ditches and stormwater outfalls provided that a stormwater management facility is installed to control pollutants and attenuate flow before the conveyance discharges through the riparian buffer~~	~~X~~	~~X~~		

Commented [HK76]: No effect – updated terminology

Commented [HK79]: No effect – airstrip is included within the definition of airport in .0701

Commented [HK80]: Removed linear feet; will just reference square feet for ease of implementation

Commented [HK81]: No effect – airstrip is included within the definition of airport in .0701

Commented [HK82]: Removed linear feet; will just reference square feet for ease of implementation

Commented [HK83]: Added new use to allow bridges with less than 1/10 to be deemed allowable; consistent with road impacts

Commented [HK84]: Combined all access trails into one use later in the table

Commented [HK85]: No effect - clarification

Commented [HK86]: No effect - grammar

Commented [HK87]: Expand use for all USACE permits, not just NW3

Commented [HK88]: No effect - clarification

Commented [HK89]: No effect - grammar

Commented [HK90]: Expand use for all USACE permits, not just NW3

Use	~~Exempt~~ Deemed Allowable	Allowable Upon Authorization	Allowable with Mitigation Upon Authorization	Pr
• ~~New stormwater discharges to existing man-made conveyances (including, but not limited to, drainage ditches, roadside ditches, and stormwater outfalls) provided that the new stormwater discharge does not result in the need to alter the existing man-made conveyances~~		~~X~~		
~~Driveway crossings of surface waters subject to this Rule:~~ • ~~Driveway crossings on single family residential lots subdivided or recorded prior to the effective date of this Rule that disturb equal to or less than 25 linear feet or 2,500 square feet of riparian buffer~~ • ~~Driveway crossings on single family residential lots subdivided or recorded prior to the effective date of this Rule that disturb greater than 25 linear feet or 2,500 square feet of riparian buffer~~ • ~~In a subdivision that cumulatively disturbs equal to or less than 150 linear feet or one-third of an acre of riparian buffer~~ • ~~In a subdivision that cumulatively disturbs greater than 150 linear feet or one-third of an acre of riparian buffer~~	~~X~~	~~X~~ ~~X~~	~~X~~	
Fences: • Fencing livestock out of surface waters • ~~Fences provided that disturbance is minimized and installation~~Installation does not result in removal of trees ~~as defined in this Rule~~ • ~~Fences provided that disturbance is minimized and installation~~Installation results in removal of trees ~~as defined in this Rule~~	X X	X		
Forest harvesting - see ~~Item (11) of this~~ Rule .0706 of this Section				
Fertilizer • One-time fertilizer application to establish replanted vegetation. This only applies to the one-time application of fertilizer in the riparian buffer. No runoff from this one-	X			

Commented [HK76]: No effect – updated terminology

Commented [HK91]: Moved to Item (8) above

Commented [HK92]: Moved below with road impacts

Commented [HK93]: New deemed allowable use

Commented [HK94]: No effect - grammar

Commented [HK95]: No effect - grammar

Commented [HK96]: No effect – updated citation

Use	~~Exempt~~ Deemed Allowable	Allowable Upon Authorization	Allowable with Mitigation Upon Authorization	Pr
time application in the riparian buffer is allowed in the applicable surface water.				
• Ongoing fertilizer application				
Grading ~~and revegetation~~ in Zone 2 only provided that ~~diffuse flow and~~ the health of existing vegetation in Zone 1 is not ~~compromised~~ compromised, Item (8) of this Rule is complied with, and disturbed areas are stabilized and revegetated	X			
~~Greenway / hiking trails~~ Greenways, trails, sidewalks or linear pedestrian/bicycle transportation system:				
• In Zone 2 provided that no built upon area is added within the buffer	X			
• When built upon area is added to the buffer, equal to or less than ten (10) feet wide with two (2) foot wide shoulders. Must be located outside Zone 1 unless there is no practical alternative		X		
• When built upon area is added to the buffer, greater than ten (10) feet wide with two (2) foot wide shoulders. Must be located outside Zone 1 unless there is no practical alternative			X	
Historic preservation	X			
Landfills				
Mining activities:				
• Mining activities that are covered by the Mining Act provided that new riparian buffers that meet the requirements of Items ~~(4) and (5)~~(7) and (8) of this Rule are established adjacent to the relocated channels		X		
• Mining activities that are not covered by the Mining Act OR where new riparian buffers that meet the requirements of Items (7) and (8)~~(4) and (5)~~ of this Rule are not established ~~adjacent to the relocated channels~~			X	
• Wastewater or mining dewatering wells with approved NPDES permit	X			

Commented [HK76]: No effect – updated terminology

Commented [HK97]: New use

Commented [HK98]: No effect - clarification

Commented [HK99]: No effect – clarification and updated citation

Commented [HK100]: Codifying policy

Commented [HK101]: No effect - clarification

Commented [HK102]: No effect – updated citation

Commented [HK103]: No effect – updated citation

Commented [HK104]: Allows mining activities that do not relocate channels to pursue an authorization certificate

Commented [HK105]: New deemed allowable use

Use	~~Exempt~~ Deemed Allowable	Allowable Upon Authorization	Allowable with Mitigation Upon Authorization	Pr
~~Non-electric utility lines:~~				
~~• Impacts other than perpendicular crossings in Zone 2 only [1]~~		~~X~~		
~~• Impacts other than perpendicular crossings in Zone 1 [1]~~			~~X~~	
~~Non-electric utility line perpendicular crossings of surface waters subject to this Rule [1]:~~				
~~• Perpendicular crossings that disturb equal to or less than 40 linear feet of riparian buffer with a maintenance corridor equal to or less than 10 feet in width~~	~~X~~			
~~• Perpendicular crossings that disturb equal to or less than 40 linear feet of riparian buffer with a maintenance corridor greater than 10 feet in width~~		~~X~~		
~~• Perpendicular crossings that disturb greater than 40 linear feet but equal to or less than 150 linear feet of riparian buffer with a maintenance corridor equal to or less than 10 feet in width~~		~~X~~		
~~• Perpendicular crossings that disturb greater than 40 linear feet but equal to or less than 150 linear feet of riparian buffer with a maintenance corridor greater than 10 feet in width~~			~~X~~	
~~• Perpendicular crossings that disturb greater than 150 linear feet of riparian buffer regardless of the width of the maintenance corridor~~			~~X~~	
~~Overhead electric utility lines:~~				
~~• Impacts other than perpendicular crossings in Zone 2 only [1]~~	~~X~~			
~~• Impacts other than perpendicular crossings in Zone 1 [1,2,3]~~	~~X~~			
~~Overhead electric utility line perpendicular crossings of surface waters subject to this Rule [1]:~~				
~~• Perpendicular crossings that disturb equal to or less than 150 linear feet of riparian buffer [2]~~	~~X~~			
~~• Perpendicular crossings that disturb greater than 150 linear feet of riparian buffer [2,3]~~		~~X~~		

Commented [HK76]: No effect – updated terminology

Commented [HK106]: Moved to below

Commented [HK107]: Moved to below

Commented [HK108]: Moved to below

Commented [HK109]: Moved to below

1

~~[1] Perpendicular crossings are those that intersect the surface water at an angle between 75° and 105°. New water intakes and new outfall lines which may be required to extend to or cross part of waterbodies will be implemented and enforced under this category.~~

~~[2] Provided that, in Zone 1, all of the following BMPs for overhead utility lines are used. If all of these BMPs are not used, then the overhead utility lines shall require a no practical alternative evaluation by the Division.~~

- ~~A minimum zone of 10 feet wide immediately adjacent to the water body shall be managed such that only vegetation that poses a hazard or has the potential to grow tall enough to interfere with the line is removed.~~
- ~~Woody vegetation shall be cleared by hand. No land grubbing or grading is allowed.~~
- ~~Vegetative root systems shall be left intact to maintain the integrity of the soil. Stumps shall remain where trees are cut.~~
- ~~Rip rap shall not be used unless it is necessary to stabilize a tower.~~
- ~~No fertilizer shall be used other than a one-time application to re-establish vegetation.~~
- ~~Construction activities shall minimize the removal of woody vegetation, the extent of the disturbed area, and the time in which areas remain in a disturbed state.~~
- ~~Measures shall be taken after construction and during routine maintenance to ensure diffuse flow of stormwater through the buffer.~~
- ~~In wetlands, mats shall be utilized to minimize soil disturbance.~~

~~[3] Provided that poles or towers shall not be installed within 10 feet of a water body unless the Division completes a no practical alternative evaluation.~~

Commented [HK110]: Moved relevant footnotes into the Table

Use	~~Exempt~~ Deemed Allowable	Potentially Allowable	Potentially Allowable with Mitigation	Proh
On-site sanitary sewage systems – new ones that use ground absorption				X
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: • Pedestrian access trail equal to or less than six (6) feet wide that does not result in the removal of any tree(s) within the riparian buffer and does not result in any built upon area being added to the riparian buffer • Pedestrian access trail equal to or less than six (6) feet wide where the installation or use results in the removal of tree(s) or addition of built upon area to the riparian buffer • Pedestrian access trail greater than six (6) feet wide	X	X	X	

Commented [HK111]: No effect – updated terminology

Commented [HK112]: No effect – clarification

Commented [HK113]: Combined uses from above

Use	~~Exempt~~ Deemed Allowable	Potentially Allowable	Potentially Allowable with Mitigation	Proh
Playground equipment: • Playground equipment on single family lots provided that installation and use does not result in removal of ~~trees as defined in this Rule~~vegetation	X			
• Playground equipment on single family lots where installation ~~and~~ or use ~~requires~~ results in the removal of ~~trees as defined in this Rule~~vegetation		X		
• Playground equipment installed on lands other than single family lots		X		
Properties that have been subdivided by a preliminary subdivision ~~plat~~ [4]plat approved by local governments within the Catawba River Basin within 2 years prior to June 30, 2001 for conventional subdivisions and within 5 years prior to June 30, 2001 for phased ~~subdivisions:~~subdivisions. The submitted preliminary subdivision plan stall include all of the following: total acreage of land proposed for platting, boundaries of the tract or portion thereof to be subdivided, with all bearings and distances accurately shown, including dimensions of all lot lines; location and use of all existing and proposed easements, including easements for drainage and utilities, location, width of rights-of-way and all proposed streets, location of all utilities installations, distance to nearest public water supply and sanitary sewerage systems, significant natural features including existing riparian buffer areas, existing wetlands, lakes or rivers, or other natural features affecting the site, and existing physical features including buildings, streets, railroads, power lines, drainage ways, sewer and water or spring heads, and town limit lines both to or adjacent to the land to be subdivided.	X			
• Uses in Zone 2 provided that the ground is stabilized and Item (8) of this Rule is complied with~~diffuse flow is maintained~~				
• Uses in Zone 1 provided that the ground is stabilized and Item (8) of this Rule is complied with~~diffuse flow is maintained~~. On-site waste systems, septic tanks and drainfields are not allowed in Zone 1		X		
Properties that are included on a recorded subdivision plan prior to June 30, 2001:				

Commented [HK111]: No effect – updated terminology

Commented [HK114]: No effect – clarifications and separated bullets for clarification

Commented [HK115]: No effect – updated citation

Commented [HK116]: No effect – incorporated footnote into main text

Use	~~Exempt~~ Deemed Allowable	Potentially Allowable	Potentially Allowable with Mitigation	Proh
• Uses in Zone 2 provided that the ground is stabilized and Item (8) of this Rule is complied with~~diffuse flow is maintained~~ • Uses in Zone 1 provided that the ground is stabilized and Item (8) of this Rule is complied with~~diffuse flow is maintained~~. On-site waste systems, septic tanks and drainfields are not allowed in Zone 1	X	X		
Protection of existing ~~structures,~~structures and facilities, including existing utility lines, ~~facilities and shoreline~~ when this requires additional disturbance of the riparian buffer ~~or the channel~~		X		
Pumps for agricultural irrigation in Zone 1 provided that installation and use does not result in removal of trees as defined in this Rule	X			

Commented [HK111]: No effect – updated terminology

Commented [HK117]: No effect – updated citations

Commented [HK118]: No effect – shorelines addressed below, clarify this includes existing utility lines

Commented [HK119]: Removed to only reference disturbance of the buffer

~~[4] The submitted preliminary subdivision plat shall include all the following information:~~

- ~~Total acreage of land proposed for platting.~~
- ~~The boundaries of the tract or portion thereof to be subdivided, with all bearings and distances accurately shown, including dimensions of all lot lines.~~
- ~~Location and use of all existing and proposed easements. This includes easements for drainage and utilities.~~
- ~~Location, width of rights-of-way and all proposed streets.~~
- ~~Location of all utilities installations.~~
- ~~Distance to nearest public water supply and sanitary sewerage systems.~~
- ~~Significant natural features including existing riparian buffer areas, existing wetlands, lakes or rivers, or other natural features affecting the site.~~
- ~~Existing physical features including buildings, streets, railroads, power lines, drainage ways, sewer and water or spring heads, and town limit lines both to or adjacent to the land to be subdivided.~~

Commented [HK120]: Moved relevant footnotes into the Table

Use	~~Exempt~~ Deemed Allowable	Potentially Allowable	Potentially Allowable with Mitigation	Proh
~~Railroad impacts other than crossings of surface waters subject to this Rule~~			~~X~~	

Commented [HK121]: No effect – updated terminology

Commented [HK122]: Moved to below

Use	~~Exempt~~ Deemed Allowable	Potentially Allowable	Potentially Allowable with Mitigation	Proh
~~Recreational and accessory structures:~~ • ~~Recreational and accessory structures such as decks, gazebos and sheds provided the total cumulative footprint of all structures within the buffer does not exceed 150 square feet, that the structures are elevated above pervious ground, that installation does not result in removal of trees as defined in this Rule, and that they are not otherwise prohibited under the local water supply watershed ordinance~~ • ~~Recreational and accessory structures such as decks, gazebos, and sheds with a cumulative footprint of more than 150 square feet provided that the structures are elevated above pervious ground, that installation does not result in removal of trees as defined in this Rule, and that they are not otherwise prohibited under the local water supply watershed ordinance~~	~~X~~	~~X~~		
Removal of previous fill or debris provided that Item (8) of this Rule is complied with~~diffuse flow is maintained~~ and any vegetation removed is restored	X			
Restoration or enhancement (wetland, stream) as defined in 33 CFR Part 332 available free of charge on the internet at: http://water.epa.gov/lawsregs/guidance/wetlands/wetlandsmitigation_index.cfm: • Wetland or stream restoration that does not require written Division approval that results in impacts to the riparian buffer • Wetland or stream restoration that requires written Division approval that results in impacts to the riparian buffer	X	X		
~~Road~~Road, driveway or railroad impacts other than perpendicular crossings of surface waters subject to this Rule			X	
~~Road~~ Road, driveway or railroads: perpendicular crossings of surface waters subject to this Rule or perpendicular entry into the buffer that does not cross a stream or other surface water subject to this Rule: • ~~Road crossings that impact~~Impact equal to or less than ~~40 linear feet~~one-tenth of an acre of riparian buffer	X			

Commented [HK121]: No effect – updated terminology

Commented [HK123]: Removed this use; these structures will fall under "allowable with exception" except for decks, which are addressed below

Commented [HK124]: No effect – updated citation

Commented [HK125]: Clarification

Commented [HK126]: Incorporating road, driveway and railroad into one row of requirements for ease and consistency

Commented [HK127]: Incorporating road, driveway and railroad into one row of requirements for ease and consistency

Commented [HK128]: Clarification

Commented [HK129]: No effect - grammar

Commented [HK130]: No effect – will just reference square feet for ease of implementation

Use	~~Exempt~~ Deemed Allowable	Potentially Allowable	Potentially Allowable with Mitigation	Proh
• ~~Road crossings that impact~~Impact greater than ~~40 linear feet~~one-tenth of an acre but equal to or less than ~~150 linear feet or~~ one-third of an acre of riparian buffer		X		
• ~~Road crossings that impact~~Impact greater than ~~150 linear feet or~~ one-third of an acre of riparian buffer			X	
• Driveway crossings in a subdivision that cumulatively disturb equal to or less than one-third of an acre of riparian buffer		X		
• Driveway crossings in a subdivision that cumulatively disturb greater than one-third of an acre of riparian buffer			X	
Road relocation of existing private access roads associated with public road projects where necessary for public safety:				
• Less than or equal to 2,500 square feet of riparian buffer impact		X		
• Greater than 2,500 square feet of riparian buffer impact			X	
Scientific studies and gauging station	X			
Stormwater ~~management ponds excluding dry ponds:~~Control Measure (SCM) as defined in 15A NCAC 02H .1002:				
• In Zone 2 if Item (8) of this Rule is complied with~~New stormwater management ponds provided that a riparian buffer that meets the requirements of Items (4) and (5) of this Rule is established adjacent to the pond~~		X		
• In Zone 1~~New stormwater management ponds where a riparian buffer that meets the requirements of Items (4) and (5) of this Rule is NOT established adjacent to the pond~~			X	
• ~~Stormwater constructed wetland and bio-retention area~~		~~X~~		
Shoreline stabilization		X		
Temporary ~~roads:~~roads, provided that the disturbed area is restored to pre-construction topographic and hydrologic conditions and replanted with comparable vegetation within two (2) months of when construction is complete. Tree planting may occur during the dormant season. At the end of five years, the restored wooded buffer shall comply with the restoration criteria in Paragraph (i) of Rule .0295 of this Section:	X			

Commented [HK121]: No effect – updated terminology

Commented [HK131]: No effect - grammar

Commented [HK132]: No effect – will just reference square feet for ease of implementation

Commented [HK133]: No effect - grammar

Commented [HK134]: No effect – will just reference square feet for ease of implementation

Commented [HK135]: No effect – moved from above

Commented [HK136]: New use

Commented [HK137]: Changes use to allow any SCM in the buffer instead of just wet ponds

Commented [HK138]: Clarification

Use	~~Exempt~~ Deemed Allowable	Potentially Allowable	Potentially Allowable with Mitigation	Proh
• ~~Temporary roads that disturb less~~Less than or equal to 2,500 square feet ~~provided that vegetation is restored within six months of initial disturbance~~of riparian buffer disturbance		X		
• ~~Temporary roads that disturb greater~~Greater than 2,500 square feet ~~provided that vegetation is restored within six months of initial disturbance~~of riparian buffer disturbance		X		
• ~~Temporary roads used for~~Associated with culvert installation, bridge construction or replacement ~~provided that restoration activities, such as soil stabilization and revegetation, are conducted immediately after construction~~				
Temporary sediment and erosion control ~~devices:~~ devices provided that the disturbed area is restored to preconstruction topographic and hydrologic conditions and replanted with comparable vegetation within two (2) months of when construction is complete. Tree planting may occur during the dormant season. At the end of five years, the restored buffer shall comply with the restoration criteria in Paragraph (i) of Rule .0295 of this Section:				
• In Zone 2 only provided ground cover is established within the timeframes required by the Sedimentation and Erosion Control Act, ~~that the~~ vegetation in Zone 1 is not compromised and that discharge is released ~~as diffuse flow~~ in accordance with Item ~~(5)~~(8) of this Rule	X			
• In Zones 1 and 2 to control impacts associated with uses approved by the ~~Division~~ Authority or that have received ~~a variance~~an authorization with exception provided that sediment and erosion control for upland areas is addressed ~~to the maximum extent practical~~ outside the buffer		X		
• In-stream temporary erosion and sediment control measures for work within a stream channel that is authorized under Sections 401 and 404 of the Federal Water Pollution Control Act	X			
~~Underground electric utility lines:~~ • ~~Impacts other than perpendicular crossings in Zone 2 only [1]~~	~~X~~			

Commented [HK121]: No effect – updated terminology

Commented [HK139]: No effect - grammar

Commented [HK140]: Moved to wording above

Commented [HK141]: No effect - grammar

Commented [HK142]: Moved to wording above

Commented [HK143]: No effect – grammar

Commented [HK144]: Moved to wording above

Commented [HK145]: Added language for restoring temporarily disturbed area; consistent with requirement for temporary roads

Commented [HK146]: Incorporate compliance with the E&SC plan

Commented [HK147]: No effect – updated citation

Commented [HK148]: No effect – updated terminology

Commented [HK149]: No effect – updated terminology

Commented [HK150]: Removed unnecessary language; this will be reviewed as part of the no practical alternatives analysis

Commented [HK151]: clarification

Use	~~Exempt~~ Deemed Allowable	Potentially Allowable	Potentially Allowable with Mitigation	Proh
• ~~Impacts other than perpendicular crossings in Zone 1~~[1,5]	~~X~~			
~~Underground electric utility line perpendicular crossings of surface waters subject to this Rule:~~ [1] • ~~Perpendicular crossings that disturb less than or equal to 40 linear feet of riparian buffer~~ [5] • ~~Perpendicular crossings that disturb greater than 40 linear feet of riparian buffer~~ [5]	~~X~~	~~X~~		
Utility – Sewer lines: • Perpendicular crossings of streams and other surface waters subject to this Rule or perpendicular entry into the buffer that does not cross a stream or other surface water subject to this Rule: o Construction activities that disturb less than or equal to 40 linear feet of riparian buffer provided that vegetative root systems and stumps shall be left intact to maintain the integrity of the soil except in the trench where trees are cut and that vegetation is allowed to regenerate in disturbed areas with the exception of a maintenance corridor equal to or less than 20 feet in width	X			
o Construction activities that disturb greater than 40 linear feet and less than or equal to 150 linear feet of riparian buffer provided that vegetative root systems and stumps shall be left intact to maintain the integrity of the soil except in the trench where trees are cut and that vegetation is allowed to regenerate in disturbed areas with the exception of a maintenance corridor equal to or less than 20 feet in width		X		
o Construction activities that disturb greater than 150 linear feet of riparian buffer			X	

Commented [HK121]: No effect – updated terminology

Commented [HK152]: Moved to below

Commented [HK153]: Moved to below

Commented [HK154]: Changed 3 categories of utilities from (1) non-electric, (2) electric aerial and (3) electric underground to (1) sewer lines, (2) non-sewer underground and (3) non-sewer aerial

Commented [HK155]: Clarify that this use can include perpendicular entry into the buffer that doesn't cross stream (e.g. connecting to an existing line)

Commented [HK156]: Increased maintenance corridor from 10 feet to 20 feet

Commented [HK157]: Changed from allowable with mitigation to allowable

Commented [HK158]: No change

Use	~~Exempt~~ Deemed Allowable	Potentially Allowable	Potentially Allowable with Mitigation	Prohibited
○ Any activities with a permanent maintenance corridor greater than 20 feet in width			X	
• Impacts other than perpendicular crossings:				
○ Impacts in Zone 2 provided vegetation is re-established after disturbance and the function of Zone 1 is not compromised	X			
○ Impacts in Zone 1 less than 2,500 square feet when impacts are solely the result of tying to an existing utility line and provided that land grubbing or grading is not conducted within 10 feet immediately adjacent to the water		X		
○ Impacts to Zone 1 for the replacement of an existing sewer line within Zone 1 provided that the new line is within an existing Right-of-Way and land grubbing or grading is not conducted within 10 feet immediately adjacent to the water		X		
○ Impacts to Zone 1 for the purpose of reclaiming a maintenance corridor for an existing sewer line provided that trees and shrubs are not cleared within 10 feet immediately adjacent to the water		X		
○ Impacts to Zone 1 other than noted above			X	
• Vegetation maintenance activities along an existing utility line beyond the footprint of an existing utility line maintenance corridor where the total maintenance corridor is equal to or less than 20 linear feet in width		X		
• Vegetation maintenance activities along an existing utility line beyond the footprint of an existing utility line maintenance corridor where the total maintenance corridor is greater than 20 linear feet in width			X	
Utilities – Non-sewer underground lines:				
• Perpendicular crossings of streams and other surface waters subject to this Rule or perpendicular entry into the buffer that	X			

Commented [HK121]: No effect – updated terminology

Commented [HK159]: Changed from allowable to allowable with mitigation. Also expanded use for any perpendicular crossing not just those less than 40 linear feet

Commented [HK160]: No change

Commented [HK161]: Changed from allowable to deemed allowable

Commented [HK162]: New uses to accommodate replacement of existing sewer lines within Zone 1

Commented [HK163]: Changed from all impact to zone 1 triggering mitigation to only impacts above 2,500 square feet when not trying into an existing line

Commented [HK164]: New uses to allow for vegetation maintenance beyond the maintenance corridor

Commented [HK165]: Changed 3 categories of utilities from (1) non-electric, (2) electric aerial and (3) electric underground to (1) sewer lines, (2) non-sewer underground and (3) non-sewer aerial

Use	~~Exempt~~ Deemed Allowable	Potentially Allowable	Potentially Allowable with Mitigation	Proh
does not cross a stream or other surface water subject to this Rule:				
○ Construction activities that disturb less than or equal to 50 linear feet of riparian buffer provided that vegetative root systems and stumps shall be left intact to maintain the integrity of the soil except in the trench where trees are cut and that vegetation is allowed to regenerate in disturbed areas with the exception of a maintenance corridor equal to or less than 30 feet in width		X		
○ Construction activities that disturb greater than 50 linear feet and less than or equal to 150 linear feet of riparian buffer provided that vegetative root systems and stumps shall be left intact to maintain the integrity of the soil except in the trench where trees are cut and that vegetation is allowed to regenerate in disturbed areas with the exception of a maintenance corridor equal to or less than 30 feet in width			X X	
○ Construction activities that disturb greater than 150 linear feet of riparian buffer	X			
○ Any activities with a permanent maintenance corridor greater than 30 feet in width				
• Impacts other than perpendicular crossings:		X		
○ Impacts in Zone Two provided vegetation is re-established after disturbance and the function of Zone 1 is not compromised				
○ Impacts in Zone One less than 2500 square feet when impacts are a result of tying to an existing utility line and provided that land grubbing or grading is not conducted within 10 feet immediately adjacent to the water		X	X	
○ Impacts in Zone One other than listed above				

Commented [HK121]: No effect – updated terminology

Commented [HK166]: Clarify this use can include perpendicular entry into the buffer that doesn't cross stream (e.g., connecting to an existing line)

Commented [HK167]: Changed 40 feet to 50 feet. Added language re maintenance corridor

Commented [HK168]: Capped allowable use to impacts less than 150 feet

Commented [HK169]: New use

Commented [HK170]: No change

Commented [HK171]: Capped impacts to zone 1 to less than 2500 square feet when not tying into an existing line before triggering mitigation

Use	~~Exempt~~ Deemed Allowable	Potentially Allowable	Potentially Allowable with Mitigation	Prohibited
• Vegetation maintenance activities along an existing utility line beyond the footprint of an existing utility line maintenance corridor where the total maintenance corridor is equal to or less than 30 linear feet in width • Vegetation maintenance activities along an existing utility line beyond the footprint of an existing utility line maintenance corridor where the total maintenance corridor is greater than 30 linear feet in width			X	
Utilities – Non-sewer aerial lines:				
• Perpendicular crossings of streams and other surface waters subject to this Rule or perpendicular entry into the buffer that does not cross a stream or other surface water subject to this Rule:	X			
○ Disturb equal to or less than 150 linear feet of riparian buffer provided that a minimum zone of 10 feet wide immediately adjacent to the water body is managed such that only vegetation that poses a hazard or has the potential to grow tall enough to interfere with the line is removed, that no land grubbing or grading is conducted in Zone 1, and that that poles or aerial infrastructure are not installed within 10 feet of a water body		X		
○ Disturb greater than 150 linear feet of buffer		X		
• Impacts other than perpendicular crossings:			X	
○ Impacts in Zone Two				
○ Impacts in Zone One provided that a minimum zone of 10 feet wide immediately adjacent to the water body is managed such that only vegetation that poses a hazard or has the potential to grow tall enough to interfere with the line is removed, that no land grubbing or grading is conducted in Zone 1, and that that poles or aerial infrastructure are not installed within 10 feet of a water body				

Commented [HK121]: No effect – updated terminology

Commented [HK172]: New uses to allow for vegetation maintenance beyond the maintenance corridor

Commented [HK173]: Changed 3 categories of utilities from (1) non-electric, (2) electric aerial and (3) electric underground to (1) sewer lines, (2) non-sewer underground and (3) non-sewer aerial

Commented [HK174]: Clarify this use can include perpendicular entry into the buffer that doesn't cross stream (e.g., connecting to an existing line)

Commented [HK175]: No change

Commented [HK176]: Changed from exempt to allowable; consistent with other utility uses

Use	~~Exempt~~ Deemed Allowable	Potentially Allowable	Potentially Allowable with Mitigation	Proh
Vehicle access roads and boat ramps (excluding parking areas) leading to the surface water, docks, fishing piers, and other water dependent activities:				
• ~~Vehicular~~ Single vehicular access ~~roads~~ road and boat ~~ramps~~ ramp to the surface water but not crossing the surface water that are restricted to the minimum width practicable not to exceed ~~10~~ 15 feet in width		X		
• Vehicular access roads and boat ramps to the surface water but not crossing the surface water that are restricted to the minimum width practicable and exceed ~~10~~ 15 feet in width			X	
View corridors:				
• Thinning of underbrush, shrubs, and limbs up to 50% of individual tree height to enhance a lake view provided soils are undisturbed, Item (8) of this Rule is complied with ~~diffuse flow is maintained~~ and no stems of woody vegetation larger than 3" DBH are removed	X			
• Thinning of underbrush, shrubs, and limbs above 50% of individual tree height to enhance a lake view provided soils are undisturbed, Item (8) of this Rule is complied with ~~diffuse flow is maintained~~ and no stems of woody vegetation larger than 3" DBH are removed		X		

Commented [HK121]: No effect – updated terminology

Commented [HK177]: clarification

Commented [HK178]: clarification

Commented [HK179]: no effect - grammar

Commented [HK180]: increased width from 10 to 15 feet

Commented [HK181]: increased width from 10 to 15 feet

Commented [HK182]: no effect – updated citations

~~[5] Provided that, in Zone 1, all of the following BMPs for underground utility lines are used. If all of these BMPs are not used, then the underground utility line shall require a no practical alternative evaluation by the Division.~~

- ~~Woody vegetation shall be cleared by hand. No land grubbing or grading is allowed.~~
- ~~Except as specified within this footnote, vegetative root systems shall be left intact to maintain the integrity of the soil. Stumps shall remain, except in the trench, where trees are cut.~~
- ~~Underground cables shall be installed by vibratory plow or trenching.~~
- ~~The trench shall be backfilled with the excavated soil material immediately following cable installation.~~
- ~~No fertilizer shall be used other than a one-time application to re-establish vegetation.~~
- ~~Construction activities shall minimize the removal of woody vegetation, the extent of the disturbed area, and the time in which areas remain in a disturbed state.~~
- ~~Active measures shall be taken after construction and during routine maintenance to ensure diffuse flow of stormwater through the buffer.~~
- ~~In wetlands, mats shall be utilized to minimize soil disturbance.~~

Commented [HK183]: Moved relevant footnotes into the Table

Use	~~Exempt~~ Deemed Allowable	Potentially Allowable	Potentially Allowable with Mitigation
Vegetation management:			
• Emergency fire control measures provided that topography and hydrology is restored	X		
• Periodic mowing and harvesting of plant products in Zone 2 only	X		
• Placement of mulch ring around restoration plantings for a period of five years from the date of planting	X		
• Planting non-invasive vegetation to ~~improve water quality protection function of~~enhance the riparian buffer	X		
• Pruning forest vegetation provided that the health and function of the forest vegetation is not compromised			
• Removal of individual trees which are in danger of causing damage to dwellings, existing utility lines, other structures or human life, or are imminently endangering stability of the streambank provided that the stumps are left or ground in place without causing additional land disturbance.~~life~~	X X X		
• Removal of individual trees which are dead, diseased or damaged			
• Removal of poison ~~ivy~~ivy, oak or sumac. Removal can include application of pesticides within the riparian buffer if the pesticides are certified by EPA for use in or near aquatic sites and are applied in accordance with the manufacturer's instructions. If removal is significant, then the riparian buffer shall be replanted with non-invasive species.	X X		
• Removal of understory nuisance vegetation listed in Appendix III of: Smith, Cherri L. 2008. Invasive Plants of North Carolina. Dept. of Transportation. Raleigh, NC (available at http://portal.ncdenr.org/c/document_library/get_file?uuid=0acc6377-ea07-42dc-bb27-45a78d1c7ebe&groupId=38364). Removal can include application of pesticides within the riparian buffer is the pesticides are certified by EPA for use in or near aquatic sites and are applied in accordance with the manufacturer's instructions. If removal is significant, then the riparian buffer shall be replanted with non-invasive species.~~1998. Exotic Plant Guidelines.~~			

Commented [HK184]: clarification

Commented [HK185]: new use

Commented [HK186]: clarification

Commented [HK187]: clarification

Commented [HK188]: allows for removal of additional nuisance species and allows for use of pesticides

~~Department of Environment and Natural Resources. Division of Parks and Recreation. Raleigh, NC. Guideline #30~~			
Water dependent ~~structures:~~ • ~~Water dependent structures as defined in 15A NCAC 02B .0202 where installation and use do not result in disturbance to riparian buffers~~ ~~Water dependent structures as defined in 15A NCAC 02B .0202 where installation and use result in disturbance to riparian buffers~~structures (except for boat ramps) as defined in Rule .0202 of this Section	~~X~~	X	
Water ~~wells:~~ • ~~Single family residential water wells~~ ~~All other water wells~~wells	X	~~X~~	
~~Wetland, stream and buffer restoration that results in impacts to the riparian buffers:~~ • ~~Wetland, stream and buffer restoration that requires DWQ approval for the use of a 401 Water Quality Certification~~ • ~~Wetland, stream and buffer restoration that does not require DWQ approval for the use of a 401 Water Quality Certification~~	~~X~~	~~X~~	
Wildlife passage structures		X	
Slatted uncovered decks (and associated steps) associated with a dwelling that are in Zone 1 or 2 and are at least 8 feet in height and vegetation is not removed from Zone 1 for the installation and that it meets the requirements of Items (7) and (8) of this Rule.		X	

~~(7) REQUIREMENTS FOR CATEGORIES OF USES. Uses designated as exempt, allowable, and allowable with mitigation in Item (6) of this Rule and prohibited in this Rule shall have the following requirements:~~

~~(a) EXEMPT. Uses designated as exempt are allowed within the riparian buffer. Exempt uses shall be designed, constructed and maintained to minimize soil disturbance and to provide the maximum water quality protection practicable. In addition, exempt uses shall meet requirements listed in Item (6) of this Rule for the specific use.~~

~~(b) ALLOWABLE. Uses designated as allowable may proceed within the riparian buffer provided that there are no practical alternatives to the requested use pursuant to Item (8) of this Rule and that disturbance to the buffer is minimized. These uses require prior written authorization from the Division or from a local government with an approved riparian buffer ordinance pursuant to Sub-Item (3)(b) of this Rule.~~

Commented [HK189]: updated citation; allow for use of pesticides

Commented [HK190]: consistent with other buffer rules; boat raps addressed above

Commented [HK191]: changed all wells to be deemed allowable

Commented [HK192]: moved to above

Commented [HK193]: new use

Commented [HK194]: moved from recreational structures use above

(c) ALLOWABLE WITH MITIGATION. Uses designated as allowable with mitigation may proceed within the riparian buffer provided that there are no practical alternatives to the requested use pursuant to Item (8) of this Rule and an appropriate mitigation strategy has been approved pursuant to Item (10) of this Rule. These uses require written authorization from the Division or the approved local government.

(d) PROHIBITED. All uses not designated as exempt, allowable or allowable with mitigation are considered prohibited and may not proceed within the riparian buffer unless a variance is granted pursuant to Item (9) of this Rule. Mitigation may be required as one condition of a variance approval.

Commented [HK195]: No effect – moved to Item (9)(a) above

(8) DETERMINATION OF "NO PRACTICAL ALTERNATIVES." Persons who wish to undertake uses designated as allowable or allowable with mitigation shall submit a request for a "no practical alternatives" determination to the Division or to the approved local government. The applicant shall certify that the criteria identified in Sub-Item (8)(a) of this Rule are met. The Division or the approved local government shall grant an Authorization Certificate upon a "no practical alternatives" determination. The procedure for making an Authorization Certificate shall be as follows:

(a) For any request for an Authorization Certificate, the Division or the approved local government shall review the entire project and make a finding of fact as to whether the following requirements have been met in support of a "no practical alternatives" determination:

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

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

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

(b) Requests for an Authorization Certificate shall be reviewed and either approved or denied within 60 days of receipt of a complete submission based on the criteria in Sub-Item (8)(a) of this Rule by either the Division or the approved local government. Failure to issue an approval or denial within 60 days shall constitute that the applicant has demonstrated "no practical alternatives." An Authorization Certificate shall be issued to the applicant, unless:

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

(ii) Applicant fails to furnish requested information necessary to the Division's or approved local government's decision; or

(iii) Information necessary to the Division's or approved local government's decision.

The Division or the approved local government may attach conditions to the Authorization Certificate that support the purpose, spirit and intent of the riparian buffer protection program. Complete submissions to the Division shall use the appropriate Pre-Construction Notification (PCN) Application Form and shall submit the completed form to the Division. Complete submissions to the delegated local government shall include the following unless otherwise identified within an approved local government ordinance:

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

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

(iii) The location of the activity, including the jurisdiction;

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

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

(vi) Plans for any best management practices proposed to be used to control the impacts associated with the activity.

(e) Any disputes over determinations regarding Authorization Certificates shall be referred to the Director for a decision. The Director's decision is subject to review as provided in G.S. 150B Articles 3 and 4.

(9) VARIANCES. Persons who wish to undertake uses designated as prohibited may pursue a variance. The Division or the appropriate approved local government shall make all of the following findings of fact and may grant variances. The variance request procedure shall be as follows:

(a) For any variance request, the Division or the approved local government shall make a finding of fact to insure that the following requirements have been met:

(i) There are practical difficulties or hardships that prevent compliance with the riparian buffer protection requirements. Practical difficulties or unnecessary hardships shall be evaluated in accordance with the following:

(A) If the applicant complies with the provisions of this Rule, he or she can secure no reasonable return from, nor make reasonable use of, his or her property. Merely proving that the variance would permit a greater profit from the property shall not be considered adequate justification for a variance. Moreover, the Division or the approved local government shall consider whether the variance is the minimum possible deviation from the terms of this Rule that shall make reasonable use of the property possible.

~~(B) The hardship results from application of this Rule to the property rather than from other factors such as deed restrictions or other hardship.~~

~~(C) The hardship is due to the physical nature of the applicant's property, such as its size, shape, or topography, which is different from that of neighboring property.~~

~~(D) The applicant did not cause the hardship by knowingly or unknowingly violating this Rule.~~

~~(E) The hardship is unique to the applicant's property, rather than the result of conditions that are widespread. If other properties are equally subject to the hardship created in the restriction, then granting a variance would be a special privilege denied to others, and would not promote equal justice.~~

~~(ii) The variance is in harmony with the general purpose and intent of the Catawba River Basin's riparian buffer protection requirements and preserves its spirit; and~~

~~(iii) In granting the variance, the public safety and welfare have been assured, water quality has been protected, and justice has been done.~~

~~(b) Variance requests shall be reviewed and approved based on the criteria in Sub-Item (9)(a) of this Rule by either the Division or the approved local government pursuant to G.S. 153A, Article 18, or G.S. 160A, Article 19. The Division or the approved local government may attach conditions to the variance approval that support the purpose, spirit and intent of the riparian buffer protection program. Requests for appeals of decisions made by the Division shall be made to the Office of Administrative Hearings. Request for appeals of decisions made by the approved local government shall be made to the appropriate Board of Adjustment under G.S. 160A-388 or G.S. 153A-345 for determinations made by the approved local government.~~

(10) MITIGATION. Persons who wish to undertake uses designated as allowable with mitigation upon authorization as defined in Sub-Item (9)(a)(iii) of this Rule or allowable with exeption as defined in Sub-Item (9)(a)(v) of this Rule shall meet the following requirements in order to proceed with their proposed ~~use.~~use:

(a) Obtain ~~a determination of "no practical alternatives" to the proposed use~~an Authorization Certificate pursuant to ~~Item (8) of this Rule.~~Rule .0705 of this Section; and

(b) Obtain written approval for a mitigation proposal pursuant to ~~15A NCAC 02B .0244.~~Rule .0704 of this Section.

~~(11) REQUIREMENTS SPECIFIC TO FOREST HARVESTING. The following requirements shall apply for forest harvesting operations and practices.~~

~~(a) The following measures shall apply in Zone 1 of the riparian buffer:~~

~~(i) Logging decks and sawmill sites shall not be placed in the riparian buffer.~~

~~(ii) Timber felling shall be directed away from the water body.~~

Commented [HK196]: Moved to Rule .0705

Commented [HK197]: No effect – clarification and updated citation

Commented [HK198]: No effect – punctuation

Commented [HK199]: No effect – updated terminology

Commented [HK200]: No effect – update citation

Commented [HK201]: No effect - clarification

Commented [HK202]: No effect – updated citation

(iii) Skidding shall be directed away from the water body and shall be done in a manner that minimizes soil disturbance and prevents the creation of channels or ruts in accordance with 15A NCAC 01I .0203 as enforced by the Division of Forest Resources.

(iv) Individual trees may be treated to maintain or improve their health, form or vigor.

(v) Harvesting of dead or infected trees or application of pesticides necessary to prevent or control tree pest and disease infestation shall be allowed. These practices must be approved by the Division of Forest Resources for a specific site pursuant to this Rule. The Division of Forest Resources must notify the Division of all approvals.

(vi) Removal of individual trees that are in danger of causing damage to structures or human life shall be allowed.

(vii) Natural regeneration of forest vegetation and planting of trees, shrubs, or ground cover plants to enhance the riparian buffer shall be allowed provided that soil disturbance is minimized. Plantings shall consist primarily of native species.

(viii) Prescribed burns shall not be allowed.

(ix) Application of fertilizer shall not be allowed except as necessary for permanent stabilization. Broadcast application of fertilizer or herbicides to the adjacent forest stand shall be conducted so that the chemicals are not applied directly to or allowed to drift into the riparian buffer.

(b) In Zone 1, forest vegetation shall be protected and maintained. Selective harvest as provided for below is allowed on forest lands that have a deferment for use value under forestry in accordance with G.S. 105-277.2 through G.S. 277.6 or on forest lands that have a forest management plan prepared or approved by a registered professional forester. Copies of either the approval of the deferment for use value under forestry or the forest management plan shall be produced upon request. For such forest lands, selective harvest is allowed in accordance with the following:

(i) Tracked or wheeled vehicles are not permitted except at stream crossings designed, constructed and maintained in accordance with 15A NCAC 01I .0203 as enforced by the Division of Forest Resources.

(ii) Soil disturbing site preparation activities are not allowed.

(iii) Trees shall be removed with the minimum disturbance to the soil and residual vegetation.

(iv) The following provisions for selective harvesting shall be met:

(A) The first 10 feet of Zone 1 directly adjacent to the stream or waterbody shall be undisturbed except for the removal of individual high value trees as defined.

~~(B) In the outer 20 feet of Zone 1, trees greater than 12 inch diameter stump may be cut and removed. The reentry time for harvest shall be no more frequent than every 15 years, except on forest plantations where the reentry time shall be no more frequent than every five years. In either case, the trees remaining after harvest shall be as evenly spaced as possible.~~

~~(c) In Zone 2, harvesting and regeneration of the forest stand shall be allowed in accordance with 15A NCAC 01I .0100 – .0200 as enforced by the Division of Forest Resources.~~

Commented [HK203]: Moved to Rule .0706

(11) DELEGATION OF AUTHORITY FOR THE PROTECTION AND MAINTENANCE OF EXISTING RIPARIAN BUFFER. The following set out the requirements for delegation of the responsibility for implementing and enforcing the Catawba River riparian buffer protection program, as described in this Rule, to local governments.

Commented [HK204]: Moved from (3) above

(a) The Commission shall grant local government delegation of the Catawba River Riparian Buffer Protection requirements as described in this Rule according to the following procedures:

(i) Local governments within the Catawba River may submit a written request to the Commission for authority to implement and enforce the Catawba River riparian buffer protection requirements within their jurisdiction by establishing a riparian buffer program to meet the requirements of this Rule. The written request to establish a riparian buffer program shall include the following:

(A) Documentation that the local government has land use jurisdiction along the Catawba River mainstem below Lake James and along mainstem lakes in the Catawba River Basin. This can be demonstrated by delineating the local land use jurisdictional boundary on the USGS 1:24,000 topographical map(s) or other finer scale map(s);

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

Commented [HK205]: Changed approval from Division to Commission; Clarifications – requirements for delegation consistent with all other buffer rules

(C) The local government ordinances, resolutions, or regulations necessary to establish a riparian buffer program to meet the requirements of rhis Rule, which shall include the following requirements: (1) All riparian protection areas shall be recorded on all new or modified plats; (2) The land within a riparian buffer area shall not be treated as if the land is the property of the state or any of its subdivisions unless the land or an interest therein has been acquired by the state or its subdivision by a conveyance or by eminent domain; (3) Land within a riparian buffer area

in which neither the State nor its subdivisions holds any property interest may be used by the property owner to satisfy any other development-related regulatory requirements based on property size, including, but not limited to, residential density and nonresidential intensity calculations and yields, tree conservation purposes, open space or conservation area requirements, setbacks, perimeter buffers, and lot area requirements; (4) When riparian buffer requirements are placed outside of lots in portions of a subdivision that are designated as common areas or open space and neither the State nor its subdivisions holds any property interest in that riparian buffer area, the local government shall attribute to each lot abutting the riparian buffer area a proportionate share based on the area of all lots abutting the riparian buffer area for purposes of development-related regulatory requirements based on property size, including, but not limited to, residential density and nonresidential intensity calculations and yields, tree conservation purposes, open space or conservation area requirements, setbacks, perimeter buffers, and lot area requirements; and (5) A requirement that no new clearing, grading or development take place nor any new building permits be issued in violation of this Rule.

(D) The local government has provided a plan to address violations with civil or criminal remedies and actions as well as remedies that shall restore buffer functions on violation sites and provide a deterrent against the occurrence of future violations.

(ii) If the local government is establishing a riparian buffer program that exceeds the requirements set forth this Rule in order to comply with or implement federal or state law, or as a condition of a permit, certificate, or other approval issued by a federal or state agency, the local government shall provide supporting documentation with their request for Commission approval.

(iii) If the local government is establishing a riparian buffer program that exceeds the requirements set forth in this Rule not as a requirement to comply with or implement federal or state law and not as a condition of a permit, certificate, or other approval issued by a federal or state agency, the local government shall provide scientific studies of the local environmental and physical conditions that support the necessity of the buffer requirements that exceed those established in this Rule. The Commission shall not approve the ordinance unless it finds that the scientific evidence presented by the local government supports the necessity of a riparian buffer program that exceeds the requirements set forth in this Rule.

Commented [HK206]: Added to comply with SL 2015-246

Commented [HK207]: Clarification – requirements for delegation consistent with all other buffer rules

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

(b) The Division has jurisdiction to the exclusion of local governments to implement the requirements of this Rule for the following types of activities:

(i) Activities undertaken by the State;

(ii) Activities undertaken by the United States;

(iii) Activities undertaken by multiple jurisdictions;

(iv) Activities undertaken by local units of government;

(v) Forest harvest activities described in Rule .0706 of this Section; and

(vi) Agricultural activities.

(c) Delegated local governments shall maintain on-site records for a minimum of five years. Delegated local governments must furnish a copy of these records to the Division within 30 calendar days of receipt of a written request for the records. Each delegated local government's records shall include the following:

(i) A copy of Authorization Certificate with Exception requests;

(ii) The Authorization Certificate with Exception request's finding of fact;

(iii) The result of the Authorization Certificate with Exception proceedings;

(iv) A record of complaints and action taken as a result of the complaint;

(v) Records for stream origin calls and stream ratings; and

(vi) Copies of request for authorization, records approving authorization and Authorization Certificates.

(d) The Division shall regularly audit delegated local governments to ensure the local programs are being implemented and enforced in keeping with the requirements of this Rule.

(e) Upon determination by the Division that a delegated local government is failing to implement or enforce the Catawba River riparian buffer protection requirements in keeping with the request approved under Sub-Item (14)(a)(iv) of this Rule, the Commission shall notify the delegated local government in writing of the local program's inadequacies. If the delegated local government has not corrected the deficiencies within 90 calendar days of receipt of the written notification, then the Commission shall rescind the delegation of authority to the local government and the Division shall implement and enforce the Catawba River riparian buffer protection requirements within their jurisdiction.

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

Commented [HK208]: Added to comply with SL 2015-246

Commented [HK209]: Moved from (3) above

Commented [HK210]: Clarification

Commented [HK211]: Added to comply with SL 2005-447

Commented [HK212]: Clarification; consistent with more recent buffer rules

Commented [HK213]: Clarification – requirements for delegation consistent with all other buffer rules

Commented [HK214]: Moved from (3) above

(12) OTHER LAWS, REGULATIONS AND PERMITS. In all cases, compliance with this Rule does not preclude the requirement to comply with all federal, state and local regulations and laws. ~~Whichever regulation is more restrictive shall apply.~~

History Note: *Authority G.S. 143-214.1; 143-214.7; 143-215.3(a)(1); S.L. 1999, c. 329, s. 7.1; S.B 824-2003; Temporary Adoption Eff. June 30, 2001; (exempt from 270 day requirement - S.L. 2001-418 & S.L. 2003-340).*
Eff. August 1, 2004.

Commented [HK215]: Removed – unnecessary language

15A NCAC 02B .0620 is proposed for adoption as follows:

15A NCAC 02B .0620 WATER SUPPLY WATERSHED PROTECTION PROGRAM: PURPOSE

The purpose of this Rule and Rules .0621 through .0624 of this Section is to implement G.S. 143-214.5, which requires the Commission to adopt rules that establish minimum statewide water supply watershed protection requirements applicable to each Water Supply classification to protect the water quality of public surface water supplies. Water Supply classifications are set forth in 15A NCAC 02B .0212 through .0218.

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

Commented [JV1]: The current rules do not have a purpose statement. Also thought it was useful to point to WS classifications in Section .0300. *No substantive change*

15A NCAC 02B .0621 is proposed for adoption as follows:

15A NCAC 02B .0621 WATER SUPPLY WATERSHED PROTECTION PROGRAM: DEFINITIONS

The definition of any word or phrase in Water Supply Watershed Protection Program Rules .0621 through .0624 of this Section shall be the same as given in Article 21, Chapter 143 of the General Statutes of North Carolina, as amended. Definitions set forth in 15A NCAC 02B .0202 are incorporated herein by reference. Other words and phrases used in Rules .0622 through .0624 of this Section are defined as follows:

(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 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.)~~ "Built-upon Area" has the same meaning as in G.S. 143-214.7.

(3) "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.

(4) "Commission" means the North Carolina Environmental Management Commission.

(5) "Common plan of development" has the same meaning as in 15A NCAC 02H .1002, which is herein incorporated by reference, as amended.

(6) "Curb Outlet System" has the same meaning as in 15A NCAC 02H .1002.

(7) "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~~ that increases the amount of built-upon area or that otherwise decreases the infiltration of precipitation into the ~~soil~~ subsoil.

(8) "Dispersed flow" has the same meaning as in 15A NCAC 02H .1002.

(9) "Division" means the Division of ~~Water Quality~~ Energy, Mineral, and Land Resources or its successors.

(10) "Erosion and Sedimentation Control Plan" means any plan, amended plan, or revision to an approved plan submitted to the Division of Energy, Mineral, and Land Resources or a delegated authority in accordance with G.S. 113A-57.

(11) "Existing development" ~~for projects that do not require a state permit, shall be defined as~~ means 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,

Commented [A1]: Definitions for other terms including Critical Area, Protected Area will remain in 2B .0202. *No substantive change.*

Commented [A2]: EMC issued interpretive ruling in 2006 that Water Supply program should use same definition of the term "built-upon area" as in 2H .1002. Legislation has since made changes to the definition in 2H .1002 which allow areas of #57 stone to be considered pervious. *Less stringent*

or such earlier time that an affected local government's ordinance shall specify, based on at least one of the following criteria:

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

(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.~~

(12) "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 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.

(13) "Geotextile fabric" has the same meaning as in 15A NCAC 02H .1002.

(14) "Intermittent stream" has the same meaning as in 15A NCAC 02B .0233.

(15) "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.~~ that is not a "minor variance" as that term is defined in this Rule.

(16) "Minimum Design Criteria" or "MDC" has the same meaning as in 15A NCAC 02H .1002.

(17) "Minor variance" means a variance from the minimum statewide watershed protection rules that results in the 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.~~ 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 5 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 footprint of built-upon area proposed to encroach within the vegetated setback divided by the total area of vegetated setback within the project.

Commented [A3]: Don't need dates for state-issued permits in the Section .0600 WS rules since these rules only deal with local government-issued permits. Language regarding effective dates of the WS rules for landfills, NPDES, land application will stay in 2B .0104(d). *No substantive change.*

Commented [A4]: New definition to go along with new definition of "BUA" in G.S. 143-214.7 which allows #57 stone to be considered pervious as long as it's laid 4" thick on "geotextile fabric." *No substantive change*

Commented [A5]: Excluding "any variation in the design, maintenance or operation requirements of a wet detention pond or other approved stormwater management system" from definition because 1) a variance to O&M doesn't make any sense and 2) variations to design of SCMs already allowed as "alternatives" and so don't need a variance.

Commented [A6]: New language - clarification of common question. *No substantive change.*

(18) "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~~. Rule .0624 of this Section.

(19) "NPDES" means National Pollutant Discharge Elimination System.

(20) "Perennial stream" has the same meaning as in 15A NCAC 02B .0233.

(21) "Perennial waterbody" has the same meaning as in 15A NCAC 02B .0233.

(22) "Primary SCM" has the same meaning as in 15A NCAC 02H .1002.

(23) "Project" means the proposed development activity for which an applicant is seeking approval in accordance with Rules .0620 through .0624 of this Section. A project shall exclude any land adjacent to the area disturbed by the project that has been counted as pervious by any other development regulated under a federal, State, or local stormwater regulation. Owners and developers of large developments consisting of many linked projects may consider developing a master plan that illustrates how each project fits into the design of the large development.

(24) "Redevelopment" means any land disturbing activity that does not result in a net increase in built-upon area and that provides greater or equal stormwater control to that of the previous development.

(25) "Required storm depth" has the same meaning as in 15A NCAC 02H .1002.

(26) "Runoff treatment" has the same meaning as in 15A NCAC 02H .1002.

(27) "Runoff volume match" has the same meaning as in 15A NCAC 02H .1002.

(28) "Secondary SCM" has the same meaning as in 15A NCAC 02H .1002.

(29) "Stormwater Control Measure" or "SCM" has the same meaning as in 15A NCAC 02H .1002.

(30) "Vegetated setback" means an area of natural or established vegetation adjacent to surface waters, through which stormwater runoff flows in a diffuse manner to protect surface waters from degradation due to development activities.

(31) "Vegetated conveyance" means a permanent, designed waterway lined with vegetation that is used to convey stormwater runoff at a non-erosive velocity within or away from a developed area.

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

Commented [A7]: Replacing term "perennial waters" which is used in current WS rule, but is not defined. *No substantive change.*

Commented [A8]: Clarification - this term has not been defined in our rules before, but new definition not changing effect of rule. *No substantive change.*

Commented [A9]: Clarification - not defined in current WS rule 2B .0202. *No substantive change.*

15A NCAC 02B .0622 is proposed for adoption as follows:

15A NCAC 02B .0622 WATER SUPPLY WATERSHED PROTECTION PROGRAM: APPLICABILITY AND EFFECTIVE DATES

All local governments that have land use authority within classified water supply watersheds are subject to this Rule and Rules .0621 through .0624 of this Section. Administration and enforcement of this Rule and Rules .0621 through .0624 of this Section shall be the responsibility of the adopting local government within its jurisdiction. In addition, State-owned projects, silviculture activities, and agricultural activities are subject to these rules pursuant to G.S. 143-214.5 (i) and Items (3), (4), and (5) of this Rule, as applicable.

(1) RELATION TO OTHER RULES. In addition to the requirements set forth in this Rule, and Rules .0621 through .0624 of this Section, the requirements set forth in the following rules shall also apply:

(a) 15A NCAC 02B .0104 – Considerations/Assigning/Implementing Water Supply Classifications;

(b) 15A NCAC 02B .0202 – Definitions;

(c) Item (1) of 15A NCAC 02B .0212 through .0218 addressing best usages;

(d) Item (2) of 15A NCAC 02B .0212 through .0218 addressing general prohibitions on and allowances for domestic and industrial wastewater discharges;

(e) Item (3) of 15A NCAC 02B .0212 through .0218 addressing waste discharge limitations, aesthetic and human health standards, and general prohibitions on and allowances for landfills and land application of residuals and petroleum contaminated soils;

(f) 15A NCAC 02H .1050 – MDC for all Stormwater Control Measures;

(g) 15A NCAC 02H .1051 through .1062 – MDC for specific stormwater control measures; and

(h) Rule 15A NCAC 02T .1109 (b)(1)(L) – Operation and Management Practices for land application of residuals.

(2) EFFECTIVE DATES. For the purposes of implementing the requirements of this Rule, Rules .0621 through .0624 of this Section, and G.S. 143-214.5, the effective dates set forth in 15A NCAC 02B .0104(d) shall apply.

(3) STATE-OWNED PROJECTS. State-owned projects, with the exception of North Carolina Department of Transportation (NCDOT) projects, that are located in designated water supply watersheds shall comply with the stormwater management requirements of this Section and G.S. 143-214.5(i). For NCDOT projects, the construction of new roads and bridges shall minimize built-upon area, divert stormwater away from surface water supply waters as much as possible, and employ best management practices to minimize water quality impacts. To the extent practicable based on site-specific conditions and cost considerations, the construction of new roads in a critical area shall be avoided. ~~The Department of Transportation shall use BMPs as outlined~~

Commented [JV1]: The current rule does not list other applicable rules. This is here for clarity only. *No substantive change.*

Commented [JV2]: Req't of N.C.G.S. 143-214.5 *No substantive change.*

~~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.~~NCDOT projects shall be in compliance with NPDES Permit No. NCS000250.

(4) SILVICULTURE. ~~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.~~ The North Carolina Forest Service (NCFS) shall be the designated agency for oversight of compliance with the water supply watershed protection requirements of this Section, insofar as their authority allows, for silviculture activities occurring within designated water supply watersheds. Silviculture activities that comply with the provisions of the Forest Practices Guidelines Related to Water Quality (02 NCAC 60C, herein incorporated by reference with subsequent amendments and editions and available at no cost at http://www.ncoah.com/rules/) and other applicable forestry water quality standards as determined by NCFS shall be deemed compliant with the water supply watershed protection requirements of this Section.

(5) AGRICULTURE. ~~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;~~ Agricultural activities are not subject to the stormwater management requirements of this Section.

History Note: *Authority G.S. 143-214.1; 143-214.5; 143-215.3(a)(1);*
The provisions of this Rule were previously codified in 15A NCAC 02B .0104.

Commented [VJ3]: Got NCDOT's okay on this language. *No substantive change.*

Commented [JV4]: Got NCFS okay on this language. *No substantive change.*

Commented [JV5]: This provision has not been implemented, likely because it is vague ("or equivalent control") and there is no mechanism of oversight for compliance. *Less stringent.*

15A NCAC 02B .0623 is proposed for adoption as follows:

15A NCAC 02B .0623 WATER SUPPLY WATERSHED PROTECTION PROGRAM: PROGRAM ADMINISTRATION

This Rule contains provisions for the administration of water supply watershed protection programs.

(1) All local governments that have land use authority within designated water supply watersheds shall adopt and enforce ordinances and watershed maps that ~~at a minimum~~ meet or exceed the requirements of G.S. 143-214.5 ~~and this Subchapter~~ and Rules .0621 through .0624 of this Section. Local governments may adopt and enforce more stringent controls. ~~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.~~ Local governments shall have the option to use the Commission's model Watershed Protection Ordinance available at no cost at http://watersupplywatershed.nc.gov as the basis for their ordinance, or they shall have the option to propose an alternative ordinance that meets or exceeds the requirements of this Section.

(2) SCHEDULE OF IMPLEMENTATION. ~~Affected local government drinking water supply protection ordinances shall become effective on or before these dates.~~ Local governments shall adopt, make effective, and begin implementing the required water supply watershed protection ordinance (or equivalent ordinance) and watershed map in accordance with the effective dates set forth in 15A NCAC 02B .0104(d).

(3) COMMISSION APPROVAL. Local government water supply watershed protection ordinances (or equivalent ordinances) and watershed maps shall be submitted to the Division for approval by the Commission or its designee no later than 270 days after receiving notice of a water supply reclassification from the Commission. ~~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~~ The Commission or its designee shall approve the water supply watershed protection ordinance and map if it meets or exceeds the minimum statewide water supply watershed management requirements adopted pursuant to this Section and G.S. 143-214.5. ~~Local governments may choose to adopt, implement and enforce these provisions prior to this date.~~ The local government may begin implementing the ordinances prior to receiving approval by the Commission. ~~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.~~ The following items shall be included in the submission in either paper or electronic format:

Commented [VJ1]: Updated instructions on where to find Model Ordinance *No substantive change.*

Commented [JV2]: 270 day timeframe is from N.C.G.S. 143-214.5(c) *No substantive change.*

Commented [VJ3]: Current rule doesn't specify paper vs electronic. *No substantive change.*

(a) One copy of the adopted and effective relevant ordinance;

(b) A cover letter from the local government's legal counsel, municipal or county clerk, or municipal or county manager certifying that the ordinance meets or exceeds the requirements of this Section and G.S. 143-214.5; and

(c) ~~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.~~ One copy of a watershed map showing the local government corporate and extraterritorial jurisdictional boundaries, the Commission's adopted watershed boundaries, the local government's interpreted watershed boundaries, and U.S. Geological Survey 1:24,000 (7.5 minute) scale topographic contour lines and hydrography.

(4) WATERSHED BOUNDARY INTERPRETATION. Major landmarks such as highways or property lines may be used to delineate the outer boundary of the critical and protected areas if these landmarks are immediately adjacent to the appropriate outer boundary of 1/2 mile for the critical area or five or ten miles for the protected area. ~~Local governments may extend the critical area as needed.~~ Local governments may extend the critical and protected area boundaries beyond the minimum distance required; however, these extended local boundaries shall not affect administration of state permits unless the boundaries are also adopted by the Commission. 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 shall rely primarily on U.S. Geological Survey topographic maps, land surveys conducted by licensed surveyors, Lidar data, or information from the U.S. Army Corps of Engineers in approximating the location of backwaters.

(5) REVISIONS TO ORDINANCES AND MAPS. ~~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.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.~~ Revisions to local watershed supply watershed protection ordinances and watershed maps shall be submitted to the Commission or its designee for approval. The submission requirements set forth in Item (3) of this Rule shall apply to all subject revisions. In addition, revisions to ordinances shall be submitted in a format that identifies the changes adopted or being proposed, as applicable. The local government may adopt and begin implementing the revised ordinance prior to receiving approval by the Commission or its designee; ~~All revisions (expansions or deletions) to these areas must be submitted to the Division~~

Commented [JV4]: From the "critical area" and "protected area "definitions in 2B .0202. *No substantive change.*

Commented [JV5]: Clarification on this needed because have been some issues with land application permitting in critical areas that have been extended by local governments, but not recognized by State. *No substantive change.*

Commented [JV6]: This is new clarification. Current rule does not give any specifics on how to approximate NPE. *No substantive change.*

Commented [JV7]: Took out language about modifying Model ordinance. Although we will do this, it is not necessary to require it in rule. *No substantive change.*

~~and approved by the Commission prior to local government revision.~~ however, revisions (expansions or deletions) to watershed maps shall be approved by the Commission or its designee prior to local government adoption.

(6) VARIANCES. ~~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:~~ For all proposed major and minor variances, as those terms are defined in Rule .0621 of this Section, from the minimum statewide watershed protection rules, the local Watershed Review Board, or equivalent quasi-judicial body, shall make findings of fact in accordance with the procedures of S.L. 2013-126 and Article 18 of G.S. 153A or Article 19 of G.S. 160A, as appropriate, showing that:

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

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

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

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. 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. The local Watershed Review Board, or equivalent local quasi-judicial body, shall have the power to authorize minor variances for development activities on a case-by-case basis. For major variances, if 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. If the Commission approves the major variance or approves the variance with conditions or stipulations added, then the Commission shall prepare a decision that authorizes the local Watershed Review Board to issue a final decision that includes any conditions or stipulations added by the Commission. If the Commission denies the major variance, then the Commission shall prepare a decision to be sent to the local Watershed Review Board. The local Watershed Review Board shall prepare a final decision denying the major variance. Appeals from the local government decision on a major or minor variance request shall be 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

Commented [JV8]: Eliminating requirement to submit annual report on variances; instead, will require these records to be made available upon request. See Item (7) of this Rule. *Less stringent*

Commented [VJ9]: Added for clarity *No substantive change.*

state's minimum watershed protection requirements, 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 watershed protection requirements.

(7) RECORDKEEPING REQUIREMENTS. Local governments shall maintain the following records and furnish a copy of these records to the Division upon request:

(i) A copy of all variance requests and associated documents;

(ii) Findings of fact on all variance requests;

(iii) ~~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.~~ A description of all projects for which the local government has granted a variance to the requirements of this Section;

(vi) An accounting of projects approved under the local government's 10/70 Option (as described in Rule .0624 of this Section), as applicable; and

(v) ~~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.~~ Records of inspections of SCMs pursuant to Item (8) of this Rule.

(8) OPERATION AND MAINTENANCE OF SCMS. Wherever in this ~~Subchapter~~ Section it is provided that local governments assume responsibility for operation and maintenance of engineered SCMs, this shall be construed to require responsible local governments to either inspect such SCMs or require the owners of such SCMs to inspect such SCMs at least once per year to determine whether the SCMs are performing as designed and intended. Records of inspections shall be maintained on forms made available by the Division at http://watersupplywatershed.nc.gov/ or the local government. The inspection form shall include the following:

(a) project name;

(b) owner name and address;

(c) name and classification of the water supply watershed where the project is located;

(d) type(s) of SCMs at the project site;

(e) summary of repairs or maintenance needed; and

(f) estimated timeframe for completion of the repairs or maintenance.

In the event an inspection shows that an SCM is not performing ~~adequately~~ as designed and intended, the local government shall order the owning entity to take corrective actions. If the entity fails to take corrective actions, the local government may impose civil penalties and pursue other available remedies in accordance with State and local law, including without limitation: G.S. 14-4; G.S. 77-13; G.S. 77-14; G.S. 143-214.7; G.S. 143-215.6A; G.S. 153A-123; G.S. 160A-459; and G.S. 160A-175.

Commented [JV10]: Current rule requires submission of variance information on an annual basis. This proposed rule will require local governments to make that information available upon request instead of submitting them. *Less stringent*

Commented [JV11]: 10/70 accounting not currently specified in rule; but see this as a clarification of the requirement not to exceed 10 percent of local government jurisdiction. *No substantive change.*

Commented [JV12]: Already allow this, but wanted to formalize in rule that the local governments themselves do not have to conduct the inspections. *No substantive change.*

Commented [JV13]: RRC requiring us to codify the substantive contents of all forms. *No substantive change.*

Commented [JV14]: RRC requiring us to specify which laws. *No substantive change.*

(9) 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, landfills, mining, on-site sanitary sewage systems which utilize ground adsorption, toxic and hazardous materials, transportation, and water-based recreation.

(10) In the event that the Commission determines that a local government program has failed to adopt or implement its program in compliance with the water supply watershed protection requirements of this Section and G.S. 143-214.5, the Commission shall take appropriate enforcement action in accordance with G.S. 143-214.5 and 143-215.6A(e). 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~~ requirements of this ~~Subchapter~~ Section shall be approved by the Commission or its designee prior to local government issuance.

(11) The Commission may delegate such matters as variance approval, extension of deadlines for submission of ~~corrected~~ ordinances, and assessment of civil penalties pursuant to G.S. 143-214.5(e) to the Director.

History Note: *Authority G.S. 143-214.1; 143-214.5; 143-215.3(a)(1);*
The provisions of this Rule were previously codified in 15A NCAC 2B .0104.

Commented [VJ15]: Added for clarity. *No substantive change.*

15A NCAC 02B .0624 is proposed for adoption as follows:

15A NCAC 02B .0624 WATER SUPPLY WATERSHED PROTECTION PROGRAM: NONPOINT SOURCE AND STORMWATER POLLUTION CONTROL

The purpose of this Rule is to minimize the impact of stormwater runoff from development on the water quality of public surface water supplies and to protect their designated uses as public water supplies.

(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 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 a Sedimentation and Erosion Control Plan.

(3) EXCLUSIONS. The following shall not be subject to this Rule:

(a) ~~Existing development is not subject to the requirements of these Rules~~ Existing development;

(b) ~~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~~. Redevelopment, except that there are no restrictions on single-family residential redevelopment;

(c) ~~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~~ Nonconforming lot of record that is not contiguous to any other lot owned by the same party and if it is to be developed for single-family residential purposes. Local governments may 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 this Section;

(d) Any lot or parcel created as part of a family subdivision after the effective date of the local watershed ordinance if it is to be developed for one single-family detached residence and if it is exempt from a local subdivision ordinance. 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~~ this Rule, except that such a lot or parcel shall meet the

Commented [JV1]: See also definition of redevelopment. *No substantive change.*

~~minimum buffer requirements~~ vegetated setback requirements set forth in Item (12) of this Rule to the maximum extent practicable. In determining whether this criteria has been met, the local government shall take into account site-specific factors including technical and cost considerations as well as protection of water quality;

(e) Silviculture activities except as required by Item (4) of Rule .0622 of this Section;

(f) Agricultural activities; and

(g) NCDOT activities that are regulated in accordance with the provisions of NPDES Permit No. NCS000250.

(4) 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 (WS-I, WS-II, WS-III, WS-IV, WS-V), its relative location in the watershed (Critical Area versus Balance of Watershed or Protected Area), its project density (low density versus high density), and the type of development (single-family detached residential versus all other types):

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 square foot lot excluding roadway right-of-way or 12%	12% built-upon area	12 to 30% built-upon area

Commented [JV2]: New language in rule about specific allowable uses. Current rule 2B .0212 only specifies that the watershed remain "essentially natural and undeveloped." Model Ordinance lists out the allowable uses as listed here. *No substantive change.*

Commented [VJ3]: Table is new format. Currently, the numerical limits are contained in paragraph format within each WS classification rule. Did not make any changes to numerical limits. As an example, current rule for WS-II-CA:

"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"
No substantive change.

Commented [JV4]: New allowance to use BUA% for single family development – same for every WS classification. *Less stringent*

		built-upon area		
WS-III	Critical Area	1 dwelling unit per 1 acre or 40,000 square foot lot excluding roadway or 12% built-upon area right-of-way	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			

(5) 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 shall have the option of calculating 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 Section. Where there is a net increase of built-upon area, only the area of net increase shall be subject to this Section. 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 Section;

(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 shall have the option to 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.

(6) LOW DENSITY PROJECTS. In addition to complying with the project density requirements of Item (4) of this Rule, low density projects shall comply with the following:

(a) VEGETATED CONVEYANCES. Stormwater runoff from the ~~development~~ 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;

Commented [JV5]: New option to design project to maximize disperse flow instead of relying on traditional vegetated swales. Dispersed flow is more effective for removal of pollutants. *Less stringent.*

Commented [VJ6]: Clarification on what is meant by "maximum extent practicable." *No substantive change.*

Commented [JV7]: New clarification. It has been understood that conveyances that are approved as part of a permitted project need to be maintained. *No substantive change.*

Commented [JV8]: New guidance for designing a vegetated conveyance system that will be maintained in perpetuity and convey stormwater at a non-erosive velocity. These same criteria are contained in 2H .1000 stormwater rules as requirements rather than guidance. *No substantive change.*

(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, where practicable. Where not practical due to physical constraints, 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 Parts (i) through (v) of this Sub-Item.

(7) HIGH DENSITY PROJECTS. In addition to complying with the project density requirements of Item (4) of this Rule, high density projects shall comply with the following:

~~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.~~

(i) ~~engineered stormwater controls must be used to control runoff from the first inch of rainfall~~

(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;

Commented [JV9]: Same as req'ts for swales that are in curb outlet systems *No substantive change.*

Commented [VJ10]: New option to use curb outlets instead of vegetated conveyances. In practice, we have allowed this for years if the curb outlet systems are designed in accordance with 15A NCAC 2H .1008(g). *Less stringent*

Commented [VJ11]: Outdated reference. Language from 2H .1003 moved to 2H .1008 years ago. *No substantive change.*

Commented [JV12]: Mirrors language in proposed 2H .1000 stormwater rules. *No substantive change.*

Commented [JV13]: Current rule requires wet ponds first, then allows alternative systems as approved by Director on case-by-case basis. This greatly expands types of SCMs that can be used, although in practice, we have been allowing local governments to use SCMs contained in our Stormwater BMP Manual. *Less stringent*

(b) REQUIRED STORM DEPTH. 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) OFF-SITE STORMWATER. Stormwater runoff from off-site areas and "existing development," as that term is defined in Rule .0621 of this Section, is not 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) MDC FOR SCMS. SCMs shall meet the relevant MDC set forth in Rules .1050 through .1062 of Subchapter 2H of this Chapter.

(e) STORMWATER OUTLETS. 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.

(8) 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 (4) of this Rule, as appropriate:

(a) Local government shall have the option to allow only low density development in their water supply watershed areas in accordance with this Section.

(b) Local governments shall have the option to 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 shall have the option to regulate new development under the 10/70 option in accordance with the following requirements:

(i) ~~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 maximum of 10 percent of the land area of the 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) ~~A maximum of 10 percent of each jurisdiction's portion of the watershed outside~~

Commented [JV14]: Equivalent to existing requirement to "control runoff from the first inch of rainfall." *No substantive change.*

Commented [JV15]: New allowance for all SCMs, although already allowed in current rule for SCMs other than wet ponds. See struck-thru language above in (a). *Less stringent*

Commented [VJ16]: Not a new requirement. Current rule/Model Ordinance requires compliance with 15A NCAC 2H .1000 stormwater rules which has design guidelines and references the state's BMP Manual. Proposed stormwater rules 2H .1050 - .1062 are codifying all requirements from BMP Manual. *No substantive change.*

Commented [VJ17]: Isn't stated this way in current rule, but is understood with phrases like "If local governments choose the high density development option. . . ." Clarified here to help answer common question we get about whether a local government HAS to offer the high density option. *No substantive change.*

Commented [JV18]: Current rule only allows SF residential development to meet dwelling unit per acre or minimum lot size requirement. This new provision allows that type of development to meet the BUA percentage criteria instead. Also, makes it clear that a local gov't could choose to apply two or three of these provisions, which some have chosen to do. *Less stringent*

~~of the critical area as delineated on July 1, 1993~~ 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) ~~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~~ Projects that are covered under the 10/70 option shall comply with the low density requirements set forth in Item (6) of this Rule unless the local government allows high density development, in which case the local government shall have the option to require these projects to comply with the high density requirements set forth in Item (7) 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 orderly and 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 ~~wet detention pond or other approved stormwater control system~~ SCM is sized to

Commented [JV19]: New language to account for water supply watersheds that have been and will be classified since the original adoption of the WS rules. *No substantive change.*

Commented [JV20]: Same goes for 10/70 option when used in Class WS-III and IV; *No substantive change.*

Commented [JV21]: New option to allow local governments to offer both the 10/70 option and the high density option in the same watershed. *Less stringent*

Commented [VJ22]: Basically stating this limit in another way from Item (1). It's a common question we get. *No substantive change.*

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.

(9) CLUSTER DEVELOPMENT. Cluster development shall be allowed on a project-by-project basis as follows:

(a) ~~Overall density of the project meets associated density or stormwater control requirements under 15A NCAC .0200.~~ Overall density of the project shall meet the requirements of Item (4) of this Rule;

(b) ~~Buffers meet the minimum statewide water supply watershed protection requirements;~~Vegetated setbacks shall meet the requirements of Item (12) 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 ~~transport stormwater runoff by vegetated conveyances to the maximum extent practicable.~~ comply with Item (6) of this Rule.

(10) 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).

(11) RESPONSIBILITY FOR SCM OPERATION & MAINTENANCE. Operation and maintenance agreements and plans are required for SCMs in accordance with 15A NCAC 02H .1050. ~~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.~~ Local governments that allow high density development shall assume ultimate responsibility for operation and maintenance of the SCMs that they approve.

(12) VEGETATED SETBACKS. ~~A minimum 100 foot vegetative buffer shall be required for all new~~

Commented [VJ23]: Clarification on what is meant by "maximum extent practicable" *No substantive change.*

Commented [VJ24]: Density averaging provisions - see G.S. 214.5 *No substantive change.*

Commented [VJ25]: Updates reference from stormwater rule 2H .1003 to 2H .1050 *No substantive change.*

~~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. 1:24,000 (7.5 minute) scale topographic maps or as determined by local government studies.~~ 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 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 WIDTHS. The following minimum widths shall apply:

(i) Low density projects – 30 feet;

(ii) High density projects – 100 feet; and

(iii) Projects covered under the 10/70 option – 100 feet.

(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 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.~~ 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

Commented [VJ26]: Current definition rule 2B .0202 does not define "perennial waters" or any related term. *No substantive change.*

Commented [VJ27]: Using terms "perennial waterbodies" and "perennial streams" instead of "perennial waters." Adding definitions for those terms in proposed 2B .0621 (point to definitions in buffer rules for consistency). *No substantive change.*

Commented [VJ28]: New provision to allow for possibility that Dept will develop their own stream maps to more accurately depict perennial and intermittent waters. Beginning in 2011, USGS has been transitioning away from distinguishing between intermittent and perennial waters; instead, all streams are shown as perennial.

Commented [VJ29]: Allow for stream determinations to be made where USGS maps do not distinguish between intermittent and perennial streams. This is to account for recent changes to how USGS depicts streams on their maps. Eventually, all streams shown on USGS maps may appear as perennial.

Commented [VJ30]: Clarification -- 100-foot setback already required for development that "exceeds the low density option requirements." Adding as separate sub-item for clarity. *No substantive change.*

Commented [VJ31]: Not specified in current rule, but added here for clarification. Consistent with stormwater and buffer rules. *No substantive change.*

Commented [VJ32]: Not currently stated explicitly in rule, but we get this question a lot. Differentiates WS rule from riparian buffer rule which does not allow clearing and grading. *No substantive change.*

stormwater runoff shall be avoided; and

(e) ~~Nothing in this Rule shall stand as a bar to artificial streambank or shoreline stabilization~~ Artificial streambank and shoreline stabilization shall not be subject to the requirements of this Item.

(13) 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);*
The provisions of this Rule were previously codified in 15A NCAC 02B .0104 and 02B .0212 through .0218.

Last Revised August 18, 2017

15A NCAC 02B .0701 is proposed for adoption as follows:

15A NCAC 02B .0701 NUTRIENT STRATEGIES DEFINITIONS

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

(1) "Active allocation" means that portion of an allocation that has been applied toward and is expressed as a nutrient limit in an NPDES permit.

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

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

(i) Satellite parking facilities;

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

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

Commented [HJ1]:
Change: Definitions for terms used in the Nutrient Management Strategy Rules were moved and combined into this new definitions so it will be easier to locate definitions for the terms used in multiple rules that in the .0700 Section. Definitions remain located in the Nutrient Offset Rule (.0703) and Neuse Wastewater Rule (.0713) for terms used only in those rules.

Effect: Definitions easier to find. No impact on implementation

(4) "Allocation" means the mass quantity, as of nitrogen or phosphorus that a discharger, group of dischargers, or other source is potentially allowed to release into surface waters. Allocations may be expressed as delivered or discharge quantities. Possession of allocation does not authorize the discharge of nutrients but is prerequisite to such authorization in an NPDES permit.

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

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

(7) "Best Management Practice" means the same as defined in Rule .0202 of this Subchapter.

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

(9) "Buffer" means the same as defined in Rule .0202 of this Subchapter.

(10) "Built-upon area" means the same as defined in G.S. 143-214.7(b2).

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

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

(13) "Concentration(s)" means the same as defined in Rule .0202 of this Subchapter.

(14) "Contiguous" means the same as defined in Rule .0202 of this Subchapter.

(15) "Critical area" means the same as defined in Rule .0202 of this Subchapter.

(16) "Cropland" means agricultural land that is used for growing corn, grains, oilseed crops, cotton, forages, tobacco, beans, or other vegetables or fruits.

(17) "Dam" means the same as defined in G.S. 143-215.25.

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

(19) "Delivered", as in delivered allocation, load, or limit, means that portion of the allocation, load, or limit that is measured or predicted to be transported from a nutrient source or discharge to a waterbody. A delivered value equals the corresponding discharge value multiplied by its assigned transport or delivery factor.

(20) "Development" means the same as defined in G.S. 143-214.7.

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

(22) "Discharge," as in discharge allocation, load, or limit means the allocation, load, or limit that is measured at the point of discharge into surface waters. A discharge value is equivalent to a delivered value divided by the transport factor for that discharge location.

(23) "Ditch or canal" means a man-made, open drainage way or channel other than a modified natural stream in or into which excess surface water or groundwater from land, stormwater runoff, or floodwaters flow either ephemerally, intermittently or perennially. On the coastal plain, ditches are typically dug through inter-stream divide areas.

(24) "Division" means the Division of Water Resources of the North Carolina Department of Environmental Quality and its successors.

(25) "Ephemeral stream" means a feature that carries only stormwater in direct response to precipitation with water flowing only during and shortly after large precipitation events. An ephemeral stream may or may not have a well-defined channel, the aquatic bed is always above the perched or seasonal high water table, and stormwater runoff is the primary source of water. An ephemeral stream typically lacks the biological, hydrological, and physical characteristics commonly associated with the continuous or intermittent conveyance of water.

(26) "Existing development" means structures and other land modifications resulting from development activities, other than those associated with agricultural or forest management activities, that meet the following criteria:

(a) For projects that do not require a state permit, they are in place or have established a vested right to construct relative to the effective date of the applicable local stormwater ordinance implemented pursuant to a new development stormwater rule of this Section; and

(b) For projects that require a state permit, they are in place before the effective date established in the applicable state and federal entities stormwater rule of this Section.

(27) "Existing lot" in the Jordan and Randleman Lake watersheds means a lot of two acres in size or less that was platted and recorded in the office of the appropriate county Register of Deeds prior to the effective date of a local ordinance or ordinances enforcing Rules .0724 and .0744 of this Section. For activities listed in Sub-Item (15)(b) of Rule .0724 of this Section and Sub-Item (16)(b) of Rule .0744 of this Section, 'existing lot' in the Jordan and Randleman Lake watersheds means a lot of two acres in size or less that was platted and recorded in the office of the appropriate county Register of Deeds prior to August 11, 2009. "Existing lot" in the Neuse and Tar-Pamlico river basins means a lot of two acres in size or less that was platted and recorded in the office of the appropriate county Register of Deeds prior to August 1, 2000.

(28) "Existing utility line maintenance corridor" means the portion of a utility right of way in which the vegetation has been mowed, cut or otherwise maintained within the last 10 years.

(29) "Fertilizer" means the same as defined in Rule .0202 of this Subchapter.

(30) "Forest management plan" means the same as defined in Chapter 160A-458.5(4).

(31) "Forest plantation" means an area of planted trees that may be conifers (pines) or hardwoods. On a plantation, the intended crop trees are planted rather than naturally regenerated from seed on the site, coppice (sprouting), or seed that is blown or carried into the site.

(32) "Forest vegetation" means the same as defined in Rule .0202 of this subchapter.

(33) "Freshwater" means the same as defined in Rule .0202 of this subchapter.

(34) "Greenway / Hiking Trails" means pedestrian trails constructed of pervious and impervious surfaces and related structures including but not limited to boardwalks, steps, rails, and signage, and that generally run parallel to the surface water.

(35) “High value tree” means a tree that meets or exceeds the following standards: for pine species, 14-inch DBH or greater or 18-inch or greater stump diameter; or for non-pine species, 16-inch DBH or greater or 24-inch or greater stump diameter.

(36) “Industrial discharge(s)” means the same as defined in Rule .0202 of this subchapter.

(37) "Intermittent stream" means a well-defined channel that contains water for only part of the year, typically during winter and spring when the aquatic bed is below the perched or seasonal high water table. The flow may be heavily supplemented by stormwater runoff. An intermittent stream often lacks the biological and hydrological characteristics commonly associated with the continuous conveyance of water.

(38) “Land-disturbing activity” means the same as defined in Rule .0202 of this subchapter.

(39) "Load" means the mass quantity of a nutrient or pollutant released into surface waters over a given time period. Loads may be expressed in terms of pounds per year and may be expressed as "delivered load" or an equivalent "discharge load."

(40) “Load allocation” means the same as set forth in federal regulations 40 CFR 130.2(g), which is incorporated herein by reference, including subsequent amendments and editions. A copy of the most current version of the regulations is available free of charge on the internet at http://www.gpo.gov/fdsys/.

(41) “Local government” means the same as defined in Rule .0202 of this subchapter.

(42) "MGD" means million gallons per day.

(43) "Modified natural stream" means an on-site channelization or relocation of a stream channel and subsequent relocation of the intermittent or perennial flow as evidenced by topographic alterations in the immediate watershed. A modified natural stream must have the typical biological, hydrological, and physical characteristics commonly associated with at least an intermittent conveyance of water.

(44) “Natural drainageway” means any water course, channel, ditch or similar physiographic feature draining water from land to down gradient areas.

(45) “Nitrogen” means total nitrogen unless specified otherwise.

(46) "Nonpoint source load allocation" is that portion of an approved TMDL or calibrated nutrient response model assigned to all other nitrogen sources in the basin other than individually permitted wastewater facilities and represents the maximum allowable load of total nitrogen or total phosphorus to a waterbody from these nonpoint sources.

(47) “Nonpoint source pollution” means the same as defined in Rule .0202 of this subchapter.

(48) “Normal water level” means the water level within a pond, lake or other type of impoundment, natural or man-made (including beaver ponds), at the elevation of the outlet structure or spillway (i.e., the elevation of the permanent pool). The normal water level can often be identified by the lowest edge of the terrestrial vegetation.

(49) "NPDES" means National Pollutant Discharge Elimination System, and connotes the permitting process required for the operation of point source discharges in accordance with the requirements of Section 402 of the Federal Water Pollution Control Act, 33 U.S.C. Section 1251 et seq.

(50) "Nutrients" means the combination of total nitrogen and total phosphorus for the purpose of the nutrient rules of this section.

(51) "Nutrient Sensitive Waters" means the same as defined or classified in Rule .0223 of this subchapter.

(52) "Perched water table" means a saturated soil horizon or horizon subdivision, with free water surface periodically observed in a bore hole or shallow monitoring well, but generally above the normal water table, or may be identified by drainage mottles or redoximorphic features, and caused by a less permeable lower horizon.

(53) "Perennial stream" means a well-defined channel that contains water year round during a year of normal rainfall with the aquatic bed located below the perched or seasonal high water table for most of the year. Groundwater is the primary source of water for a perennial stream, but it also carries stormwater runoff. A perennial stream exhibits the typical biological, hydrological, and physical characteristics commonly associated with the continuous conveyance of water.

(54) "Perennial waterbody" means a natural or man-made watershed that stores surface water permanently at depths sufficient to preclude growth of rooted plants, including lakes, ponds, sounds, non-stream estuaries and ocean.

(55) "Perpendicular" means leading toward the nearest subject surface water at an angle between 75 and 105 degrees.

(56) "Phosphorus" means total phosphorus unless specified otherwise.

(57) "Pruning" means the removal of dead tree or shrub branches or live tree or shrub branches with a diameter of less than 4 inches.

(i) Pruning for Deciduous Trees: If pruning must be done on deciduous trees, then it should only be performed once a year during the dormant season or immediately following an "act of God" situation, such as a hurricane or ice storm that causes tree damage. Dead branches on trees can be removed any time.

(ii) Pruning for Coniferous Trees: Conifers may be pruned any time of year. Dead branches on trees can be removed any time.

(iii) Pruning for Shrubs: Shrubs may be pruned by selectively removing branches while maintaining the natural shape of the plant. Cutting the branches of a shrub down to its main trunk is not a selective removal of branches and could compromise the plant.

(58) "Reserve" allocation means allocation that is held by a permittee or other person but which has not been applied toward and is not expressed as a nutrient limit in an individual NPDES permit.

(59) "Residential development" means buildings for residence such as attached and detached single family dwellings, apartment complexes, condominiums, townhouses, and cottages, and their

associated managed pervious areas and outbuildings such as garages, storage buildings, and gazebos.

(60) “Residuals” means the same as defined in Rule .0202 of this subchapter.

(61) “Seasonal high water table” means the highest level that groundwater, at atmospheric pressure, reaches in the soil in most years. The seasonal high water table is usually detected by the mottling of the soil which results in mineral leaching.

(62) "Stream" means a body of concentrated flowing water in a natural low area or natural channel on the land surface.

(63) “Streambank or shoreline stabilization” is the in-place stabilization of an eroding streambank or shoreline.

(64) “Stormwater Collection System” means the same as defined in 15A NCAC 02H .1002.

(65) “Stormwater Control Measure” or “SCM,” also known as “Best Management Practice” or “BMP,” means the same as defined in 15A NCAC 02H .1002.

(66) “Stump diameter” means the diameter of a tree measured at six inches above the ground surface level.

(67) "Surface waters" means all waters of the state as defined in G.S. 143-212 except underground waters.

(68) “Temporary road” means a road constructed temporarily for access or to maintain public traffic during construction and is restored upon completion of construction.

(69) "Total Maximum Daily Load," or "TMDL," means the same as set forth in federal regulations 40 CFR 130.2(i) and 130.7(c)(1), which are incorporated herein by reference, including subsequent amendments and editions. A copy of the most current version of the regulations is available free of charge on the internet at http://www.gpo.gov/fdsys/.

(70) "Total nitrogen" means the sum of the organic, nitrate, nitrite, and ammonia forms of nitrogen in a water or wastewater.

(71) "Total phosphorus" means the sum of the orthophosphate, polyphosphate, and organic forms of phosphorus in a water or wastewater.

(72) “Transportation facility” means the existing road surface, road shoulders, fill slopes, ferry terminal fill areas, and constructed stormwater conveyances or drainage canals adjacent to and directly associated with the road.

(73) "Transport factor" means the fraction of a discharged nitrogen or phosphorus load that is delivered from the discharge point to a waterbody as established in an approved TMDL or other Division publication.

(74) “Tree” means a woody plant with a DBH equal to or exceeding five inches or a stump diameter exceeding six inches.

(75) "Wasteload" means the mass quantity of a nutrient or pollutant released into surface waters by a wastewater discharge over a given time period. Wasteloads may be expressed in terms of pounds per year and may be expressed as "delivered wasteload" or an equivalent "discharge wasteload."

(76) "Wasteload allocation" means the same as set forth in federal regulations 40 CFR 130.2(h), which is incorporated herein by reference, including subsequent amendments and editions. A copy of the most current version of the regulations is available free of charge on the internet at http://www.gpo.gov/fdsys/.

(77) “Wetlands” means the same as defined in Rule .0202 of this subchapter.

History Note: *Authority G.S. 143-215.3(a)(1).*
Eff. August 30, 2017.

15A NCAC 02B .0240 is proposed for amendment as follows:

15A NCAC 02B ~~.0240~~ .0703 NUTRIENT OFFSET ~~PAYMENTS~~ CREDIT TRADING PROGRAM

~~(a) The purpose of this Rule is to establish procedures for the optional payment of nutrient offset fees to the NC Ecosystem Enhancement Program, subsequently referred to as the Program, or to other public or private parties where the Program or such parties implement projects for nutrient offset purposes and accept payments for those purposes, and where either of the following applies:~~

~~(1) The following rules of this Section allow offsite options or nutrient offset payments toward fulfillment or maintenance of nutrient reduction requirements:~~

~~(A) .0234 and .0235 of the Neuse nutrient strategy,~~

~~(B) .0258 of the Tar-Pamlico nutrient strategy, and~~

~~(C) applicable rules of the Jordan nutrient strategy, which is described in Rule .0262; and~~

~~(2) Other rules adopted by the Commission allow this option toward fulfillment of nutrient load reduction requirements.~~

(a) PURPOSE. The purpose of this Rule is to establish standards and procedures for approval of nutrient offset credits and associated nutrient reduction projects. The purpose is also to establish standards and procedures for the transfer of nutrient offset credits from providers to persons or entities subject to the rules of this Section.

~~(b) Offset fees paid pursuant to this Rule shall be used to achieve nutrient load reductions subject to the following geographic restrictions:~~

~~(1) Load reductions shall be located within the same 8-digit cataloguing unit, as designated by the US Geological Survey, as the loading activity that is being offset;~~

~~(2) The Division shall track impacts by 10-digit watershed, as designated by the US Geological Survey and providers shall locate projects proportional to the location of impacts to the extent that the projects would meet the least cost alternative criterion per S.L. 2007-438. The location of load reduction projects shall be reviewed during the approval process described in Paragraph (e) of this Rule;~~

~~(3) Impacts that occur in the watershed of Falls Lake in the upper Neuse River Basin may be offset only by load reductions in the same watershed; Impacts in the Neuse 01 8-digit cataloguing unit below the Falls watershed, as designated by the US Geological Survey, may be offset only by load reductions in that same lower watershed;~~

~~(4) Restrictions established in the Jordan nutrient strategy, which is described in Rule 15A NCAC 02B .0262; and~~

~~(5) Any further restrictions established by the Commission through rulemaking.~~

(b) DEFINITIONS. Unless context indicates otherwise, the following words and phrases, which are not defined in G.S. 143 Article 21, shall be interpreted as follows for purposes of this Rule:

(1) "DMS" means the N.C. Division of Mitigation Services or its successor.

Commented [A1]: Overview of significant changes
Amendments to this rule are generally offered to codify and clarify existing practices, building on lessons learned in management of one of the nation's few operational nonpoint source nutrient trading programs. However, some notable adjustments have been proposed as well. Rule amendments generally cover the following key topics:
- Nutrient offset credits become permanent, more efficiently accounting for existing trading market.
- Provides a concise general standard for nutrient offset credit approval and provides rule and guidance-based design criteria options to meet it.
- Codifies and clarifies existing permitting procedures related to banking instruments, project plans, financial assurances, and permanent stewardship.
- New provisions governing DMS and developer-responsible nutrient offset projects.

Further explanation for these proposals is provided in comment bubbles throughout this proposed rule amendment. The rule has also been reorganized to reflect the chronological nature of credit approval and trading procedures.

Commented [A2]: Individual nutrient strategy rules authorize nutrient offset credit purchases, so not necessary in this rule.

Commented [A3]: Clarification regarding the scope and intent of the rule.

Commented [A4]: Geographic restrictions rephrased and move to paragraph (j). No change in effect.

Commented [A5]: Definitions added to clarify legal and colloquial terminology for DWR and regulated parties under this rule.

(2) "Nutrient reduction practice" is any project type or type of programmatic effort that generates a quantifiable or estimated decrease in nutrient loading, and for which practice design standards and load reduction estimation methods have been approved in rule or by the Division.

(3) "Nutrient reduction project" is a site-specific installation and implementation of a nutrient reduction practice or combination of practices.

(4) "Nutrient offset credit" is a nutrient load reduction credit that is generated in compliance with this rule. Nutrient offset credits account for permanent nutrient load reductions for compliance with new development stormwater rules of this section and may also satisfy other nutrient load reduction requirements as described in this Section. Nutrient offset credits are expressed in pounds of total nitrogen or total phosphorus per year.

Commented [A6]: Please see note regarding proposed shift to permanent credits.

NOTE: Explanation for proposed shift to permanent credits

DWR has proposed to redefine nutrient offset credits to be perpetual in nature, rather than limited to a specific term. This adjustment has meaningful implications but is intended to improve the nutrient trading market. This note provides some context regarding how the current rule operates and provides an overview of the implications and opportunities anticipated by this change.

Nutrient offset credits are presently generated in annual increments, and developers purchase 30 years of credit to meet their onsite loading targets. This time period is an informed but ultimately arbitrary approximation of nutrient impacts resulting from new development, which are effectively permanent from a regulatory perspective.

Projects that generate nutrient offset credits typically result in permanent restoration, with protection mechanisms including conservation easements or stormwater maintenance agreements. Despite the permanent restoration, these nutrient reduction projects are credited for a period of only 30 years, again an arbitrary approximation.

When permanent impacts are mitigated by permanent restoration projects, a permanent credit is the most efficient tool for accounting. Therefore, DWR has proposed to make all nutrient offset credits permanent. This may result in superficial changes in the nutrient offset market. Developers will require 30 times fewer credits to offset their impacts, but credits are likely to be approximately 30 times more expensive. Actual costs will be determined by the private nutrient credit market and by DMS through its actual cost method.

At this time, no significant cost increases are anticipated as a result of this change. However, it is possible that long-term replacement costs for allowable (but presently rarely utilized) structural nutrient reduction practices could increase the cost of non-wasting endowments negotiated between the provider and long term steward. In preparation for its fiscal analysis, the Division welcomes comment regarding potential cost increases or savings resulting from this proposed change.

By redefining nutrient offset credits in this manner, the option for temporary nutrient offset credit trades through this rule will end. To the DWR's knowledge, this temporary option has only been utilized a single time in the 19-year history of the rule. On a related topic, temporary nutrient allocation leases have occurred and will remain allowable within wastewater compliance associations. Sufficient authority exists within nutrient strategy wastewater rules to allow this practice to continue.

DWR intends to develop a separate and comprehensive rule for generating, trading, tracking, retiring and renewing temporary nutrient credits, particularly for compliance with existing development rules in the Jordan and Falls Lake watersheds. Many efficiencies may be realized by addressing these issues separately in consultation with existing advisory boards, including potentially more flexible and decentralized procedures covering a broader range of temporary restoration project types. In the meantime, the existing development and trading rules allow DWR to recognize temporary credits generated by local governments for rule compliance purposes.

(5) "Non-wasting endowment" is a fund that generates enough interest to cover the cost of perpetual monitoring, maintenance, repair and renovation of a nutrient reduction project.

(6) "Nutrient offset bank" is a nutrient reduction project that is implemented by a provider and approved by the Division for the purpose of generating nutrient offset credit.

(7) "Nutrient offset banking instrument" is a written legal agreement between the Division and the provider that governs the establishment, operation, and use of a nutrient offset bank.

(8) "Provider" means any public or private person or entity that implements a nutrient reduction project and seeks nutrient load reduction credit, including DMS. Persons or entities other than DMS that seek to become a provider of nutrient offset credits become so upon approval of a nutrient offset banking instrument by the Division.

~~(c) The Program and other parties shall obtain Division approval of proposed nutrient offset projects prior to construction. Other parties shall sell credits in compliance with approved credit release schedules and with the requirements of this Rule. Project approval shall be based on the following standards:~~

~~(1) Load reductions eligible for credit shall not include reductions used to satisfy other requirements under the same nutrient strategy;~~

~~(2) The Program and other parties shall agree to provide adequate financial assurance to protect and maintain load reductions for the stated duration, including for maintenance, repair and renovation of the proposed measure;~~

~~(3) The Program and other parties shall agree that once credits are established for a measure and until they are exhausted, they shall provide a credit/debit ledger to the Division at regular intervals;~~

~~(4) The Program and other parties shall agree that the party responsible for a measure shall allow the Division access to it throughout its lifetime for compliance inspection purposes;~~

~~(5) The Program or other party seeking approval shall obtain a site review from Division staff prior to Division approval to verify site conditions suitable to achieve the proposed load reductions through the proposed measure; and~~

~~(6) The Program shall submit a proposal, and other parties shall submit a proposal or a draft banking instrument, addressing the following items regarding a proposed load-reducing measure:~~

~~(A) Identify the location and site boundaries of the proposed measure, the geographic area to be served by credits in compliance with the requirements of Paragraph (b) of this Rule, existing conditions in the contributing drainage area and location of the measure, and the nature of the proposed measure with sufficient detail to support estimates of load reduction required in this Paragraph;~~

~~(B) Provide calculations of the annual magnitudes of load reductions and identify final credit values incorporating any delivery factors or other adjustments required under rules identified in Paragraph (a) of this Rule;~~

~~(C) Define the duration of load reductions, and provide a conservation easement or similar legal mechanism to be recorded with the County Register of Deeds and that is sufficient to ensure protection and maintenance of load reductions for the stated duration;~~

~~(D) Identify the property owner and parties responsible for obtaining all permits and other authorizations needed to establish the proposed measure, for constructing and ensuring initial performance of the proposed measure, for reporting on and successfully completing~~

Commented [A7]: Process and standards for project approval have been expanded upon to reflect existing operating procedures. Analogous provisions found in (c), (e), and (g). Reorganization intended to reflect chronological nature of credit generation process.

~~the measure, for holding and enforcing the conservation easement, and for ensuring protection and maintenance of functions for its stated duration;~~

~~(E) Provide a plan for implementing the proposed measure, including a timeline, a commitment to provide an as-built plan and report upon establishment of the measure, elements to be included in the as-built plan and report, a commitment to provide a bond or other financial assurance sufficient to cover all aspects of establishment and initial performance prior to the release of any credits, and criteria for successful completion; and~~

~~(F) Provide a monitoring and maintenance plan designed to achieve successful completion, that commits to annual reporting to the Division until success is achieved, that recognizes the Division's authority to require extension or re-initiation of monitoring depending on progress toward success, and that commits to a final report upon completion. The final report shall reaffirm the party that shall hold and enforce the conservation easement or other legal instrument.~~

(c) NUTRIENT OFFSET CREDIT APPROVAL STANDARD. To generate nutrient offset credits, providers shall demonstrate that a nutrient reduction project is designed, constructed, implemented and sustained in perpetuity in a manner that, according to scientific evidence, studies and principles, is reasonably certain to generate an estimated nutrient load reduction to the water body for which a nutrient strategy has been established.

~~(d) The Program shall establish and revise nutrient offset rates as set out in Rule .0274 of this Section. Offset payments accepted by the Program shall be placed into the Riparian Buffer Restoration Fund administered by the Department pursuant to G.S. 143-214.21~~

(d) QUANTIFYING NUTRIENT OFFSET CREDITS. The quantity of nutrient offset credits eligible to be generated by a nutrient reduction project shall be determined according to the following provisions:

(1) Nutrient load reductions shall be achieved relative to the loading condition of the source being controlled during the baseline period of the relevant nutrient strategy as determined by the provider and verified by the Division. However, if a source's loading condition was altered after the baseline period in compliance with the requirements of a nutrient strategy new development stormwater rule, reductions proposed through further modifications to that source shall be eligible for nutrient offset credit.

(2) Nutrient load reductions shall be site-specific estimates of decreases in annual mass load of nitrogen and/or phosphorus, and shall be converted to reductions delivered to the impaired water body under the applicable nutrient strategy by incorporating any delivery factors or other adjustments as required under rules of this Section for that strategy.

(3) Reductions shall not include those already implemented to satisfy other requirements under the same nutrient strategy, other local, state or federal requirements, or those resulting from state or federal compensatory mitigation requirements.

Commented [A8]: New general standard that nutrient reduction projects must meet to generate nutrient offset credits.

Commented [A9]: Restated in subparagraph (h)(1), reorganized with specific DMS-related provisions.

Commented [A10]: Codifies existing practice, clarifies that additional credits may be sought on land developed in accordance with new development rules.

Commented [A11]: Codifies existing practice.

Commented [A12]: Subparagraphs (d)(3)-(6) clarify existing policy that nitrogen and phosphorus credits may be "stacked," or generated in the same footprint, but other credit types generally may not be stacked with nutrient offset credits.

(4) Until used to satisfy a mitigation requirement, stream, buffer, or wetland mitigation credit may be converted into nutrient offset credit if the credit-generating project or portion thereof complies with this Rule.

(5) A nutrient reduction project may generate both nitrogen and phosphorus offset credits in the same area.

(6) A nutrient reduction project shall not generate nutrient offset credits and stream, buffer or wetland mitigation credits in spatially overlapping areas. Buffer mitigation credits generated pursuant to 15A NCAC 02B .0295(l)(6)(C) may be converted into nutrient offset credit.

~~(c) Persons who seek to pay nutrient offset fees under rules of this Section shall do so in compliance with such rules, the requirements of Paragraph (b) of this Rule, and the following:~~

~~(1) A non-governmental entity shall purchase nutrient offset credit from a party other than the Program if such credit is available in compliance with the criteria of this Rule at the time credit is sought, and shall otherwise demonstrate to the permitting authority that such credit is not available before seeking to make payment to the Program;~~

~~(2) Offset payments made to the Program shall be contingent upon acceptance of the payment by the Program. The financial, temporal and technical ability of the Program to satisfy the mitigation request will be considered to determine whether the Program will accept or deny the request;~~

~~(3) Where persons seek to offset more than one nutrient type, they shall make payment to address each type;~~

~~(4) The offset payment shall be an amount sufficient to fund 30 years of nutrient reduction.~~

~~(5) Persons who seek offsets to meet new development stormwater permitting requirements shall provide proof of offset credit purchase to the permitting authority prior to approval of the development plan; and~~

~~(6) A wastewater discharger that elects to purchase offset credits for the purpose of fulfilling or maintaining nutrient reduction requirements shall submit proof of offset credit acquisition or a letter of commitment from the Program or third party provider with its request for permit modification. Issuance of a permit that applies credits to nutrient limits shall be contingent on receipt of proof of offset credit acquisition. A discharger may propose to make incremental payments for additional nutrient allocations, contingent upon receiving a letter of commitment from the Program or third party provider to provide the offset credit needed for permit issuance. In that event the Division may issue or modify that permit accordingly, and shall condition any flow increase associated with that incremental purchase on payment in full for the additional allocation. Offset responsibility for nutrient increases covered under this Paragraph shall be transferred to the Program or third party provider when it has received the entire payment.~~

(e) PROJECT APPROVAL STANDARDS. Providers shall comply with the following requirements to request approval from the Division to implement a nutrient reduction project for the purpose of generating nutrient offset credits.

Commented [A13]: Codifies existing practice. Buffer projects are often eligible for nutrient credit, and unused buffer credits may be converted into nutrient offset credit. Stream and wetland restoration are potentially creditable for nutrient offset credit purposes.

Commented [A14]: The provisions of this paragraph largely relate to nutrient offset credit transactions, and most provisions have been moved with light editing to Paragraph (i).

(1) NUTRIENT OFFSET BANKING INSTRUMENT. Potential providers except DMS seeking approval of a nutrient offset bank shall submit their draft nutrient offset banking instrument to the Division prior to seeking approval of project plans. A nutrient offset banking instrument shall provide legal and financial assurances that providers will implement, maintain, and sustain nutrient reduction projects as proposed in subsequent project plans and associated nutrient reduction practice design specifications.

(2) PROJECT PLAN REQUIREMENTS. Prior to the initiation of a nutrient reduction project, providers shall submit a project plan proposal to the Division for review and approval that includes the following required elements:

(A) Site location and site boundaries of the proposed nutrient reduction project.

(B) The geographic area eligible to be served by nutrient offset credits in accordance Paragraph (j) of this rule and/or in compliance with applicable mitigation permit requirements.

(C) Documentation of the conditions of the site existing at the time of the submittal of the project plan.

(D) Documentation of the condition of the site during the baseline period of the applicable nutrient strategy in which the site is located.

(E) Description of the proposed nutrient reduction project with sufficient detail to support compliance with the standard in Paragraph (c). Projects conforming to minimum design criteria for stormwater control measures in 15A NCAC 02H .1050 and 15A NCAC 02H .1051-.1062 will meet this requirement. Design criteria for additional nutrient reduction practices established in the Division's Catalog of Nutrient Reduction Practices will also meet this requirement.

(F) Nutrient offset credit calculations in conformance with Paragraph (d) of this rule.

(G) Identification of the property owner and parties responsible for obtaining all permits and other authorizations needed to establish the proposed nutrient reduction project, constructing and ensuring initial performance of the proposed nutrient reduction project, reporting on and successfully completing the nutrient reduction project, holding and enforcing all perpetual protection mechanisms, and ensuring maintenance or restoration of the nutrient reduction practice in perpetuity.

(H) Description of how the nutrient reduction project will be implemented, which shall include a timeline and a commitment to provide an as-built report upon the full construction or installation of the nutrient reduction project.

(I) Description of how the nutrient reduction project will be maintained and monitored after it has been installed for the duration of the nutrient reduction project.

(J) Description of how the nutrient reduction project will be sustained in perpetuity, including a commitment to repair and renovate the project as needed to maintain its performance, to

Commented [A15]: Codifies existing practice.

Commented [A16]: Codifies existing practice, builds on provisions of original subparagraph (c)(6).

Commented [A17]: Provides stormwater design criteria in rule sufficient to meet the standard set forth in (c), and are thus eligible to generate nutrient offset credits.

Commented [A18]: The Catalog of Nutrient Reduction Practices is in development. When published, it will provide additional agency guidance regarding nutrient reduction practices eligible to generate nutrient offset credits.

keep records of all such operation, maintenance, monitoring, repair and renovation, and to notify the Division of any significant performance remediation needs and plans.

(K) Identification of federal or state grant funding contributing to the implementation of the nutrient reduction project.

(3) FINANCIAL ASSURANCES. Providers except DMS shall provide the financial assurance that a project plan will be completed as proposed. The financial assurance shall be in the form of a completion bond, credit insurance, letter of credit, escrow, or other vehicle acceptable to the Division, payable to, or for the benefit of, the Division, to ensure the involved property is secured in fee title or by easement and that planting or construction, monitoring and/or maintenance are completed as necessary to meet the requirements of the project plan.

(4) PROJECT PLAN APPROVAL. The Division shall approve the provider's project plan proposal after:

(A) Verifying the provider's compliance with Subparagraphs (e)(1), (2) and (3) of this rule, and

(B) Completing an onsite review to verify that preconstruction site conditions are suitable to generate the nutrient offset credits proposed by the project plan.

~~(f) Credits associated with load reducing activities funded under this Rule shall be awarded exclusively to the person, municipality, discharger, or group of dischargers who paid the offset fee.~~

(f) RELEASE AND ACCOUNTING FOR NUTRIENT OFFSET CREDITS. The Division shall release nutrient offset credits from an approved nutrient reduction project in the following manner:

(1) The Division shall release nutrient offset credits to providers upon confirmation that project-specific milestones reflected in the project plan's nutrient offset credit release schedule have been met. Project-specific milestones shall conform to the following requirements:

(A) Nutrient credits shall not be released until the property is secured in fee title or by easement and financial assurance is posted for planting or construction of the nutrient reducing project.

(B) No more than 50% of the nutrient credits shall be released for a nutrient reduction project until financial assurance is provided for monitoring and maintenance activities lasting until project completion.

(C) No more than 80% of the nutrient credits shall be released for a nutrient reduction project until the provider complies with the requirements of Paragraph (g).

(2) Once nutrient offset credits are released for a project and until they are exhausted, providers except for DMS shall provide a credit/debit ledger to the Division at regular intervals no less frequently than quarterly.

(3) The Division shall not release any nutrient offset credits for a nutrient reduction project if that project is financed in whole or in part by state or federal grant funding.

Commented [A19]: Codifies credit release provisions typically found in existing banking instruments.

Commented [A20]: In conjunction with the required disclosure provision in part (e)(2)(K), this subparagraph prevents public grant funds from being used to generate nutrient offset credits or subsidize the nutrient offset market.

(g) SUSTAINING PERMANENT REDUCTIONS. A provider may transfer liability for a completed nutrient reduction project to a perpetual steward in accordance with this Paragraph and the approved project plan. The provider shall ensure that the following mechanisms are in place to ensure that load reductions are sustained in perpetuity prior to the completion of the nutrient reduction project:

(1) A perpetual conservation easement or similar preservation mechanism to ensure perpetual access and stewardship at the project site with the purpose of protecting the nutrient reduction project's nutrient removal functions.

(2) Establishment of a non-wasting endowment or other dedicated financial surety to provide for the perpetual maintenance of the nutrient reducing project's load reductions.

(3) For nutrient reduction projects with stormwater control measures (SCMs), placement of the SCMs shall be in recorded drainage easements with recorded access easements to the nearest public right-of-way for purposes of operation and maintenance. These easements shall be granted in favor of the person or entity responsible for operating and maintaining the structures, with a note as to the responsible person or entity. Structure operation and maintenance shall be the responsibility of the landowner or easement holder unless the Division gives written approval for another person or entity.

(4) Identification of the persons or entities with legal responsibility for perpetual stewardship of the project site. The provider shall demonstrate that the persons or entities responsible for permanent stewardship have assumed a legal obligation to maintain the project in perpetuity by agreeing to at least the following minimum provisions:

(A) assumption of all relevant ownership or easement rights and responsibilities,

(B) assumption of responsibility to provide an alternate project or projects achieving equivalent nutrient load reductions and otherwise meeting the requirements of this rule if the approved project cannot be sustained in perpetuity,

(C) acknowledgement of receipt of a non-wasting endowment or other dedicated financial surety sufficient to provide for the perpetual land management, maintenance, repair and renovation of appurtenant lands and structures as appropriate,

(D) permission for the Division or its designee to access and inspect the nutrient reduction project, and

(E) conformance to the project plan's description of permanent stewardship elements as required in Subparagraph (e)(2)(J) of this rule.

(5) Notwithstanding the other requirements of this Paragraph, a nutrient reduction project shall not be required to be restored after project completion if:

(A) it is damaged by natural causes that could not have been prevented by the exercise of foresight or caution, and

(B) the nutrient reduction practice employed is designed to restore a natural ecological community at the project site.

Commented [A21]: Codifies and strengthens existing practices designed to ensure permanent credit reductions.

Commented [A22]: Clarifies existing practice that naturally restored communities do not have to be restored again after project completion if damaged due to natural causes. This provision reduces risk and liability for the long-term steward and therefore reduces the amount of funding necessary for a non-wasting endowment by the provider.

(h) ADDITIONAL PROVISIONS REGARDING THE DIVISION OF MITIGATION SERVICES.

(1) DMS shall establish and revise nutrient offset rates as set out in 15A NCAC 2R .0602. Offset payments accepted by DMS shall be placed into the Riparian Buffer Restoration Fund administered by the Department pursuant to G.S. 143-214.21.

(2) On or before November 30 of each year, DMS shall provide an annual report to the Division concerning the nutrient in-lieu fee program that includes a requirement ledger. The requirement ledger shall include all nutrient offset credit requirements paid by 8-digit service area or for each geographic area identified in Paragraph (j), the date by which the requirement must be satisfied by a nutrient reduction project, the requirement due date, and the projects and credits that have been applied to all requirements.

(3) Subject to the geographic restrictions in Paragraph (j), DMS may accept payments for nutrient offset credits prior to initiating nutrient reduction projects. After accepting payment, DMS shall construct nutrient reduction projects that, upon project completion as described in the approved project plan, will generate nutrient offset credits sufficient to fulfill all new requirements generated by these payments. Such projects shall be instituted before the end of the first full state fiscal year after DMS receives payment and constructed before the end of the third full state fiscal year after DMS receives payment. Should this latter deadline pass, as part of its annual report DMS shall develop an action strategy. If the number of credits eligible to be generated by the project is reduced at any time to less than the credit requirements assumed, DMS shall construct a new project or secure additional nutrient offset credits within the timeframes described above as if assuming a new requirement.

(4) Action strategies provided by DMS pursuant to Subparagraph (h)(2) shall include:

(A) a list of factors resulting in delays or deficiencies in procurement, project implementation and/or construction,

(B) specific actions and a timeline planned by DMS to satisfy outstanding nutrient offset credit requirements,

(C) the anticipated date by which all outstanding nutrient offset credit requirements will be satisfied, and

(D) an evaluation of current progress in relation to prior action strategies in the same geographic area if applicable.

(i) NUTRIENT OFFSET CREDIT TRANSACTIONS. Responsibility for achieving and maintaining nutrient load reductions authorized pursuant to this Rule shall be transferred to a provider when it has received full payment for the nutrient offset credit(s). Parties who seek to acquire nutrient offset credits under rules of this Section shall do so in compliance with such rules, the requirements of Paragraph (j) of this rule, G.S. 143-214.26, and the following:

(1) Offset payments made to DMS shall be contingent upon acceptance of the payment by DMS. The financial, temporal and technical ability of DMS to satisfy the mitigation request shall be considered to determine whether DMS will accept or deny the request.

Commented [A23]: Codifies DMS's existing practice relative to the nutrient offset program.

Commented [A24]: Codifies the DMS's existing practice of providing action strategies. Strengthens them by providing specific criteria that must be addressed.

Commented [A25]: Many provisions from the original paragraph (e) were reorganized and edited in this section.

(2) Where persons seek to satisfy regulatory obligations for more than one nutrient type, they shall acquire nutrient reduction credits to address each type.

(3) The payment for nutrient offset credit shall be an amount sufficient to provide for establishment, ongoing maintenance, repair and renovation of the measure's load-reducing functions in perpetuity.

(4) Persons who seek offsets to meet new development stormwater permitting requirements shall provide proof of nutrient offset credit acquisition to the permitting authority prior to approval of the development plan.

(5) A wastewater discharger that elects to purchase nutrient offset credits for the purpose of fulfilling or maintaining nutrient reduction requirements shall submit proof of nutrient offset credit acquisition or a letter of commitment from a provider with its request for permit modification. Issuance of a permit that applies nutrient offset credits to nutrient limits shall be contingent on receipt of proof of nutrient offset credit acquisition. A discharger may propose to make incremental payments for additional nutrient allocations, contingent upon receiving a letter of commitment from a provider to provide the nutrient offset credit needed for permit issuance. In that event the Division may issue or modify that permit accordingly, and shall condition any flow increase associated with that incremental purchase on payment in full for the additional allocation.

(j) GEOGRAPHIC RESTRICTIONS. Nutrient offset credits may be used to satisfy regulatory obligations only when generated by a nutrient reduction project located within the same 8-digit cataloguing unit, as designated by the U.S. Geological Survey, as the loading activity that is being offset except:

(1) Nutrient offset credits may be used to satisfy regulatory obligations incurred in the upper Falls watershed only if they were generated by a nutrient reduction project located within the upper Falls watershed, as this geographic area is described in 15A NCAC 02B .0276.

(2) Nutrient offset credits may be used to satisfy regulatory obligations incurred in the lower Falls watershed only if they were generated by a nutrient reduction project located within the Falls Lake watershed, as these geographic areas are described in 15A NCAC 02B .0276.

(3) Nutrient offset credits may be used to satisfy regulatory obligations incurred in the Jordan Lake watershed only if they were generated by a nutrient reduction project in the same subwatershed of the Jordan watershed, as these geographic areas are described in 15A NCAC 02B.0262.

(4) Nutrient offset credits may be used to satisfy regulatory obligations incurred in the Neuse 01 8-digit cataloguing unit, as designated by the U.S. Geological Survey, below the Falls Lake watershed only if they were generated by a nutrient reduction project within that same geographic area.

(k) DEVELOPER-RESPONSIBLE NUTRIENT OFFSET PROJECTS. A developer may satisfy its nutrient reduction obligations by generating its own offsite nutrient offset credits. It may do so by establishing a nutrient offset bank and generating nutrient offset credits in accordance with this rule. Alternatively, the developer shall comply with all provisions of this rule governing the generation of nutrient offset credits by a provider with the following modifications:

Commented [A26]: Rephrases and clarifies geographic restrictions from the original Paragraph (b). No change in effect.

Commented [A27]: New option for developer-responsible offset option analagous to permittee-responsible mitigation. Allows credit to be taken immediately after project construction, but at a potentially reduced rate.

(1) Instead of a credit release schedule, nutrient reduction credit for the nutrient reduction project may be assigned upon construction of the nutrient reduction project and submission of the as-built report as described in the project plan.

(2) For the installation of any nutrient reduction practice that accrues nutrient reduction capacity over time by plant growth, other biological process development or ecological succession, nutrient reduction credit shall be assigned at a 50% rate based on the design specifications of the fully completed nutrient reduction project(s).

(2) Liability for the generation of nutrient reduction credits as described in the project plan remains with the developer until the conclusion of the nutrient reduction project.

History Note: *Authority G.S. 143-214.1; 143-214.20; 143-214.21; S.L. 1995, c. 572; S.L. 2007, c. 438; S.L. 2009, c. 337; S.L. 2009, c. 484; S.L. 2009, c. 486;*
Eff. August 1, 1998;
Amended Eff. August 1, 2006;
Amended Eff. September 1, 2010.
Amended Eff. [New Date].

1

15A NCAC 02B .0705 is proposed for adoption as follows:

15A NCAC 02B .0705 MANAGING ACTIVITIES WITHIN RIPARIAN BUFFERS: AUTHORIZATION CERTIFICATES

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

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

(1) The application shall specify:

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

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

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

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

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

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

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

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

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

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

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

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

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

Commented [HK1]: Consolidate approval requirements from Randleman, Neuse and Tar-Pam into one rule for consistency and ease of implementation

Commented [HK2]: No effect – updated terminology

Commented [HK3]: No effect - clarification

Commented [HK4]: Clarification – similar to requirement for 401 WQC

Commented [HK5]: No effect - clarification

Commented [HK6]: Clarification

(3) Within 60 calendar days of receipt of a complete application package that addresses Subparagraphs (b)(1) and (b)(2) of this Rule, the Authority shall issue an Authorization Certificate if the Authority makes a finding of "no practical alternatives" and the applicant satisfies other applicable requirements as described in Subparagraphs (b)(1) and (b)(2) of this Rule. Failure to act within 60 calendar days of receipt of a complete application shall be construed as a finding of "no practical alternatives" and an Authorization Certificate shall be issued by the Authority to the applicant unless one of the following occurs:

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

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

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

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

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

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

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

(1) An Authorization Certificate with Exception shall require that all of the following conditions are met:

(A) There are practical difficulties or unnecessary hardships that prevent compliance with the riparian buffer protection requirements.

(B) If the applicant complies with the provisions of this Rule, he or she can secure no reasonable return from, nor make reasonable use of, his or her property. Merely proving that the Authorization Certificate with Exception would allow a greater profit from the property shall not be considered adequate justification for an Authorization Certificate with Exception. Moreover, the Authority shall consider whether the Authorization Certificate with Exception is the minimum possible deviation from the terms of this Rule that shall make reasonable use of the property possible;

(C) The hardship is due to the physical nature of the applicant's property, such as its size, shape, or topography;

(D) The applicant did not cause the hardship;

Commented [HK7]: Clarification – similar to 401 WQC rules

Commented [HK8]: For uses not listed in the table, instead of requesting a minor or major variance, applicants will request an authorization certificate with exception.

Commented [HK9]: Clarify that these conditions must be met to receive an authorization certificate with exception. Simplified hardships. Remove requirement that property must be purchased prior to the rule.

Commented [HK10]: Removed hardship: "The hardship results from application of this Rule to the property rather than from other factors such as deed restrictions or other hardship."

Commented [HK11]: Removed hardship: "The hardship is unique to the applicant's property, rather than the result of conditions that are widespread. If other properties are equally subject to the hardship created in the restriction, then granting a variance would be a special privilege denied to others, and would not promote equal justice;"

Commented [HK12]: Removed "which is different from that of neighboring property."

Commented [HK13]: Removed "by knowingly or unknowingly violated this Rule"

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

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

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

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

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

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

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

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

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

Commented [HK14]: Removed hardship: "The applicant did not purchase the property after the effective date of this Rule, and then requesting an appeal."

Commented [HK15]: No effect – combined two similar hardships into one

Commented [HK16]: Changed "Minor Variance" to "Minor Exception"

Commented [HK17]: Changed requirement for a minor from impacts to Zone 2 only, to impacts to either zone, totally no more than 1/3 of an acre of buffer

Commented [HK18]: Establish timelines to process minor exceptions

Commented [HK19]: Changed "Major Variance" to "Major Exception"

Commented [HK20]: Changed requirement for a major from any impacts to Zone 1 to impacts to either zone more than 1/3 of an acre of buffer

Commented [HK21]: Establishes a timeframe to process major exceptions

Commented [HK22]: Because these are not variances, they will not come before the EMC for a decision. A public notice will be provided of all major exception requests.

Commented [HK23]: Establishes a timeframe to process major exceptions

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

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

History Note: *Authority 143-214.1; 143-214.5; 143-214.7; 143-215.3(a)(1); 143-215.6A; 143-215.6B; 143-215.6C; 143 215.8B; 143B-282(c); 143B-282(d) S.L. 1999-329, s. 7.1.; S.L. 2005-190; S.L. 2006-259; S.L. 2009-216; S.L. 2009-484;*
Eff. DATE

15A NCAC 02B .0706 is proposed for adoption as follows:

15A NCAC 02B .0706 MANAGING ACTIVITIES WITHIN RIPARIAN BUFFERS: FOREST HARVESTING REQUIREMENTS

(a) PURPOSE. The following requirements shall apply to all forest harvesting operations and practices subject to riparian buffer requirements under rules of this Section.

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

(1) All forest harvest activities within the buffer shall comply with Forest Practice Guidelines Related to Water Quality as defined in Title 02 NCAC 60C;

(2) Logging decks and sawmill sites shall not be placed in the riparian buffer;

(3) Timber felling shall be directed away from the stream or waterbody;

(4) Skidding shall be directed away from the stream or water body and shall be done in a manner that minimizes soil disturbance and prevents the creation of channels or ruts;

(5) Individual trees may be treated to maintain or improve their health, form or vigor;

(6) Harvesting of dead or infected trees or application of pesticides as necessary to prevent or control the spread of tree pest and disease infestation shall be allowed. These practices must be approved by the North Carolina Forest Service for a specific site. The North Carolina Forest Service must notify the Division of all approvals within 60 calendar days;

(7) Removal of individual trees that are in danger of causing damage to structures or human life shall be allowed;

(8) Natural regeneration of forest vegetation and planting of trees, shrubs, or ground cover plants to enhance the riparian buffer shall be allowed provided that soil disturbance is minimized;

(9) Prescribed burns shall be allowed when conducted for forest management purposes; and

(10) One-time fertilizer application to establish replanted vegetation. This only applies to the one-time application of fertilizer in the riparian buffer. No runoff from this one-time application in the riparian buffer is allowed in the applicable surface water.

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

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

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

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

(3) Trees removed with the minimum disturbance to the soil and remaining vegetation;

Commented [HK1]: Consolidate forestry requirements from Randleman, Neuse, Tar-Pam and Catawba into one rule for consistency and ease of implementation

Commented [HK2]: No effect – clarification

Commented [HK3]: Added timeframe to provide notification to DWR

Commented [HK4]: Removed requirement for plantings to consist primarily of native species.

Commented [HK5]: Changed language to allow for tracked or wheeled vehicles in Zone 1 provided activities comply with FPGs

Commented [HK6]: Changed "residual" to "remaining" – No effect - grammar

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

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

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

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

Commented [HK7]: No effect - clarification

History Note: *Authority 143-214.1; 143-214.5; 143-215.3(a)(1); 143-215.6A; 143-215.6B; 143-215.6C; 143 215.8B; 143B-282(c); 143B-282(d) S.L. 1999-329, s. 7.1.; S.L. 2005-190; S.L. 2006-259; S.L. 2009-216; S.L. 2009-484;*
Eff. DATE

[.0232 is proposed for amendment and transfer to 15A NCAC 02B .0710]
Last Revised August 18, 2017

15A NCAC 02B .0232 is proposed for amendment as follows:

15A NCAC 02B ~~.0232~~ .0710 NEUSE NUTRIENT STRATEGY: PURPOSE AND SCOPE ~~NEUSE RIVER BASIN- NUTRIENT SENSITIVE WATERS MANAGEMENT STRATEGY: BASIN NUTRIENT REDUCTION GOAL~~

(a) PURPOSE. The purpose of this Rule and Rules 15A NCAC 02B .0711 through .0715 of this Section is to attain the designated uses of the Neuse River estuary with respect to meeting nutrient-related water quality standards. All waters of the Neuse River Basin are supplementally classified as Nutrient Sensitive Waters (NSW) pursuant to 15A NCAC 2B .0223. The rules enumerated in Paragraph (d) of this Rule together constitute the Neuse nutrient strategy, and shall be implemented in accordance with 15A NCAC 02B .0223. This rule establishes the framework of the Neuse nutrient strategy. ~~Pursuant to 1995 (Reg. Sess., 1996) N.C. Session Laws, c. 572, the Environmental Management Commission hereby establishes the goal of reducing the average annual load of nitrogen delivered to the Neuse River Estuary from point and nonpoint sources by a minimum of 30 percent of the average annual load for the period 1991 through 1995 by the year 2001. All waters of the Neuse River Basin have been supplementally classified as Nutrient Sensitive Waters (NSW) pursuant to 15A NCAC 2B .0223. The following rules shall be implemented in accordance with 15A NCAC 2B .0223 in all waters of the Neuse River Basin:~~

(b) SCOPE AND LIMITATION. The Neuse nutrient strategy rules require controls to reduce nitrogen loads from significant sources of this nutrient throughout the Neuse Basin. These Rules do not address sources for which there is insufficient scientific knowledge to base regulation. The Commission may undertake additional rulemaking in the future or make recommendations to other rulemaking bodies as deemed appropriate to more fully address nutrient sources to the Neuse River Estuary.

(c) GOAL. To achieve the purpose of the Neuse nutrient strategy, the Commission has established the goal of reducing the average annual load of nitrogen delivered to the Neuse estuary from point and nonpoint sources by a minimum of 30 percent below the average annual load for the period 1991 through 1995 and thereafter maintaining it at or below that level.

(d) RULES ENUMERATED. The rules of the Neuse nutrient strategy are titled as follows:

~~(1) Rule .0233 for protection and maintenance of riparian areas,~~

~~(2) Rule .0234 for wastewater discharges,~~

~~(3) Rule .0235 for urban stormwater management,~~

~~(4) Rules .0236 and .0238 for agricultural nitrogen reduction,~~

~~(5) Rule .0239 for nutrient management, and~~

~~(6)~~(5) Rule .0240 for nitrogen offset fees.~~fees; and~~

~~(6) Rules .0241 and .0295 for riparian buffer and mitigation.~~

(1) Rule .0711 for urban stormwater management,

(2) Rule .0712 for agriculture,

(3) Rule .0713 for wastewater discharges,

Commented [A1]: Change: Updated rule references and added clarifying language to better explain the purpose of the rules to achieve nutrient related water quality standards in the Neuse estuary.

Effect: Improved clarity. No impact on implementation.

Commented [A2]: Note: Statement on what sources are addressed under the rules and the Commissions ability to undertake additional rulemaking.

Effect: No Impact

Commented [A3]: Change: Moved and clarified goals language addressing the overall strategy nitrogen reduction goal from Paragraph (a)

Effect: No Impact

Commented [A4]: Change: Provides updated Rule References to point to new .0700 Rule numbers

Effect: Points to new .0700 Rule Numbers

[.0232 is proposed for amendment and transfer to 15A NCAC 02B .0710]
Last Revised August 18, 2017

(4) Rule .0714 for riparian buffer protection, and

(5) Rule .0715 for riparian buffer program delegation

(e) ADAPTIVE MANAGEMENT. Given ongoing impairment of the Neuse estuary over a decade after full implementation of the above rules, the Division shall pursue fuller evaluation of the basin's nutrient dynamics to inform and guide adaptive management. Evaluation shall seek to utilize all sources of available information, including stakeholder input, and shall consider drivers, character and shifts in the impairment with time, trends and character of loading delivered to the estuary, and distribution and character of loading inputs to the basin and changes to those inputs over time. Evaluation shall address the extent to which the reduction goals identified above have been achieved and shall, based on its findings, provide recommendations on management needs. The Division shall seek to complete an evaluation within three years of the effective date of this rule and shall distribute its findings, which may recommend regulatory and non-regulatory actions, upon completion. The Division shall also report biannually to the Water Quality Committee of the Commission on implementation progress and reductions achieved by sources subject to the Neuse nutrient strategy.

(f) GEOGRAPHIC APPLICABILITY. The Neuse nutrient strategy shall apply in all areas draining to waters within the Neuse River Basin unless individual strategy rules describe other boundaries.

~~(b)~~(g) PENALTIES. Failure to meet requirements of the Neuse nutrient strategy ~~Rules .0233, .0234, .0235, .0236, .0238, .0239, and .0240 .0240. and .0295 of this Section~~ may result in 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; 143-215.1; 143-215.3(a)(1); 143-215.6A; 143-215.6B; 143-215.6C;*
Eff. August 1, 1998.
Amended Eff. [New Date].

Commented [A5]: Change: Added adaptive management language recognizing the ongoing water quality issues in the estuary and the availability of more information to evaluate implementation as time goes on. Establishes date by which evaluation would be completed and recommendations made. Added requirement for Division to report to the WQC biannually on implementation progress.

Effect: Provides for better tracking of progress and ability for management strategy to be modified based on evaluation of additional data and strategy effectiveness.

Commented [A6]: Change: Clarified geographic area to which the Neuse nutrient strategy rules apply.

Effect: No Impact

Commented [A7]: Change: Removed unnecessary rule references and simplified language to refer to the collective Neuse nutrient strategy.

Effect: Improved Clarity. No Impact.

[.0235 is proposed for amendment and transfer to 15A NCAC 02B .0711]
Last Revised August 18, 2017

15A NCAC 02B .0235 is proposed for amendment as follows:

15A NCAC 02B ~~.0235~~ .0711 NEUSE ~~RIVER BASIN~~ NUTRIENT ~~SENSITIVE WATERS MANAGEMENT~~ STRATEGY: ~~BASINWIDE~~ STORMWATER ~~REQUIREMENTS~~

The following is the urban stormwater management strategy for the Neuse River Basin:

(1) PURPOSE. The purpose of this Rule is to achieve and maintain the nitrogen loading reduction goal established for the Neuse River Estuary in Rule .0710 of this Section from an undeveloped condition on lands in the Neuse River Basin on which new development occurs. Nothing in this Rule preempts the requirements of 15A NCAC 02B .0277 for projects subject to the Falls Reservoir Nutrient Strategy or prevents local governments from implementing requirements that are more restrictive than those set forth in this Rule.

~~(1)~~(2) APPLICABILITY. The following local governments ~~are designated, based on population and other factors, as parties responsible for implementing stormwater management requirements as part of the Neuse River Nutrient Sensitive Waters stormwater management strategy:~~ shall implement stormwater management requirements as part of the Neuse River Nutrient Sensitive Waters stormwater management strategy. Municipalities shall implement this rule throughout their corporate limits and extraterritorial jurisdiction, while counties shall implement this rule throughout their direct territorial jurisdictions. Counties named in this Item may implement this rule within municipalities not named in this Item in accordance with G.S. 160A-360(d).

(a) Local governments designated by the Commission in 1998 as subject to this Rule:

~~(a)~~(i) Cary,
~~(b)~~(ii) Durham,
~~(c)~~(iii) Garner,
~~(d)~~(iv) Goldsboro,
~~(e)~~(v) Havelock,
~~(f)~~(vi) Kinston,
~~(g)~~(vii) New Bern,
~~(h)~~(viii) Raleigh,
~~(i)~~(ix) Smithfield,
~~(j)~~(x) Wilson,
~~(k)~~(xi) Durham County,
~~(l)~~(xii) Johnston County,
~~(m)~~(xiii) Orange County,
~~(n)~~(xiv) Wake County, and
~~(o)~~(xv) Wayne County.

(b) Additional local governments designated by the Commission in 2018 as subject to this Rule:

(i) Apex,

Commented [A1]: Change: Added Purpose statement to clarify goal of this rule is to achieve reductions from new development. And point to the overall strategy reduction goals in Rule .0710. Given overlap of Falls and Neuse watershed geographic areas added statement that the requirements of the Falls Lake rules supersede those of the Neuse where applicable.

Effect: No substantive change. Improved clarity of rule purpose and interaction between Falls and Neuse rules.

Commented [A2]: Change: Provide a more detailed explanation of boundaries where the requirements of this rule apply within the municipality or county

Effect: Greater clarity. Ensure rule requirements implemented consistently geographically for all subject local governments. Adds flexibility for counties to work with municipalities not named in this rule to implement requirements allowing for greater coverage.

Commented [A3]: Change: Added additional local governments to which the requirements of this rule shall apply based on assessment of growth by looking at overall populations and growth rate over the past 15 years. Added counties and municipalities with populations greater than 20K and 5K respectively that have a growth rate of approximately 200 or more people a year.

Effect: Improved coverage of rule requirements. Addresses holes in strategy coverage where larger and fast growing communities were previously left out of the original rule. These newly named local governments will be required to develop and adopt local programs including local ordinances to implement the rule requirements. Fiscal impact will be determined during the rulemaking process.

(ii) Clayton,
(iii) Fuquay Varina,
(iv) Greenville,
(v) Holly Springs,
(vi) Knightdale,
(vii) Morrisville,
(viii) Rolesville,
(viii) Wake Forest,
(ix) Wendell,
(x) Winterville,
(xi) Craven County,
(xii) Greene County,
(xiii) Nash County,
(xiv) Pitt County, and
(xv) Wilson County.

~~(2) Other incorporated areas and other counties, not listed under Item (1) of this Rule, may seek to implement their own local stormwater management plan by complying with the requirements specified in Items (5) and (6) of this Rule.~~

(3) EXEMPTION. A stormwater management plan is not required for new development on an individual single family lot if the new development meets the following criteria:

(a) It is not part of a larger common plan of development or sale; and

(b) The project does not result in greater than 5 percent built upon area on the lot or it is for purposes of a single family residence on a lot 5 acres in size or greater.

~~(3) The Environmental Management Commission may designate additional local governments by amending this Rule based on their potential to contribute significant nutrient loads to the Neuse River. At a minimum, the Commission shall review the need for additional designations to the stormwater management program as part of the basinwide planning process for the Neuse River Basin. Any local governments that are designated at a later date under the Neuse Nutrient Sensitive Waters Stormwater Program shall meet the requirements under Items (5) and (6) of this Rule.~~

~~(4)~~(4) LOCAL PROGRAM IMPLEMENTATION REQUIREMENTS. All local governments subject to this rule shall implement stormwater management programs approved by the Commission ~~in March 2001~~ pursuant to the timeframes set out in Item (6) of this Rule, or any subsequent modifications to those plans approved by the Director, according to the following requirements and the standards contained in Item (5) of this Rule: ~~Local stormwater programs shall address nitrogen reductions for both existing and new development and include the following elements:~~

(a) ~~Review and approval of stormwater management plans for new developments to ensure that:~~The requirement for local government approval of a stormwater plan for all proposed

Commented [A4]: Change: Removed this provision as it is unnecessary since local governments already have this authority under session law 2006-246.

Effect: No Impact

Commented [A5]: Change: Provided exemption for individual single lot residential projects under a 5% BUA or of a certain size and not part of a larger common plan of development. Addition in response to stakeholder input and based on scenarios run using the latest accounting tool, projects meeting these criteria are assumed to already be meeting the required export rate targets.

Effect: Provides straightforward path for projects meeting these criteria to show compliance with the rule export targets without the cost of having to run export calculations and submitting a stormwater plan.

Commented [A6]: Change: Reorganized rule text to clearly state the requirements subject local governments must meet in their local implementation programs.

Effect: Provides clear separation between local government and developer requirements under the rule. Makes rule text current and clarifies that all local governments implementing programs continue to implement. Improved clarity. No substantive impact.

new development projects disturbing one acre or more for single family and duplex residential property and recreational facilities, and one-half acre or more for commercial, industrial, institutional, multifamily residential, or local government property. Where proposed new development on an existing developed lot not part of a larger common plan of development results in built-upon area exceeding 24 percent, a stormwater plan addressing the new built-upon area shall be required.

(b) A plan to ensure maintenance of stormwater control measures (SCMs) implemented to comply with this rule for the life of the development;

(c) A plan to ensure enforcement and compliance with the provisions in Item (5) of this Rule for the life of the development;

(d) A public education program to inform citizens how to reduce nutrient pollution and to inform developers about the nutrient requirements set forth in Item (5);

(e) A mapping program that includes major components of the municipal separate storm sewer system, waters of the State, land use types, and location of sanitary sewers; and

(f) A program to identify and remove illegal discharges.

(5) DEVELOPMENT PROJECT REQUIREMENTS. A proposed development project shall be approved by a subject local government when the applicable requirements of Item (4) and the following criteria are met. For development projects subject to the requirements of 15A NCAC 02B .0277 the requirements of this Item shall not apply.

~~(i)~~(a) The project area shall meet either a nitrogen loading rate target of 3.6 pounds/acre/year or the definition of runoff volume match provided in 15A NCAC 02H .1002. Except as otherwise stated in this Item, the project may meet the loading rate target through use of nutrient offset credit pursuant to Rule .0703 of this Section; ~~the nitrogen load contributed by new development activities is held at 70 percent of the average nitrogen load contributed by the 1995 land uses of the non-urban areas of the Neuse River Basin. The local governments shall use a nitrogen export standard of 3.6 pounds/acre/year, determined by the Environmental Management Commission as 70 percent of the average collective nitrogen load for the 1995 non-urban land uses in the basin above New Bern. The EMC may periodically update the design standard based on the availability of new scientific information; Developers shall have the option of offsetting part of their nitrogen load by funding offsite management measures by making payment to the NC Ecosystem Enhancement Program or to another seller of offset credits approved by the Division or may implement other offset measures contingent upon approval by the Division. Offset payments shall meet the requirements of Rule .0240 of this Section, which establishes procedural requirements for nutrient offset payments. However, before using offset payments, the development must attain, at a minimum, a nitrogen export that does not exceed 6~~

Commented [A7]: Change: Included land disturbance thresholds previously included in model program to provide information in one location.

Effect: Improved clarity and ease of finding information. No change in thresholds.

Commented [A8]: Change: Language added to address cumulative impacts in cases where small land disturbances add up over time to exceeded land disturbance thresholds that require a stormwater plan to be submitted.

Effect: Captures projects with cumulative impacts over land disturbance thresholds over time that would previously have been missed under the rule. Only requires the new BUA to be treated. Addresses loophole in previous rule language

Commented [A9]: Change: This language was moved up to this location from elsewhere in the rule.

Effect: Improved clarity concerning local government responsibilities.

Commented [A10]: Change: Reorganized this section to make it easier for the development community to identify the requirements their development projects need to meet.

Effect: Provides clear separation between local government and developer requirements under the rule. Improved Clarity.

Commented [A11]: Change: Updated this language to recognize there are multiple ways for a developer to meet runoff requirements for a proposed project including meeting the export rates targets as well as meeting the requirements through runoff volume match or the use of offsite nutrient offsets.

Effect: Improved clarity and added flexibility by providing multiple pathways for compliance.

~~pounds/acre/year for residential development and 10 pounds/acre/year for commercial or industrial development;~~

~~(ii) For the following local governments and any additional local governments identified in rule by the Commission, the post-construction requirements of 15 NCAC 02B .0277 shall supersede the requirements in this Sub-item for areas within their jurisdiction within the watershed of the Falls of the Neuse Reservoir: Durham, Raleigh, Durham County, Orange County, and Wake County; and~~

(b) Nitrogen loading rates, and reductions resulting from the use of SCMs, shall be determined through the use of the tool most recently approved by the Division for stormwater nutrient accounting or an alternative method at least as protective as accepted by the Division;

(c) Projects resulting in greater than 24 percent built-upon area shall install a primary SCM that meets the design specifications provided in 15A NCAC 02H .1003 for all impervious area on the project site;

(d) Projects with less than 24 percent built upon area shall meet the low density design requirements provided in 15A NCAC 02H .1003 for dispersed flow, vegetative conveyances, and curb outlet systems;

(e) Proposed new development undertaken by a local government solely as a public road or public sidewalk project or proposed new development subject to the jurisdiction of the Surface Transportation Board shall be exempt from the requirements of Sub-Items (5)(c) and (5)(d) of this Rule;

(f) Proposed development projects that would replace or expand existing structures and would result in a net increase in built-upon area shall be responsible for nitrogen loading from the area of disturbance less any preexisting built-upon area located therein. The developer shall have the option to either achieve the nitrogen percent loading reduction goal established in Rule .0710 of this Section or meet the nitrogen loading rate target of this Item;

(g) Proposed new development projects that utilize an offsite SCM that meets the design specifications provided in 15A NCAC 02H .1003 and is dedicated to treating an area encompassing the project shall be considered compliant with the treatment requirements described in Sub-Item (5)(c) of this Rule;

(h) SCMs shall meet a required storm depth of one inch in non-coastal counties and one and one-half inches in coastal counties;

(i) Where pursuant to G.S. 153A-454 and G.S. 160A-459 a local government program does not review a development project proposed by a state or federal entity, the entity shall obtain Department review and approval; and

(j) Proposed development projects shall demonstrate compliance with the riparian buffer protection requirements of Rule .0714 of this Section or subsequent amendments or replacement to those requirements.

Commented [A12]: Change: Added requirement that only the most recently approved stormwater accounting tool (or Division approved equivalent) is to be used for calculating loading rates and reductions to ensure all developers and local governments are using the same accounting tool based on the most recent available data.

Effect: Provides improved consistency of rule implementation.

Commented [A13]: Change: Eliminated outdated onsite treatment threshold pounds and replaced with onsite treatment requirement of one SCM minimum for projects exceeding 24% BUA or not meeting loading rate targets.

Effect: Eliminates the 6 & 10 lbs/ac/yr onsite treatment thresholds required before developer could go offsite for a nutrient reduction buydown. Improves agreement of Neuse rule with Phase II Stormwater requirements. Fiscal impact will be determined during the rulemaking process.

Commented [A14]: Change: Added low density option to better align rule with options provided under Phase II stormwater requirements.

Effect: Establishes minimum site design requirements for low density projects. Fiscal impact will be determined during the rulemaking process.

Commented [A15]: Change: In response to stakeholder input added option for local government road and sidewalk projects that have limited or no space for SCMs to meet export targets entirely through the use of offsite nutrient offsets.

Effect: Provides flexibility and potentially more cost-effective ways for projects meeting these criteria to meet the requirements of the rule.

Commented [A16]: Change: Updated language addressing redevelopment scenarios per new definition of development in Session Law 2014-90 to make it clear that the area of disturbance minus any preexisting BUA must be treated when development replaces or expands existing development resulting in net increase in BUA.

Effect: Reduces the area and amount of treatment required under redevelopment scenarios. Aligns rule with session law.

Commented [A17]: Change: Based on stakeholder input added the option for developers to use "Regional" offsite SCMs to provide treatment for projects. This option may be particularly useful for municipalities with limited space for SCMs in downtown are... [1]

Commented [A18]: Change: Added storm depth requirements for SCMs to be consistent with requirements in 2H stormwater rules.

Effect: Ensures proper SCM design and establishes consistency across stormwater rules.

Commented [A19]: Change: Added language addressing enforcement of rule requirements by local governments on state and federal entities within their jurisdiction (in cases where they do not already have an NPDES permit).

... [2]

Commented [A20]: Change: Moved expectation to demonstrate buffer rule compliance from model program.

Effect: Clarifies requirements addressed in local government programs. No Impact.

~~(i) (iii) there is no net increase in peak flow leaving the site from the predevelopment conditions for the 1-year, 24-hour storm.~~

~~(b) Review of new development plans for compliance with requirements for protecting and maintaining existing riparian areas as specified in 15A NCAC 02B .0233;~~

~~(c) Implementation of public education programs;~~

~~(d) Identification and removal of illegal discharges;~~

~~(e) Identification of suitable locations for potential stormwater retrofits (such as riparian areas) that could be funded by various sources; and~~

~~(f) Submittal of an annual report on October 30 in October to the Division documenting progress on and net changes to nitrogen load from the local government's planning jurisdiction.~~

~~(5) Local governments shall implement stormwater management programs according to their plans approved by the Commission as of March 2001. Local governments administering a stormwater management program shall submit annual reports to the Division documenting their progress and net changes to nitrogen load by October 30 of each year.~~

~~(6) If a local government fails to properly implement an approved plan, then stormwater management requirements for existing and new urban areas within its jurisdiction shall may be administered through the NPDES municipal stormwater permitting program per 15A NCAC 02H .0126.~~

~~(a) Subject local governments shall develop and implement comprehensive stormwater management programs, tailored toward nitrogen reduction, for both existing and new development.~~

~~(b) These stormwater management programs shall provide all components that are required of local government stormwater programs in Sub-items (4)(a) through (f) (5)(a) through (f) of this Rule.~~

~~(c) Local governments that are subject to an NPDES permit shall be covered by the permit for at least one permitting cycle (five years) before they are eligible to submit a local stormwater management program for consideration and approval by the EMC.~~

(6) RULE IMPLEMENTATION

(a) Within 4 months of the effective date of this Rule, the Division shall submit a model local stormwater program embodying the elements in Items (4) and (5) of this Rule to the Commission for approval. The Division shall work in cooperation with subject local governments in developing this model program.

(b) Local governments designated by the Commission in 1998 and additional local governments designated herein as subject to this Rule shall submit a local stormwater program for approval by the Commission within 6 months and 12 months, respectively, of the Commission's approval of the model local program. These local programs shall meet or exceed the requirements in Items (4) and (5) of this Rule.

Commented [A21]: Changed: Removed outdated peak flow requirement after consulting with NCDEMLR. Rule has been updated to include requirement in Sub-Item (5)(e) that SCMs be designed in accordance with requirements of 2H .1003 which includes the requirement that stormwater outlets to be designed so that they do not cause erosion downslope of the discharge point during peak flow from the 10-year storm event.

Effect: Updated requirement based on most recent science. Consistency between nutrient and state stormwater rules.

Commented [A22]: Change: This language was moved to Paragraph (c). Dropped the requirement for identifying stormwater retrofits based on stakeholder input.

Effect: Placement in Paragraph (c) provides better organization and clarity for local government responsibilities and elements to include in their local programs. Not change in implementation other than removing outdated and unnecessary requirement for identifying retrofit locations.

Commented [A23]: Change: Updated rule implementation timeline and added timeline for Division to develop model and new subject local governments to submit local programs.

Effect: Provides timeline for local governments who are added to this rule when they will be expected to begin implementing the requirements. Fiscal impact will be determined during the rulemaking process.

Commented [A24]: Change: Provide timelines for local governments to complete local programs allowing for more time for newly named communities.

Effect: Local governments that are already implementing will be provided 6 months to revise and submit their local programs. New subject communities will be provided more time – up to 12 months to develop and submit their programs for approval.

(c) The Division shall provide recommendations to the Commission regarding proposed local stormwater programs. The Commission shall either approve the programs or require changes based on the standards set out in Items (4) and (5) of this Rule. Should the Commission require changes, the applicable local government shall have three months to submit revisions, and the Division shall provide follow-up recommendations to the Commission within two months after receiving revisions;

(d) Within 6 months after the Commission's approval of a local program, the affected local government shall complete adoption of and implement its local stormwater management program.

(e) Local governments administering a stormwater management program shall submit annual reports in electronic format to the Division documenting their progress regarding each program implementation requirement in Item (4) and net changes to nitrogen load by October 30th of each year. Annual reports shall also include as appendices all data utilized by nutrient calculation tools for each development stormwater plan approved in accordance with this Rule.

(f) Any significant modifications to a local program subsequent to its approval pursuant to the requirements of this item shall be submitted to the Director for approval.

(7) COMPLIANCE. A local government's authority to approve new development stormwater plans for compliance with this Rule pursuant to Item (5) shall be contingent upon maintaining its own compliance with this Rule. A local government that fails to submit an acceptable local stormwater management program within the timeframe established in this Rule, fails to implement an approved program, or fails to comply with annual reporting requirements shall be in violation of this Rule.

History Note: *Authority G.S. 143-214.1; 143-214.7; 143-215.1; 143-215.3(a)(1); S.L. 1995, c. 572;*
Eff. August 1, 1998;
Amended Eff. January 15, 2011 (this permanent rule replaces the temporary rule approved by the RRC on December 16, 2010).
Amended Eff. [New Date].

Commented [A25]: **Change:** Added New Annual Reporting Language clarifying what needs to be included in the submittal.

Effect: Provides more useful information to the Division for tracking implementation and rule compliance

Commented [A26]: **Change:** Added stronger language to deal with noncompliance of the rule requirements.

Effect: Clarifies expectations and potential recourse for noncompliance with the rule requirements.

Page 4: [1] Commented [A17] **Author**

Change: Based on stakeholder input added the option for developers to use "Regional" offsite SCMs to provide treatment for projects. This option may be particularly useful for municipalities with limited space for SCMs in downtown areas.

Effect: Provides an additional option and improved flexibility for meeting the requirements of this rule.

Page 4: [2] Commented [A19] **Author**

Change: Added language addressing enforcement of rule requirements by local governments on state and federal entities within their jurisdiction (in cases where they do not already have an NPDES permit).

Effect: Recognizes local governments have the authority to require state and federal entities to meet the requirements of their local stormwater ordinances. In cases where Local governments do not enforce these requirements the Division shall do so. Fiscal impact will be evaluated during the rulemaking process.

[.0238 is proposed for amendment and transfer to 15A NCAC 02B .0712]

Last Revised August 18, 2017

15A NCAC 02B .0238 is proposed for amendment as follows:

15A NCAC 02B ~~.0238~~.0712 NEUSE RIVER ~~BASIN-NUTRIENT SENSITIVE WATERS MANAGEMENT BASIN~~ NUTRIENT STRATEGY: ~~AGRICULTURAL NITROGEN REDUCTION STRATEGY~~ AGRICULTURE

~~The following requirements apply to all persons in the Neuse River Basin who engage in agricultural operations. Agricultural operations are activities which relate to the production of crops, livestock, and poultry.~~ This Rule sets forth a process by which agricultural operations in the Neuse River Basin will collectively limit their nitrogen loading to the Neuse estuary, as prefaced in Rule .0710 of this Section. This process is as follows:

(1) ~~All persons engaging in agricultural operations in the Neuse River Basin shall collectively achieve and maintain a 30 percent net total nitrogen loading reduction from the cumulative average 1991-1995 nitrogen loadings within five years from the effective date of this Rule. Persons subject to this Rule are provided with two options for meeting the requirements of this Rule. The first option is to sign up for and participate in implementing a collective local strategy for agricultural nitrogen reduction as described in Item (7) of this Rule. This option allows site-specific plans to be developed for those operations where further nitrogen reduction practices are necessary to achieve the collective reduction goal. The second option requires the implementation of standard Best Management Practices as specified in Item (8) of this Rule. Failure to meet requirements of this Rule may result in 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).~~ PURPOSE. The purpose of this Rule is to maintain or exceed the percentage reduction goal defined in Rule .0710 of this Section on the collective loss of nitrogen from all lands used for agricultural production as described in Item (2) of this Rule from its 1991-1995 baseline level, as estimated by best available accounting practices.

(2) APPLICABILITY. This Rule shall apply to all persons engaging in agricultural operations, including those related to crops, horticulture, livestock, and poultry, in the geographic area subject to the Neuse nutrient strategy as described in Rule .0710 of this Section. This Rule applies to livestock and poultry operations above the size thresholds in this Item in addition to requirements for animal operations set forth in general permits issued pursuant to G.S. 143-215.10C. Nothing in this Rule shall be deemed to allow the violation of any assigned surface water, groundwater, or air quality standard by any agricultural operation, including any livestock or poultry operation below the size thresholds in this Item. For the purposes of this Rule, agricultural operations are activities that relate to any of the following pursuits:

(a) The commercial production of crops or horticultural products other than trees. As used in this Rule, commercial shall mean activities conducted primarily for financial profit.

(b) Research activities in support of such commercial production.

~~Commented [A1]:~~ Change: Revised to capture substance of proposed repealed rule 02B .0236, which set the reduction goal for agriculture.

Effect: Streamlined content. No substantive change.

~~Commented [A2]:~~ Change: Updated to reflect current implementation status and to eliminate individual option of standard BMPs vs. collective compliance.

Effect: No practical impact.

(c) The production or management of any of the following number of livestock or poultry at any time, excluding nursing young:

(i) 5 or more horses;

(ii) 20 or more cattle;

(iii) 20 or more swine not kept in a feedlot, or 150 or more swine kept in a feedlot;

(iv) 120 or more sheep;

(v) 130 or more goats;

(vi) 650 or more turkeys;

(vii) 3,500 or more chickens; or

(viii) Any single species of any other livestock or poultry, or any combination of species of livestock or poultry that exceeds 20,000 pounds of live weight at any time.

~~Commented [A3]:~~ **Change:** Added specificity to applicability description and size thresholds for livestock to conform with Tar-Pamlico ag rule.

Effect: Reduces uncertainty, narrows scope of applicability

(3) IMPLEMENTATION PROCESS. A Basin Oversight Committee and county-level Local Advisory Committees shall coordinate activities and account for progress. The membership, roles and responsibilities of these committees are set forth in Items (4) and (6) of this Rule. Accounting for nitrogen load-reducing actions on agricultural lands within the basin shall follow requirements set forth in Item (5) of this Rule. Producers may be eligible to obtain cost share and technical assistance from the NC Agriculture Cost Share Program and similar federal programs to contribute to their counties' ongoing nitrogen reductions. Committee activity shall be guided by the following:

~~Commented [A4]:~~ **Change:** Part of content reorganization/streamlining consistent with other ag rules.

Effect: Clarity, brevity. No substantive change

(a) OPTIONS FOR INDIVIDUAL OPERATIONS. Persons subject to this Rule may elect to implement practices meeting the standards identified in Item (7) of this Rule that contribute to maintenance of collective local compliance with the goal identified in Item (1) of this Rule, but are not required to implement any specific practices provided their basin collectively maintains compliance with the goal.

~~Commented [A5]:~~ **Change:** Added language clarifying individual's ability to meet requirements through the collective compliance approach.

Effect: Improved clarity. No Impact.

(b) MAINTENANCE OF GOAL. Accounting shall annually demonstrate maintenance or exceedence of the nitrogen reduction goal on a basin basis. Where three sequential annual reports show that the Basin did not meet its nitrogen reduction goal, the Basin Oversight Committee shall work with the Division of Soil and Water Conservation and Local Advisory Committees to seek reduction actions by operations to bring agriculture collectively back into compliance, and shall report on their efforts in subsequent annual reports. Should subsequent annual reports not reverse the trend of noncompliance, the Commission may seek a more specific implementation plan from the Basin Oversight Committee, which may include an assessment of need for specific action by the Commission.

~~Commented [A6]:~~ **Change:** Adds express ability for EMC to seek corrective action.

Effect: Probably no practical difference.

~~(2)~~ (4) BASIN OVERSIGHT COMMITTEE. The Basin Oversight Committee shall have the following membership, role and responsibilities: ~~Formation and membership of the Basin Oversight Committee. The Environmental Management Commission shall delegate to the Secretary of the Department of Environment and Natural Resources the responsibility of forming a Basin Oversight Committee.~~

~~(a) The Secretary shall solicit one nomination for membership on this Committee from each of the following agencies:~~ (a) MEMBERSHIP. The Director of the Division of Water Resources shall be responsible for maintaining the following membership composition. Until such time as the Commission determines that long-term compliance with this rule is assured, the Director shall solicit one nomination for membership on this Committee from each agency in Sub-Items (4)(a)(i) through (4)(a)(v). The Director may appoint a replacement at any time for an interest in Sub-Items (4)(a)(vi) through (4)(a)(viii) of this Rule upon request of representatives of that interest or by the request of the Commissioner of Agriculture:

(i) Division of Soil and Water Conservation,

(ii) United States Department of Agriculture- Natural Resources Conservation ~~Service,~~ Service (shall serve in an "ex-officio" non-voting capacity and shall function as a technical program advisor to the Committee),

(iii) North Carolina Department of ~~Agriculture,~~ Agriculture and Consumer Services,

(iv) North Carolina Cooperative Extension Service, ~~and~~

(v) Division of Water ~~Quality.~~ Resources,

(vi) Up to two environmental interests,

(vii) Up to two general farming interest, and

(viii) Scientific community with experience related to water quality problems in the Neuse River Basin.

~~(b) The Secretary shall also solicit one nomination that represents environmental interests, one nomination that represents agricultural interests, and one from the scientific community with experience related to water quality problems in the Neuse River Basin.~~

~~(c) The Secretary, Department of Environment and Natural Resources, shall appoint members of the Basin Oversight Committee from the nominees provided in Sub-Items (2)(a) and (2)(b) of this Rule. Members shall be appointed for a term not to exceed five years and shall serve at the pleasure of the Secretary. The United States Department of Agriculture Natural Resources Conservation Service member shall serve in an "ex-officio" non-voting capacity and shall function as a technical program advisor to the Committee.~~

~~(3) Role of the Basin Oversight Committee. The Environmental Management Commission shall delegate the following responsibilities to the Basin Oversight Committee.~~

~~(a) Develop a tracking and accounting methodology, as described below, for evaluating total nitrogen loading from agricultural operations and progress toward reaching the total nitrogen net loading reduction from the implementation BMPs within the Neuse River Basin. The accountability methodology must demonstrate how the nitrogen loading reduction can be met collectively by implementing best management practices approved by the Soil and Water

Conservation Commission that include, but are not limited to, water control structures, riparian area establishment, and nutrient management.

(b) Submit a draft accountability process in accordance with the requirements in Sub-Items (3)(a) and (3)(c) of this Rule to the Environmental Management Commission for review within six months after the effective date of the rule and the final accountability process to the Environmental Management Commission for approval within one year after the effective date of the rule. The Environmental Management Commission shall approve the accountability process if it meets requirements in Sub-Items (3)(a) and (3)(c) of this Rule. If the Basin Oversight Committee fails to submit an approvable accountability process to the Environmental Management Commission, then the Environmental Management Commission may accept alternative accountability process proposals within 15 months of the effective date of this Rule. If the Environmental Management Commission fails to receive an approvable accountability process, then the Environmental Management Commission may require all agricultural operations to follow the standard Best Management Practices option as specified in Item (8) of this Rule.

(c) Include in the accountability process a method to accurately track implementation of BMPs, including location and type of BMPs; to estimate nitrogen reductions from BMP implementation; to quantify increases or decreases in nitrogen loading due to changes in land use, modified agricultural activity, or atmospheric nitrogen loading, based on the best available scientific information; to ensure operation and maintenance of BMPs, including year round management for water control structures; to address life expectancy of BMPs; and a method to ensure maintenance of the nitrogen net loading reduction after the initial five years of this Rule, including substitute BMPs to replace expired practices and additional BMPs to offset new sources of nitrogen.

(d) Calculate a separate total nitrogen loading for agricultural lands in the Neuse River Basin above and below New Bern based on the average of 1991-1995 conditions. Based on this loading, calculate a separate 30 percent net reduction. Loading calculations must include atmospheric emissions and deposition of nitrogen from agricultural lands based on the best available scientific information. Allocate to counties or watersheds, as allowed in Sub-Item (4)(a) of this Rule, within the Neuse River Basin their portion of the calculated nitrogen loading reduction from agricultural operations, including any division of the reduction between specific categories of agricultural operations. Each county or watershed may not have to reduce individually its nitrogen loading by 30 percent; however, the nitrogen loading reduction from all counties or watershed above New Bern shall collectively meet their total nitrogen reduction and all counties or watersheds below New Bern shall collectively meet their total nitrogen reduction. If the Basin Oversight Committee fails to allocate the nitrogen

~~loading reductions from agricultural operations to counties or watersheds within the Neuse River Basin, the Environmental Management Commission may assign the agricultural nitrogen reductions based on the approved accountability process as described in Sub-Items (3)(a) and (3)(c) of this Rule.~~

~~(e) Review, approve and summarize county nitrogen reduction strategies and present these strategies to the Environmental Management Commission for approval within two years from the effective date of this Rule.~~

~~(f) Review, approve and summarize local nitrogen reduction annual reports and present these reports to the Environmental Management Commission each October. Information to be included in the Annual Report is described in Item (5)(d) of this Rule.~~

(b) ROLE. The Basin Oversight Committee shall:

(i) Continue to review, approve and summarize local nitrogen loss annual reports to ensure ongoing implementation of the accounting method approved by the Commission in July 1999 as conforming to the requirements of Item (5) of this Rule. Continue to submit these reports as initiated in 2002, to the Director annually;

(ii) Take actions called for under Sub-Item (3)(b) as needed to address maintenance of the nitrogen reduction goal; and

(iii) Identify and implement refinements to the accounting method as needed to reflect advances in scientific understanding, including establishment or refinement of nutrient reduction efficiencies for BMPs.

(5) ACCOUNTING METHODOLOGY. Success in meeting this Rule's purpose will be gauged by estimating percentage changes in nitrogen loss from agricultural lands in the Neuse Basin. The Basin Oversight Committee shall develop maintain, and update as indicated elsewhere in this Item, accounting methods that meet the following requirements:

(a) The nitrogen method shall estimate baseline and annual total nitrogen losses from agricultural operations in each county and for the entire Neuse Basin. Baseline losses and relative loss reduction progress shall be adjusted as frequently as can be supported by available data to account for lands permanently removed from agricultural control through development;

(b) The nitrogen method shall include a means of tracking implementation of BMPs, including number, type, and area affected;

(c) The nitrogen method shall include a means of estimating incremental nitrogen loss reductions from implementation of BMPs that conform to requirements of Item (7) of this Rule and of evaluating progress toward and maintenance of the nutrient goal from changes in BMP implementation, fertilization, and changes in individual crop acres; and

(d) The nitrogen method shall be refined as research and technical advances allow.

~~Commented [A7]:~~ Change: Added an additional environmental representative and farming interest to the Committee Membership. Provided process for appointing members to fill empty seats.

Effect: Provides consistency of interests represented on oversight committees across watersheds. Improved clarity on process for appointing new members. No Impact on rule implementation.

~~Commented [A8]:~~ Change: Reorganized and updated role and responsibilities of the Basin Oversight Committee recognizing several of the responsibilities previously listed in rule have already been addressed during the earlier years of rule implementation.

Effect: Brings responsibilities up to date. Provides Consistency across watersheds. No impact on rule implementation.

~~Commented [A9]:~~ Change: Updated the language addressing accounting methodologies recognizing the Basin Oversight Committee has developed tools currently used for tracking progress with the required reduction goals.

Effect: Improved clarity and brings the rule language up to date reflecting how the rule requirements are being implemented.

~~Commented [A10]:~~ Change: Added language requiring evaluation and adjustment of baseline losses and relative loss reduction progress based on data availability to address agricultural land lost to development.

Effect: Agriculture's reduction progress will be measured against an updated baseline that reflects the nutrient contributions from lands still within the Agriculture universe. Fiscal impact will be evaluated during rulemaking process.

~~(4)~~ (6) ~~Formation and membership of the Local Advisory Committees.~~ LOCAL ADVISORY COMMITTEES. The ~~Environmental Management Commission shall delegate to the~~ Directors of the Division of Water ~~Quality~~ Resources and Division of Soil and Water Conservation ~~the responsibility of forming~~ shall maintain Local Advisory ~~Committees.~~ Committees initially established in February and March, 1999, as follows:

(a) ~~The Directors shall form Local Advisory Committees in~~ MEMBERSHIP. For each county ~~(or~~ or watershed specified by the Basin Oversight ~~Committee)~~ Committee within the Neuse River ~~Basin. The~~ Basin, the Directors shall ~~solicit nominations for~~ jointly maintain membership on the Local Advisory Committee from each of the following local ~~agencies:~~ entities, whose appointees shall serve at the pleasure of the Directors:

(i) Soil and Water Conservation District,

(ii) United States Department of Agriculture- Natural Resources Conservation Service,

(iii) North Carolina Department of Agriculture,

(iv) North Carolina Cooperative Extension Service,

(v) North Carolina Division of Soil and Water Conservation, and

(vi) ~~The Directors shall also solicit at least two nominations that represents a local farmer in the county watershed.~~ At least two farmers that reside in the county.

~~The Soil and Water Conservation District may be designated by the Basin Oversight Committee as the lead agency on the Local Advisory Committee.~~

(b) ROLE. Local Advisory Committees shall:

(i) Continue to submit annual reports to the Basin Oversight Committee estimating total crop production on agricultural operations for the preceding calendar year, summarizing land use changes in the county and making recommendations to the Basin Oversight Committee on the need for updates to the accounting methodology. Reports shall include documentation on the BMPs implemented, including type and location, that satisfy the requirements identified in item (6) of this Rule and documentation of any expired contracts for BMPs; and

(ii) Take actions called for under Sub-Item (3)(b) to address maintenance of the nitrogen reduction goal.

(7) PRACTICE STANDARDS. To receive nutrient reduction credit under the accounting methods described elsewhere in this Rule, a BMP shall be included in the Commission-approved accounting method, or in a subsequent revision to that method identified in annual reporting, and it shall be implemented according to the applicable nutrient-related standards identified by the BOC and established by the NC Soil and Water Conservation Commission or the USDA-Natural Resources Conservation Service in North Carolina.

~~Commented [A11]:~~ Change: Technical corrections updating Session Law References and Agency names.

Effect: No Impact. Improved Clarity

~~Commented [A12]:~~ Change: Updates role of the local advisory committees LACs.

Effect: No Impact. Brings rule language up to date and better reflects how requirements are currently being implemented.

~~Commented [A13]:~~ Change: Adds practice standards requirements for BMPs

Effect: Ensures proper BMP implementation and use of approved accounting methods to earn nutrient reduction credit.

~~(b) The Environmental Management Commission and Soil and Water Conservation Commission shall appoint members of Local Advisory Committee from the nominees provided in Sub-Item (4)(a) of this Rule and shall be appointed for a term not to exceed five years and shall serve at the pleasure of the Commissions.~~

~~(5) Role of the Local Advisory Committees. The Environmental Management Commission shall delegate the following responsibilities to employees of the Department who are members of the Local Advisory Committees and employees of the Division of Soil and Water Conservation or its designee. These employees shall act with advice from the Local Advisory Committees.~~

~~(a) Conduct a sign-up process for persons wishing to voluntarily implement the local nitrogen reduction strategy as specified in Item (7) of this Rule. This sign-up process shall be completed within one year following the effective date of this Rule.~~

~~(b) Develop local nitrogen reduction strategies that meet the nitrogen loading reduction goal for agricultural operations assigned by the Basin Oversight Committee. The local strategies shall be designed to achieve the required nitrogen loading reduction within five years from the effective date of this Rule. A matrix of best management practice options, which account for stream order, floodplain width, and regional variations in soil types and topography, may be used in developing the local nitrogen reduction strategies. Local nitrogen reduction strategies must specify the name and location of participant agricultural farming operations, BMPs which will be required as part of the plan, estimated nitrogen reduction, schedule for BMP implementation, and operation and maintenance requirements. If the Local Advisory Committee fails to develop the local nitrogen reduction strategy, the Environmental Management Commission may develop the strategy based on the tracking and accounting method approved by the Environmental Management Commission.~~

~~(c) Submit an annual report to the Basin Oversight Committee each May on net total nitrogen loading reductions from agricultural operations, the implementation of BMPs for nitrogen control, and progress towards the total nitrogen loading reduction requirements in the Neuse River Basin above and below New Bern.~~

~~(d) Include in the annual report, at a minimum, documentation on the BMPs implemented (including type and location), their costs, documentation of any expired contracts for BMPs, estimated nitrogen net loading reductions achieved as a result of those BMPs, any increases or decreases in nitrogen loading resulting from changes in land use or modified agricultural-related activity, discussion of operation and maintenance of BMPs, and a summary of the estimated load from agricultural operations for the previous year, and any modifications to the accounting methodology. Information shall be provided in the annual report on the status of BMP implementation and estimated total nitrogen reduction by all agricultural operations~~

~~Commented [A14]:~~ Change: Local advisory Committee roles and responsibility language has been updated and reorganized in new Item (6).

Effect: No practical impact. Brings rule text up to date.

~~within the Neuse River Basin in each county or watershed. The annual report shall also be summarized separately for cropland, livestock and poultry activities.~~

~~(6) Options for meeting the collective total nitrogen net loading reduction requirement. Each agricultural operation in the Neuse River Basin shall have two options for meeting the requirements of this Rule. The options are to either implement a local nitrogen reduction strategy, specified by Item (7) of this Rule, or implement standard Best Management Practices specified by Item (8) of this Rule.~~

~~(7) Local nitrogen reduction strategy option. All persons subject to this Rule that choose to implement the county nitrogen reduction plan must complete the sign-up process that will be conducted per the requirements of Item (5)(a) of this Rule. This sign-up process will be completed within one year from the effective date of this Rule. If a person subject to this Rule does not complete the sign-up process, he shall be subject to implementation of Best Management Practices as specified in Item (8) of this Rule. Persons who choose to participate in the local nitrogen reduction strategy must commit and implement their portion of the plan within five years of the effective date of this Rule. A person may withdraw from the local nutrient reduction strategy up until the time that the local strategy is finalized by the Local Advisory Committee and the person signs the specific plan for his property, which represents his commitment to implement the plan within five years of the effective date of the rules. After a person has made the commitment to implement the local strategy by signing the plan for his property, then such persons may not withdraw from the local nitrogen reduction strategy during the initial five-year period. The local nitrogen reduction strategy is not required to be more stringent than the standard best management practice option provided that the net nitrogen reduction goals are met collectively; however, the Local Advisory Committees may develop strategies that achieve reductions of greater than 30 percent.~~

~~(8) Standard best management practice option. If a person subject to this Rule does not complete the sign-up process for implementation of the local nitrogen reduction strategy, then he shall implement the following best management practices within four years following the effective date of this Rule.~~

~~(a) A forested riparian area, as described in Sub-Item (8)(a)(i) (ii) of this Rule, is required on all sides of surface waters in the Neuse River Basin (intermittent streams, perennial streams, lakes, ponds and estuaries) as indicated on the most recent versions of U.S.G.S. 1:24,000 scale (7.5 minute quadrangle) topographic maps or other site-specific evidence. Design and installation of the forested riparian area shall be such that, to the maximum extent possible, sheet flow of surface water is achieved. Any activities that would result in water quality standard violations or disrupt the structural or functional integrity of the forested riparian area are prohibited. The protected riparian area shall have two zones as follows:~~

~~(i) Zone 1 shall be undisturbed forest. Zone 1 begins at the top of bank for intermittent streams and perennial streams without tributaries and extends landward a distance of 30 feet on each side of the waterbody, measured horizontally on a line~~

~~Commented [A15]:~~ Change: Removed outdated individual standard BMP option to reflect current implementation status of collective compliance.

Effect: No practical impact.

perpendicular to the waterbody. For all other waterbodies, Zone 1 begins at the top of bank or the mean high water line and extends landward a distance of 30 feet, measured horizontally on a line perpendicular to the waterbody. Forest vegetation of any width that exists in Zone 1 as of July 22, 1997 must be preserved and maintained in accordance with Sub-Items (8)(a)(i)(A) (E) of this Rule. The application of fertilizer in Zone 1 is prohibited. The following practices and activities are allowed in Zone 1:

(A) Natural regeneration of forest vegetation and planting vegetation to enhance the riparian area if disturbance is minimized, provided that any plantings shall primarily consist of locally native trees and shrubs;

(B) Selective cutting of individual trees of high value in the outer 20 feet of Zone 1, provided that the basal area of this outer 20 foot wide area remains at or above 75 square feet per acre and is computed according to the following method. Basal area of this outer 20 foot wide area shall be computed every 100 feet along the stream to ensure even distribution of forest vegetation and shall be based on all trees measured at 4.5 feet from ground level. No tracked or wheeled equipment is allowed in Zone 1 except at stream crossings which are designed, constructed and maintained in accordance with Forest Practice Guidelines Related to Water Quality (15A NCAC 1J .0201 - .0209);

(C) Horticulture or silvicultural practices to maintain the health of individual trees;

(D) Removal of individual trees which are in danger of causing damage to dwellings, other structures, or the stream channel; and

(E) Removal of dead trees and other timber cutting techniques necessary to prevent extensive pest or disease infestation if recommended by the Director, Division of Forest Resources and approved by the Director, Division of Water Quality.

(ii) Zone 2: begins at the outer edge of Zone 1 and extends landward a minimum of 20 feet as measured horizontally on a line perpendicular to the waterbody. The combined minimum width of Zones 1 and 2 shall be 50 feet on all sides of the waterbody. Vegetation in Zone 2 shall consist of a dense ground cover composed of herbaceous or woody species which provides for diffusion and infiltration of runoff and filtering of pollutants. The following practices and activities are allowed in Zone 2 in addition to those allowed in Zone 1: Periodic mowing and removal of plant products such as timber, nuts, and fruit is allowed on a periodic basis provided

the intended purpose of the riparian area is not compromised by harvesting, disturbance, or loss of forest or herbaceous ground cover. Forest vegetation in Zone 2 may be managed to minimize shading on adjacent land outside the riparian area if the water quality function of the riparian area is not compromised.

(iii) The following practices and activities are not allowed in Zone 1 and Zone 2:

(A) Land disturbing activities and placement of fill and other materials, other than those allowed in Items (8)(a)(i) and (8)(b) of this Rule;

(B) New development;

(C) New on-site sanitary sewage systems which use ground absorptions;

(D) Any activity that threatens the health and function of the vegetation including, but not limited to, application of fertilizer or chemicals in amounts exceeding the manufacturer's recommended rate, uncontrolled sediment sources on adjacent lands, and the creation of any areas with bare soil.

(iv) Timber removal and skidding of trees in the riparian area shall be directed away from the water course or water body. Skidding shall be done in a manner to prevent creation of ephemeral channels perpendicular to the water body. Any tree removal must be performed in a manner that does not compromise the intended purpose of the riparian area and is in accordance with the Forest Practices Guidelines Related to Water Quality (15A NCAC 1J .0201 .0209).

(b) The following waterbodies and land uses are exempt from the riparian area requirement:

(i) Ditches and manmade conveyances, other than modified natural streams, which under normal conditions do not receive drainage waters from any tributary ditches, canals, or streams, unless the ditch or manmade conveyance delivers runoff directly to waters classified in accordance with 15A NCAC 2B .0100;

(ii) Ditches and manmade conveyances other than modified natural streams which are used exclusively for drainage of silvicultural land or naturally forested areas. All forest harvesting operations shall be in compliance with North Carolina's Forest Practices Guidelines Related to Water Quality;

(iii) Areas mapped as perennial streams, intermittent streams, lakes, ponds or estuaries on the most recent versions of United States Geological Survey 1:24,000 scale (7.5 minute quadrangle) topographic maps where no perennial, intermittent waterbody, or lakes, ponds or estuaries exists on the ground;

(iv) Ponds and lakes created for animal watering, irrigation, or other agricultural uses that are not part of a natural drainage way that is classified in accordance with 15A NCAC 2B .0100;

(v) Water dependent structures as defined in 15A NCAC 2B .0202 provided that they are located, designed, constructed and maintained to provide maximum nutrient removal, to have the least adverse effects on aquatic life habitat and to protect water quality;

(vi) The following uses may be allowed where no practical alternative exists. A lack of practical alternatives may be shown by demonstrating that, considering the potential for a reduction in size, configuration or density of the proposed activity and all alternative designs, the basic project purpose cannot be practically accomplished in a manner which would avoid or result in less adverse impact to surface waters. Also, these structures shall be located, designed, constructed, and maintained to have minimal disturbance, to provide maximum nutrient removal and erosion protection, to have the least adverse effects on aquatic life and habitat, and to protect water quality to the maximum extent practical through the use of best management practices:

(A) Road crossings, railroad crossings, bridges, airport facilities, and utility crossings may be allowed if conditions specified in Sub-Item (8)(b)(vi) of this Rule are met;

(B) Stormwater management facilities and ponds, and utility construction and maintenance corridors for utilities such as water, sewer or gas, may be allowed in Zone 2 of the riparian area as long as the conditions specified in Sub-Item (8)(b)(vi) of this Rule are met and they are located at least 30 feet from the top of bank or mean high water line. Additional requirements for utility construction and maintenance corridors are listed in Sub-Item (8)(b)(vi) of this Rule.

(vii) A corridor for the construction and maintenance of utility lines, such as water, sewer or gas, (including access roads and stockpiling of materials) may run parallel to the stream and may be located within Zone 2 of the riparian area, as long as no practical alternative exists and they are located at least 30 feet from the top of bank or mean high water line and best management practices are installed to minimize runoff and maximize water quality protection to the maximum extent practicable. Permanent, maintained access corridors shall be restricted to the minimum width practicable and shall not exceed 10 feet in width except at manhole locations. A 10 feet by 10 feet perpendicular vehicle turnaround is allowed provided they are spaced at least 500 feet apart along the riparian area;

(viii) Stream restoration projects, scientific studies, stream gauging, water wells, passive recreation facilities such as boardwalks, trails, pathways, historic preservation and

archaeological activities are allowed; provided that they are located in Zone 2 and are at least 30 feet from the top of bank or mean high water line and are designed, constructed and maintained to provide the maximum nutrient removal and erosion protection, to have the least adverse effects on aquatic life and habitat, and to protect water quality to maximum extent practical through the use of best management practices. Activities that must cross the stream or be located within Zone 1 are allowed as long as all other requirements of this Item are met;

(ix) Stream crossings associated with timber harvesting are allowed if performed in accordance with the Forest Practices Guidelines Related to Water Quality (15A NCAC 1J.0201 .0209); and

(x) In addition to exceptions included in Sub-Item (8)(b)(i) (ix), canals, ditches, and other drainage conveyances are exempt from the riparian area requirement if both water control structures with a water control structure management plan and a nutrient management plan, are implemented on the adjacent agricultural land according to the standards and specifications of the USDA – Natural Resources Conservation Service or the standards and specifications adopted by the NC Soil and Water Conservation Commission. The water control structures and nutrient management practices must provide equivalent protection and directly affect the land and waterbodies draining into the waterbody exempted from the riparian area requirement. To the maximum extent practical, water control structures shall be managed to maximize nitrogen removal throughout the year. A technical specialist designated pursuant to rules adopted by the Soil and Water Conservation Commission must provide written approval that the nutrient management and water management plans meet the standards and specifications of the USDA – Natural Resources Conservation Service or the standards and specifications adopted by the NC Soil and Water Conservation Commission. If the nutrient management plans and water management plans are not implemented, then a riparian area pursuant to this Section is required.

(c) The following are modifications to the riparian area requirements.

(i) On agricultural land where either water control structures with a water control structure management plan, or a nutrient management plan is implemented according to the standards and specifications of the USDA – Natural Resources Conservation Service or the standards and specifications adopted by the NC Soil and Water Conservation Commission, then a 20 ft forested or a 30 ft vegetated buffer is required. The water control structures or nutrient management practices must provide equivalent protection and directly affect the land and waterbodies

draining into the waterbody with a modified buffer requirement. To the maximum extent practical, water control structures shall be managed to maximize nitrogen removal throughout the year. A technical specialist designated pursuant to rules adopted by the Soil and Water Conservation Commission must provide written approval that the nutrient management plan meets the standards and specifications of the USDA – Natural Resources Conservation Service or the standards and specifications adopted by the NC Soil and Water Conservation Commission.

(ii) A vegetated riparian area may be substituted for an equivalent width of forested riparian area within 100 feet of tile drainage.

(iii) Where the riparian area requirements would result in an unavoidable loss of tobacco allotments [(7 CFR 723.220(c)] and the BMPs of controlled drainage or nutrient management are not in place, forest cover is required only in the first 20 feet of the riparian area.

(d) Maintenance of Zones 1 and 2 is required in accordance with this Rule.

(i) Sheet flow must be maintained to the maximum extent practical through dispersing concentrated flow and re-establishment of vegetation to maintain the effectiveness of the riparian area.

(ii) Concentrated runoff from new ditches or manmade conveyances must be dispersed into sheetflow before the runoff enters Zone 2 of the riparian area. Existing ditches and manmade conveyances, as specified in Sub-Item (8)(b)(ii) of this Rule, are exempt from this requirement; however, care shall be taken to minimize pollutant loading through these existing ditches and manmade conveyances from fertilizer application or erosion.

(iii) Periodic corrective action to restore sheet flow shall be taken by the landowner if necessary to impede the formation of erosion gullies which allow concentrated flow to bypass treatment in the riparian area.

(e) Periodic maintenance of modified natural streams such as canals is allowed provided that disturbance is minimized and the structure and function of the riparian area is not compromised. A grassed travelway is allowed on one side of the waterbody when alternative forms of maintenance access are not practical. The width and specifications of the travelway shall be only that needed for equipment access and operation. The travelway shall be located to maximize stream shading.

(f) Where the standards and management requirements for riparian areas are in conflict with other laws, regulations, and permits regarding streams, steep slopes, erodible soils, wetlands, floodplains, forest harvesting, surface mining, land disturbance activities, development in

~~Coastal Area Management Act Areas of Environmental Concern, or other environmental protection areas, the more protective shall apply.~~

~~(g) The Environmental Management Commission acknowledges that best management practices under the standard management practice option of this Rule do not fully address nitrogen loading, including atmospheric emissions and deposition, from animal operations. As information becomes available on nitrogen loadings from animal operations and best management practices to control these loadings, other best management practices from animal operations may be required by the Commission as necessary to achieve equivalent reduction in nitrogen loadings therefrom. These additional best management practices shall be required if deemed necessary to achieve a net total nitrogen loading reduction from the animal operations based on average 1991-1995 conditions.~~

History Note: *Authority G.S. 143-214.1; 143-214.7; 143-215.3(a)(1);*
Eff. August 1, 1998.
Amended Eff. [New Date].

~~Commented [A16]:~~ Change: Removed unnecessary language for unused standard BMP option since producers in the watershed have chosen to comply with the rule requirements using the collective compliance approach.

Effect: No Impact

15A NCAC 02B .0234 is proposed for amendment and recodification as follows:

15A NCAC 02B ~~.0234~~.0713 NEUSE RIVER BASIN - NUTRIENT SENSITIVE WATERS MANAGEMENT STRATEGY: WASTEWATER DISCHARGE REQUIREMENTS

The following is the National Pollutant Discharge Elimination System (NPDES) wastewater discharge management strategy for the Neuse River Basin:

(1) Purpose. The purpose of this Rule is to establish minimum nutrient control requirements for point source discharges in the Neuse River Basin in order to maintain or restore the water quality in the Neuse River Estuary and protect its designated uses.

(2) Applicability. This Rule applies to all wastewater treatment facilities in the Neuse River Basin that receive nitrogen-bearing wastewater and are required to obtain individual NPDES permits.

(3) Definitions. ~~For the purposes of~~The terms used in this ~~Rule, the following definitions apply~~Rule shall be as defined in Rule 02B .0701 and as follows:

(a) In regard to point source dischargers, treatment facilities, wastewater flows or discharges, or like matters:

(i) "Existing" means that which obtained ~~a~~an NPDES permit on or before December 31, 1995.

(ii) "Expanding" means that which increases beyond its permitted flow as defined in this Rule.

(iii) "New" means that which had not obtained ~~a~~an NPDES permit on or before December 31, 1995.

(b) ~~"MGD" means million gallons per day.~~

~~(c)~~ "Nitrogen wasteload allocation" is that portion of the Neuse River nitrogen TMDL assigned to individually permitted wastewater facilities in the basin and represents the maximum allowable load of total nitrogen to the estuary from these point source dischargers.

~~(d)~~(c) "Nitrogen estuary allocation" or "estuary allocation" means the mass loading of total nitrogen at the estuary that is reserved for a discharger or group of dischargers. A discharger's or group's estuary allocation is equivalent to its discharge allocation multiplied by its assigned transport factor.

~~(e)~~(d) "Nitrogen discharge allocation" or "discharge allocation" means the mass loading of total nitrogen at the point(s) of discharge that is reserved for a discharger or group of dischargers. A discharger's or group's discharge allocation is equivalent to its estuary allocation divided by its assigned transport factor.

~~(f) "Nitrogen TMDL," or "TMDL," means the total nitrogen load to the Neuse River estuary that is predicted to maintain adequate water quality to support all designated uses in the~~

Style Definition: Rule

Commented [TM1]: Change: This and other nutrient management rules for several river basins are to be moved to a new section 02B .0700 so that requirements common to multiple basins can be consolidated.
Effect: Improved organization of the rules.

Commented [TM2]: NOTE: See also the new Item (10), which refers to overlapping Falls Lake requirements.

Commented [TM3]: Change: Several definitions are to be moved to the new Definitions rule in Section 2B .0700.
Effect: Improved organization of the rules.

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~~estuary and is approved by the United States Environmental Protection Agency in accordance with the federal Clean Water Act.~~

~~(g)~~(e) "Nonpoint source load allocation" is that portion of the Neuse River nitrogen TMDL assigned to all other nitrogen sources in the basin other than individually permitted wastewater facilities and represents the maximum allowable load of total nitrogen to the estuary from these nonpoint sources.

~~(h)~~(f) "Permitted flow" means the maximum monthly average flow authorized in a facility's NPDES permit as of December 31, 1995, with the following exceptions:

Facility Name	NPDES No.	Permitted Flow (MGD)
Benson	NC0020389	3.00
Goldsboro	NC0023949	16.80
Kenly	NC0064891	0.63
Snow Hill	NC0020842	0.50
Wilson	NC0023906	14.00

~~(i) "Total nitrogen" means the sum of the organic, nitrate, nitrite, and ammonia forms of nitrogen.~~

~~(j) "Transport factor" is the fraction of the total nitrogen in a discharge that is predicted to reach the estuary.~~

(4) This Item specifies the nitrogen wasteload allocation for point sources.

(a) ~~Beginning~~In accordance with the ~~calendar year 2003,~~Nitrogen TMDL for the Neuse River estuary, the nitrogen wasteload allocation for point sources shall not exceed 1.64 million pounds per calendar year plus any ~~portion of the nonpoint source load allocation purchased in accordance with the provisions in Items (7) and (8) of this Rule and 15A NCAC 02B .0240.~~nutrient offset credits obtained in accordance with Rule 02B .0703, Nutrient Offset Trading Program.

(b) The Commission shall order future revisions in the nitrogen wasteload allocation whenever necessary to ensure that water quality in the estuary meets all standards in 15A NCAC 02B .0200 or to conform with applicable state or federal requirements.

(5) This Item specifies the initial distribution of nitrogen discharge allocations for point sources.

(a) ~~Upon adoption of this Rule and until~~Until revised as provided elsewhere in this Rule, the following group and individual discharge allocations for total nitrogen shall apply in order to comply with the nitrogen wasteload allocation for point sources in Item (4) of this Rule:

(i) Dischargers with permitted flows less than 0.5 MGD shall be assigned collectively an annual discharge allocation of 138,000 pounds of total nitrogen.

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Commented [TM4]: Change: Updated to reflect passage of the original compliance date.
Effect: Technical correction.

Commented [TM5]: Change: Clarifies that the following values are initial allocations, which are subject to change in accordance with the provisions of this rule.
Effect: Clarification.

Commented [TM6]: Change: Updated to reflect passage of the original compliance date.
Effect: Technical correction.

(ii) Dischargers upstream of Falls Lake Dam and with permitted flows greater than or equal to 0.5 MGD shall be assigned collectively an annual discharge allocation of 443,700 pounds of total nitrogen.

(iii) Municipal dischargers downstream of Falls Lake Dam and with permitted flows greater than or equal to 0.5 MGD shall be assigned collectively an annual discharge allocation of 2,021,400 pounds of total nitrogen.

(iv) Industrial dischargers downstream of Falls Lake Dam and with permitted flows greater than or equal to 0.5 MGD shall be assigned collectively an annual discharge allocation of 396,900 pounds of total nitrogen.

(v) Within each group in Sub-Items (i) - (iv) of this Item, each individual discharger shall be assigned an individual discharge allocation and the equivalent estuary allocation. Each discharger's discharge allocation shall be calculated as its permitted flow divided by the total permitted flow of the group, multiplied by the group discharge allocation.

(b) In the event that the nitrogen wasteload allocation for point sources is revised, as provided in Item (4) of this Rule, the Commission shall apportion the revised load among the existing facilities and shall revise discharge allocations as needed. The Commission may consider such factors as:

(i) fate and transport of nitrogen in the river basin;

(ii) technical feasibility and economic reasonableness of source reduction and treatment methods;

(iii) economies of scale;

(iv) nitrogen control measures already implemented;

(v) probable need for growth and expansion;

(vi) incentives for responsible planning, utilities management, resource protection, and cooperative efforts among dischargers; and

(vii) other factors the Commission deems relevant.

(6) This Item specifies nutrient controls for existing facilities.

(a) Beginning with calendar year 2003, each discharger with a permitted flow equal to or greater than 0.5 MGD shall be subject to a total nitrogen permit limit equal to its individual discharge allocation, pursuant to Item (5) of this Rule.

(b) Beginning with calendar year 2023, each discharger with a permitted flow equal to or greater than 0.1 MGD and less than 0.5 MGD shall be subject to a total nitrogen permit limit equal to its individual discharge allocation, pursuant to Item (5) of this Rule.

(c) Effective January 1, 2003, dischargers shall be subject to the following limits for total phosphorus:

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Commented [TM7]: Change: Extends nitrogen limits to include mid-size facilities, which are not currently subject to such limits.
Effect: Will require treatment plant or operations improvements in the first five years at approximately 8 of the 14 affected facilities. The remaining 6 may need to make improvements in the ensuing 10-20 years as their wastewater flows increase.

Note: The Division seeks public comment, in particular, on whether to add a new Sub-item (6)(b), which would extend permit limits for nitrogen to some dischargers smaller than 0.5 MGD.

Item (5)(a) of the Rule sets nitrogen caps for four groups of dischargers, according to facility type and size. Dischargers in each group are also assigned an individual allocation in proportion to their size. Under Item (6), the 29 largest dischargers (≥ 0.5 MGD permitted flow) received permit limits for nitrogen in 2003. The 38 smaller dischargers did not receive limits but are subject to their group cap, which is not readily enforceable.

The 'small dischargers' group has exceeded its group cap since at least 2011. This is largely due to (0.1 - 0.5 MGD), which collectively exceeded their allocations by 85% in 2015.

As drafted, the new rule language would set limits for all 18 intermediate facilities. It would primarily impact the eight with the poorest nutrient performance, of which two are already subject to more stringent requirements under the Falls Lake nutrient rule, 15A NCAC 02B .0279.

Setting nitrogen limits for these intermediate dischargers would ensure that the small dischargers conform to their group cap and, thus, the aims of the Neuse nutrient strategy and TMDL. The change would also be more consistent with the Jordan Lake and Falls Lake rules, where the threshold for limits is already 0.1 MGD.

(i) All existing facilities above Falls Lake Dam with permitted flows greater than or equal to 0.05 MGD shall meet a quarterly average total phosphorus limit of 2 mg/L.

(ii) All existing facilities below Falls Lake Dam with permitted flows greater than or equal to 0.5 MGD shall meet a quarterly average total phosphorus limit of 2 mg/L.

~~(e)~~(d) The director shall establish more stringent limits for nitrogen or phosphorus upon finding that such limits are necessary to protect water quality standards in localized areas.

(7) This Item specifies nutrient controls for new facilities.

Commented [TM8]: Change: Updated to reflect changes in the nutrient offsets rule, 2B .0703.
Effect: Technical correction.

(a) New facilities proposing to discharge wastewater shall evaluate all practical alternatives to surface water discharge, pursuant to 15A NCAC 02H .0105(c)(2), prior to submitting an application to discharge.

(b) New facilities submitting an application shall make every reasonable effort to obtain estuary allocation for the proposed wastewater discharge from existing dischargers. If estuary allocation cannot be obtained from the existing facilities, new facilities may ~~purchase a portion of the nonpoint source load allocation~~obtain nutrient credits equal to 200 percent of the required allocation and sufficient for a period of 30 ~~years at a rate of 200 percent of the cost as set in 15A NCAC 02B .0240 to implement practices designed to offset the loading created by the new facility.~~years pursuant to Rule 02B .0703, Nutrient Offset Trading Program. Payment for ~~each 30-year portion of the nonpoint source load allocation~~the credits shall be made prior to the ensuing permit issuance.

(c) No application for a new discharge shall be made or accepted without written documentation demonstrating that the requirements of Sub-Items (a) and (b) of this Item have been met.

(d) The nitrogen discharge ~~allocation~~limit for a new facility treating municipal or domestic wastewaters shall not exceed the mass equivalent to a concentration of 3.5 mg/L at the maximum monthly average flow limit in the facility's NPDES permit.

(e) The nitrogen discharge ~~allocation~~limit for a new facility treating industrial wastewaters shall not exceed the mass equivalent of either the best available technology economically achievable or a discharge concentration of 3.2 mg/L at the maximum monthly average flow limit in the facility's NPDES permit, whichever is less.

(f) New dischargers must meet a monthly average total phosphorous limit of 1 mg/L.

(g) The director shall establish more stringent limits for nitrogen or phosphorus upon finding that such limits are necessary to protect water quality standards in localized areas.

(8) This Item specifies nutrient controls for expanding facilities.

(a) Expanding facilities shall evaluate all practical alternatives to surface water discharge, pursuant to 15A NCAC 02H .0105(c)(2), prior to submitting an application to discharge.

(b) Facilities submitting an application for increased discharge shall make every reasonable effort to minimize increases in their nitrogen discharges, such as reducing sources of nitrogen to the facility or increasing the nitrogen treatment capacity of the facility; or to obtain estuary allocation from existing dischargers.

(c) No application for an expanding facility shall be made or accepted without written documentation demonstrating that the requirements of Sub-Items (a) and (b) of this Item have been met.

(d) If these measures do not produce adequate estuary allocation for the expanded flows, facilities may ~~purchase a portion of the nonpoint source load allocation~~obtain nutrient credits equal to 200 percent of the required allocation and sufficient for a period of 30 ~~years at a rate of 200 percent of the cost as set in 15A NCAC 02B .0240 to implement practices designed to offset the loading created by the new facility.~~years pursuant to Rule 02B .0703, Nutrient Offset Trading Program. Payment for ~~each 30-year portion of the nonpoint source load allocation~~the credits shall be made prior to the ensuing permit issuance.

(e) The nitrogen discharge ~~allocation~~limit for an expanded facility treating municipal or domestic wastewaters shall not exceed the mass equivalent to a concentration of 3.5 mg/L at the maximum monthly average flow limit in the NPDES permit, or its existing allocation, whichever is greater.

(f) The nitrogen discharge ~~allocation~~limit for expanding facilities of an industrial nature shall not exceed the mass equivalent to the best available technology economically achievable or a concentration of 3.2 mg/L at the maximum monthly average flow limit in the facility's modified NPDES permit, whichever is less. If the resulting mass is less than the facility's existing discharge allocation, the existing discharge allocation shall not be reduced.

Commented [TM9]: Change: Throughout the rule, corrected references to allocations (potential allowances) and limits (enforceable caps, set in permits).
Effect: Technical correction/ clarifications.

Commented [TM10]: Change: Updated to reflect changes in the nutrient offsets rule, 2B .0703.
Effect: Technical correction.

(g) Expanding facilities must meet a monthly average total phosphorous limit of 1 mg/L unless they are a member in good standing of a group compliance association described in Item (9) of this Rule, in which case they must meet a quarterly average total phosphorus limit of 2 mg/L.

(h) The director shall establish more stringent limits for nitrogen or phosphorus upon finding that such limits are necessary to protect water quality standards in localized areas.

(9) This Item describes the option for dischargers to join a group compliance association to collectively meet nutrient load allocations.

(a) Any or all facilities within the basin may form a group compliance association to meet nitrogen ~~estuary allocations~~limits collectively. Any such association must apply for and shall be subject to an NPDES permit that establishes the effective total nitrogen ~~allocations~~limits, expressed as loads delivered to the estuary, for the association and for its members. More than one group compliance association may be established. No facility may belong to more than one association at a time.

(b) No later than 180 days prior to expiration of the association NPDES permit, the association and its members shall submit an application for ~~a~~an NPDES permit for the discharge of total nitrogen to the surface waters of the Neuse River Basin. The NPDES permit shall be issued to the association and its members as co-permittees ("association NPDES permit"). ~~It shall contain the association's estuary allocation and individual estuary allocations for each of the members.~~

(c) An association's estuary ~~allocation~~limit of total nitrogen shall be the sum of its members' individual estuary ~~allocations~~limits plus any other eligible estuary allocation obtained by the association or its members.

(d) An association may reapportion the individual estuary allocations of its members on an annual basis. The association NPDES permit shall be modified to reflect the revised individual estuary ~~allocations.~~allocations and limits.

(e) ~~Beginning in calendar year 2003, if~~If an association does not meet its estuary ~~allocation~~limit in any year, it shall ~~make offset payments for nonpoint source controls~~obtain nutrient reduction credits in accordance with Rule 02B .0703, Nutrient Offset Trading Program, in an amount equal to its mass exceedance no later than May 1 of the following ~~year at the rate set in 15A NCAC 02B .0240.~~year.

(f) Association members shall be exempted from the permit limits for total nitrogen contained in their individually issued NPDES permits so long as they remain members in an association. Association members shall be exempted from their individual estuary ~~allocations~~limits in the association NPDES permit as long as the association is in compliance with its estuary ~~allocation~~limit. If the association ~~fails to meet its estuary allocation~~exceeds its limit, the association and ~~the~~ any members that ~~have failed to~~

Commented [TM11]: Change: Corrected references to allocations (potential allowances) and limits (enforceable caps, set in permits).
Effect: Clarification of existing requirements.

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Effect: Technical correction

~~meet~~exceed their individual estuary ~~allocations~~limits in the association NPDES permit ~~will~~shall be deemed to be out of compliance with the association NPDES permit.

(10) Regional Facilities. In the event that an existing discharger or group of dischargers accepts wastewater from another NPDES-permitted treatment facility in the Neuse River Basin and that acceptance results in the elimination of the discharge from the treatment facility, the eliminated facility's total nitrogen estuary allocation shall be transferred and added to the accepting discharger's estuary allocation.

(11) Falls Lake. Where facilities are subject to nutrient limits under both the Falls Lake and Neuse estuary nutrient strategies, the more stringent of the limits shall apply, and facilities shall maintain sufficient lake and estuary allocations to support the applicable limits.

History Note: *Authority G.S. 143-214.1; 143-215; 143-215.1; 143-215.1; 143-215.3(a) (1); S.L. 1995, c. 572;*
Temporary Adoption Eff. January 22, 1998;
Eff. August 1, 1998;
Temporary Amendment Eff. March 15, 2000;
Temporary Amendment Expired on December 10, 2000;
Amended Eff. [new effective date]; April 1, 2003.

Commented [TM13]: Change: Added to clarify that both the estuary and Falls Lake requirements apply to Falls Lake dischargers and that the more stringent requirements apply. **Effect:** Clarification, in response to stakeholder comment.

Formatted: HistoryAfter

15A NCAC 02B .0714 is proposed for adoption as follows:

15A NCAC 02B ~~.0233~~.0714 NEUSE RIVER BASIN: NUTRIENT SENSITIVE WATERS MANAGEMENT STRATEGY: PROTECTION AND MAINTENANCE OF EXISTING RIPARIAN BUFFERS

The following is the management strategy for maintaining and protecting existing riparian buffers in the Neuse River Basin.

(1) PURPOSE. The purpose of this Rule shall be to maintain and protect ~~and preserve~~ existing riparian buffers in the Neuse River ~~Basin~~ Basin, including the Falls of the Neuse Reservoir watershed, to maintain their nutrient removal functions.

~~(2) DEFINITIONS. For the purpose of this Rule, these terms shall be defined as follows:~~

~~(a) 'Channel' means a natural water-carrying trough cut vertically into low areas of the land surface by erosive action of concentrated flowing water or a ditch or canal excavated for the flow of water. (current definition in Forest Practice Guidelines Related to Water Quality, 15A NCAC 01I .0102)~~

~~(b) 'DBH' means Diameter at Breast Height of a tree, which is measured at 4.5 feet above ground surface level.~~

~~(c) 'Ditch or canal' means a man-made channel other than a modified natural stream constructed for drainage purposes that is typically dug through inter-stream divide areas. A ditch or canal may have flows that are perennial, intermittent, or ephemeral and may exhibit hydrological and biological characteristics similar to perennial or intermittent streams.~~

~~(d) 'Ephemeral (stormwater) stream' means a feature that carries only stormwater in direct response to precipitation with water flowing only during and shortly after large precipitation events. An ephemeral stream may or may not have a well-defined channel, the aquatic bed is always above the water table, and stormwater runoff is the primary source of water. An ephemeral stream typically lacks the biological, hydrological, and physical characteristics commonly associated with the continuous or intermittent conveyance of water.~~

~~(e) 'Forest plantation' means an area of planted trees that may be conifers (pines) or hardwoods. On a plantation, the intended crop trees are planted rather than naturally regenerated from seed on the site, coppice (sprouting), or seed that is blown or carried into the site.~~

~~(f) 'High Value Tree' means a tree that meets or exceeds the following standards: for pine species, 14 inch DBH or greater or 18 inch or greater stump diameter; and, for hardwoods and wetland species, 16 inch DBH or greater or 24 inch or greater stump diameter.~~

~~(g) 'Intermittent stream' means a well-defined channel that contains water for only part of the year, typically during winter and spring when the aquatic bed is below the water table. The~~

Commented [HK1]: No effect – update citation

Commented [HK2]: No effect - grammar

Commented [HK3]: no effect - clarification

~~flow may be heavily supplemented by stormwater runoff. An intermittent stream often lacks the biological and hydrological characteristics commonly associated with the conveyance of water.~~

~~(h) 'Modified natural stream' means an on-site channelization or relocation of a stream channel and subsequent relocation of the intermittent or perennial flow as evidenced by topographic alterations in the immediate watershed. A modified natural stream must have the typical biological, hydrological, and physical characteristics commonly associated with the continuous conveyance of water.~~

~~(i) 'Perennial stream' means a well-defined channel that contains water year-round during a year of normal rainfall with the aquatic bed located below the water table for most of the year. Groundwater is the primary source of water for a perennial stream, but it also carries stormwater runoff. A perennial stream exhibits the typical biological, hydrological, and physical characteristics commonly associated with the continuous conveyance of water.~~

~~(j) 'Perennial waterbody' means a natural or man-made basin that stores surface water permanently at depths sufficient to preclude growth of rooted plants, including lakes, ponds, sounds, non-stream estuaries and ocean. For the purpose of the State=s riparian buffer protection program, the waterbody must be part of a natural drainageway (i.e., connected by surface flow to a stream).~~

~~(k) 'Stream' means a body of concentrated flowing water in a natural low area or natural channel on the land surface.~~

~~(l) 'Surface water' means all waters of the state as defined in G.S. 143-212 except underground waters.~~

~~(m) 'Tree' means a woody plant with a DBH equal to or exceeding five inches.~~

Commented [HK4]: No effect – moved definitions to .0701

~~(3)~~(2) 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 of the Neuse Reservoir watershed.

Commented [HK5]: No effect – clarification

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(3) BUFFERS PROTECTED. The following minimum criteria shall be used for identifying regulated buffers:

Commented [HK7]: No effect – reorganization

(a) A surface water shall be subject to this Rule if the feature is approximately shown on any of the following references:

(i) The most recent version of the published manuscript of the soil survey map that shows stream layers prepared by the Natural Resources Conservation Service of the United States Department of Agriculture;

(ii) The most recent version of the 1:24,000 scale (7.5 minute) quadrangle topographic maps prepared by the United States Geologic Survey (USGS); or

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(iii) Other maps approved by the Geographic Information Coordinating Council and by the Environmental Management Commission as more accurate than those identified in Sub-Item (3)(a)(i) and (3)(a)(ii) of this Rule. Other maps may be submitted to the Division for review and recommendation to the Environmental Management Commission. Prior to recommendation to the Environmental Management Commission, the Division shall issue a 30-calendar day public notice through the Division's Mailing List in accordance with 15A NCAC 02H .0503. Division staff shall present recommendations including comments received during the public notice period to the Environmental Management Commission for a final decision. Maps approved under this Sub-Item shall not apply to projects that are existing and ongoing within the meaning of this Rule as set out in Item (6) of this Rule;

(b) This Rule shall apply to activities conducted within 50-foot wide riparian buffers directly adjacent to surface waters in the Neuse River Basin (intermittent streams, perennial streams, lakes, ponds, reservoirs and estuaries), excluding wetlands;~~wetlands. Except as described in Sub-Item (4)(a)(iii) of this Rule, wetlands~~

(c) Wetlands adjacent to surface waters or within 50 feet of surface waters shall be considered as part of the riparian buffer but are regulated pursuant to 15A NCAC 02H ~~.0506.~~.0506;

(d) Stormwater runoff from activities conducted outside the riparian buffer shall comply with Item (9) of this Rule;

~~The riparian buffers protected by this Rule shall be measured pursuant to Item (4) of this Rule. For the purpose of this Rule, a surface water shall be present if the feature is approximately shown on either the most recent version of the soil survey map prepared by the Natural Resources Conservation Service of the United States Department of Agriculture or the most recent version of the 1:24,000 scale (7.5 minute) quadrangle topographic maps prepared by the United States Geologic Survey (USGS).~~

~~Riparian buffers adjacent to surface waters that do not appear on either of the maps shall not be subject to this Rule. Riparian buffers adjacent to surface waters that appear on the maps shall be subject to this Rule unless one of the following applies:~~

(e) Riparian buffers protected by this Rule shall be measured pursuant to Item (8) of this Rule;

(f) A riparian buffer may be exempt from this Rule as described in Items (5), (6) and (7) of this Rule; and

(g) No new clearing, grading or development shall take place nor shall any new building permits be issued in violation of this Rule.

~~(a)~~(4) ~~EXEMPTION WHEN AN~~ ON-SITE ~~DETERMINATION SHOWS THAT SURFACE WATERS ARE NOT PRESENT.~~DETERMINATION. When a landowner or other affected party believes that the maps listed in Sub-Item (3)(a) of this Rule have inaccurately depicted surface ~~waters.~~waters or

Commented [HK9]: Added flexibility for a 3rd map to be used – language from SL 2009-484 for Jordan buffer rules

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Commented [HK15]: No effect – moved to (3)(a) above

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Commented [HK17]: Clarification – wording in Jordan buffer rule

Commented [HK18]: No effect - reorganization

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the specific origination point of a stream, or the specific origination point of a stream is in question or unclear, he or she shall ~~consult~~ request the ~~Division or the appropriate delegated local authority. Upon request, the Division or delegated local authority shall~~ Authority to make an on-site ~~determinations.~~determination. On-site determinations shall be made by Authority staff that are certified pursuant to G.S. 143-214.25A. Registered Foresters under Chapter 89B of the General Statutes who are employees of the North Carolina Forest Service of the Department of Agriculture and Consumer Services can make on-site determinations for forest harvesting operations and practices. On-site determinations shall expire five years from the date of the determination. Any disputes over on-site determinations shall be referred to the Director in ~~writing.~~writing within 60 calendar days of written notification from the Authority. ~~A determination of the Director as to the accuracy or application of the maps~~The Director's determination is subject to review as provided in ~~Articles 3 and 4 of~~G.S. 150B.

(5) EXEMPTION BASED ON ON-SITE DETERMINATION. Surface waters that appear on the maps listed in Sub-Item (3)(a) of this Rule shall not be subject to this Rule if an on-site determination shows that they fall into one of the following ~~categories.~~categories:

~~(i)~~(a) Ditches and manmade conveyances other than modified natural streams unless constructed for navigation or boat access.

~~(ii)~~(b) Manmade ponds and lakes that are ~~located outside natural drainage ways.~~not fed by an intermittent or perennial stream or do not have a direct discharge point to an intermittent or perennial stream.

~~(iii)~~(c) Ephemeral (stormwater) streams.

(d) The absence on the ground of a corresponding perennial waterbody, intermittent waterbody, lake, pond or estuary.

~~(b)~~(6) EXEMPTION WHEN EXISTING USES ARE PRESENT AND ONGOING. This Rule shall not apply to portions of the riparian buffer where a use is existing and ~~ongoing according to the following:~~ ongoing.

~~(i)~~(a) A use shall be considered existing ~~if~~if:

(i) ~~it~~ It was present within the riparian buffer as of July 22, ~~1997.~~1997 and has continued to exist since that time;

(ii) It was a deemed allowable activity as listed in Item (10) of this Rule; or

(iii) It was conducted and maintained pursuant to an Authorization Certificate or Variance issued by the Authority.

(b) Existing and ongoing uses shall include, but not be limited to, agriculture, buildings, industrial facilities, commercial areas, transportation facilities, maintained lawns, maintained utility lines and on-site sanitary sewage ~~systems.~~systems, any of which involve either specific periodic management of vegetation or displacement of vegetation by structures or regular activity.

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Commented [HK24]: Codifying policy. Consistent with timeframe of Corps determinations.

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Commented [HK26]: No effect - grammar

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Commented [HK28]: No effect – added header

Commented [HK29]: No effect – clarification

Commented [HK30]: No effect - punctuation

Commented [HK31]: Codifying policy

Commented [HK32]: No effect - reorganization

Commented [HK33]: No effect – clarification

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Commented [HK39]: Clarification; codifying policy

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(c) Only the portion of the riparian buffer that contains the footprint of the existing and ongoing use is exempt from this Rule.

(d) Change of ownership through purchase or inheritance is not a change of use.

(e) Activities necessary to maintain existing and ongoing uses are allowed provided that ~~no additional vegetation is removed from Zone 1 except that grazed or trampled by livestock~~the site remains similarly vegetated, no built upon area is added within the riparian buffer where it did not exist prior to July 22, 1997, and the site is in compliance with Item (9) of this Rule.~~existing diffuse flow is maintained. Grading and revegetating Zone 2 is allowed provided that the health of the vegetation in Zone 1 is not compromised, the ground is stabilized and existing diffuse flow is maintained.~~

(f) This Rule shall apply at the time an existing and ongoing use is changed to another use. Change of use shall involve the initiation of any activity not defined as existing and ongoing in Sub-Items (6)(a) through (6)(e) of this Rule.

~~(ii) At the time an existing use is proposed to be converted to another use, this Rule shall apply. An existing use shall be considered to be converted to another use if any of the following applies:~~

~~(A) Impervious surface is added to the riparian buffer in locations where it did not exist previously.~~

~~(B) An agricultural operation within the riparian buffer is converted to a non-agricultural use.~~

~~(C) A lawn within the riparian buffer ceases to be maintained.~~

(7) EXEMPTION FOR PONDS CONSTRUCTED AND USED FOR AGRICULTURAL PURPOSES. This Rule shall not apply to a freshwater pond if all of the following conditions are met:

(a) The property on which the pond is located is used for agriculture as that term is defined in G.S. 106-581.1.

(b) Except for this Rule, the use of the property is in compliance with all other water quality and water quantity statutes and rules applicable to the property before July 22, 1997.

(c) The pond is not a component of an animal waste management system as defined in G.S. 143-215.10B (3).

~~(4)~~(8) ZONES OF THE RIPARIAN BUFFER. The protected riparian buffer shall have two zones as follows:

(a) Zone 1 shall consist of a vegetated area that is undisturbed except for uses provided for in Item ~~(6)~~(10) of this Rule. The location of Zone 1 shall be as follows:

(i) For intermittent and perennial streams, Zone 1 shall begin at the most landward limit of the top of bank or the rooted herbaceous vegetation and extend landward a distance of 30 feet on all sides of the ~~surface water,~~stream, measured horizontally on a line perpendicular to the ~~surface water,~~stream (where an intermittent or perennial stream begins or ends, including when it goes

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Commented [HK45]: No effect - language repeated below

Commented [HK46]: No effect – moved from (ii) below

Commented [HK47]: Moved to (f) above

Commented [HK48]: Removed

Commented [HK49]: Added per SL 2013-413

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Commented [HK51]: No effect - clarification

underground, enters or exits a culvert, or enters or exits a wetland, the required distance shall be measured as a radius around the beginning or the end).

(ii) For ponds, lakes and reservoirs located within a natural drainage way, Zone 1 shall begin at the ~~most landward limit of the~~ normal water level ~~or the rooted herbaceous vegetation~~ and extend landward a distance of 30 feet, measured horizontally on a line perpendicular to the surface water.

(iii) For surface waters within the 20 Coastal Counties (defined in ~~15A NCAC 02B .0202)~~ 0202 of this Subchapter) and within the jurisdiction of the Division of Coastal Management, Zone 1 shall begin at the most landward limit ~~of:~~

~~(A) the normal high water level;~~

~~(B) the normal water level; or~~

~~the landward limit of coastal wetlands as defined by the Division of Coastal Management;~~

of the normal high water level or the normal water level and extend landward a distance of 30 feet, measured horizontally on a line perpendicular to the surface water, whichever is more restrictive.

(b) Zone 2 shall consist of a stable, vegetated area that is undisturbed except for activities and uses provided for in Item ~~(6)~~(10) of this Rule. Grading and revegetating Zone 2 is allowed provided that the health of the vegetation in Zone 1 is not compromised. Zone 2 shall begin at the outer edge of Zone 1 and extend landward 20 feet as measured horizontally on a line perpendicular to the surface water. The combined width of Zones 1 and 2 shall be 50 feet on all sides of the surface water.

~~(5) DIFFUSE FLOW REQUIREMENT. Diffuse flow of runoff shall be maintained in the riparian buffer by dispersing concentrated flow and reestablishing vegetation.~~

~~(a) Concentrated runoff from new ditches or manmade conveyances shall be converted to diffuse flow before the runoff enters the Zone 2 of the riparian buffer.~~

~~(b) Periodic corrective action to restore diffuse flow shall be taken if necessary to impede the formation of erosion gullies.~~

(9) STORMWATER RUNOFF THROUGH THE RIPARIAN BUFFER. Drainage conveyances include drainage ditches, roadside ditches, and stormwater conveyances. The following stormwater conveyances through the riparian buffer are either deemed allowable or allowable upon authorization, as defined in Sub-Item (10)(a) of this Rule, provided that they do not erode through the buffer and do not cause erosion to the receiving waterbody. Stormwater conveyances through the riparian buffer that are not listed below shall be allowable with exception as defined in Sub-Item (10)(a)(v) of this Rule.

(a) The following are deemed allowable as defined in Sub-Item (10)(a)(i) of this rule:

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Commented [HK53]: clarification

Commented [HK54]: removed for simplicity

Commented [HK55]: No effect – updated citation

Commented [HK56]: Edited per SL 2015-246

Commented [HK57]: No effect – update citation

Commented [HK58]: Removed diffuse flow requirement; instead provide options for stormwater discharges.

Commented [HK59]: Removed diffuse flow requirement; instead provide options for stormwater discharges

Commented [HK60]: Organization

(i) New drainage conveyances that comply with a stormwater management plan reviewed and approved under a state stormwater program or a state-approved local government stormwater program, which includes a Primary SCM, as defined in 15A NCAC 02H .1002, to treat the drainage area to the conveyance;

(ii) New stormwater flow to existing drainage conveyances provided that the addition of new flow does not result in the need to alter the conveyance.

(b) The following are allowable upon authorization as defined in Sub-Item (10)(a)(ii) of this Rule:

(i) New drainage conveyances when a Primary SCM as defined in 15A NCAC 02H .1002 is provided to treat the drainage area to the conveyance;

(ii) New drainage conveyances when the drainage area to the conveyance is demonstrated via approved nutrient calculation methodologies to meet the nutrient loading goal of 3.6 pounds per acre per year of Nitrogen (N) outside of the Falls of the Neuse Reservoir Watershed. Within the Falls of the Neuse Reservoir Watershed, new drainage conveyances when the drainage area to the conveyance is demonstrated via approved nutrient calculation methodologies to meet the nutrient loading goal of 2.2 pounds per acre per year of Nitrogen (N) and 0.33 pounds per acre per year of Phosphorus (P);

(iii) New drainage conveyances when the flow rate of the conveyance is less than 0.5 cubic feet per second during the peak flow from the 0.75 inch per hour storm;

(iv) New stormwater runoff that has been treated through a level spreader-filter strip that complies with 15A NCAC 02H .1059;

(v) Realignment of existing roadside drainage ditches retaining or improving the design dimensions provided that no additional travel lanes are added and the minimum required roadway typical section is used based on traffic and safety considerations;

(vi) Realignment of existing conveyances retaining or improving the design dimensions provided that the size of the drainage area and the percent built-upon area within the drainage area remain the same;

(vii) New or altered drainage conveyances applicable to publicly funded and maintained linear transportation provided that SCMs, or BMPs from the NCDOT Stormwater Best Management Practices Toolbox, are employed;

(viii) New drainage conveyances applicable to linear transportation projects that do not provide a stormwater management facility due to topography constraints provided other measures are employed to protect downstream water quality to the maximum extent practical;

Commented [HK61]: New use – allows for DWR to accept local government review of a SMP without having to review for meeting diffuse flow

Commented [HK62]: No change – moved from table

Commented [HK63]: Organization

Commented [HK64]: No change – moved from table

Commented [HK65]: New use

Commented [HK66]: New use

Commented [HK67]: No change – from diffuse flow language above

Commented [HK68]: New use

Commented [HK69]: New use

Commented [HK70]: New Use

Commented [HK71]: New use

(ix) New drainage conveyances where the drainage area to the conveyance has no new built-upon area as defined in 15A NCAC 02H .1002 and the conveyance is necessary for bypass of existing drainage only.

~~(6)~~(10) ~~TABLE OF~~ USES. Uses within the riparian buffer, or outside the buffer with hydrological impacts on the riparian buffer, shall be designated as deemed allowable, allowable upon authorization, allowable with mitigation upon authorization, allowable with exception or prohibited.

(a) Potential new uses shall have the following requirements:

(i) DEEMED ALLOWABLE. Uses designated as deemed allowable in Sub-Items (9)(a) and (10)(b) of this Rule may occur within the riparian buffer. Deemed allowable uses shall be designed, constructed and maintained to minimize vegetation and soil disturbance and to provide the maximum water quality protection practicable, including construction, monitoring, and maintenance activities. In addition, deemed allowable uses shall meet the requirements listed in Sub-Item (10)(b) of this Rule for the specific use.

(ii) ALLOWABLE UPON AUTHORIZATION. Uses designated as allowable upon authorization in Sub-Items (9)(b) and (10)(b) of this Rule require a written Authorization Certificate from the Authority for impacts within the riparian buffer pursuant to Rule .0705 of this Section.

(iii) ALLOWABLE WITH MITIGATION UPON AUTHORIZATION. Uses designated as allowable with mitigation upon authorization in Sub-Item (10)(b) of this Rule require a written Authorization Certificate from the Authority for impacts within the riparian buffer pursuant to Rule .0705 of this Section and an appropriate mitigation strategy that has received written approval pursuant to Item (11) of this Rule.

(iv) PROHIBITED. Uses designated as prohibited in Sub-Item (10)(b) of this Rule may not proceed within the riparian buffer unless a Variance is granted pursuant to Rule .0226 of this Section. Mitigation may be required as a condition of variance approval.

(v) ALLOWABLE WITH EXCEPTION. Uses not designated as deemed allowable, allowable upon authorization, allowable with mitigation upon authorization or prohibited in Sub-Item (10)(b) of this Rule require a written Authorization Certificate with Exception from the Authority for impacts within the riparian buffer pursuant to Rule .0705 of this Section and an appropriate mitigation strategy that has received written approval pursuant to Item (11) of this Rule.

(b) The following ~~chart~~table sets out ~~the~~ potential new uses within the riparian buffer, or outside the buffer with hydrological impacts on the riparian buffer, and ~~their designation under this Rule~~designates them as ~~exempt~~deemed allowable, ~~allowable~~allowable upon

Commented [HK72]: New use

Commented [HK73]: Moved from (7) below

Commented [HK74]: Update terminology

Commented [HK75]: No effect – moved from (7) below

Commented [HK76]: Update terminology

Commented [HK77]: No effect – moved from (7) below

Commented [HK78]: Update terminology

Commented [HK79]: No effect – moved from (7) below

Commented [HK80]: Changed to variance process set out in Rule .0226

Commented [HK81]: New category – instead of deeming all activities not listed in the table as "prohibited" they will go through buffer authorization process but still have to meet hardships.

Commented [HK82]: No effect – update terminology

Commented [HK83]: No effect - grammar

Commented [HK84]: No effect - clarification

Commented [HK85]: No effect - grammar

Commented [HK86]: No effect – update terminology

authorization, allowable with ~~mitigation, or prohibited.~~mitigation upon authorization, or prohibited: ~~The requirements for each category are given in Item (7) of this Rule.~~

Commented [HK87]: No effect – update terminology

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Commented [HK89]: No effect - puntuation

Commented [HK90]: Moved to (a) above

	~~Exempt~~ Deemed Allowable	Allowable Upon Authorization	Allowable with Mitigation Upon Authorization	Prohibited
Airport facilities: • Vegetation removal activities necessary to comply with Federal Aviation Administration requirements (e.g. line of sight requirements) provided the disturbed areas are stabilized and revegetated	X			
• Airport facilities that impact equal to or less than ~~150 linear feet or~~ one-third of an acre of riparian buffer		X		
• Airport facilities that impact greater than ~~150 linear feet or~~ one-third of an acre of riparian buffer			X	
Archaeological activities	X			
Bridges • Impact equal to or less than one-tenth of an acre of riparian buffer	X			
• Impact greater than one-tenth of an acre of riparian buffer		X		
Dam maintenance activities • Dam maintenance activities that do not cause additional riparian buffer disturbance beyond the footprint of the existing dam or those covered under a U.S. Army Corps of Engineers permit	X			
• Dam maintenance activities that do cause additional riparian buffer disturbance beyond the footprint of the existing dam or those not covered under a U.S. Army Corps of Engineers permit		X		

Commented [HK91]: No effect – updated terminology

Commented [HK92]: No effect – updated terminology

Commented [HK93]: No effect – updated terminology

Commented [HK94]: Codifying policy

Commented [HK95]: Removed linear feet; will just reference square feet for ease of implementation

Commented [HK96]: Removed linear feet; will just reference square feet for ease of implementation

Commented [HK97]: Added new use to allow bridges with less than 1/10 to be deemed allowable; consistent with road impacts

Commented [HK98]: Require authorization certificate for new impacts to buffers

	~~Exempt~~ Deemed Allowable	Allowable Upon Authorization	Allowable with Mitigation Upon Authorization	Prohibited
~~Drainage ditches, roadside ditches and stormwater outfalls through riparian buffers:~~ • ~~Existing drainage ditches, roadside ditches, and stormwater outfalls provided that they are managed to minimize the sediment, nutrients and other pollution that convey to waterbodies~~ • ~~New drainage ditches, roadside ditches and stormwater outfalls provided that a stormwater management facility is installed to control nitrogen and attenuate flow before the conveyance discharges through the riparian buffer~~ • ~~New drainage ditches, roadside ditches and stormwater outfallsthat do not provide control for nitrogen before discharging through the riparian buffer~~ • ~~Excavation of the streambed in order to bring it to the same elevation as the invert of a ditch~~	~~X~~	~~X~~		~~X~~ ~~X~~
Drainage of a pond ~~in a natural drainage way~~ subject to Item (3) of this Rule provided that a new riparian buffer ~~that meets the requirements of Items (4) and (5) of this Rule~~ is established ~~adjacent to the new channel~~ by natural regeneration or planting, within 50 feet of any stream which naturally forms or is constructed within the drained pond area. Drained ponds shall be allowed to naturalize for a minimum of six months from completion of the draining activity before a stream determination is conducted pursuant to Item (4) of this Rule.	X			

Commented [HK91]: No effect – updated terminology

Commented [HK92]: No effect – updated terminology

Commented [HK93]: No effect – updated terminology

Commented [HK99]: Moved to Item (9) above

Commented [HK100]: No effect - clarification

Commented [HK101]: Clarification of regeneration process after pond is drained

	~~Exempt~~ Deemed Allowable	Allowable Upon Authorization	Allowable with Mitigation Upon Authorization	Prohibited
~~Driveway crossings of streams and other surface waters subject to this Rule:~~ • ~~Driveway crossings on single family residential lots that disturb equal to or less than 25 linear feet or 2, 500 square feet of riparian buffer~~ • ~~Driveway crossings on single family residential lots that disturb greater than 25 linear feet or 2,500 square feet of riparian buffer~~ • ~~In a subdivision that cumulatively disturb equal to or less than 150 linear feet or one-third of an acre of riparian buffer~~ • ~~In a subdivision that cumulatively disturb greater than 150 linear feet or one-third of an acre of riparian buffer~~	~~X~~	~~X~~ ~~X~~	~~X~~	
Fences: • Fencing livestock out of surface waters • ~~Fences provided that disturbance is minimized and installation~~Installation does not result in removal of ~~forest vegetation~~trees • Installation results in removal of trees	X X	X		
Forest harvesting - see ~~Item (11) of this~~ Rule .0706 of this Section				
Fertilizer application: • One-time fertilizer application to establish replanted ~~vegetation~~vegetation. This only applies to the one-time application of fertilizer in the riparian buffer. No runoff from this one-time application in the riparian buffer is allowed in the applicable surface water. • Ongoing fertilizer application	X			X

Commented [HK91]: No effect – updated terminology

Commented [HK92]: No effect – updated terminology

Commented [HK93]: No effect – updated terminology

Commented [HK102]: Moved below with road impacts

Commented [HK103]: New deemed allowable use

Commented [HK104]: No effect - grammar

Commented [HK105]: New allowable use

Commented [HK106]: No effect – update citation

Commented [HK107]: Clarification

	~~Exempt~~ Deemed Allowable	Allowable Upon Authorization	Allowable with Mitigation Upon Authorization	Prohibited
Grading ~~and revegetation~~ in Zone 2 only provided that ~~diffuse flow and~~ the health of existing vegetation in Zone 1 is not ~~compromised~~ compromised, Item (9) of this Rule is complied with, and disturbed areas are stabilized and revegetated	X			
~~Greenway/hiking trails~~Greenways, trails, sidewalks or linear pedestrian/bicycle transportation system: • In Zone 2 provided that no built upon area is added within the buffer • When built upon area is added to the buffer, equal to or less than ten (10) feet wide with two (2) foot wide shoulders. Must be located outside Zone 1 unless there is no practical alternative • When built upon area is added to the buffer, greater than ten (10) feet wide with two (2) foot wide shoulders. Must be located outside Zone 1 unless there is no practical alternative	X	X	X	
Historic preservation	X			
Landfills as defined by G.S. 130A-290				X
Mining activities: • Mining activities that are covered by the Mining Act provided that new riparian buffers that meet the requirements of Items ~~(4)~~(8) and ~~(5)~~(9) of this Rule are established adjacent to the relocated channels • Mining activities that are not covered by the Mining Act OR where new riparian buffers that meet the requirements or Items ~~(4)~~(8) and ~~(5)~~(9) of this Rule are not established ~~adjacent to the relocated channels~~ • Wastewater or mining dewatering wells with approved NPDES permit	X	X	X	

Commented [HK91]: No effect – updated terminology

Commented [HK92]: No effect – updated terminology

Commented [HK93]: No effect – updated terminology

Commented [HK108]: No effect – clarification and updated citation

Commented [HK109]: Codifying policy

Commented [HK110]: No effect – update citation

Commented [HK111]: No effect – update citation

Commented [HK112]: Allows mining activities that do not relocate channels to pursue an authorization certificate

	~~Exempt~~ Deemed Allowable	Allowable Upon Authorization	Allowable with Mitigation Upon Authorization	Prohibited
~~Non-electric utility lines:~~				
• ~~Impacts other than perpendicular crossings in Zone 2 only[3]~~		~~X~~		
• ~~Impacts other than perpendicular crossings in Zone 1[3]~~			~~X~~	
~~Non-electric utility line perpendicular crossing of streams and other surface waters subject to this Rule[3]:~~				
• ~~Perpendicular crossings that disturb equal to or less than 40 linear feet of riparian buffer with a maintenance corridor equal to or less than 10 feet in width~~	~~X~~			
• ~~Perpendicular crossings that disturb greater than 40 linear feet of riparian buffer with a maintenance corridor greater than 10 feet in width~~		~~X~~		
• ~~Perpendicular crossings that disturb greater than 40 linear feet but equal to or less than 150 linear feet of riparian buffer with a maintenance corridor equal to or less than 10 feet in width~~		~~X~~		
• ~~Perpendicular crossings that disturb greater than 40 linear feet but equal to or less than 150 linear feet of riparian buffer with a maintenance corridor greater than 10 feet in width~~			~~X~~	
• ~~Perpendicular crossings that disturb greater than 150 linear feet of riparian buffer~~			~~X~~	
On-site sanitary sewage systems - new ones that use ground absorption				X
~~Overhead electric utility lines:~~				
• ~~Impacts other than perpendicular crossings in Zone 2 only[3]~~	~~X~~			
• ~~Impacts other than perpendicular crossings in Zone 1[1,2,3]~~	~~X~~			

Commented [HK91]: No effect – updated terminology

Commented [HK92]: No effect – updated terminology

Commented [HK93]: No effect – updated terminology

Commented [HK113]: Moved to below

Commented [HK114]: Moved to below

Commented [HK115]: Moved to below

	~~Exempt~~ Deemed Allowable	Allowable Upon Authorization	Allowable with Mitigation Upon Authorization	Prohibited
~~Overhead electric utility line perpendicular crossings of streams and other surface waters subject to this Rule[3]~~ • ~~Perpendicular crossings that disturb equal to or less than 150 linear feet of riparian buffer[1]~~ • ~~Perpendicular crossings that disturb greater than 150 linear feet of riparian buffer[1, 2]~~	~~X~~	~~X~~		
~~Periodic maintenance of~~Maintenance access on modified natural streams ~~such as~~or canals; ~~and~~ a grassed travelway on one side of the ~~surface~~ waterbody when less impacting alternative forms ~~of maintenance access~~ are not practical. The width and specifications of the travel way shall be only that needed for equipment access and operation. The travelway shall be located to maximize stream shading.		X		
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: • Pedestrian access trail equal to or less than six (6) feet wide that does not result in the removal of any tree(s) within the riparian buffer and does not result in any built upon area being added to the riparian buffer • Pedestrian access trail equal to or less than six (6) feet wide where the installation or use results in the removal of tree(s) or addition of built upon area to the riparian buffer • Pedestrian access trail greater than six (6) feet wide	X	X	X	

Commented [HK91]: No effect – updated terminology

Commented [HK92]: No effect – updated terminology

Commented [HK93]: No effect – updated terminology

Commented [HK116]: Moved to below

Commented [HK117]: Clarifications

Commented [HK118]: New use to allow for impacts to buffer for access trails to surface waters and associated docking facilities

	~~Exempt~~ Deemed Allowable	Allowable Upon Authorization	Allowable with Mitigation Upon Authorization	Prohibited
Playground equipment: • Playground equipment on single family lots provided that installation and use does not result in removal of vegetation	X			
• Playground equipment on single family lots where installation or use results in the removal of vegetation		X		
• Playground equipment installed on lands other than single-family lots ~~or that requires removal of vegetation~~		X		
~~Ponds in natural drainage ways, excluding dry ponds:~~Ponds created or modified by impounding streams subject to buffers pursuant to Item (3) of this Rule and not used as stormwater control measures (SCMs):		X		
• New ponds provided that a riparian buffer that meets the requirements of Items ~~(4)~~(8) and ~~(5)~~(9) of this Rule is established adjacent to the pond				
• New ponds where a riparian buffer that meets the requirements of Items ~~(4)~~(8) and ~~(5)~~(9) of this Rule is NOT established adjacent to the pond			X	
Protection of existing ~~structures, facilities and streambanks~~structures and facilities, including existing utility lines, when this requires additional disturbance of the riparian buffer~~ or the stream channel~~		X		
~~Railroad impacts other than crossings of streams and other surface waters subject to this Rule~~			~~X~~	

Commented [HK91]: No effect – updated terminology

Commented [HK92]: No effect – updated terminology

Commented [HK93]: No effect – updated terminology

Commented [HK119]: No effect – split out into two bullets for clarification

Commented [HK120]: No effect - clarification

Commented [HK121]: No effect – update citation

Commented [HK122]: No effect – update citation

Commented [HK123]: No effect – streambanks in table below; clarify "structures and facilities" includes existing utility lines

Commented [HK124]: Moved to below

	~~Exempt~~ Deemed Allowable	Allowable Upon Authorization	Allowable with Mitigation Upon Authorization	Prohibited
~~Railroad crossings of streams and other surface waters subject to this Rule:~~ • ~~Railroad crossings that impact equal to or less than 40 linear feet of riparian buffer~~ • ~~Railroad crossings that impact greater than 40 linear feet but equal to or less than 150 linear feet or one-third of an acre of riparian buffer~~ • ~~Railroad crossings that impact greater than 150 linear feet or one-third of an acre of riparian buffer~~	~~X~~	~~X~~	~~X~~	
Removal of previous fill or debris provided that ~~diffuse flow is maintained~~Item (9) of this Rule is complied with and any vegetation removed is restored	X			
Residential Properties: Where application of this Rule would preclude construction or expansion of a single-family residence and necessary infrastructure, such as an on-site wastewater system, the single-family residence may encroach in the buffer if all of the following conditions are met: (1) the residence is set back the maximum feasible distance from the top of the bank, rooted herbaceous vegetation, normal high-water level, or normal water level, whichever is applicable, on the existing lot; (2) the residence is designed to minimize encroachment into the riparian buffer; (3) the residence complies with Item (9) of this Rule; and (4) if the residence will be served by an on-site wastewater system, no part of the septic tank or drainfield may encroach into the riparian buffer. • The residence or necessary infrastructure impact Zone 2 only		X		
• The residence or necessary infrastructure impact Zone 1			X	

Commented [HK91]: No effect – updated terminology

Commented [HK92]: No effect – updated terminology

Commented [HK93]: No effect – updated terminology

Commented [HK125]: Moved to below

Commented [HK126]: No effect – update citation

Commented [HK127]: Incorporating SL 2011-394 and SL 2012-200

Commented [HK128]: New use to allow impacts to Zone 1 for single-family residences

	~~Exempt~~ Deemed Allowable	Allowable Upon Authorization	Allowable with Mitigation Upon Authorization	Prohibited
Restoration or enhancement (wetland, stream) as defined in 33 CFR Part 332 available free of charge on the internet at: http://water.epa.gov/lawsregs/guidance/wetlands/wetlandsmitigation_index.cfm:				
• Wetland or stream restoration that does not require written Division approval that results in impacts to the riparian buffer	X			
• Wetland or stream restoration that requires written Division approval that results in impacts to the riparian buffer		X		
~~Road~~ Road, driveway or railroad impacts other than perpendicular crossings of streams and other surface waters subject to this Rule			X	
~~Road~~ Road, driveway or railroads: perpendicular crossings of streams and other surface waters subject to this ~~Rule:~~Rule or perpendicular entry into the buffer that does not cross a stream or other surface water subject to this Rule:	X			
• ~~Road crossings that impact~~Impact equal to or less than ~~40 linear feet~~one-tenth of an acre of riparian buffer		X		
• ~~Road crossings that impact~~Impact greater than ~~40 linear feet~~one-tenth of an acre but equal to or less than ~~150 linear feet or~~ one-third of an acre of riparian buffer			X	
• ~~Road crossings that impact~~Impact greater than ~~150 linear feet or~~ one-third of an acre of riparian buffer		X		
• Driveway crossings in a subdivision that cumulatively disturb equal to or less than one-third of an acre of riparian buffer			X	
• Driveway crossings in a subdivision that cumulatively disturb greater than one-third of an acre of riparian buffer				

Commented [HK91]: No effect – updated terminology

Commented [HK92]: No effect – updated terminology

Commented [HK93]: No effect – updated terminology

Commented [HK129]: Moved from below

Commented [HK130]: No effect, incorporating road, driveway and railroad into one row as requirements were all the same

Commented [HK131]: No effect, incorporating road, driveway and railroad into one row as requirements were all the same

Commented [HK132]: Clarification

Commented [HK133]: No effect - grammar

Commented [HK134]: Removed linear feet; will just reference square feet for ease of implementation

Commented [HK135]: No effect - grammar

Commented [HK136]: Removed linear feet; will just reference square feet for ease of implementation

Commented [HK137]: No effect - grammar

Commented [HK138]: Removed linear feet; will just reference square feet for ease of implementation

Commented [HK139]: No effect – moved from above

	~~Exempt~~ Deemed Allowable	Allowable Upon Authorization	Allowable with Mitigation Upon Authorization	Prohibited
Road relocation of existing private access roads associated with public road projects where necessary for public safety: • Less than or equal to 2,500 square feet of riparian buffer impact		X		
• Greater than 2,500 square feet of riparian buffer impact			X	
Scientific studies and stream gauging	X			
Slatted uncovered decks, including steps, which are associated with a dwelling, provided that it meets the requirements of Items (8) and (9) of this Rule and: • Installation does not result in removal of vegetation in Zone 1		X		
• Installation results in removal of vegetation in Zone 1			X	
Stormwater Control Measure (SCM) as defined in 15A NCAC 02H .1002:~~management ponds excluding dry ponds:~~ • ~~New stormwater management ponds provided that a riparian buffer that meets the requirements of Items (4) and (5) of this Rule is established adjacent to the pond~~In Zone 2 if Item (9) of this Rule is complied with		X		
• ~~New stormwater management ponds where a riparian buffer that meets the requirements of Items (4) and (5) of this Rule is NOT established adjacent to the pond~~In Zone 1			X	
~~Stream restoration~~	~~X~~			
Streambank or shoreline stabilization		X		

Commented [HK91]: No effect – updated terminology

Commented [HK92]: No effect – updated terminology

Commented [HK93]: No effect – updated terminology

Commented [HK140]: New use

Commented [HK141]: New use

Commented [HK142]: Changes use to allow any SCM in the buffer instead of just wet ponds.

Commented [HK143]: Moved above

Commented [HK144]: No effect - clarification

	~~Exempt~~ Deemed Allowable	Allowable Upon Authorization	Allowable with Mitigation Upon Authorization	Prohibited
Temporary ~~roads:~~ roads, provided that the disturbed area is restored to pre-construction topographic and hydrologic conditions and replanted with comparable vegetation within two (2) months of when construction is complete. Tree planting may occur during the dormant season. At the end of five years, the restored wooded buffer shall comply with the restoration criteria in Paragraph (i) of Rule .0295 of this Section:				
• ~~Temporary roads that disturb less~~Less than or equal to 2,500 square feet ~~provided that vegetation is restored within six months of initial disturbance~~of riparian buffer disturbance	X			
• ~~Temporary roads that disturb greater~~Greater than 2,500 square feet ~~provided that vegetation is restored within six months of initial disturbance~~of riparian buffer disturbance		X		
• ~~Temporary roads used for~~Associated with culvert installation or bridge construction or replacement ~~provided that restoration activities, such as soil stabilization and revegetation, are conducted immediately after construction~~		X		

Commented [HK91]: No effect – updated terminology

Commented [HK92]: No effect – updated terminology

Commented [HK93]: No effect – updated terminology

Commented [HK145]: Clarification

Commented [HK146]: No effect - grammar

Commented [HK147]: Moved to wording above

Commented [HK148]: No effect - grammar

Commented [HK149]: Moved to wording above

Commented [HK150]: Allow for culvert installation in addition to bridges

Commented [HK151]: Moved to wording above

	~~Exempt~~ Deemed Allowable	Allowable Upon Authorization	Allowable with Mitigation Upon Authorization	Prohibited
Temporary sediment and erosion control ~~devices:~~ devices provided that the disturbed area is restored to preconstruction topographic and hydrologic conditions and replanted with comparable vegetation within two (2) months of when construction is complete. Tree planting may occur during the dormant season. At the end of five years, the restored buffer shall comply with the restoration criteria in Paragraph (i) of Rule .0295 of this Section:				
• In Zone 2 only provided ~~that the vegetation in Zone 1 is not compromised~~ ground cover is established within the timeframes required by the Sedimentation and Erosion Control Act, vegetation in Zone 1 is not compromised, and that discharge is released ~~as diffuse flow~~ in accordance with Item ~~(5)~~(9) of this Rule	X			
• In Zones 1 and 2 to control impacts associated with uses approved by the ~~Division~~ Authority or that have received ~~a variance~~an authorization certificate with exception provided that sediment and erosion control for upland areas is addressed ~~to the maximum extent practical~~ outside the buffer	X			
• In-stream temporary erosion and sediment control measures for work within a stream channel that is authorized under Sections 401 and 404 of the Federal Water Pollution Control Act		X		
• In-stream temporary erosion and sediment control measures for work within a stream channel that has written approval from the Division and the U.S. Army Corps of Engineers under Sections 401 & 404 of the Federal Water Pollution Control Act		X		

Commented [HK91]: No effect – updated terminology

Commented [HK92]: No effect – updated terminology

Commented [HK93]: No effect – updated terminology

Commented [HK152]: Added language for restoring temporarily disturbed area; consistent with requirement for temporary roads

Commented [HK153]: Incorporate compliance with E&SC plan

Commented [HK154]: no effect – update citation

Commented [HK155]: no effect – update name

Commented [HK156]: no effect – update terminology

Commented [HK157]: removed unnecessary language; this will be reviewed as part of the no practical alternatives analysis

Commented [HK158]: Clarification

Commented [HK159]: Clarification

	~~Exempt~~ Deemed Allowable	Allowable Upon Authorization	Allowable with Mitigation Upon Authorization	Prohibited
~~Underground electric utility lines:~~ • ~~Impacts other than perpendicular crossings in Zone 2 only[3]~~ • ~~Impacts other than perpendicular crossings in Zone 1[3,4]~~	~~X~~ ~~X~~			
~~Underground electric utility line perpendicular crossings of streams and other surface waters subject to this Rule:[3]~~ • ~~Perpendicular crossings that disturb less than or equal to 40 linear feet of riparian buffer[3,4]~~ • ~~Perpendicular crossings that disturb greater than 40 linear feet of riparian buffer[3,4]~~	~~X~~	~~X~~		
Utility – Sewer lines: • Perpendicular crossings of streams and other surface waters subject to this Rule or perpendicular entry into the buffer that does not cross a stream or other surface water subject to this Rule: ○ Construction activities that disturb less than or equal to 40 linear feet of riparian buffer provided that vegetative root systems and stumps shall be left intact to maintain the integrity of the soil except in the trench where trees are cut and that vegetation is allowed to regenerate in disturbed areas with the exception of a maintenance corridor equal to or less than 20 feet in width ○ Construction activities that disturb greater than 40 linear feet and less than or equal to 150 linear feet of riparian buffer provided that vegetative root systems and stumps shall be left intact to maintain the integrity of the soil except in the trench where trees are cut and that vegetation is allowed to regenerate in disturbed areas with the exception of a	X	X		

Commented [HK91]: No effect – updated terminology

Commented [HK92]: No effect – updated terminology

Commented [HK93]: No effect – updated terminology

Commented [HK160]: Moved to below

Commented [HK161]: Moved to below

Commented [HK162]: Changed 3 categories of utilities from (1) non-electric, (2) electric aerial and (3) electric underground to (1) sewer lines, (2) non-sewer underground and (3) non-sewer aerial

Commented [HK163]: Clarify this use can include perpendicular entry into the buffer that doesn't cross stream (e.g., connecting to an existing line)

Commented [HK164]: Increased maintenance corridor from 10 feet to 20 feet

	~~Exempt~~ Deemed Allowable	Allowable Upon Authorization	Allowable with Mitigation Upon Authorization	Prohibited
maintenance corridor equal to or less than 20 feet in width				
○ Construction activities that disturb greater than 150 linear feet of riparian buffer			X	
○ Any activities with a permanent maintenance corridor greater than 20 feet in width			X	
• Impacts other than perpendicular crossings:				
○ Impacts in Zone 2 provided vegetation is re-established after disturbance and the function of Zone 1 is not compromised	X			
○ Impacts in Zone 1 less than 2,500 square feet when impacts are solely the result of tying to an existing utility line and provided that land grubbing or grading is not conducted within 10 feet immediately adjacent to the water		X		
○ Impacts to Zone 1 for the replacement of an existing sewer line within Zone 1 provided that the new line is within an existing Right-of-Way and land grubbing or grading is not conducted within 10 feet immediately adjacent to the water		X		
○ Impacts to Zone 1 for the purpose of reclaiming a maintenance corridor for an existing sewer line provided that trees and shrubs are not cleared within 10 feet immediately adjacent to the water		X		
○ Impacts to Zone 1 other than noted above			X	
• Vegetation maintenance activities along an existing utility line beyond the footprint of an existing utility line maintenance corridor where the total maintenance corridor is equal to or less than 20 linear feet in width		X		
• Vegetation maintenance activities along an existing			X	

Commented [HK91]: No effect – updated terminology

Commented [HK92]: No effect – updated terminology

Commented [HK93]: No effect – updated terminology

Commented [HK165]: Changed from Allowable with Mitigation to Allowable

Commented [HK166]: No change

Commented [HK167]: Changed from allowable to allowable with mitigation. Also expanded use for any perpendicular crossing, not just those less than 40 linear feet.

Commented [HK168]: No change

Commented [HK169]: Changed from allowable to deemed allowable

Commented [HK170]: Changed from all impacts to Zone 1 triggering mitigation to only impacts above 2,500 square feet when not tying into an existing line

Commented [HK171]: New uses to accommodate replacement of existing sewer lines within Zone 1

Commented [HK172]: Changed from all impacts to Zone 1 triggering mitigation to only impacts above 2,500 square feet when not tying into an existing line

	~~Exempt~~ Deemed Allowable	Allowable Upon Authorization	Allowable with Mitigation Upon Authorization	Prohibited
utility line beyond the footprint of an existing utility line maintenance corridor where the total maintenance corridor is greater than 20 linear feet in width				

Commented [HK91]: No effect – updated terminology

Commented [HK92]: No effect – updated terminology

Commented [HK93]: No effect – updated terminology

Commented [HK173]: New uses to allow for vegetation maintenance beyond the maintenance corridor

Utilities – Non-sewer underground lines:				
• Perpendicular crossings of streams and other surface waters subject to this Rule or perpendicular entry into the buffer that does not cross a stream or other surface water subject to this Rule:				
○ Construction activities that disturb less than or equal to 50 linear feet of riparian buffer provided that vegetative root systems and stumps shall be left intact to maintain the integrity of the soil except in the trench where trees are cut and that vegetation is allowed to regenerate in disturbed areas with the exception of a maintenance corridor equal to or less than 30 feet in width	X			
○ Construction activities that disturb greater than 50 linear feet and less than or equal to 150 linear feet of riparian buffer provided that vegetative root systems and stumps shall be left intact to maintain the integrity of the soil except in the trench where trees are cut and that vegetation is allowed to regenerate in disturbed areas with the exception of a maintenance corridor equal to or less than 30 feet in width		X		
○ Construction activities that disturb greater than 150 linear feet of riparian buffer			X	
○ Any activities with a permanent maintenance corridor greater than 30 feet in width			X	
• Impacts other than perpendicular crossings:				
○ Impacts in Zone Two provided vegetation is re-established after disturbance and the function of Zone 1 is not compromised	X			
○ Impacts in Zone One less than 2,500 square feet when impacts are a result of tying to an existing utility line and provided that land grubbing or grading is not conducted within 10 feet immediately adjacent to the water		X		

Commented [HK174]: Changed 3 categories of utilities from (1) non-electric, (2) electric aerial and (3) electric underground to (1) sewer lines, (2) non-sewer underground and (3) non-sewer aerial

Commented [HK175]: Clarify this use can include perpendicular entry into the buffer that doesn't cross stream (e.g., connecting to an existing line)

Commented [HK176]: Change 40 feet to 50 feet. Added language re maintenance corridor.

Commented [HK177]: Capped Allowable use to impacts less than 150 feet

Commented [HK178]: Changed use from allowable to allowable with mitigation for impacts greater than 150 feet

Commented [HK179]: new use

Commented [HK180]: No change

Commented [HK181]: No change

	~~Exempt~~ Deemed Allowable	Allowable Upon Authorization	Allowable with Mitigation Upon Authorization	Prohibited
○ Impacts in Zone One other than listed above			X	
• Vegetation maintenance activities along an existing utility line beyond the footprint of an existing utility line maintenance corridor where the total maintenance corridor is equal to or less than 30 linear feet in width		X		
• Vegetation maintenance activities along an existing utility line beyond the footprint of an existing utility line maintenance corridor where the total maintenance corridor is greater than 30 linear feet in width			X	
Utilities – Non-sewer aerial lines:				
• Perpendicular crossings of streams and other surface waters subject to this Rule or perpendicular entry into the buffer that does not cross a stream or other surface water subject to this Rule:				
○ Disturb equal to or less than 150 linear feet of riparian buffer provided that a minimum zone of 10 feet wide immediately adjacent to the water body is managed such that only vegetation that poses a hazard or has the potential to grow tall enough to interfere with the line is removed, that no land grubbing or grading is conducted in Zone 1, and that that poles or aerial infrastructure are not installed within 10 feet of a water body	X			
○ Disturb greater than 150 linear feet of buffer		X		
• Impacts other than perpendicular crossings:				
○ Impacts in Zone Two	X			
○ Impacts in Zone One provided that a minimum zone of 10 feet wide immediately adjacent to the water body is managed such that only vegetation that poses a hazard or has the potential to grow tall enough to interfere		X		

Commented [HK91]: No effect – updated terminology

Commented [HK92]: No effect – updated terminology

Commented [HK93]: No effect – updated terminology

Commented [HK182]: Capped impacts to Zone 1 to less than 2,500 square feet when not tying into an existing line before triggering mitigation

Commented [HK183]: New uses to allow for vegetation maintenance beyond the maintenance corridor

Commented [HK184]: Changed 3 categories of utilities from (1) non-electric, (2) electric aerial and (3) electric underground to (1) sewer lines, (2) non-sewer underground and (3) non-sewer aerial

Commented [HK185]: Clarify this use can include perpendicular entry into the buffer that doesn't cross stream (e.g., connecting to an existing line)

Commented [HK186]: No change

Commented [HK187]: No change

Commented [HK188]: No change

Commented [HK189]: No change

	~~Exempt~~ Deemed Allowable	Allowable Upon Authorization	Allowable with Mitigation Upon Authorization	Prohibited
with the line is removed, that no land grubbing or grading is conducted in Zone 1, and that that poles or aerial infrastructure are not installed within 10 feet of a water body				
Vehicle access roads and boat ramps (excluding parking areas) leading to surface water, docks, fishing piers, and other water dependent activities: • Single vehicular access road and boat ramp to the surface water but not crossing the surface water that are restricted to the minimum width practicable not to exceed 15 feet in width • Vehicular access roads and boat ramps to the surface water but not crossing the surface water that are restricted to the minimum width practicable and exceed 15 feet in width		X	X	
Vegetation management: • Emergency fire control measures provided that topography and hydrology are~~is~~ restored	X			
• Periodic mowing and harvesting of plant products in Zone 2 only	X			
• Placement of mulch ring around restoration plantings for a period of five years from the date of planting	X			
• Planting non-invasive vegetation to enhance the riparian buffer	X			
• Pruning forest vegetation provided that the health and function of the forest vegetation is not compromised	X			
• Removal of individual trees which are in danger of causing damage to dwellings, existing utility lines, other structures or human ~~life~~life, or are imminently endangering stability of the streambank provided that the stumps are left or ground in place without causing additional land disturbance.	X			

Commented [HK91]: No effect – updated terminology

Commented [HK92]: No effect – updated terminology

Commented [HK93]: No effect – updated terminology

Commented [HK190]: Changed from exempt to Allowable; consistent with other utility uses

Commented [HK191]: New use to allow for vehicle access roads and boats ramps to surface waters and associated docking facilities

Commented [HK192]: clarification

Commented [HK193]: new use

Commented [HK194]: clarification

Commented [HK195]: no effect – clarification

Commented [HK196]: clarification

	~~Exempt~~ Deemed Allowable	Allowable Upon Authorization	Allowable with Mitigation Upon Authorization	Prohibited
• Removal of individual trees that are dead, diseased or damaged	X			
• Removal of poison ~~ivy~~ivy, oak or sumac. Removal can include application of pesticides within the riparian buffer if the pesticides are certified by EPA for use in or near aquatic sites and are applied in accordance with the manufacturer's instructions. If removal is significant, then the riparian buffer shall be replanted with non-invasive species.	X			
• Removal of understory nuisance vegetation as defined in: Smith, Cherri L. ~~1998. Exotic Plant Guidelines. Department of Environment and Natural Resources. Division of Parks and Recreation. Raleigh, NC. Guideline #30~~2008. Invasive Plants of North Carolina. Dept. of Transportation. Raleigh, NC (available at http://portal.ncdenr.org/c/document_library/get_file?uuid=0acc6377-ea07-42dc-bb27-45a78d1c7ebe&groupId=38364). Removal can include application of pesticides within the riparian buffer is the pesticides are certified by EPA for use in or near aquatic sites and are applied in accordance with the manufacturer's instructions. If removal is significant then the riparian buffer shall be replanted with non-invasive species.			X	
• Removal of woody vegetation in Zone 1 provided that Item (9) of this Rule is complied with				
Water dependent structures (except for boat ramps) as defined in Rule .0202 of this Section		X		

Commented [HK91]: No effect – updated terminology

Commented [HK92]: No effect – updated terminology

Commented [HK93]: No effect – updated terminology

Commented [HK197]: new use

Commented [HK198]: allows for removal of additional nuisance species and allows for use of pesticides

Commented [HK199]: Update citations; allow for use of pesticides

Commented [HK200]: Per SL 2015-246

Commented [HK201]: No effect – boat ramps addressed above

Commented [HK202]: No effect – update citation

	~~Exempt~~ Deemed Allowable	Allowable Upon Authorization	Allowable with Mitigation Upon Authorization	Prohibited
Water supply reservoirs: • New reservoirs provided that a riparian buffer that meets the requirements of Items ~~(4)~~(8) and ~~(5)~~(9) of this Rule is established adjacent to the reservoir		X		
• New reservoirs where a riparian buffer that meets the requirements of Items ~~(4)~~(8) and ~~(5)~~(9) of this Rule is NOT established adjacent to the reservoir			X	
Water wells	X			
Wildlife passage structures		X		
~~Wetland restoration~~	~~X~~			

Commented [HK91]: No effect – updated terminology

Commented [HK92]: No effect – updated terminology

Commented [HK93]: No effect – updated terminology

Commented [HK203]: No effect – update citation

Commented [HK204]: No effect – update citation

Commented [HK205]: New use

Commented [HK206]: Moved above

~~[1] Provided that, in Zone 1, all of the following BMPs for overhead utility lines are used. If all of these BMPs are not used, then the overhead utility lines shall require a no practical alternative evaluation by the Division.~~

~~A minimum zone of 10 feet wide immediately adjacent to the water body shall be managed such that only vegetation that poses a hazard or has the potential to grow tall enough to interfere with the line is removed.~~

~~Woody vegetation shall be cleared by hand. No land grubbing or grading is allowed.~~

~~Vegetative root systems shall be left intact to maintain the integrity of the soil. Stumps shall remain where trees are cut.~~

~~Rip rap shall not be used unless it is necessary to stabilize a tower.~~

~~No fertilizer shall be used other than a one-time application to re-establish vegetation.~~

~~Construction activities shall minimize the removal of woody vegetation, the extent of the disturbed area, and the time in which areas remain in a disturbed state.~~

~~Active measures shall be taken after construction and during routine maintenance to ensure diffuse flow of stormwater through the buffer.~~

~~In wetlands, mats shall be utilized to minimize soil disturbance.~~

~~[2] Provided that poles or towers shall not be installed within 10 feet of a water body unless the Division completes a no practical alternative evaluation.~~

~~[3] Perpendicular crossings are those that intersect the surface water at an angle between 75° and 105°.~~

~~[4] Provided that, in Zone 1, all of the following BMPs for underground utility lines are used. If all of these BMPs are not used, then the underground utility line shall require a no practical alternatives evaluation by the Division.~~

- ~~Woody vegetation shall be cleared by hand. No land grubbing or grading is allowed.~~
- ~~Vegetative root systems shall be left intact to maintain the integrity of the soil. Stumps shall remain, except in the trench, where trees are cut.~~

- Underground cables shall be installed by vibratory plow or trenching.
- The trench shall be backfilled with the excavated soil material immediately following cable installation.
- No fertilizer shall be used other than a one-time application to re-establish vegetation.
- Construction activities shall minimize the removal of woody vegetation, the extent of the disturbed area, and the time in which areas remain in a disturbed state.
- Active measures shall be taken after construction and during routine maintenance to ensure diffuse flow of stormwater through the buffer.
- In wetlands, mats shall be utilized to minimize soil disturbance.

(7) REQUIREMENTS FOR CATEGORIES OF USES. Uses designated as exempt, allowable, allowable with mitigation and prohibited in Item (6) of this Rule shall have the following requirements:

(a) EXEMPT. Uses designated as exempt are allowed within the riparian buffer. Exempt uses shall be designed, constructed and maintained to minimize soil disturbance and to provide the maximum water quality protection practicable. In addition, exempt uses shall meet requirements listed in Item (6) of this Rule for the specific use.

(b) ALLOWABLE. Uses designated as allowable may proceed within the riparian buffer provided that there are no practical alternatives to the requested use pursuant to Item (8) of this Rule. These uses require written authorization from the Division or the delegated local authority.

(c) ALLOWABLE WITH MITIGATION. Uses designated as allowable with mitigation may proceed within the riparian buffer provided that there are no practical alternatives to the requested use pursuant to Item (8) of this Rule and an appropriate mitigation strategy has been approved pursuant to Item (10) of this Rule. These uses require written authorization from the Division or the delegated local authority.

(d) PROHIBITED. Uses designated as prohibited may not proceed within the riparian buffer unless a variance is granted pursuant to Item (9) of this Rule. Mitigation may be required as one condition of a variance approval.

(8) DETERMINATION OF "NO PRACTICAL ALTERNATIVES." Persons who wish to undertake uses designated as allowable or allowable with mitigation shall submit a request for a "no practical alternatives" determination to the Division or to the delegated local authority. The applicant shall certify that the criteria identified in Sub-Item (8)(a) of this Rule are met. The Division or the delegated local authority shall grant an Authorization Certificate upon a "no practical alternatives" determination. The procedure for making an Authorization Certificate shall be as follows:

(a) For any request for an Authorization Certificate, the Division or the delegated local authority shall review the entire project and make a finding of fact as to whether the following requirements have been met in support of a "no practical alternatives" determination:

Commented [HK207]: Necessary language from footnotes incorporated into relevant use within the Table above.

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

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

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

(b) Requests for an Authorization Certificate shall be reviewed and either approved or denied within 60 days of receipt of a complete submission based on the criteria in Sub-Item (8)(a) of this Rule by either the Division or the delegated local authority. Failure to issue an approval or denial within 60 days shall constitute that the applicant has demonstrated "no practical alternatives." The Division or the delegated local authority may attach conditions to the Authorization Certificate that support the purpose, spirit and intent of the riparian buffer protection program. Complete submissions shall include the following:

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

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

(iii) The location of the activity, including the jurisdiction;

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

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

(vi) Plans for any best management practices proposed to be used to control the impacts associated with the activity.

(c) Any disputes over determinations regarding Authorization Certificates shall be referred to the Director for a decision. The Director's decision is subject to review as provided in Articles 3 and 4 of G.S. 150B.

(9) VARIANCES. Persons who wish to undertake uses designated as prohibited may pursue a variance. The Division or the appropriate delegated local authority may grant minor variances. The variance request procedure shall be as follows:

(a) For any variance request, the Division or the delegated local authority shall make a finding of fact as to whether the following requirements have been met:

(i) There are practical difficulties or unnecessary hardships that prevent compliance with the strict letter of the riparian buffer protection requirements. Practical

difficulties or unnecessary hardships shall be evaluated in accordance with the following:

(A) If the applicant complies with the provisions of this Rule, he/she can secure no reasonable return from, nor make reasonable use of, his/her property. Merely proving that the variance would permit a greater profit from the property shall not be considered adequate justification for a variance. Moreover, the Division or delegated local authority shall consider whether the variance is the minimum possible deviation from the terms of this Rule that shall make reasonable use of the property possible.

(B) The hardship results from application of this Rule to the property rather than from other factors such as deed restrictions or other hardship.

(C) The hardship is due to the physical nature of the applicant's property, such as its size, shape, or topography, which is different from that of neighboring property.

(D) The applicant did not cause the hardship by knowingly or unknowingly violating this Rule.

(E) The applicant did not purchase the property after the effective date of this Rule, and then requesting an appeal.

(F) The hardship is unique to the applicant's property, rather than the result of conditions that are widespread. If other properties are equally subject to the hardship created in the restriction, then granting a variance would be a special privilege denied to others, and would not promote equal justice;

(ii) The variance is in harmony with the general purpose and intent of the State's riparian buffer protection requirements and preserves its spirit; and

(iii) In granting the variance, the public safety and welfare have been assured, water quality has been protected, and substantial justice has been done.

(b) MINOR VARIANCES. A minor variance request pertains to activities that are proposed only to impact any portion of Zone 2 of the riparian buffer. Minor variance requests shall be reviewed and approved based on the criteria in Sub-Item (9)(a) of this Rule by the either the Division or the delegated local authority pursuant to G.S. 153A Article 18, or G.S. 160A Article 19. The Division or the delegated local authority may attach conditions to the variance approval that support the purpose, spirit and intent of the riparian buffer protection program. Requests for appeals of decisions made by the Division shall be made to the Office of Administrative Hearings. Request for appeals made by the delegated local

~~authority shall be made to the appropriate Board of Adjustment under G.S. 160A-388 or G.S. 153A-345.~~

~~(c) MAJOR VARIANCES. A major variance request pertains to activities that are proposed to impact any portion of Zone 1 or any portion of both Zones 1 and 2 of the riparian buffer. If the Division or the delegated local authority has determined that a major variance request meets the requirements in Sub-Item (9)(a) of this Rule, then it shall prepare a preliminary finding and submit it to the Commission. Preliminary findings on major variance requests shall be reviewed by the Commission within 90 days after receipt by the Director. Requests for appeals of determinations that the requirements of Sub-Item (9)(a) of this Rule have not been met shall be made to the Office of Administrative Hearings for determinations made by the Division or the appropriate Board of Adjustments under G.S. 160A-388 or G.S. 153A-345 for determinations made by the delegated local authority. The purpose of the Commission's review is to determine if it agrees that the requirements in Sub-Item (9)(a) of this Rule have been met. Requests for appeals of decisions made by the Commission shall be made to the Office of Administrative Hearings. The following actions shall be taken depending on the Commission's decision on the major variance request:~~

~~(i) Upon the Commission's approval, the Division or the delegated local authority shall issue a final decision granting the major variance.~~

~~(ii) Upon the Commission's approval with conditions or stipulations, the Division or the delegated local authority shall issue a final decision, which includes these conditions or stipulations.~~

~~(iii) Upon the Commission's denial, the Division or the delegated local authority shall issue a final decision denying the major variance.~~

~~(10)~~(11) MITIGATION. Persons who wish to undertake uses designated as allowable with mitigation upon authorization as defined in Sub-Item (10)(a)(iii) of this Rule or allowable with exception as defined in Sub-Item (10)(a)(v) of this Rule shall meet the following requirements in order to proceed with their proposed use.

(a) Obtain ~~a determination of "no practical alternatives" to the proposed use~~an Authorization Certificate pursuant to ~~Item (8) of this Rule.~~Rule .0705 of this Section; and

(b) Obtain written approval for a mitigation proposal pursuant to ~~15A NCAC 02B .0242~~ Rule ~~.0295~~.0704 of this Section.

~~(11) REQUIREMENTS SPECIFIC TO FOREST HARVESTING. The following requirements shall apply for forest harvesting operations and practices.~~

~~(a) The following measures shall apply in the entire riparian buffer:~~

~~(i) Logging decks and sawmill sites shall not be placed in the riparian buffer.~~

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(ii) Access roads and skid trails shall be prohibited except for temporary and permanent stream crossings established in accordance with 15A NCAC 011 .0203. Temporary stream crossings shall be permanently stabilized after any site disturbing activity is completed.

(iii) Timber felling shall be directed away from the stream or water body.

(iv) Skidding shall be directed away from the stream or water body and shall be done in a manner that minimizes soil disturbance and prevents the creation of channels or ruts.

(v) Individual trees may be treated to maintain or improve their health, form or vigor.

(vi) Harvesting of dead or infected trees or application of pesticides necessary to prevent or control extensive tree pest and disease infestation shall be allowed. These practices must be approved by the Division of Forest Resources for a specific site. The Division of Forest Resources must notify the Division of all approvals.

(vii) Removal of individual trees that are in danger of causing damage to structures or human life shall be allowed.

(viii) Natural regeneration of forest vegetation and planting of trees, shrubs, or ground cover plants to enhance the riparian buffer shall be allowed provided that soil disturbance is minimized. Plantings shall consist primarily of native species.

(ix) High intensity prescribed burns shall not be allowed.

(x) Application of fertilizer shall not be allowed except as necessary for permanent stabilization. Broadcast application of fertilizer or herbicides to the adjacent forest stand shall be conducted so that the chemicals are not applied directly to or allowed to drift into the riparian buffer.

(b) In Zone 1, forest vegetation shall be protected and maintained. Selective harvest as provided for below is allowed on forest lands that have a deferment for use value under forestry in accordance with G.S. 105-277.2 through G.S. 277.6 or on forest lands that have a forest management plan prepared or approved by a registered professional forester. Copies of either the approval of the deferment for use value under forestry or the forest management plan shall be produced upon request. For such forest lands, selective harvest is allowed in accordance with the following:

(i) Tracked or wheeled vehicles are not permitted except at stream crossings designed, constructed and maintained in accordance with 15A NCAC 011 .0203.

(ii) Soil disturbing site preparation activities are not allowed.

(iii) Trees shall be removed with the minimum disturbance to the soil and residual vegetation.

(iv) The following provisions for selective harvesting shall be met:

~~(A) The first 10 feet of Zone 1 directly adjacent to the stream or waterbody shall be undisturbed except for the removal of individual high value trees as defined provided that no trees with exposed primary roots visible in the streambank be cut.~~

~~(B) In the outer 20 feet of Zone 1, a maximum of 50 percent of the trees greater than five inches dbh may be cut and removed. The reentry time for harvest shall be no more frequent than every 15 years, except on forest plantations where the reentry time shall be no more frequent than every five years. In either case, the trees remaining after harvest shall be as evenly spaced as possible.~~

~~(C) In Zone 2, harvesting and regeneration of the forest stand shall be allowed provided that sufficient ground cover is maintained to provide for diffusion and infiltration of surface runoff.~~

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(12) REQUIREMENTS SPECIFIC TO LOCAL GOVERNMENTS WITH STORMWATER PROGRAMS FOR NITROGEN CONTROL. Local governments that are required to have local stormwater programs pursuant to ~~15A NCAC 02B~~Rule .0235 of this Section shall have two options for ensuring protection of riparian buffers on new developments within their jurisdictions as follows.

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(a) Obtain authority to implement a local riparian buffer protection program pursuant to ~~15A NCAC 02B .0241~~ Rule .0715 of this Section.

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(b) Refrain from issuing local approvals for new development projects unless either:

(i) The person requesting the approval does not propose to impact the riparian buffer ~~of a surface water that appears on either the most recent versions of the soil survey maps prepared by the Natural Resources Conservation Service of the United States Department of Agriculture or the most recent versions of the 1:24,000 scale (7.5 minute quadrangle) topographic maps prepared by the United States Geologic Survey (USGS).~~as described in Item (3) of this Rule.

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(ii) The person requesting the approval proposes to impact the riparian buffer ~~of a surface water that appears on the maps~~as described in ~~Sub-Item (12)(b)(i)~~Item (3) of this Rule and either:

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(A) Has received an on-site determination from the ~~Division~~ Authority pursuant to ~~Sub-Item (3)(a)~~Item (4) of this Rule that surface waters are not present;

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(B) Has received an Authorization Certificate from the ~~Division~~ Authority pursuant to ~~Item (8) of this~~ Rule .0705 of this Section for uses designated as ~~Allowable~~ allowable upon authorization under this Rule;

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(C) Has received an Authorization Certificate from the ~~Division~~ Authority pursuant to ~~Item (8) of this~~ Rule .0705 of this Section and obtained the ~~Division's~~ Authority's approval on a mitigation plan pursuant to Item

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~~(10)~~(11) of this Rule for uses designated as ~~Allowable with Mitigation~~allowable with mitigation upon authorization under this Rule; or

(D) Has received ~~a variance from the Commission~~an Authorization Certificate with Exception from the Authority pursuant to ~~Item (9) of this Rule.~~Rule .0705 of this Section.

(13) OTHER LAWS, REGULATIONS AND PERMITS. In all cases, compliance with this Rule does not preclude the requirement to comply with all federal, state and local regulations and laws.

History Note: *Authority G.S. 143-214.1; 143-214.7; 143-215.3(a)(1); S.L. 1995, c. 572; S.L 2011, c. 394; S.L 2012, c. 200; S.L 2013, c. 413; S.L 2015 c. 246;*
Temporary Adoption Eff. July 22, 1997;
Temporary Adoption Eff. June 22, 1999; April 22, 1998; January 22, 1998;
Eff. August 1, 2000.

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15A NCAC 02B .0715 is proposed for adoption as follows:

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

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

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

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

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

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

(C) The local government ~~has adopted~~ ordinances, resolutions, or regulations necessary to establish ~~and maintain the State's riparian buffer protection requirements; and~~a riparian buffer program to meet the requirements of Rule .0714 of this Section, which shall include the following requirements:

(i) All riparian protection areas shall be recorded on all new or modified plats;

(ii) The land within a riparian buffer area shall not be treated as if the land is the property of the state or any of its subdivisions unless the land or an interest therein has been acquired by the state or its subdivision by a conveyance or by eminent domain;

(iii) Land within a riparian buffer area in which neither the State nor its subdivisions holds any property interest may be used by the property owner to satisfy any other development-related regulatory requirements based on property size, including, but not limited to, residential density and nonresidential intensity calculations and

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yields, tree conservation purposes, open space or conservation area requirements, setbacks, perimeter buffers, and lot area requirements;

(iv) When riparian buffer requirements are placed outside of lots in portions of a subdivision that are designated as common areas or open space and neither the State nor its subdivisions holds any property interest in that riparian buffer area, the local government shall attribute to each lot abutting the riparian buffer area a proportionate share based on the area of all lots abutting the riparian buffer area for purposes of development-related regulatory requirements based on property size, including, but not limited to, residential density and nonresidential intensity calculations and yields, tree conservation purposes, open space or conservation area requirements, setbacks, perimeter buffers, and lot area requirements; and

(v) A requirement that no new clearing, grading or development take place nor any new building permits be issued in violation of Rule .0714 of this Section.

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

(2) If the local government is establishing a riparian buffer program that exceeds the requirements set forth in Rule .0714 of this Section in order to comply with or implement federal or state law, or as a condition of a permit, certificate, or other approval issued by a federal or state agency, the local government shall provide supporting documentation with their request for Commission approval.

(3) If the local government is establishing a riparian buffer program that exceeds the requirements set forth in Rule .0714 of this Section not as a requirement to comply with or implement federal or state law and not as a condition of a permit, certificate, or other approval issued by a federal or state agency, the local government shall provide scientific studies of the local environmental and physical conditions that support the necessity of the buffer requirements that exceed those established in Rule .0714 of this Section. The Commission shall not approve the ordinance unless it finds that the scientific evidence presented by the local government supports the necessity of a riparian buffer program that exceeds the requirements set forth in Rule .0714 of this Section.

~~(2)~~(4) Within 90 days after the Commission has received the request for delegation, the Commission shall notify the local government whether it has been approved, approved with modifications, or denied.

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

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~~authority to the local government and shall implement and enforce the State's riparian buffer protection requirements.~~

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

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

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

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

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

(1) Activities conducted under the authority of the State;

(2) Activities conducted under the authority of the United States;

(3) Activities conducted under the authority of multiple jurisdictions; ~~and~~

(4) Activities conducted under the authority of local units of ~~government.~~government;

(5) Forest harvesting activities described in Rule .0706 of this Section; and

(6) Agricultural activities.

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Commented [HK26]: The division is unable to provide subsequent annual training

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Commented [HK29]: Ensures on-site determinations continue when local governments don't have anyone on staff certified to make calls. This is codifying current practice.

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

(1) A copy of ~~variance~~ Authorization Certificate with exception requests;

(2) The ~~variance~~ Authorization Certificate with exception request's finding of fact;

(3) The result of the ~~variance~~ Authorization Certificate with exception proceedings;

(4) A record of complaints and action taken as a result of the complaint;

(5) Records for stream origin calls and stream ratings; and

(6) Copies of request for authorization, records approving authorization and Authorization Certificates.

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

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

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

History Note: Authority 143-214.1; 143-214.7; 143-214.23, 143-214.23A, 143-215.3(a)(1); S.L. 1998 c. 221; S.L. 2015 c. 246

Eff. August 1, 2000.

Amended Eff. INSERT DATE

Commented [HK42]: No effect – update name

Commented [HK43]: No effect – update name

Commented [HK44]: No effect – update name

Commented [HK45]: No effect - clarification

Commented [HK46]: Moved to (h) below

Commented [HK47]: No effect – update name

Commented [HK48]: No effect – update terminology

Commented [HK49]: No effect – update terminology

Commented [HK50]: No effect – update terminology

Commented [HK51]: No effect – moved from (g) above

Commented [HK52]: No effect – moved from (b) above

Commented [HK53]: No effect – moved from (b) above

[.0248 is proposed for amendment and transfer to 15A NCAC 02B .0720]
Last Revised August 18, 2017

15A NCAC 02B .0248 is proposed for amendment as follows:

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

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

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

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

~~(1) Rule .0249 of this Section for Wastewater Discharges,~~

~~(2) Rule .0250 of this Section for Protection and Maintenance of Riparian Areas, and~~

~~(3) Rule .0251 of this Section for Urban Stormwater Management.~~

(1) Rule .0721 of this Section for Urban Stormwater Management.

(2) Rule .0722 of this Section for Wastewater Discharges, and

(3) Rule .0723 of this Section for Protection and Maintenance of Riparian Areas

~~(b)~~(d) PENALTIES. Failure to meet the requirements of the Rules in this Section may result in the 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; 143-214.5; 143-215.3(a)(1); 143-215.6A; 143-215.6B; 143-215.6C;
Eff. April 1, 1999;
Amended Eff. May 1, 2010;
Amended Eff. [New Date]

Commented [HJ1]: Change: Added purpose statement to provide clarity to purpose of the nutrient management strategy

Effect: No Impact

Commented [HJ2]: Change: Added Scope & Limitation Language explaining what sources are addressed under the rules and the Commissions ability to undertake additional rulemaking.

Effect: No impact on implementation.
Consistency across watersheds and improved clarity.

Commented [HJ3]: Change: Provides updated Rule References to point to new .0700 Rule numbers

Effect: No Impact

Commented [HJ4]: Change: Added title to paragraph

Effect: No Impact

[.0251 is proposed for amendment and transfer to 15A NCAC 02B .0721]

Last Revised August 18, 2017

15A NCAC 02B .0251 is proposed for amendment as follows:

15A NCAC 02B ~~.0251~~.0721 RANDLEMAN LAKE WATER SUPPLY WATERSHED: STORMWATER REQUIREMENTS

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

(1) IMPLEMENTING AUTHORITY. The requirements of this Rule shall be implemented by ~~All~~ local governments that have land use authority within the Randleman Lake ~~watershed~~watershed. ~~shall comply with stormwater management requirements as outlined in this Rule. Although the management requirements for the upper and the lower portions of the watershed are similar, additional density related stormwater requirements apply to the lower portion of this watershed that do not apply to the upper portion of the watershed. The upper portion of the watershed is defined as those waters and lands of the Deep River watershed which drain to the Oakdale Cotton Mill Dam. The lower portion of the watershed are those waters and lands of the Deep River upstream and draining to the Randleman Lake Dam, from the Oakdale Cotton Mill Dam to the Randleman Dam.~~ 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 Subchapter.

~~(2) To meet the requirements of this Rule, the local governments with jurisdictions in the upper portion of the Randleman Reservoir watershed shall meet the state's rules for a WS-IV classification as specified in 15A NCAC 2B .0104, .0202 and .0216, the conditions specified in their existing ordinances, the riparian area protection requirements of Rule .0250 of this Section, along with the stormwater planning requirements set forth in Sub-Items (4), (5), and (6) of this Rule.~~

~~(3) To meet the requirements of this Rule, local governments with jurisdictions in the lower portion of the Randleman Lake watershed shall meet the provisions of Sub-Items (4), (5) and (6) of this Rule along with the following:~~

~~(a) Within 270 days of the effective date of this Rule, the affected jurisdictions, in coordination with the Piedmont Triad Regional Water Authority, shall submit local water supply ordinances to the Environmental Management Commission for approval. The ordinances shall at least meet the state's minimum rules for a WS-IV classification as specified in 15A NCAC 2B .0104, .0202 and .0216, except that the requirements of this Sub-Item shall replace the nonpoint source requirements in 15A NCAC 2B .0216(3)(b) for the lower portion of the Randleman Lake watershed.~~

~~(b) The local ordinances shall provide for review and approval of stormwater management plans for new developments to ensure that the following conditions can be met:~~

~~(i) Stormwater pollution control criteria for the Randleman Lake watershed outside of critical area:~~

Commented [A1]: Change: This language moved to Item (2)
Effect: No Impact

Commented [A2]: Change: Statement added to clarify how state agencies comply with the Rule.

Effect: No Impact

Commented [A3]: Change: Moved to Item (5) and updated rule references

Effect: No Impact

Commented [A4]: Change: Language moved to Item (6) and updated rule references

Effect: No Impact

(A) Low Density Option: For each development project, development density must be limited to either no more than one dwelling unit per acre of single family detached residential development (or 40,000 square foot lot excluding roadway right-of-way) or 12 percent built-upon area for all other residential and non-residential development. Stormwater runoff shall be transported primarily by vegetated conveyances. Conveyance system shall not include a discrete stormwater collection system as defined in 15A NCAC 2B .0202;

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

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

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

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

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

Commented [A5]: Change: This BUA information was moved to Table form in Sub-Item (6)(a)

Effect: No Impact

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

(V) remainder of tract to remain in vegetated or natural state by utilization of one of the methods provided in Sub-Item 3(b)(i)(C)(VI) of this Rule;

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

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

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

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

(E) Impervious cover shall be minimized to the maximum extent practical through clustering, narrower and shorter paved areas (streets, driveways, sidewalks, cul-de-sacs, and parking lots), and spreading rooftop and other impervious area runoff over pervious areas. Land clearing during the construction process shall be limited to the maximum extent practical. The local government permit shall require recorded deed restrictions and protective covenants to ensure that development activities maintain the development consistent with the plans and specifications approved by the local governments;

(F) The project is in compliance with the riparian area protection requirements as specified in 15A NCAC 2B .0250 (Randleman Lake riparian area rule);

(G) No new development shall be allowed within 50 feet of waters affected by the Randleman riparian area rule 15A NCAC 2B .0250;

(H) New development meeting the high-density option shall be located at least 100 feet from perennial waters as identified on topo or soil survey maps; however, within the area between 50 and 100 feet adjacent to the perennial

Commented [A6]: Changed: Removed this language as it is redundant of language already present in the Water Supply Rule.

Effect: No Impact

Commented [A7]: Change: Removed this language as it is already covered in the Buffer Rule

Effect: No Impact

water body, water dependent structures, or other structures, such as flag poles, signs and security lights, which result in only diminimus increases in impervious area and public projects such as road crossings and greenways may be allowed where no practicable alternative exists; these activities shall minimize built-upon surface area, divert runoff away from surface waters and maximize the utilization of BMPs;

(I) For local governments that do not use the high density option, a maximum of 10 percent of each jurisdiction's portion of the watershed outside of the critical area as delineated on April 1, 1999 may be developed with new development projects and expansions to existing development of up to 70 percent built-upon surface area in addition to the new development approved in compliance with the appropriate requirements of Sub-Item (3)(b)(ii)(A) of this Rule. For expansions to existing development, the existing built-upon surface area shall not be counted toward the allowed 70 percent built-upon surface area. A local government having jurisdiction within the watershed may transfer, in whole or in part, its right to the 10 percent/70 percent land area to local government within the watershed upon submittal of a joint resolution for review by the Commission. When the designated water supply watershed area is composed of public land, such as National Forest land, local governments may count the public land acreage within the designated watershed area outside of the critical area in figuring the acreage allowed under this provision. Each project shall, to the maximum extent practicable, minimize built-upon surface area, direct stormwater runoff away from surface waters and incorporate best management practices to minimize water quality impacts;

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

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

(B) High Density Option: If new development exceeds the low density option requirements as stated in Sub-Item (3)(b)(ii) of this Rule, then engineered stormwater controls must be used to control runoff from the first inch of

Commented [A8]: Change: This language moved to Sub-Item (6)(b)

Effect: No Impact

Commented [A9]: Changed: Removed this language as it is redundant of language already present in the Water Supply Rule.

Effect: No Impact

~~rainfall. New residential and non residential development shall not exceed 30 percent built-upon area;~~

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

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

~~(E) Sub-Items (3)(b)(i)(C) (II) of this Rule also apply to the critical area.~~

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

(a) the upper portion of the watershed is defined as those waters and lands of the Deep River watershed which drain to the Oakdale-Cotton Mill Dam;

(b) the lower portion of the watershed are those waters and lands of the Deep River upstream and draining to the Randleman Lake Dam, from the Oakdale-Cotton Mill Dam to the Randleman Dam;

(c) Oak Hollow Lake subwatershed is defined as all land areas draining to Oak Hollow Lake;

(d) High Point Lake subwatershed is defined as all land areas draining to High Point Lake, East Fork Deep River and West Fork Deep River from Oak Hollow Lake Dam; and

(e) Deep River 1 subwatershed is defined as all land areas draining to the Deep River from High Point Lake Dam to Freeman Mill Dam.

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

(a) ~~Evaluation~~ evaluation of existing land use within Oak Hollow Lake subwatershed, High Point Lake subwatershed and Deep River 1 subwatershed in the Randleman Lake watershed with recommendations that show how overall built-upon area (for existing and future development) for each subwatershed can be minimized and high intensity land uses can be targeted away from surface waters and sensitive areas. ~~Oak Hollow Lake subwatershed is defined as all land areas draining to Oak Hollow Lake. High Point Lake subwatershed is defined as all land areas draining to High Point Lake, East Fork Deep River and West Fork Deep River from Oak Hollow Lake Dam. Deep River 1 subwatershed is defined as all land areas draining to the Deep River from High Point Lake Dam to Freeman Mill Dam.~~ This

Commented [A10]: Change: Moved to table in Sub-Item (6)(b)

Effect: No Impact

Commented [A11]: Change: Language moved from previous Sub-Item (4)(a).

Effect: No Impact

Commented [A12]: Change: Updated text to make current

Effect: No Impact

evaluation shall be done by the local governments having jurisdiction in those watersheds, working in cooperation with the ~~PTRWA;~~ Piedmont Triad Regional Water Authority;

(b) ~~Coordination~~ coordination between all affected jurisdictions to encourage their development in the existing urban areas. The planning effort shall include provisions for areas of contiguous open space to be protected through conservation easements or other long-term protection measures and provisions to direct infrastructure growth towards existing urban development corridors rather than to rural lands;

(c) ~~Evaluation~~ evaluation of existing ordinances, municipal programs (maintenance, street cleaning, etc.) and other local policies to identify opportunities for stormwater quality improvements including reducing the amount of built-upon area that is required for uses such as parking, building setbacks, road widths and cul-de-sacs. The evaluations shall consider development options such as multiple story buildings, mixed use to encourage pedestrian travel and mass transit and an identification of municipal activities and procedures that may be modified to allow for stormwater pollution prevention opportunities;

(d) ~~Implementation~~ implementation of watershed protection public education programs;

(e) ~~Identification~~ identification and removal of illegal discharges; and

(f) ~~Identification~~ identification of suitable locations for potential stormwater retrofits (such as riparian areas) that could be funded by various sources.

~~(5) Local governments may submit a more stringent local stormwater management program plan. Local stormwater management programs and modifications to these programs shall be kept on file by the Division of Water Quality.~~

~~(6) If a local government fails to submit an acceptable local stormwater management program plan within the time frames established in this Rule or fails to properly implement an approved plan, then stormwater management requirements for existing and new urban areas within its jurisdiction shall be administered through the NPDES municipal stormwater permitting program per 15A NCAC 2H .0126 which shall include at a minimum:~~

~~(a) Subject local governments shall be required to develop and implement comprehensive stormwater management programs for both existing and new development. development;~~

~~(b) These stormwater management programs shall provide all components that are required of local government stormwater programs in this Rule. rule; and~~

~~(c) Local governments that are subject to an NPDES permit shall be covered by the permit for at least one permitting cycle (five years) before they are eligible to submit a revised local stormwater management component of their water supply watershed protection program for consideration and approval by the EMC.~~

(4) RANDLEMAN LAKE WATERSHED ORDINANCES. Local governments with jurisdiction in the Randleman Lake watershed shall implement local ordinances that meet or exceed the provisions of

Commented [A13]: Change: Relocated to Item (2)

Effect: No Impact

Commented [A14]: Change: Editorial

Effect: No Imapct

Commented [A15]: Change: Removed redundant language already covered in existing statues.

Effect: No Impact

Commented [A16]: Change: Language moved to Item (7) and Item (8)

Effect: No Impact

Items (5) and (6) of this Rule in accordance with their location in the Randleman Lake watershed and in coordination with the Piedmont Triad Regional Water Authority. All revisions to these local ordinances shall be submitted to the Commission for review and approval. Ordinances that meet or exceed the provisions of Items (5) and (6) of this Rule shall be approved by the Commission.

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

(6) REQUIREMENTS FOR THE LOWER PORTION OF THE WATERSHED. Local governments with jurisdiction in the lower portion of the Randleman Lake watershed shall adopt ordinances that meet the riparian area protection requirements set forth in15A NCAC 02B .0723. Local ordinances shall also meet or exceed the state's minimum requirements for a Class WS-IV watershed set forth in15A NCAC 02B .0620 through .0624 except that the following requirements shall supersede the equivalent provisions of 15A NCAC 02B .0624 as specified:

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

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
Critical Area	1 dwelling unit per 2 acres or 80,000 square foot lot or 6% built-upon area	6% built-upon area	6 to 30% built-upon area
Protected Area	1 dwelling unit per acre or	12% built-upon area	12 to 50% built-upon area;

Commented [A17]: Change: Language moved from Item (2)

Effect: No Impact

Commented [A18]: Change: Language moved from Item (3)

Effect: No Impact

Commented [A19]: Change: Information moved into this table from Sub-Item (3) (a) and (b)

Effect: No Impact

	40,000 square foot lot or 12% built-upon area		

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

(i) vegetated setbacks for high density development shall be located at least 100 feet from perennial waterbodies and perennial streams indicated on the most recent versions of the United States Geological Survey (USGS) 1:24,000 scale (7.5 minute) quadrangle topographic maps, which are herein incorporated by reference and are available at no cost at http://www.usgs.gov/pubprod/, or the most recent version of the published manuscript of the soil survey map that shows stream layers prepared by the Natural Resources Conservation Service of the United States Department of Agriculture, which are herein incorporated by reference and are available at no cost at http://www.nrcs.usda.gov/wps/portal/nrcs/main/soils/survey/;

(ii) the width of a vegetated setback shall be measured horizontally from the normal pool elevation of impounded structures, from the top of bank of each side of streams or rivers, and from the mean high waterline of tidal waters, perpendicular to the shoreline;

(iii) vegetated setbacks may be cleared or graded, but shall be replanted and maintained in grass or other vegetation; and

(iv) no new built-upon area shall be allowed in the vegetated setback except for publicly-funded linear projects such as roads, greenways, and sidewalks, water dependent structures such as docks, and minimal footprint uses such as poles, signs, utility appurtenances, and security lights where it is not practical to locate the built-upon area elsewhere. Built-upon area associated with these uses shall be minimized and the channelization of stormwater runoff shall be avoided.

(c) outside of the critical areas, a local government may submit an alternative high density option to the Commission as part of the submittal of the local water supply watershed protection ordinance in order to allow development to exceed 50 percent built-upon area. The alternative ordinance shall be approved by the Commission if the Commission determines that it provides equal or greater water quality protection to the Randleman Lake reservoir and its tributaries;

(d) no new permitted sites for land application of residuals or petroleum contaminated soils shall be allowed in the critical areas; and

Commented [A20]: Change: Language Moved from (3)(H)

Effect: No Impact

Commented [A21]: Change: Added web link for where maps can be located

Effect: No Impact

Commented [A22]: Change: Moved from Sub-Item (3)(b)

Effect: No Impact

Commented [A23]: Change: Language moved from Sub-Item (3)(H)

Effect: No Impact

Commented [A24]: Change: Language moved from Sub-Item (3)(b)

Impact: No change

(e) no new landfills shall be allowed in the critical areas.

(7) Local governments shall have the option to develop more stringent local stormwater management plans and watershed ordinances. Local stormwater management programs and ordinances, and modifications to these programs and ordinances, shall be submitted to the Commission for review and approval and kept on file by the Division.

(8) If a local government fails to properly implement an approved plan, then stormwater management requirements for existing and new urban areas within its jurisdiction shall be administered through the NPDES municipal stormwater permitting program per 15A NCAC 2H .0126 which shall include at a minimum:

(a) subject local governments shall be required to develop and implement comprehensive stormwater management programs for both existing and new development;

(b) these stormwater management programs shall provide all components that are required of local government stormwater programs in this Rule; and

(c) local governments that are subject to an NPDES permit shall be covered by the permit for at least one permitting cycle (five years) before they are eligible to submit a revised local stormwater management component of their water supply watershed protection program for consideration and approval by the Commission.

Commented [A25]: Change: Language moved from Sub-Item (5)(b)

Effect: No Impact

History Note: *Authority G.S. 143-214.1; 143-214.5; 143-214.7; 143-215.1; 143-215.3(a)(1);*
Eff. April 1, 1999.
Amended Eff. [New Date].

15A NCAC 02B .0249 is proposed for amendment and recodification as follows:

15A NCAC 02B ~~.0249~~.0722 RANDLEMAN LAKE WATER SUPPLY WATERSHED: WASTEWATER DISCHARGE REQUIREMENTS

The following is the National Pollutant Discharge Elimination System (NPDES) wastewater discharge management strategy for the Randleman Lake watershed. For purposes of this Rule, permitted wastewater discharges means those facilities permitted to discharge domestic wastewater or wastewaters containing phosphorus:

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

(2) There shall be no new or expanding permitted wastewater discharges in the watershed with the exception that the City of High Point Eastside ~~wastewater treatment plant~~WWTP may be allowed to expand provided that any new permit contains concentration and mass limits predicted to provide a level of water quality in the Randleman Lake which meets all designated uses of those waters.

History Note: *Authority G. S. 143-214.1; 143-214.5; 143-215.3(a)(1);*
Eff. April 1, ~~1999.~~1999;
Amended Eff. <date>.

Commented [TM1]: Change: This and other nutrient management rules for several river basins are being moved to a new section 02B .0700, and requirements common to multiple basins are being consolidated.
Effect: Improved organization of the rules.

Commented [TM2]: Change: Corrected the name of the affected facility.
Effect: Technical correction.

15A NCAC 02B .0724 is proposed for adoption as follows:

15A NCAC 02B ~~.0250~~.0724 RANDLEMAN LAKE WATER SUPPLY WATERSHED: PROTECTION AND MAINTENANCE OF EXISTING RIPARIAN BUFFERS

Protection of the pollutant removal and other water quality services provided by riparian buffers throughout the watershed is an important element of the overall Randleman water supply pollutant strategy. The following is the management strategy for maintaining and protecting riparian areas in the Randleman Lake watershed:

(1) PURPOSE. The purposes of this Rule shall be for the local governments listed in this Rule, and in certain cases stated in this Rule the Division, to maintain and protect ~~and preserve~~ existing riparian buffers throughout the Randleman Lake watershed as generally described in this Rule, in order to maintain their nutrient removal and stream protection functions. Additionally this Rule will help protect the water supply uses of Randleman Lake and of designated water supplies throughout the Randleman Lake water supply watershed. ~~Local governments with jurisdictions in Randleman Lake watershed shall establish programs to meet or exceed the minimum requirements of this Rule. However, the Division shall assume responsibility for applying the requirements of this Rule to activities listed in Item (3) of this Rule. The requirements of this Rule shall supersede all buffer requirements stated in Rules 15A NCAC 02B .0214 through .0216 as applied to WS-II, WS-III, and WS-IV waters in the Randleman Lake watershed. Parties subject to this Rule may choose to implement more stringent rules, including the one hundred foot buffer requirement set out in Sub-item (3)(b)(i) of Rules 15A NCAC 02B .0214 through .0216 for high-density developments.~~

~~(2) DEFINITIONS. For the purpose of this Rule, these terms shall be defined as follows:~~

~~(a) 'Access Trails' means pedestrian trails constructed of pervious or impervious surfaces, and related structures to access a surface water including (but not limited to) boardwalks, steps, rails, signage;~~

~~(b) 'Archaeological Activities' means activities conducted by a Registered Professional Archaeologist (RPA);~~

~~(c) 'Airport Facilities' means all properties, facilities, buildings, structures, and activities that satisfy or otherwise fall within the scope of one or more of the definition or uses of the words or phrases 'air navigation facility', 'airport', or 'airport protection privileges' under G.S. 63-1; the definition of 'aeronautical facilities' in G.S. 63-79(1); the phrase 'airport facilities' as used in G.S. 159-48(b)(1); the phrase 'aeronautical facilities' as defined in G.S. 159-81 and G.S. 159-97; and the phrase 'airport facilities and improvements' as used in Article V, Section 13, of the North Carolina Constitution. Airport facilities shall include without limitation, any and all of the following: airports, airport maintenance facilities, clear zones, drainage ditches, fields, hangars, landing lighting, airport and airport related offices, parking facilities, related navigational and signal systems, runways, stormwater outfalls, terminals, terminal shops, and all appurtenant areas used or suitable for airport buildings or other airport facilities, and all appurtenant rights-of-way; restricted landing areas; any structures, mechanisms, lights, beacons, marks, communicating systems, or other instrumentalities~~

Commented [HK1]: no effect - update citation

Commented [HK2]: no effect - grammar

Commented [HK3]: moved to item (12) below

or devices used or useful as an aid, or constituting an advantage or convenience to the safe taking off, navigation, and landing of aircraft, or the safe and efficient operation or maintenance of an airport or restricted landing area; easements through, or interests in, air space over land or water, interests in airport hazards outside the boundaries of airports or restricted landing areas, and other protection privileges, the acquisition or control of which is necessary to ensure safe approaches to the landing areas of airports and restricted landing areas, and the safe and efficient operation thereof and any combination of any or all of such facilities. Notwithstanding the foregoing, the following shall not be included in the definition of 'airport facilities':

(i) Satellite parking facilities;

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

(iii) Other secondary development, such as hotels, industrial facilities, free-standing offices and other similar buildings, so long as these facilities are not directly associated with the operation of the airport, and are not operated by a unit of government or special governmental entity such as an airport authority;

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

(e) 'DBH' means diameter at breast height of a tree measured at 4.5 feet above ground surface level;

(f) Ditch means a man-made, open drainage way in or into which excess surface water or groundwater from land, stormwater runoff, or floodwaters flow either continuously or intermittently;

(g) 'Ephemeral stream' means a feature that carries stormwater in direct response to precipitation with water flowing only during and shortly after large precipitation events. An ephemeral stream may or may not have a well-defined channel, the aquatic bed is always above the water table, and stormwater runoff is the primary source of water. An ephemeral stream typically lacks the biological, hydrological, and physical characteristics commonly associated with the continuous or intermittent conveyance of water;

(h) 'Forest plantation' means an area of planted trees that may be conifers (pines) or hardwoods. On a plantation, the intended crop trees are planted rather than naturally regenerated from seed on the site, coppice (sprouting), or seed that is blown or carried into the site;

(i) 'Greenway / Hiking Trails' means pedestrian trails constructed of pervious and impervious surfaces and related structures including but not limited to boardwalks, steps, rails, and signage, and that generally run parallel to the surface water;

(j) 'High Value Tree' means a tree that meets or exceeds the following standards: for pine species, 14 inch DBH or greater or 18 inch or greater stump diameter; and, for hardwoods and wetland species, 16 inch DBH or greater or 24 inch or greater stump diameter;

(k) 'Intermittent stream' means a well-defined channel that contains a continuous flow of water for only part of the year, typically during winter and spring when the aquatic bed is below the 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;~~

~~(l) 'Modified natural stream' means an on-site channelization or relocation of a stream channel and subsequent relocation of the intermittent or perennial flow as evidenced by topographic alterations in the immediate watershed. A modified natural stream must have the typical biological, hydrological, and physical characteristics commonly associated with the continuous conveyance of water;~~

~~(m) 'Perennial stream' means a well-defined channel that contains water year-round during a year of normal rainfall with the aquatic bed located below the water table for most of the year. Groundwater is the primary source of water for a perennial stream, but it also carries stormwater runoff. A perennial stream exhibits the typical biological, hydrological, and physical characteristics commonly associated with the continuous conveyance of water;~~

~~(n) 'Perennial waterbody' means a natural or man-made watershed that stores surface water permanently at depths sufficient to preclude growth of rooted plants, including lakes, ponds, sounds, non-stream estuaries and ocean. For the purpose of the State's riparian buffer protection program, the waterbody must be part of a natural drainage way (i.e., connected by surface flow to a stream);~~

~~(o) 'Shoreline stabilization' is the in-place stabilization of an eroding shoreline. Stabilization techniques which include "soft" methods or natural materials (such as root wads, or rock vanes) may be considered as part of a restoration design. However, stabilization techniques that consist primarily of "hard" engineering, such as concrete lined channels, rip rap, or gabions, while providing bank stabilization, shall not be considered stream restoration;~~

~~(p) 'Stream restoration' is defined as the process of converting an unstable, altered or degraded stream corridor, including adjacent riparian zone and flood-prone areas to its natural or referenced, stable conditions considering recent and future watershed conditions. This process also includes restoring the geomorphic dimension, pattern, and profile as well as biological and chemical integrity, including transport of water and sediment produced by the stream's watershed in order to achieve dynamic equilibrium. 'Referenced' or 'referenced reach' means a stable stream that is in dynamic equilibrium with its valley and contributing watershed. A reference reach can be used to develop natural channel design criteria for stream restoration projects. 'Stream' means a body of concentrated flowing water in a natural low area or natural channel on the land surface;~~

~~(q) 'Stump diameter' means the diameter of a tree measured at six inches above the ground surface level;~~

~~(r) 'Surface waters' means all waters of the state as defined in G.S. 143-212 except underground waters and wetlands;~~

~~(s) 'Temporary road' means a road constructed temporarily for equipment access to build or replace hydraulic conveyance structures such as bridges, culverts or pipes or water dependent structures, or to maintain public traffic during construction; and~~

~~(t) 'Tree' means a woody plant with a DBH equal to or exceeding five inches or a stump diameter exceeding six inches.~~

~~(3)~~(2) APPLICABILITY. This Rule shall apply to all ~~local governments with jurisdictions~~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 Randleman Lake watershed. ~~Local governments shall develop riparian buffer protection programs for approval by the Division incorporating the minimum standards set out throughout this Rule and shall apply the requirements of this Rule throughout their jurisdictions within the Randleman watershed except where the Division shall exercise jurisdiction. For the following types of buffer activities in the Randleman watershed, wherever local governments are referenced in this Rule, the Division shall implement applicable requirements to the exclusion of local governments:~~

~~(a) Activities conducted under authority of the State;~~

~~(b) Activities conducted under the authority of the United States;~~

~~(c) Activities conducted under the authority of multiple jurisdictions;~~

~~(d) Activities conducted under the authority of local units of government;~~

~~(e) Forest harvesting activities described in Item 16 of this Rule; and~~

~~(f) Agricultural activities.~~

~~(4)~~(3) ~~REQUIREMENTS.~~BUFFERS PROTECTED. The following minimum criteria shall be used for identifying regulated buffers:~~buffers. All local governments subject to this Rule shall develop riparian buffer protection programs and ordinances for approval by the Commission, incorporating the minimum standards contained in Rule.~~

(a) A surface water shall be subject to this Rule if the feature is approximately shown on any of the following references, or if there is other site specific evidence that indicates to the Authority the presence of waters not shown on any of these references:

(i) The most recent version of the United States Geological Survey (USGS) 1:24,000 scale (7.5 minute quadrangle) topographic maps;

(ii) The most recent version of the published manuscript of the soil survey map that shows stream layers prepared by the Natural Resource Conservation Service of the United States Department of Agriculture; or

(iii) Other maps approved by the Geographic Information Coordinating Council and by the Environmental Management Commission as more accurate than those identified in Sub-Item (3)(a)(i) and (3)(a)(ii) of this Rule. Other maps may be submitted to the Division for review and recommendation to the Environmental Management Commission. Prior to recommendation to the Environmental Management Commission, the Division shall issue a 30-day public notice through the Division's Mailing List in accordance with 15A NCAC 02H .0503. Division staff shall present recommendations including comments received during the

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public notice period to the Environmental Management Commission for a final decision. Maps approved under this Sub-Item shall not apply to projects that are existing and ongoing within the meaning of this Rule as set out in Item (6) of this Rule;

(b) This Rule shall apply to activities conducted within 50 foot wide riparian buffers directly adjacent to surface waters in the Randleman watershed (intermittent and perennial streams, lakes, reservoirs, and ponds) excluding ~~wetlands.~~wetlands;

(c) Wetlands adjacent to surface waters or within 50 feet of surface ~~waters,~~waters shall be considered as part of the riparian buffer but are regulated pursuant to 15A NCAC ~~02H.0506.~~02H .0506;

(d) Stormwater runoff from activities conducted outside the riparian buffer shall comply with Item (9) of this Rule;

~~(a) Surface waters shall be subject to this Rule if the feature is approximately shown on any of the following references, or if there is other site specific evidence that indicates to the Division or local government the presence of waters not shown on any of these maps:~~

~~(i) The most recent version of the United States Geological Survey 1:24,000 scale (7.5 minute quadrangle) topographic maps;~~

~~(ii) The most recent version of the hardcopy soil survey maps developed by USDA-Natural Resource Conservation Service; or~~

~~(iii) A map approved by the Geographic Information Coordinating Council and by the Commission. Prior to approving a map under this sub-division the Commission shall provide a 30-day public notice and opportunity for comment;~~

(e) Riparian buffers protected by this Rule shall be measured pursuant to Item (8) of this Rule;

(f) A riparian buffer may be exempt from this Rule as described in Items (5), (6) and (7) of this Rule; and

(g) No new clearing, grading, or development shall take place nor shall any new building permits be issued in violation of this Rule.

~~(b) Where the specific origination point of an intermittent or perennial stream is in question, parties subject to this Rule shall use the Division publication, *Identification Methods for the Origins of Intermittent and Perennial Streams, v 3.1 February 28, 2005* available at: http://portal.ncdenr.org/web/wq/swp/ws/401/waterresources/streamdeterminations to establish that point;~~

~~(c) Local governments may develop stream network maps for the watershed based on maps referenced in Sub-Item (4)(a) of this Rule or criteria identified in Sub-Item (4)(b) and of this Rule. These maps shall be submitted to the Director for review to establish that proper methods were used by any local government wishing to use such maps for implementation of riparian area protection. The local map must be at least as accurate as the map identified~~

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~~in Sub-Items (4)(a)(i) and (4)(a)(ii) and must use the stream identification manual as referenced in Item (4)(b) of this Rule. Riparian areas shall be protected and maintained in accordance with this Rule on all sides of surface waters in the Randleman Lake watershed as delineated on these approved stream network maps;~~

~~(d) Personnel from delegated local governments that are assigned to perform stream determinations, shall successfully complete the Division's Surface Water Identification Training and Certification Class within three years of the effective revision date of this Rule. A delegated local government shall retain personnel on staff who have successfully completed the Division's class at all times with the exception of staff vacancies and class scheduling problems. At any time that a local government does not have a certified individual retained on staff they shall notify the Division and indicate a proposed schedule to secure a certified staff member;~~

~~(e) All local governments that have land use authority within the Randleman Lake water supply watershed shall adopt and enforce this Rule through local water supply and other local ordinances. Ordinances shall require that all riparian protection areas are recorded on new or modified plats. No new clearing, grading, or development shall take place and no new building permits shall be issued in violation of this Rule; and~~

~~(f) Parties subject to this Rule shall abide by all State rules and laws regarding waters of the state including Rules 15A NCAC 02H .0500, 15A NCAC 02H .1300, and Sections 401 and 404 of the Federal Clean Water Act.~~

~~(5)~~(4) ~~EXEMPTION REQUIREMENTS TO WHEN AN~~ ON-SITE ~~DETERMINATION SHOWS THAT SURFACE WATERS ARE NOT PRESENT.~~DETERMINATION. When a landowner or other affected party believes that the maps listed in Sub-Item (3)(a) of this Rule have inaccurately depicted surface ~~waters,~~waters or the specific origination point of a stream, or the specific origination point of a stream is in question or unclear, he or she shall ~~consult~~ request the ~~delegated local authority. Upon request, the delegated local authority shall~~Authority to make an ~~onsite~~ on-site ~~determinations.~~determination. On-site determinations shall be made by Authority staff that are certified pursuant to G.S. 143-214.25A. Registered Foresters under Chapter 89B of the General Statutes who are employees of the North Carolina Forest Service of the Department of Agriculture and Consumer Services can make on-site determinations for forest harvesting operations and practices. Local governments may ~~also~~ accept the results of ~~site assessments~~an on-site determination made by other parties who have successfully completed the Division's Surface Water Identification Training Certification course, its successor, or other equivalent training curriculum approved by the Division. ~~course and are sanctioned by the Division to make such determinations.~~ On-site determinations shall expire five years from the date of the determination. Any disputes over on-site determinations shall be referred to the ~~local Board of Adjustment or other local appeals process in writing. For projects proposed for state and federal lands, any disputes shall be referred~~

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Commented [HK22]: no effect - clarification

Commented [HK23]: no effect - grammar

Commented [HK24]: no effect – incorporating statute

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~~to the~~ Director in ~~writing.~~writing within 60 calendar days of written notification from the Authority. ~~A determination of the Director as to the accuracy or application of the maps~~The Director's determination is subject to review as provided in Articles 3 and 4 of G.S. 150B.

(5) EXEMPTION BASED ON ON-SITE DETERMINATION. Surface waters that appear on the maps listed in Sub-Item (3)(a) of this Rule shall not be subject to this Rule if an on-site determination shows that they fall into one of the following categories:

(a) Ditches and manmade conveyances, to include manmade stormwater conveyances, other than modified natural streams, unless the ditch or manmade conveyance delivers untreated stormwater runoff from an adjacent source directly to an intermittent or perennial stream;

(b) ~~Areas mapped as intermittent streams, perennial streams, lakes, ponds, or estuaries on the most recent versions of United States Geological Survey 1:24,000 scale (7.5 minute quadrangle) topographic maps, hard copy soil survey maps or other EMC approved stream maps where no~~The absence on the ground of a corresponding perennial waterbody, intermittent waterbody, lake, reservoir or pond;~~pond or estuary actually exists on the ground;~~

(c) Ephemeral streams; and

(d) ~~Ponds~~Manmade ponds and lakes ~~created for animal watering, irrigation, or other agricultural uses~~ that are not ~~part of a natural drainage way that is classified in accordance with 15A NCAC 02B .0100. Ponds are part of a natural drainage way when they are hydrologically connected (i.e. the pond is~~ fed by an intermittent or perennial ~~stream)~~stream nor ~~or when they~~ have a direct discharge point to an intermittent or perennial stream.

(6) EXEMPTION ~~TO REQUIREMENTS~~ WHEN EXISTING USES ARE PRESENT AND ONGOING. This Rule shall not apply to portions of the riparian buffer where a use is existing ~~and ongoing according to the following:~~ongoing.

(a) A use shall be considered existing and ongoing ~~if~~if:

(i) ~~it~~It was present within the riparian buffer as of the effective date of the local ordinance or ~~local~~ordinances enforcing this Rule and has continued to exist since that time. For ~~state and federal entities,~~activities listed in Sub-Item (12)(b), a use shall be considered existing and ongoing if it was present within the riparian buffer as of ~~the effective date of this Rule~~April 1, 1999 and has continued to exist since that ~~time.~~time;

(ii) It was a deemed allowable activity as listed in Item (10) of this Rule;

(iii) It was conducted and maintained pursuant to an Authorization Certificate or Exception issued by the Authority; or

(iv) The project or proposed development are determined by the Authority to meet at least one of the following criteria:

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Commented [HK32]: Codifying policy

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(A) Project requires a 401 Certification/404 permit and these were issued prior to the effective date of the local ordinance or ordinances enforcing this Rule, or for activities listed in Sub-Item (12)(b), prior to April 1, 1999, and are still valid;

(B) Projects that require a state permit, such as landfills, NPDES wastewater discharges, land application of residuals and road construction activities, and have begun construction or are under contract to begin construction, and have received all required state permits and certifications prior to the effective date of the local ordinance or ordinances implementing this Rule, or for activities listed in Sub-Item (12)(b), prior to April 1, 1999;

(C) Projects that are being reviewed through the Clean Water Act Section 404/National Environmental Policy Act Merger 01 Process (published by the US Army Corps of Engineers and Federal Highway Administration, 2003) or its immediate successor and that have reached agreement with the Department on avoidance and minimization prior to April 1, 1999; or

(D) Projects that are not required to be reviewed by the Clean Water Act Section 404/National Environmental Policy Act Merger 01 Process (published by the US Army Corps of Engineers and Federal Highway Administration, 2003) or its immediate successor if a Finding of No Significant Impact has been issued for the project and the project has the written approval of the Division prior to April 1, 1999.

(b) Existing and ongoing uses shall include, but not be limited to, agriculture, buildings, industrial facilities, commercial areas, transportation facilities, maintained lawns, maintained utility lines and on-site sanitary sewage ~~systems~~ systems, any of which involve either specific, periodic management of vegetation or displacement of vegetation by structures or regular activity.

(c) Only the portion of the riparian buffer that contains the footprint of the existing and ongoing use is exempt from this Rule.

(d) Change of ownership through purchase or inheritance is not a change of use.

(e) Activities necessary to maintain existing and ongoing uses are allowed provided that the site remains similarly vegetated, no ~~impervious surface~~built upon area is added within ~~50 feet of the surface water~~the riparian buffer where it did not previously exist ~~as of~~prior to the effective date of the local ordinance or ~~local~~ ordinances enforcing this Rule, or for activities listed in Sub-Item (12)(b) prior to April 1, 1999, and the site is in compliance with Item (9) of this Rule.~~existing diffuse flow is maintained.~~ ~~Grading and revegetating~~

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Commented [HK44]: clarification; codifying policy

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~~Zone 2 is allowed provided that the health of the vegetation in Zone 1 is not compromised, the ground is stabilized and existing diffuse flow is maintained;~~

~~(b) A use shall be considered existing if projects or proposed development are determined by the local government, or the Director for the cases involving state or federal entities, to meet at least one of the following criteria:~~

~~(i) Project requires a 401 Certification/404 permit and these were issued prior to the effective date of the local program enforcing this Rule, and prior to the effective date of this Rule for Division-administered activities listed in Item (3) of this Rule;~~

~~(ii) Projects that require a state permit, such as landfills, NPDES wastewater discharges, land application of residuals and road construction activities, have begun construction or are under contract to begin construction and had received all required state permits and certifications prior to the effective date of the local program implementing this Rule, and prior to the effective date of this Rule for Division-administered activities listed in Item (3) of this Rule;~~

~~(iii) Projects that are being reviewed through the Clean Water Act Section 404/National Environmental Policy Act Merger 01 Process (published by the US Army Corps of Engineers and Federal Highway Administration, 2003) or its immediate successor and that have reached agreement with DENR on avoidance and minimization by the effective date of the local program enforcing this Rule, and prior to the effective date of this Rule for state and federal entities; or~~

~~(iv) Projects that are not required to be reviewed by the Clean Water Act Section 404/National Environmental Policy Act Merger 01 Process (published by the US Army Corps of Engineers and Federal Highway Administration, 2003) or its immediate successor if a Finding of No Significant Impact has been issued for the project and the project has the written approval of the local government prior to the effective date of the local program enforcing this Rule, or the written approval of the Division prior to the effective date of this Rule for state and federal entities: and~~

~~(c)~~(f) This Rule shall apply at the time an existing use is changed to another use. Change of use shall ~~include, but not limited to~~involve the initiation of any activity not defined as existing and ongoing in ~~either Sub-Item (6)(a) or (6)(b)~~Sub-Items (6)(a) through (6)(e) of this Rule.

(7) EXEMPTION FOR PONDS CONSTRUCTED AND USED FOR AGRICULTURAL PURPOSES. This Rule shall not apply to a freshwater pond if all of the following conditions are met:

(a) The property on which the pond is located is used for agriculture as that term is defined in G.S. 106-581.1.

(b) Except for this Rule, the use of the property is in compliance with all other water quality and water quantity statutes and rules applicable to the property before April 1, 1999.

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(c) The pond is not a component of an animal waste management system as defined in G.S. 143-215.10B (3).

~~(7)~~(8) ZONES OF THE RIPARIAN BUFFER. The protected riparian buffer shall have two zones as follows:

(a) Zone 1 shall consist of a vegetated area that is undisturbed except for uses provided for in Item ~~(9)~~(10) of this Rule. The location of Zone 1 shall be as follows:

(i) For intermittent and perennial streams, Zone 1 shall begin at the most landward limit of the top of the bank or the rooted herbaceous vegetation and extend landward a distance of 30 feet on all sides of the ~~surface water,~~stream, measured horizontally on a line perpendicular to ~~a vertical line marking the edge of the top of the bank;~~the stream (where an intermittent or perennial stream begins or ends, including when it goes underground, enters or exits a culvert, or enters or exits a wetland, the required distance shall be measured as a radius around the beginning or the end); and

(ii) For ponds, lakes and reservoirs located within a natural drainage way, Zone 1 shall begin at the ~~most landward limit of the~~ normal water level ~~or the rooted herbaceous vegetation~~ and extend landward a distance of 30 feet, measured horizontally on a line perpendicular to ~~a vertical line marking the edge of the surface water or rooted herbaceous vegetation: and~~ the surface water.

(b) Zone 2 shall consist of a stable, vegetated area that is undisturbed except for uses provided for in Item ~~(9)~~(10) of this Rule. Grading and revegetating Zone 2 is allowed provided that the health of the vegetation in Zone 1 is not compromised. Zone 2 shall begin at the outer edge of Zone 1 and extend landward 20 feet as measured horizontally on a line perpendicular to the surface water. The combined width of Zones 1 and 2 shall be 50 feet on all sides of the surface water.

~~(8) DIFFUSE FLOW REQUIREMENT. Diffuse flow of runoff shall be maintained in the riparian buffer by dispersing concentrated flow and reestablishing vegetation.~~

~~(a) Concentrated runoff from new ditches or manmade conveyances shall be converted to diffuse flow at non-erosive velocities before the runoff enters Zone 2 of the riparian buffer;~~

~~(b) Periodic corrective action to restore diffuse flow shall be taken if necessary to impede the formation of erosion gullies; and~~

~~(c) No new stormwater conveyances are allowed through the buffers except for those specified in Item (9) of this Rule addressing stormwater management ponds drainage ditches, roadside ditches, and stormwater conveyances.~~

(9) STORMWATER RUNOFF THROUGH THE RIPARIAN BUFFER. Drainage conveyances include drainage ditches, roadside ditches, and stormwater conveyances. The following stormwater conveyances through the riparian buffer are either deemed allowable or allowable upon

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Commented [HK59]: Clarification

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authorization, as defined in Sub-Item (10)(a) of this Rule, provided that they do not erode through the buffer and do not cause erosion to the receiving waterbody. Stormwater conveyances through the riparian buffer that are not listed below shall be allowable with exception as defined in Sub-Item (10)(a)(v) of this Rule.

(a) The following are deemed allowable as defined in Sub-Item (10)(a)(i) of this rule:

(i) New drainage conveyances that comply with a stormwater management plan reviewed and approved under a state stormwater program or a state-approved local government stormwater program, which includes a Primary SCM, as defined in 15A NCAC 02H .1002, to treat the drainage area to the conveyance;

(ii) New stormwater flow to existing drainage conveyances provided that the addition of new flow does not result in the need to alter the conveyance.

(b) The following are allowable upon authorization as defined in Sub-Item (10)(a)(ii) of this Rule:

(i) New drainage conveyances when a Primary SCM as defined in 15A NCAC 02H .1002 is provided to treat the drainage area to the conveyance;

(ii) New drainage conveyances when the flow rate of the conveyance is less than 0.5 cubic feet per second during the peak flow from the 0.75 inch per hour storm;

(iii) New stormwater runoff that has been treated through a level spreader-filter strip that complies with 15A NCAC 02H .1059;

(iv) Realignment of existing roadside drainage ditches retaining or improving the design dimensions provided that no additional travel lanes are added and the minimum required roadway typical section is used based on traffic and safety considerations;

(v) Realignment of existing conveyances retaining or improving the design dimensions provided that the size of the drainage area and the percent built-upon area within the drainage area remain the same;

(vi) New or altered drainage conveyances applicable to publicly funded and maintained linear transportation provided that SCMs, or BMPs from the NCDOT Stormwater Best Management Practices Toolbox, are employed;

(vii) New drainage conveyances applicable to linear transportation projects that do not provide a stormwater management facility due to topography constraints provided other measures are employed to protect downstream water quality to the maimum extent practical;

(viii) New drainage conveyances where the drainage area to the conveyance has no new built-upon area as defined in 15A NCAC 02H .1002 and the conveyance is necessary for bypass of existing drainage only.

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~~(9)~~(10) ~~TABLE OF~~ USES. Uses within the riparian buffer, or outside the buffer with hydrological impacts on the riparian buffer, shall be designated as deemed allowable, allowable upon authorization, allowable with mitigation upon authorization, or prohibited.

(a) Potential new uses shall have the following requirements:

(i) DEEMED ALLOWABLE. Uses designated as deemed allowable in Sub-Items (9)(a) and (10)(b) of this Rule may occur within the riparian buffer. Deemed allowable uses shall be designed, constructed and maintained to minimize vegetation and soil disturbance and to provide the maximum water quality protection practicable, including construction, monitoring, and maintenance activities. In addition, deemed allowable uses shall meet requirements listed in Sub-Item (10)(b) of this Rule for the specific use.

(ii) ALLOWABLE UPON AUTHORIZATION. Uses designated as allowable upon authorization in Sub-Items (9)(b) and (10)(b) of this Rule require a written Authorization Certificate from the Authority for impacts within the riparian buffer provided that there are no practical alternatives to the requested use pursuant to Rule .0705 of this Section.

(iii) ALLOWABLE WITH MITIGATION UPON AUTHORIZATION. Uses designated as allowable with mitigation upon authorization in Sub-Item (10)(b) of this Rule require a written Authorization Certificate from the Authority for impacts within the riparian buffer provided that there are no practical alternatives to the requested use pursuant to Rule.0705 of this Section. and an appropriate mitigation strategy has received written approval pursuant to Item (11) of this Rule.

(iv) PROHIBITED. Uses designated as prohibited in Sub-Item (10)(b) of this Rule may not proceed within the riparian buffer unless a Variance is granted pursuant to Rule .0226 of this Section. Mitigation may be required as a condition of variance approval.

(v) ALLOWABLE WITH EXCEPTION. Uses not designated as deemed allowable, allowable upon authorization, allowable with mitigation upon authorization or prohibited in Sub-Item (10)(b) of this Rule require a written Authorization Certificate with Exception from the Authority for impacts within the riparian buffer pursuant to Rule .0705 of this Section and an appropriate mitigation strategy that has received written approval pursuant to Item (11) of this Rule.

(b) The following ~~chart~~ table sets out ~~the~~ potential new uses within the riparian buffer, or outside the buffer with hydrological impacts on the riparian buffer, and ~~their designation under this Rule~~designates them as ~~exempt,~~deemed allowable, ~~potentially allowable,~~ allowable upon authorization or ~~potentially~~ allowable with mitigation upon

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Commented [HK82]: Changed to variance process set out in Rule .0226.

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authorization:~~mitigation.~~ ~~All uses not designated as exempt, potentially allowable, or potentially allowable with mitigation are considered prohibited and may not proceed within the riparian buffer unless a variance is granted pursuant to Item (12) of this Rule. The requirements for each category are given in Item (10) of this Rule.~~

Use	~~Exempt~~ Deemed Allowable	~~Potentially~~ Allowable Upon Authorization	~~Potentially~~ Allowable with Mitigation Upon Authorization	Prohibited
~~Access trails: Pedestrian access trails leading to the surface water, docks, fishing piers, boat ramps and other water dependent activities:~~ • ~~Pedestrian access trails that are restricted to the minimum width practicable and do not exceed 4 feet in width of buffer disturbance, and provided that installation and use does not result in removal of trees as defined in this Rule and no impervious surface is added to the riparian buffer~~	~~X~~			
• ~~Pedestrian access trails that exceed 4 feet in width of buffer disturbance, the installation or use results in removal of trees as defined in this Rule or impervious surface is added to the riparian buffer~~		~~X~~		
Airport facilities: • Airport facilities that impact equal to or less than ~~150 linear feet or~~ one-third of an acre of riparian buffer		X		
• Airport facilities that impact greater than ~~150 linear feet or~~ one-third of an acre of riparian buffer			X	
• ~~Activities~~ Vegetation removal activities necessary to comply with ~~FAA~~ Federal Aviation Administration requirements (e.g. ~~radar uses or landing strips)~~[1] line of sight requirements) provided the disturbed areas are stabilized and revegetated	X	~~X~~		

Commented [HK88]: No effect – updated terminology

Commented [HK89]: Removed – see (v) above

Commented [HK90]: Updated terminology

Commented [HK91]: Moved to below

Commented [HK92]: Removed linear feet; will just reference square feet for east of implementation

Commented [HK93]: Removed linear feet; will just reference square feet for east of implementation

Commented [HK94]: Codifying policy

Use	~~Exempt~~ Deemed Allowable	~~Potentially~~ Allowable Upon Authorization	~~Potentially~~ Allowable with Mitigation Upon Authorization	Prohibited
Archaeological activities~~activities: In Zones 1 and 2 and are designed, constructed and maintained to provide the maximum sediment removal and erosion protection, to have the least adverse effects on aquatic life and habitat, and to protect water quality to the maximum extent practical.~~	X			
Bridges • Impact equal to or less than one-tenth of an acre of riparian buffer • Impact greater than one-tenth of an acre of riparian buffer	X	X		
~~Canoe access provided that installation and use does not result in removal of trees as defined in the Rule and no impervious surface is added to the buffer.~~	~~X~~			
Dam maintenance activities: • Dam maintenance activities that do not cause additional buffer disturbance beyond the footprint of the existing dam or those covered under a U.S. Army Corps of Engineers ~~Nationwide~~ Permit • Dam maintenance activities that do cause additional buffer disturbance beyond the footprint of the existing dam or those not covered under a U.S. Army Corps of Engineers ~~Nationwide~~ Permit	X	X		

Commented [HK90]: Updated terminology

Commented [HK95]: Removed for simplicity

Commented [HK96]: Added new use to allow bridges with less than 1/10 to be deemed allowable, consistent with road impacts

Commented [HK97]: Moved to below

Commented [HK98]: Allows for any Corps permit, including Regional General Permits or Individual Permits

Commented [HK99]: Allows for any Corps permit

Use	~~Exempt~~ Deemed Allowable	~~Potentially~~ Allowable Upon Authorization	~~Potentially~~ Allowable with Mitigation Upon Authorization	Prohibited
~~Drainage ditches, roadside ditches and stormwater conveyances through riparian buffers:~~ • ~~New stormwater flows to existing drainage ditches, roadside ditches, and stormwater conveyances provided flows do not alter or result in the need to alter the conveyance and are managed to minimize the sediment, nutrients and other pollution that convey to waterbodies~~ • ~~Realignment of existing roadside drainage ditches retaining the design dimensions, provided that no additional travel lanes are added and the minimum required roadway typical section is used based on traffic and safety considerations~~ • ~~New or altered drainage ditches, roadside ditches and stormwater outfalls provided that a stormwater management facility is installed to control nitrogen and attenuate flow before the conveyance discharges through the riparian buffer~~ • ~~New drainage ditches, roadside ditches and stormwater conveyances applicable to linear projects that do not provide a stormwater management facility due to topography constraints provided that other practicable BMPs are employed~~	~~X~~	~~X~~ ~~X~~	~~X~~	
Drainage of a pond subject to Item (4) of this Rule ~~in a natural drainage way~~ provided that a new riparian buffer ~~that meets the requirements of Items (7) and (8) of this Rule~~ is established ~~adjacent to the new channel~~. by natural regeneration or planting, within 50 feet of any stream which naturally forms or is constructed within the drained pond area. Drained ponds shall be allowed to naturalize for a minimum of six months from completion of the draining activity before a stream determination is conducted pursuant to Item (4) of this Rule.	X			

Commented [HK90]: Updated terminology

Commented [HK100]: Moved to Item (9) below

Commented [HK101]: No effect - clarification

Commented [HK102]: Clarification of regeneration process after pond is drained

Use	~~Exempt~~ Deemed Allowable	~~Potentially~~ Allowable Upon Authorization	~~Potentially~~ Allowable with Mitigation Upon Authorization	Prohibited
~~Driveway crossings of streams and other surface waters subject to this Rule:~~ • ~~Driveway crossings on single family residential lots that disturb equal to or less than 25 linear feet or 2,500 square feet of riparian buffer~~ • ~~Driveway crossings on single family residential lots that disturb greater than 25linear feet or 2,500 square feet of riparian buffer~~ • ~~In a subdivision that cumulatively disturb equal to or less than 150 linear feet or one-third of an acre of riparian buffer~~ • ~~In a subdivision that cumulatively disturb greater than 150 linear feet or one-third of an acre of riparian buffer~~	~~X~~	~~X~~ ~~X~~	~~X~~	
~~Driveway impacts other than crossing of a stream or other surface waters subject to this Rule~~			~~X~~	
Fences: • Fencing livestock out of surface waters • ~~Fences provided that disturbance is minimized and installation~~Installation does not result in removal of trees ~~as defined in this Rule~~ • ~~Fences provided that disturbance is minimized and installation~~ Installation results in removal of trees ~~as defined in this Rule~~	X X	X		
Forest harvesting - see ~~Item (16) of this~~ Rule .0706 of this Section.				

Commented [HK90]: Updated terminology

Commented [HK103]: Moved below with road impacts

Commented [HK104]: Moved below with road impacts

Commented [HK105]: New deemed allowable use

Commented [HK106]: No effect - grammar

Commented [HK107]: No effect –grammar

Commented [HK108]: No effect – update citation

Use	~~Exempt~~ Deemed Allowable	~~Potentially~~ Allowable Upon Authorization	~~Potentially~~ Allowable with Mitigation Upon Authorization	Prohibited
Fertilizer Application: • One-time fertilizer application to establish ~~vegetation~~vegetation. This only applies to the one-time application of fertilizer in the riparian buffer. No runoff from this one-time application in the riparian buffer is allowed in the applicable surface water. • Ongoing fertilizer application	X			X
Grading ~~and revegetation~~ in Zone 2 provided that ~~diffuse flow and~~ the health of existing vegetation in Zone 1 is not ~~compromised~~ compromised, Item (9) of this Rule is complied with, and disturbed areas are ~~revegetated with native vegetation~~stabilized and revegetated	X			
~~Greenway / hiking trails:~~ ~~Designed, constructed and maintained to provide the maximum nutrient removal and erosion protection, to have the least adverse effects on aquatic life and habitat, and to protect water quality to the maximum extent practical.~~ Greenways, trails, sidewalks or linear pedestrian/bicycle transportation system: • In Zone 2 provided that no built upon area is added within the buffer • When built upon area is added to the buffer, equal to or less than ten (10) feet wide with two (2) foot wide shoulders. Must be located outside Zone 1 unless there is no practical alternative • When built upon area is added to the buffer, greater than ten (10) feet wide with two (2) foot wide shoulders. Must be located outside Zone 1 unless there is no practical alternative	X	X	X	

Commented [HK90]: Updated terminology

Commented [HK109]: Clarification

Commented [HK110]: No effect – clarification and updated citation

Commented [HK111]: Clarify, consolidate and codify policy

Use	~~Exempt~~ Deemed Allowable	~~Potentially~~ Allowable Upon Authorization	~~Potentially~~ Allowable with Mitigation Upon Authorization	Prohibited
Historic ~~preservation: Designed, constructed and maintained to provide the maximum nutrient removal and erosion protection, to have the least adverse effects on aquatic life and habitat, and to protect water quality to the maximum extent practical~~preservation	X			
Maintenance access of modified natural streams: a grassed travel way on one side of the water body when less impacting alternatives are not practical. The width and specifications of the travel way shall be only that needed for equipment access and operation. The travel way shall be located to maximize stream shading.		X		
Mining activities: • Mining activities that are covered by the Mining Act provided that new riparian buffers that meet the requirements of Items ~~(7)~~(8) and ~~(8)~~(9) of this Rule are established adjacent to the relocated channels		X		
• Mining activities that are not covered by the Mining Act or where new riparian buffers that meet the requirements or Items ~~(7)~~(8) and ~~(8)~~(9) of this Rule are not established ~~adjacent to the relocated channels~~			X	
• Wastewater or mining dewatering wells with approved NPDES permit	X			

Commented [HK90]: Updated terminology

Commented [HK112]: Removed for simplicity

Commented [HK113]: No effect – update citation

Commented [HK114]: No effect – update citation

Commented [HK115]: Allows mining activities that do not relocate channels to pursue an authorization certificate

Use	~~Exempt~~ Deemed Allowable	~~Potentially~~ Allowable Upon Authorization	~~Potentially~~ Allowable with Mitigation Upon Authorization	Prohibited
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: • Pedestrian access trail equal to or less than six (6) feet wide that does not result in the removal of any tree(s) within the riparian buffer and does not result in any built upon area being added to the riparian buffer • Pedestrian access trail equal to or less than six (6) feet wide where the installation or use results in the removal of tree(s) or addition of built upon area to the riparian buffer • Pedestrian access trail greater than six (6) feet wide	X	X	X	
Playground equipment: • Playground equipment on single family lots provided that installation and use does not result in removal of vegetation • Playground equipment on single family lots where installation or use results in the removal of vegetation • Playground equipment installed on lands other than single-family lots ~~or that requires removal of vegetation~~	X	X X		
Ponds ~~in natural drainage ways, excluding dry ponds:~~created or modified by impounding streams subject to buffer pursuant to Item (3) of this Rule and not used at stormwater control measures (SCMs): • New ponds provided that a riparian buffer that meets the requirements of Items ~~(7)~~(8) & ~~(8)~~(9) of this Rule is established adjacent to the pond • New ponds where a riparian buffer that meets the requirements of Items ~~(7)~~(8) & ~~(8)~~(9) of this Rule is NOT established adjacent to the pond		X	X	

Commented [HK90]: Updated terminology

Commented [HK116]: Moved and consolidated from other uses above

Commented [HK117]: No effect – split into two bullets for clarification

Commented [HK118]: No effect – clarification

Commented [HK119]: No effect – update citation

Commented [HK120]: No effect – update citation

Use	~~Exempt~~ Deemed Allowable	~~Potentially~~ Allowable Upon Authorization	~~Potentially~~ Allowable with Mitigation Upon Authorization	Prohibited
Protection of existing ~~structures, facilities and stream banks~~structures and facilities, including existing utility lines, when this requires additional disturbance of the riparian buffer ~~or the stream channel~~		X		
~~Railroad impacts other than crossings of streams and other surface waters subject to this Rule.~~			~~X~~	
~~Railroad crossings of streams and other surface waters subject to this Rule:~~ • ~~Railroad crossings that impact equal to or less than 40 linear feet of riparian buffer~~ • ~~Railroad crossings that impact greater than 40 linear feet but equal to or less than 150 linear feet or one-third of an acre of riparian buffer~~ • ~~Railroad crossings that impact greater than 150 linear feet or one-third of an acre of riparian buffer~~	~~X~~	~~X~~	~~X~~	
~~Recreational and accessory structures:~~ • ~~Total footprint of gazebos and sheds in Zone 2, provided they are not prohibited under local water supply ordinance less than or equal to 150 square feet per lot~~ • ~~Total footprint gazebos and sheds in Zone 2, provided they are not prohibited under local water supply ordinance of more than 150 square feet per lot~~ • ~~Wooden slatted decks (and associated steps) that are at least 8 feet in height and vegetation is not removed from Zone 1 for the installation and that it meets the requirements of Items (7) and (8) of this Rule~~ • ~~Wooden slatted decks (and associated steps) that are not at least 8 feet in height or vegetation is removed from Zone 1 for the installation and that it meets the requirements of Items (7) and (8) of this Rule~~		~~X~~ ~~X~~	~~X~~ ~~X~~	

Commented [HK90]: Updated terminology

Commented [HK121]: No effect – streambanks in table below; clarified this includes existing utility lines

Commented [HK122]: Moved to below

Commented [HK123]: Moved to below

Commented [HK124]: Moved to below

Use	~~Exempt~~ Deemed Allowable	~~Potentially~~ Allowable Upon Authorization	~~Potentially~~ Allowable with Mitigation Upon Authorization	Prohibited
Removal of previous fill or debris provided that Item (9) of this Rule is complied with~~diffuse flow is maintained~~ and any vegetation removed is restored	X			
Residential Properties: Where application of this Rule would preclude construction of a single-family residence and necessary infrastructure, such as an on-site wastewater system, the single-family residence may encroach in the buffer if all of the following conditions are met: (1) the residence is set back the maximum feasible distance from the top of the bank, rooted herbaceous vegetation, normal high-water level, or normal water level, whichever is applicable, on the existing lot; (2) the residence is designed to minimize encroachment into the riparian buffer; (3) the residence complies with Item (9) of this Rule; and if the residence will be served by an on-site wastewater system, no part of the septic tank or drainfield may encroach into the riparian buffer. • The residence and necessary infrastructure impact Zone 2 only • The residence or necessary infrastructure impact Zone 1		X X		
Restoration or enhancement (wetland, stream) as defined in 33 CFR Part 332 available free of charge on the internet at: http://water.epa.gov/lawsregs/guidance/wetlands/wetlandsmitigation_index.cfm • Wetland or stream restoration that does not require written Division approval results in impacts to the riparian buffer • Wetland or stream restoration that does require written Division approval that results in impacts to the riparian buffer	X	 X		

Commented [HK90]: Updated terminology

Commented [HK125]: No effect – update citation and grammar

Commented [HK126]: Incorporating SL 2011-394 and SL2012-200

Commented [HK127]: New use to allow impacts to Zone 1 for single-family residences

Commented [HK128]: Moved from below

Use	~~Exempt~~ Deemed Allowable	~~Potentially~~ Allowable Upon Authorization	~~Potentially~~ Allowable with Mitigation Upon Authorization	Prohibited
~~Road~~ Road, driveway or railroad: perpendicular crossings of streams and other surface waters subject to this Rule or perpendicular entry into the buffer that does not cross a stream or other surface water subject to this Rule:				
• ~~Road crossings that impact~~Impact equal to or less than ~~40 linear feet~~one-tenth of an acre of riparian buffer	X			
• ~~Road crossings that impact~~Impact greater than one-tenth of an ~~acre 40 linear feet~~ but equal to or less than ~~150 linear feet or~~ one-third of an acre of riparian buffer		X		
• ~~Road crossings that impact~~Impact greater than ~~150 linear feet or~~ one-third of an acre of riparian buffer			X	
• Driveway crossings in a subdivision that cumulatively disturb equal to or less than one-third of an acre of riparian buffer		X		
• Driveway crossings in a subdivision that cumulatively disturb greater than one-third of an acre of riparian buffer			X	
~~Road~~ Road, driveway or railroad impacts other than perpendicular crossings of streams and other surface waters subject to this Rule			X	
Road relocation of existing private access roads associated with public road projects where necessary for public safety:				
• Less than or equal to 2,500 square feet of buffer impact		X		
• Greater than 2,500 square feet of buffer impact			X	
Stormwater ~~BMPs:~~Control Measure (SCM) as defined in 15A NCAC 02H .1002:		X		
• In Zone 2 if Item (9) of this Rule is complied with~~Wet detention, bioretention, and constructed wetlands in Zone 2 if diffuse flow of discharge is provided into Zone 1~~			X	
• ~~Wet detention, bioretention, and constructed wetlands in~~In Zone 1				

Commented [HK90]: Updated terminology

Commented [HK129]: No effect – incorporating road, driveway and railroad into one row as requirements were all the same

Commented [HK130]: Clarification

Commented [HK131]: No effect - grammar

Commented [HK132]: Removed linear feet; will just reference square feet for ease of implementation

Commented [HK133]: No effect - grammar

Commented [HK134]: Removed linear feet; will just reference square feet for ease of implementation

Commented [HK135]: No effect - grammar

Commented [HK136]: Removed linear feet; will just reference square feet for ease of implementation

Commented [HK137]: No effect – moved from above

Commented [HK138]: No effect – incorporating road, driveway and railroad into one row as requirements were all the same

Commented [HK139]: Changes uses to allow any SCM in the buffer instead of just wet ponds

Use	~~Exempt~~ Deemed Allowable	~~Potentially~~ Allowable Upon Authorization	~~Potentially~~ Allowable with Mitigation Upon Authorization	Prohibited
Scientific studies and stream ~~gauging:~~ ~~In Zones 1 and 2 if they are designed, constructed and maintained to protect water quality to the maximum extent practical.~~gauging	X			
Streambank or shoreline stabilization		X		
Temporary roads provided that the disturbed area is restored to pre-construction topographic and hydrologic conditions ~~immediately after construction is complete~~ and replanted ~~immediately~~ with comparable vegetation within two (2) months of when construction is complete. ~~vegetation, except that the tree~~ Tree planting may occur during the dormant season. ~~A one time application of fertilizer may be utilized to establish vegetation.~~ At the end of five ~~years~~ years, the restored buffer shall comply with the restoration criteria in ~~Item (9)~~Paragraph (i) of Rule ~~15A NCAC 02B .0252:~~.0295 of this Section:				
• Less than or equal to 2,500 square feet of buffer disturbance	X			
• Greater than 2,500 square feet of buffer disturbance		X		
• Associated with culvert installation, bridge construction or replacement		X		

Commented [HK90]: Updated terminology

Commented [HK140]: Removed wording for simplicity

Commented [HK141]: Clarification

Temporary sediment and erosion control devices provided that the disturbed area is restored to pre-construction topographic and hydrologic conditions ~~immediately after construction is complete~~ and replanted immediately with comparable ~~vegetation, except that tree~~ vegetation within two (2) months of when construction is complete. Tree planting may occur during the dormant season. ~~A one-time application of fertilizer may be used to establish vegetation.~~ At the end of five ~~years~~years, the restored buffer shall comply with the restoration criteria in ~~Item (9) of Rule 15A NCAC 02B .0252:~~Paragraph (i) of Rule .0295 of this Section:				
• In Zone 2 only provided ground cover is established within the timeframes required by the Sedimentation and Erosion Control ~~Act and that~~Act, the vegetation in Zone 1 is not compromised and that discharge is released as diffuse flow in accordance with Item ~~(8)~~(9) of this Rule	X			
• In Zones 1 and 2 to control impacts associated with uses approved by the ~~local government~~Authority or that have received ~~a variance~~an exception provided that sediment and erosion control for upland areas is addressed ~~to the maximum extent practical~~ outside the buffer		X		
• In-stream temporary erosion and sediment control measures for work within a stream channel that is authorized under Section 401 and 404 of the Federal Water Pollution Control Act	X			
• ~~In-stream temporary erosion and sediment control measures for authorized work within a stream channel~~In-stream temporary erosion and sediment control measures for work within a stream that has written approval from the Division and the U.S. Army Corps of Engineers under Sections 401 & 404 of the Federal Water Pollution Control Act		X		
~~Utility- Non-electric utility lines:~~ ~~• Impacts other than perpendicular crossings in Zone 2 only[4, 5]~~ ~~• Impacts other than perpendicular crossings in Zone 1 only[4, 5]~~		~~X~~	~~X~~	
~~Utility- Non-electric utility line perpendicular crossings of streams and other surface waters subject to this Rule[4, 5]:~~				

Commented [HK142]: Clarification

Commented [HK143]: Moved to below

Use	~~Exempt~~ Deemed Allowable	~~Potentially~~ Allowable Upon Authorization	~~Potentially~~ Allowable with Mitigation Upon Authorization	Prohibited
• ~~Perpendicular crossings that disturb equal to or less than 40 linear feet of riparian buffer with a maintenance corridor equal to or less than 10 feet in width~~	~~X~~			
• ~~Perpendicular crossings that disturb equal to or less than 40 linear feet of riparian buffer with a maintenance corridor greater than 10 feet in width~~		~~X~~		
• ~~Perpendicular crossings that disturb greater than 40 linear feet but equal to or less than 150 linear feet of riparian buffer with a maintenance corridor equal to or less than 10 feet in width~~		~~X~~		
• ~~Perpendicular crossings that disturb greater than 40 linear feet but equal to or less than 150 linear feet of riparian buffer with a maintenance corridor greater than 10 feet in width~~			~~X~~	
• ~~Perpendicular crossings that disturb greater than 150 linear feet of riparian buffer~~			~~X~~	
~~Utility Overhead electric utility lines:~~				
• ~~Impacts other than perpendicular crossings in Zone 2 only[4, 5]~~		~~X~~		
• ~~Impacts other than perpendicular crossings in Zone 1[2,3,4, 5]~~			~~X~~	
~~Utility Overhead electric utility line perpendicular crossings of streams and other surface waters subject to this Rule[2, 3,4, 5]:~~				
• ~~Perpendicular crossings that disturb equal to or less than 150 linear feet of riparian buffer~~	~~X~~			
• ~~Perpendicular crossings that disturb greater than 150 linear feet of riparian buffer~~		~~X~~		
~~Utility Underground electric utility lines:~~				
• ~~Impacts other than perpendicular crossings in Zone 2 only[2]~~	~~X~~			
• ~~Impacts other than perpendicular crossings in Zone 1[1,4]~~	~~X~~			

Commented [HK90]: Updated terminology

Commented [HK144]: Moved to below

Commented [HK145]: Moved to below

Commented [HK146]: Moved to below

Commented [HK147]: Moved to below

Use	~~Exempt~~ Deemed Allowable	~~Potentially~~ Allowable Upon Authorization	~~Potentially~~ Allowable with Mitigation Upon Authorization	Prohibited
~~Utility- Underground electric utility line perpendicular crossings of streams and other surface waters subject to this Rule:~~ ~~• Perpendicular crossings that disturb less than or equal to 40 linear feet of riparian buffer[3, 4, 5]~~ ~~• Perpendicular crossings that disturb greater than 40 linear feet of riparian buffer[3, 4, 5]~~	~~X~~	~~X~~		
Utility – Sewer lines: • Perpendicular crossings of streams and other surface waters subject to this Rule or perpendicular entry into the buffer that does not cross a stream or other surface water subject to this Rule: o Construction activities that disturb less than or equal to 40 linear feet of riparian buffer provided that vegetative root systems and stumps shall be left intact to maintain the integrity of the soil except in the trench where trees are cut and that vegetation is allowed to regenerate in disturbed areas with the exception of a maintenance corridor equal to or less than 20 feet in width	X			
o Construction activities that disturb greater than 40 linear feet and less than or equal to 150 linear feet of riparian buffer provided that vegetative root systems and stumps shall be left intact to maintain the integrity of the soil except in the trench where trees are cut and that vegetation is allowed to regenerate in disturbed areas with the exception of a maintenance corridor equal to or less than 20 feet in width		X		

Commented [HK90]: Updated terminology

Commented [HK148]: Moved to below

Commented [HK149]: Changed 3 categories of utilities from (1) non-electric, (2) electric aerial and (3) electric underground to (1) sewer lines, (2) non-sewer underground and (3) non-sewer aerial

Commented [HK150]: clarify this use can include perpendicular entry into the buffer that doesn't cross stream (e.g., connecting to an existing line)

Commented [HK151]: increased maintenance corridor from 10 feet to 20 feet

Commented [HK152]: changed from allowable with mitigation to allowable

Use	~~Exempt~~ Deemed Allowable	~~Potentially~~ Allowable Upon Authorization	~~Potentially~~ Allowable with Mitigation Upon Authorization	Prohibited
○ Construction activities that disturb greater than 150 linear feet of riparian buffer			X	
○ Any activities with a permanent maintenance corridor greater than 20 feet in width			X	
• Impacts other than perpendicular crossings:				
○ Impacts in Zone 2 provided vegetation is re-established after disturbance and the function of Zone 1 is not compromised	X			
○ Impacts in Zone 1 less than 2,500 square feet when impacts are solely the result of tying to an existing utility line and provided that land grubbing or grading is not conducted within 10 feet immediately adjacent to the water		X		
○ Impacts to Zone 1 other than noted above			X	
• Vegetation maintenance activities along an existing utility line beyond the footprint of an existing utility line maintenance corridor where the total maintenance corridor is equal to or less than 20 linear feet in width		X		
• Vegetation maintenance activities along an existing utility line beyond the footprint of an existing utility line maintenance corridor where the total maintenance corridor is greater than 20 linear feet in widthClarify this use can include perpendicular entry into the buffer that doesn't cross stream (e.g., connecting to an existing line)			X	
Utilities – Non-sewer underground lines:				
• Perpendicular crossings of streams and other surface waters subject to this Rule or perpendicular entry into the buffer that does not cross a stream or other surface water subject to this Rule:				

Commented [HK90]: Updated terminology

Commented [HK153]: no change

Commented [HK154]: changed from allowable to allowable with mitigation. Also expanded use for any perpendicular crossing, not just those less than 40 linear feet

Commented [HK155]: no change

Commented [HK156]: changed from allowable to deemed allowable

Commented [HK157]: Changed from all impacts to Zone 1 triggering mitigation to only impacts above 2,500 square feet when not tying into an existing line

Commented [HK158]: New uses to allow for vegetation maintenance beyond the maintenance corridor

Commented [HK159]: Changed 3 categories of utilities from (1) non-electric, (2) electric aerial and (3) electric underground to (1) sewer lines, (2) non-sewer underground and (3) non-sewer aerial

Commented [HK160]: Clarify this use can include perpendicular entry into the buffer that doesn't cross stream (e.g., connecting to an existing line)

Use	~~Exempt~~ Deemed Allowable	~~Potentially~~ Allowable Upon Authorization	~~Potentially~~ Allowable with Mitigation Upon Authorization	Prohibited
○ Construction activities that disturb less than or equal to 50 linear feet of riparian buffer provided that vegetative root systems and stumps shall be left intact to maintain the integrity of the soil except in the trench where trees are cut and that vegetation is allowed to regenerate in disturbed areas with the exception of a maintenance corridor equal to or less than 30 feet in width	X			
○ Construction activities that disturb greater than 50 linear feet and less than or equal to 150 linear feet of riparian buffer provided that vegetative root systems and stumps shall be left intact to maintain the integrity of the soil except in the trench where trees are cut and that vegetation is allowed to regenerate in disturbed areas with the exception of a maintenance corridor equal to or less than 30 feet in width		X		
○ Construction activities that disturb greater than 150 linear feet of riparian buffer			X	
○ Any activities with a permanent maintenance corridor greater than 30 feet in width			X	
• Impacts other than perpendicular crossings:				
○ Impacts in Zone Two provided vegetation is re-established after disturbance and the function of Zone 1 is not compromised	X			
○ Impacts in Zone One less than 2500 square feet when impacts are a result of tying to an existing utility line and provided that land grubbing or		X		

Commented [HK90]: Updated terminology

Commented [HK161]: Changed 40 feet to 50 feet. Added language re maintenance corridor.

Commented [HK162]: Capped allowable use to impacts less than 150

Commented [HK163]: Changed use from allowable to allowable with mitigation for impacts greater than 150 feet

Commented [HK164]: New use

Commented [HK165]: No change

Commented [HK166]: No change

Use	~~Exempt~~ Deemed Allowable	~~Potentially~~ Allowable Upon Authorization	~~Potentially~~ Allowable with Mitigation Upon Authorization	Prohibited
grading is not conducted within 10 feet immediately adjacent to the water				
○ Impacts to Zone 1 for the replacement of an existing sewer line within Zone 1 provided that the new line is within an existing Right-of-Way and land grubbing or grading is not conducted within 10 feet immediately adjacent to the water		X	X	
○ Impacts to Zone 1 for the purpose of reclaiming a maintenance corridor for an existing sewer line provided that trees and shrubs are not cleared within 10 feet immediately adjacent to the water			X	
○ Impacts in Zone One other than listed above				
• Vegetation maintenance activities along an existing utility line beyond the footprint of an existing utility line maintenance corridor where the total maintenance corridor is equal to or less than 30 linear feet in width				
• Vegetation maintenance activities along an existing utility line beyond the footprint of an existing utility line maintenance corridor where the total maintenance corridor is greater than 30 linear feet in width				
Utilities – Non-sewer aerial lines:				
• Perpendicular crossings of streams and other surface waters subject to this Rule or perpendicular entry into the buffer that does not cross a stream or other surface water subject to this Rule:				
○ Disturb equal to or less than 150 linear feet of riparian buffer provided that a minimum zone of 10 feet wide immediately adjacent to the water body is managed such that only	X			

Commented [HK90]: Updated terminology

Commented [HK167]: Capped impacts to zone 1 to less than 2500 square feet when not tying into an existing line before triggering mitigation

Commented [HK168]: New uses to accommodate replacement of existing sewer lines within Zone 1

Commented [HK169]: Capped impacts to zone 1 to less than 2500 square feet when not tying into an existing line before triggering mitigation

Commented [HK170]: New uses to allow for vegetation maintenance beyond the maintenance corridor

Commented [HK171]: Changed 3 categories of utilities from (1) non-electric, (2) electric aerial and (3) electric underground to (1) sewer lines, (2) non-sewer underground and (3) non-sewer aerial

Commented [HK172]: Clarify this use can include perpendicular entry into the buffer that doesn't cross stream (e.g., connecting to an existing line)

Use	~~Exempt~~ Deemed Allowable	~~Potentially~~ Allowable Upon Authorization	~~Potentially~~ Allowable with Mitigation Upon Authorization	Prohibited
vegetation that poses a hazard or has the potential to grow tall enough to interfere with the line is removed, that no land grubbing or grading is conducted in Zone 1, and that that poles or aerial infrastructure are not installed within 10 feet of a water body				
○ Disturb greater than 150 linear feet of buffer		X		
• Impacts other than perpendicular crossings:				
○ Impacts in Zone Two		X		
○ Impacts in Zone One provided that a minimum zone of 10 feet wide immediately adjacent to the water body is managed such that only vegetation that poses a hazard or has the potential to grow tall enough to interfere with the line is removed, that no land grubbing or grading is conducted in Zone 1, and that that poles or aerial infrastructure are not installed within 10 feet of a water body			X	

Commented [HK90]: Updated terminology

Commented [HK173]: No change

Commented [HK174]: No change

Commented [HK175]: Changed from deemed allowable to allowable; consistent with other utility line uses

Vegetation management: • Emergency fire control measures provided that topography and hydrology areis restored	X				Commented [HK176]: Clarification
• Periodic mowing and harvesting of plant products in Zone 2 only	X				
• Placement of mulch ring around restoration plantings for a period of five years from the date of planting	X				Commented [HK177]: New use
• Planting non-invasive vegetation to enhance the riparian buffer	X				Commented [HK178]: Clarification
• Pruning forest vegetation provided that the health and function of the forest vegetation is not compromised	X				
• Removal of individual trees which are in danger of causing damage to dwellings, existing utility lines, other structures or human lifelife, or are imminently endangering stability of the streambank provided that the stumps are left or ground in place without causing additional land disturbance.	X				Commented [HK179]: No effect – clarification Commented [HK180]: Clarification
• Removal of individual trees that are dead, diseased or damaged.	X				
• Removal of poison ivyivy, oak or sumac. Removal can include application of pesticides within the riparian buffer if the pesticides are certified by EPA for use in or near aquatic sites and are applied in accordance with the manufacturer's instructions. If removal is significant, then the riparian buffer shall be replanted with non-invasive species	X				Commented [HK181]: Allow for removal of additional nuisance species and allows for use of pesticides
• Removal of understory nuisance vegetation as defined in: Smith, Cherri L. 1998. Exotic Plant Guidelines. Dept. of Environment and Natural Resources. Division of Parks and Recreation. Raleigh, NC. Guideline #302008. Invasive Plants of North Carolina. Dept. of Transportation. Raleigh, NC (available at http://portal.ncdenr.org/c/document_library/get_file?uuid=0acc6377-ea07-42dc-bb27-45a78d1c7ebe&groupId=38364). Removal can include application of pesticides within the riparian buffer is the pesticides are certified by EPA for use in or near aquatic sites and are applied in accordance with the manufacturer's instructions. If removal is significant, then the riparian buffer shall be replanted with non-invasive species.	X				Commented [HK182]: Update citation; allow for use of pesticides

Use	~~Exempt~~ Deemed Allowable	~~Potentially~~ Allowable Upon Authorization	~~Potentially~~ Allowable with Mitigation Upon Authorization	Prohibited
Vehicle access roads and boat ramps (excluding parking areas) leading to surface water, docks, fishing piers, and other water dependent activities:~~to water dependent structures~~ • ~~Vehicular~~ Single vehicular access ~~roads~~ road and boat ramp ~~leading to water dependent structures as defined in 15A NCAC 02B .0202, provided they do not cross~~ the surface water but not crossing the surface water that are restricted to the~~and have a~~ minimum practicable width not ~~exceeding~~to exceed ~~ten~~ 15 feet in width		X		
• Vehicular access roads and boat ramps to the surface water but not crossing the surface water that are restricted to the minimum width practicable and exceed 15 feet in width			X	
Water dependent structures (except for boat ramps) as defined in ~~15A NCAC 02B~~Rule .0202 of this Section		X		
Water supply reservoirs: • New reservoirs provided that a riparian buffer that meets the requirements of Items ~~(7)~~(8) and ~~(8)~~(9) of this Rule is established adjacent to the reservoir		X		
• New reservoirs where a riparian buffer that meets the requirements of Items ~~(7)~~(8) and ~~(8)~~(9) of this Rule is not established adjacent to the reservoir			X	
Water wells ~~Single family water wells~~	X			
~~All water wells other than single family water wells~~		~~X~~		
~~Wetland stream and buffer restoration~~ • ~~Wetland, stream and buffer restoration that requires DWQ approval for the use of a 401 Water Quality Certification~~	~~X~~			
• ~~Wetland, stream and buffer restoration that does NOT require DWQ approval for the use of a 401 Water Quality Certification~~		~~X~~		

Commented [HK90]: Updated terminology

Commented [HK183]: Moved from above

Commented [HK184]: Boat ramps addressed above

Commented [HK185]: No effect – update citation

Commented [HK186]: No effect – update citation

Commented [HK187]: No effect – update citation

Commented [HK188]: Simplification

Commented [HK189]: Moved above

Use	~~Exempt~~ Deemed Allowable	~~Potentially~~ Allowable Upon Authorization	~~Potentially~~ Allowable with Mitigation Upon Authorization	Prohibited
Wildlife passage structures		X		
Slatted uncovered decks, including steps, which are associated with a dwelling, provided that it meets the requirements of Items (8) and (9) of this Rule and: • Installation does not result in removal of vegetation in Zone 1 • Installation results in removal of vegetation in Zone 1		X	X	

Commented [HK90]: Updated terminology

Commented [HK190]: Moved from above

~~[1] Provided that:~~

- ~~Heavy equipment is not used in Zone 1~~
- ~~Vegetation is not compromised in the portions of Zone 1 and Zone 2 that are not impacted~~
- ~~Trees that are cut down are removed by chain~~
- ~~No permanent felling of trees occurs in the protected buffers or in the streams~~
- ~~Stump removal is performed only by grinding~~
- ~~At the completion of the project the disturbed area is stabilized with native vegetation~~
- ~~Zones 1 & 2 meet the requirements of (7) and (8) of this Rule.~~

~~[2] Provided that, in Zone 1, all of the following BMPs for overhead utility lines are used. If all of these BMPs are not used, then the overhead utility lines shall require a no practical alternative evaluation by the local government, or the Director for the cases involving activities listed in Item (3)of this Rule.~~

- ~~A minimum zone of 10 feet wide immediately adjacent to the water body shall be managed such that only vegetation that poses a hazard or has the potential to grow tall enough to interfere with the line is removed.~~
- ~~Woody vegetation shall be cleared by hand. No land grubbing or grading is allowed.~~
- ~~Vegetative root systems shall be left intact to maintain the integrity of the soil. Stumps shall remain where trees are cut.~~
- ~~Riprap shall not be used unless it is necessary to stabilize a tower.~~
- ~~No fertilizer shall be used other than a one-time application to re-establish vegetation.~~
- ~~Construction activities shall minimize the removal of woody vegetation, the extent of the disturbed area, and the time in which areas remain in a disturbed state.~~
- ~~Active measures shall be taken after construction and during routine maintenance to ensure diffuse flow of stormwater through the buffer.~~

- In wetlands, mats shall be utilized to minimize soil disturbance.

[3] Provided that poles or towers shall not be installed within 10 feet of a water body unless the local government or the Director for the cases involving activities listed in Item (3) of this Rule completes a no practical alternative evaluation as defined in Item (11) of this Rule.

[4] Provided that, in Zone 1, all of the following BMPs for underground utility lines are used. If all of these BMPs are not used, then the underground utility line shall require a no practical alternative evaluation by the local government or the Director for the cases involving activities listed in Item (3) of this Rule, as defined in Item (11) of this Rule.

- Woody vegetation shall be cleared by hand. No land grubbing or grading is allowed.
- Vegetative root systems shall be left intact to maintain the integrity of the soil. Stumps shall remain, except in the trench, where trees are cut.
- Underground cables shall be installed by vibratory plow or trenching.
- The trench shall be backfilled with the excavated soil material immediately following cable installation.
- No fertilizer shall be used other than a one-time application to re-establish vegetation.
- Construction activities shall minimize the removal of woody vegetation, the extent of the disturbed area, and the time in which areas remain in a disturbed state.
- Active measures shall be taken after construction and during routine maintenance to ensure diffuse flow of stormwater through the buffer.
- In wetlands, mats shall be utilized to minimize soil disturbance.

[5] Perpendicular crossings are those that intersect the surface water at an angle between 75 degrees and 105 degrees.

(10) REQUIREMENTS FOR CATEGORIES OF USES. Uses designated as exempt, potentially allowable, and potentially allowable with mitigation in Item (9) of this Rule shall have the following requirements:

(a) EXEMPT. Uses designated as exempt are allowed within the riparian buffer. Exempt uses shall be designed, constructed and maintained to minimize soil disturbance and to provide the maximum water quality protection practicable, including construction, monitoring, and maintenance activities. In addition, exempt uses shall meet requirements listed in Item (9) of this Rule for the specific use;

(b) POTENTIALLY ALLOWABLE. Uses designated as potentially allowable require a written buffer authorization from the local government, or the Director for the cases involving activities listed in Item (3) of this Rule for impacts within the riparian buffer provided that there are no practical alternatives to the requested use pursuant to Item (11) of this Rule;

(c) POTENTIALLY ALLOWABLE WITH MITIGATION. Uses designated as potentially allowable with mitigation require written authorization from the local government, or the Director for the cases involving activities listed in Item (3) of this Rule for impacts within the riparian buffer provided that there are no practical alternatives to the requested use

Commented [HK191]: Moved relevant language into table

pursuant to Item (11) of this Rule and an appropriate mitigation strategy has been approved pursuant to Item (15) of this Rule; and

(d) PROHIBITED. Uses that are not designated in Item (9) of this Rule are considered prohibited in the riparian buffers.

(11) DETERMINATION OF "NO PRACTICAL ALTERNATIVES." Persons who wish to undertake uses designated as allowable or allowable with mitigation shall submit a request for a "no practical alternatives" determination to the local government or the Director for the cases involving activities listed in Item (3) of this Rule. The applicant shall certify that the criteria identified in Sub-Item (a) of this Item are met. The local government, or the Director for the cases involving activities listed in Item (3) of this Rule, shall grant an Authorization Certificate upon a "no practical alternatives" determination. The procedure for making an Authorization Certificate shall be as follows:

(a) For any request for an Authorization Certificate, the local government, or the Director for the cases involving activities listed in Item (3) of this Rule, shall review the entire project and make a finding of fact as to whether the following requirements have been met in support of a "no practical alternatives" determination:

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

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

(iii) Best management practices shall be used if required to minimize disturbance, preserve aquatic life and habitat, and protect water quality;

(b) Requests for an Authorization Certificate shall be reviewed and either approved or denied within 60 days of receipt of a complete submission based on the criteria in Sub-Item (a) of this Item and the local ordinance or ordinances enforcing this Rule by the local government, or the Director for the cases involving activities listed in Item (3) of this Rule. Failure to issue an approval or denial within 60 days shall constitute that the applicant has demonstrated "no practical alternatives." An Authorization Certificate shall be issued to the applicant, unless:

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

(ii) Applicant fails to furnish requested information necessary to the local government's decision or the Director's decision for the cases involving activities listed in Item (3) of this Rule;

(c) The local government, or the Director for the cases involving activities listed in Item (3) of this Rule, may attach conditions to the Authorization Certificate that support the purpose,

Commented [HK192]: Moved to Item (10) above

spirit and intent of the riparian buffer protection program. Complete submissions shall include the following:

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

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

(iii) The location of the activity, including the jurisdiction;

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

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

(vi) Plans for any best management practices proposed to be used to control the impacts associated with the activity: and

(d) Any disputes over determinations regarding Authorization Certificates shall be referred to the local government's appeals process for a decision, or to the Director for determinations involving lands of activities listed in Item (3) of this Rule. The Director's decision is subject to review as provided in G.S. 150B Articles 3 and 4.

(12) VARIANCES. Persons who wish to undertake prohibited uses may pursue a variance. The local government may grant only minor variances. For major variances, local governments shall prepare preliminary findings and submit them to the Commission for approval. The variance request procedure shall be as follows:

(a) There are practical difficulties or unnecessary hardships that prevent compliance with the riparian buffer protection requirements. Practical difficulties or unnecessary hardships shall be evaluated in accordance with all of the following:

(i) If the applicant complies with the provisions of this Rule, he or she can secure no reasonable return from, nor make reasonable use of, his or her property. Merely proving that the variance would permit a greater profit from the property shall not be considered adequate justification for a variance. Moreover, the local government, or the Director for the cases involving activities listed in Item (3) of this Rule, shall consider whether the variance is the minimum possible deviation from the terms of this Rule that shall make reasonable use of the property possible;

(ii) The hardship results from application of this Rule to the property rather than from other factors such as deed restrictions or other hardship;

(iii) The hardship is due to the physical nature of the applicant's property, such as its size, shape, or topography, and is unique to the applicant's property rather than the result of conditions that are widespread. If other properties are equally subject

to the hardship created in the restriction, then granting a variance would be a special privilege denied to others, and would not promote equal justice; and

(iv) The applicant did not cause the hardship by knowingly or unknowingly violating this Rule.

(b) The variance is in harmony with the general purpose and intent of the State's riparian buffer protection requirements and preserves its spirit; and

(c) In granting the variance, the public safety and welfare have been assured, water quality has been protected, and substantial justice has been done.

(13) MINOR VARIANCES. A minor variance request pertains to activities that are proposed to impact only Zone 2 or any portion of Zone 2 of the riparian buffer. Minor variance requests shall be reviewed and approved based on the criteria in Sub-Item (12)(a) of this Rule by the local government pursuant to G.S. 153A Article 18, or G.S. 160A Article 19. The local government may attach conditions to the variance approval that support the purpose, spirit and intent of the riparian buffer protection program. Request for appeals to decisions made by the local government shall be made through the local government's appeals process, or to the Director for determinations involving activities listed in Item (3) of this Rule. The Director's decision is subject to review as provided in G.S. 150B Articles 3 and 4.

(14) MAJOR VARIANCES. A major variance request pertains to activities that are proposed to impact any portion of Zone 1 of the riparian buffer. If the local government, or the Director for the cases involving activities listed in Item (3) of this Rule, has determined that a major variance request meets the requirements in Sub-Item (12)(a) of this Rule, then itshall prepare a preliminary finding and submit it to the Commission for approval. Within 90 days after receipt by the local government, or the Director for the cases involving activities listed in Item (3) of this Rule, the Commission shall review preliminary findings on major variance requests. The Commission may choose to approve, approve with conditions, or deny the major variance.

(15)(11) MITIGATION. Persons who wish to undertake uses designated as allowable upon authorization with mitigation as defined in Sub-Item (10)(a)(iii) of this Rule or allowable with exception as defined in Sub-Item (10)(a)(v) of this Rule shall meet the following requirements in order to proceed with their proposed use.

(a) Obtain a determination of "no practical alternatives" to the proposed use an Authorization Certificate pursuant to Item (11) of this Rule .0705 of this Section; and

(b) Obtain written approval for a mitigation proposal pursuant to 15A NCAC 02B .0252. Rule .0295 of this Section.

(16) REQUIREMENTS SPECIFIC TO FOREST HARVESTING. The following requirements shall apply for forest harvesting operations and practices:

(a) The following measures shall apply in the entire riparian buffer:

(i) Logging decks and sawmill sites shall not be placed in the riparian buffer;

Commented [HK193]: Moved to Rule .0705

Commented [HK194]: No effect – clarification and updated citations

Commented [HK195]: No effect – updated terminology

Commented [HK196]: No effect – updated citation

Commented [HK197]: No effect – clarification

Commented [HK198]: No effect – update citation

(ii) Access roads and skid trails shall be prohibited except for temporary and permanent stream crossings established in accordance with 15A NCAC 011 .0203. Temporary stream crossings shall be permanently stabilized after any site disturbing activity is completed;

(iii) Timber felling shall be directed away from the stream or water body;

(iv) Skidding shall be directed away from the stream or water body and shall be done in a manner that minimizes soil disturbance and prevents the creation of channels or ruts;

(v) Individual trees may be treated to maintain or improve their health, form or vigor;

(vi) Harvesting of dead or infected trees or other timber cutting techniques necessary to prevent or control extensive tree pest and disease infestation shall be allowed. These practices must be approved by the Division of Forest Resources for a specific site pursuant to 15A NCAC 011 .0100 .0209. The Division of Forest Resources must notify the local government of all approvals;

(vii) Removal of individual trees that are in danger of causing damage to structures or human life shall be allowed;

(viii) Natural regeneration of forest vegetation and planting of trees, shrubs, or ground cover plants to enhance the riparian buffer shall be allowed provided that soil disturbance is minimized. Plantings shall consist primarily of native species;

(ix) High intensity prescribed burns shall not be allowed;

(x) Application of fertilizer shall not be allowed except as a one time use that is necessary for permanent stabilization; and

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

(b) In Zone 1, forest vegetation shall be protected and maintained. Selective harvest as provided for below is allowed on forest lands that have a deferment for use value under forestry in accordance with G.S. 105-277.2 through 277.6 or on forest lands that have a forest management plan prepared or approved by a registered professional forester. Copies of either the approval of the deferment for use value under forestry or the forest management plan shall be produced upon request. For such forest lands, selective harvest is allowed in accordance with the following:

(i) Tracked or wheeled vehicles are permitted for the purpose of selective timber harvesting where there is no other practical alternative for removal of individual trees provided activities comply with forest practices guidelines for water quality as defined in Rule 15A NCAC 011 .0101 through .0209, and provided no equipment shall operate within the first 10 feet immediately adjacent to the stream

~~except at stream crossings designed, constructed and maintained in accordance with Rule 15A NCAC 01I .0203;~~

~~(ii) Soil disturbing site preparation activities are not allowed; and~~

~~(iii) Trees shall be removed with the minimum disturbance to the soil and residual vegetation; and~~

~~(c) In addition to the requirements of (b) in this Item, the following provisions for selective harvesting shall be met:~~

~~(i) The first 10 feet of Zone 1 directly adjacent to the stream or waterbody shall be undisturbed except for the removal of individual high value trees as defined provided that no trees with exposed primary roots visible in the streambank be cut unless listed as an exempt activity under Vegetation Management in the Table of Uses (9) of this Rule.~~

~~(ii) In the outer 20 feet of Zone 1, a maximum of 50 percent of the trees greater than five inches DBH may be cut and removed. The reentry time for harvest shall be no more frequent than every 15 years, except on forest plantations where the reentry time shall be no more frequent than every five years. In either case, the trees remaining after harvest shall be as evenly spaced as possible; and~~

~~(iii) In Zone 2, harvesting and regeneration of the forest stand shall be allowed in accordance with 15A NCAC 01I .0100 through .0209 as enforced by the Division of Forest Resources.~~

Commented [HK199]: Moved to Rule .0706

~~(17)~~(12) RULE IMPLEMENTATION. This Rule shall be implemented as follows:

(a) Local governments with land use authority within the Randleman Lake water supply watershed shall establish riparian buffer protection programs to meet or exceed the minimum requirements of this Rule.

Commented [HK200]: Moved from Item (1) above

(i) Local governments shall adopt and enforce this Rule through local ordinances. Ordinances shall include the following requirements:

(A) All riparian protection areas shall be recorded on all new or modified plats;

(B) The land within a riparian buffer area shall not be treated as if the land is the property of the state or any of its subdivisions unless the land or an interest therein has been acquired by the state or its subdivision by a conveyance or by eminent domain;

(C) Land within a riparian buffer area in which neither the State nor its subdivisions holds any property interest may be used by the property owner to satisfy any other development-related regulatory requirements based on property size, including, but not limited to, residential density and nonresidential intensity calculations and yields, tree conservation

purposes, open space or conservation area requirements, setbacks, perimeter buffers, and lot area requirements;

(D) When riparian buffer requirements are placed outside of lots in portions of a subdivision that are designated as common areas or open space and neither the State nor its subdivisions holds any property interest in that riparian buffer area, the local government shall attribute to each lot abutting the riparian buffer area a proportionate share based on the area of all lots abutting the riparian buffer area for purposes of development-related regulatory requirements based on property size, including, but not limited to, residential density and nonresidential intensity calculations and yields, tree conservation purposes, open space or conservation area requirements, setbacks, perimeter buffers, and lot area requirements; and

(E) A requirement that no new clearing, grading or development take place nor any new building permits be issued in violation of Rule .0714 of this Section.

(iii) If the local government is establishing a riparian buffer program that exceeds the requirements set forth in this Rule in order to comply with or implement federal or state law, or as a condition of a permit, certificate, or other approval issued by a federal or state agency, the local government shall provide supporting documentation with their request for Commission approval.

(iv) If the local government is establishing a riparian buffer program that exceeds the requirements set forth in this Rule not as a requirement to comply with or implement federal or state law and not as a condition of a permit, certificate, or other approval issued by a federal or state agency, the local government shall provide scientific studies of the local environmental and physical conditions that support the necessity of the buffer requirements that exceed those established in this Rule. The Commission shall not approve the ordinance unless it finds that the scientific evidence presented by the local government supports the necessity of a riparian buffer program that exceeds the requirements set forth in this Rule.

(v) Local governments shall appoint a Riparian Buffer Protection Administrator who shall coordinate the implementation and enforcement of the program. The Administrator shall attend an initial training session by the Division and be certified to make on-site determinations pursuant to G.S. 143-214.25A. The Administrator shall ensure that local government staff working directly with the program receive training to understand, implement and enforce the program and are certified to make on-site determinations pursuant to G.S. 143-214.25A. At

Commented [HK201]: Added per SL 2015-246

Commented [HK202]: Moved from Item (3) above

Commented [HK203]: Added per SL 2015-246

any time that a local government does not have a certified individual retained on staff to make on-site determinations pursuant to G.S. 143-214.25A, they shall immediately notify the Division and indicate a proposed schedule to secure a certified staff member. The local government shall coordinate with the Division to provide on-site determinations until a new certified staff member is secured by the local government.

Commented [HK204]: Moved from Item (3) above

(b) Local governments shall apply the requirements of this Rule throughout their jurisdictions within the Randleman watershed except where the Division shall exercise jurisdiction. The Division shall implement applicable requirements in lieu of local governments for:

(i) Activities conducted under authority of the State;

(ii) Activities conducted under the authority of the United States;

(iii) Activities conducted under the authority of multiple jurisdictions;

(iv) Activities conducted under the authority of local units of government;

(v) Forest harvesting activities described in Rule .0706 of this Section; and

(vi) Agricultural activities.

Commented [HK205]: Moved from Item (2) above

(c) The Division shall regularly audit local programs to ensure local programs are being implemented and enforced in keeping with the requirements of this Rule and Rule .0705 of this Section.

Commented [HK206]: Added DWR audit requirement – consistent with other buffer rules

(d) Local governments shall maintain on-site records for a minimum of five years, and shall furnish a copy of these records to the Division within 30 calendar days of receipt of a written request for them. Local programs' records shall include the following:

(i) A copy of all exception requests;

(ii) Findings of fact on all exception requests;

(iii) Results of all exception proceedings;

(iv) A record of complaints and action taken as a result of complaints;

(v) Records for on-site determinations as described in Item (4) of this Rule; and

(vi) Copies of all requests for authorization, records approving authorization and Authorization Certificates.

Commented [HK207]: Added record keeping requirements – consistent with other buffer rules and water supply watershed requirements.

(e) If a local government fails to adopt or adequately implement its program as specified in this Rule, the Division may take appropriate enforcement action as authorized by statute and may choose to assume responsibility for implementing that program until such time as it determines that the local government is prepared to comply with its responsibilities.

Commented [HK208]: Added – consistent with water supply watershed statute 143-214.5

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

Commented [HK209]: Added – consistent with other buffer rules

~~(a) For activities listed in Item (3) of this Rule, the Division shall implement the requirements of this Rule as of its effective date;~~

~~(b) Within six months of the effective revision date of this Rule, local governments shall review, revise as necessary, and submit a local program including all necessary ordinances to the Division for review. The local program shall detail local government buffer program implementation including but not limited to such factors as a method for resolution of disputes involving Authorization Certificate or variance determinations, a plan for record keeping, and a plan for enforcement. Local governments shall use the Division's publication, *Identification Methods for the Origins of Intermittent and Perennial Streams, v 3.1 February 28, 2005* available at http://portal.nedenr.org/web/wq/swp/ws/401/waterresources/streamdeterminations to establish the existence of streams;~~

~~(c) Within six months of the Division approval of the revised local ordinance, the local government shall implement their revised buffer program;~~

~~(d) Upon implementation, subject local governments shall submit annual reports to the Division summarizing their activities in implementing each of the requirements in Item (4) of this Rule;~~

~~(e) The Division shall regularly audit local programs to ensure rule implementation; and~~

~~(f) If a local government fails to adopt or adequately implement its program as called for in this Rule, the Division may take appropriate enforcement action as authorized by statute, and may choose to assume responsibility for implementing that program until such time as it determines that the local government is prepared to comply with its responsibilities.~~

~~(18) Where the standards and management requirements for riparian areas are in conflict with other laws, regulations, and permits regarding streams, steep slopes, erodible soils, wetlands, floodplains, forest harvesting, surface mining, land disturbance activities, or other environmental protection areas, the more restrictive shall apply.~~

~~(19)~~(13) WATER SUPPLY REQUIREMENTS. The existing water supply requirement in Rule .0216(3)(b) of this Section that stipulates a 100 foot vegetated buffer, adjacent to perennial streams, for all new development activities which utilize the high density option, applies to the entire Randleman Lake watershed. The first 50 feet of these riparian areas on either side of these waters must also be protected in accordance with all the requirements of this Rule. Local governments subject to this Rule may choose to implement more stringent requirements, including requiring additional buffer width.

~~(20)~~(14) OTHER LAWS, REGULATIONS AND PERMITS. In all cases, compliance with this Rule does not preclude the requirement to comply with all other federal, state and local regulations and laws.

History Note: *Authority G.S. 143-214.1; 143-214.5; 143-215.3(a)(1);*
Eff. April 1, 1999;
Amended Eff. June 1, 2010.

Commented [HK210]: Reorganized

Commented [HK211]: No effect – added header

Commented [HK212]: Moved from Item (1) above

15A NCAC 02B .0730 is proposed as follows:

15A NCAC 02B .0730 TAR-PAMLICO NUTRIENT STRATEGY: PURPOSE & SCOPE

PURPOSE. The purpose of this Rule and Rules 15A NCAC 02B .0731 through .0736 is to attain the designated uses of the Pamlico River estuary with respect to meeting nutrient-related water quality standards. The estuary and waters of the Tar-Pamlico River Basin are classified as Nutrient Sensitive Waters (NSW) pursuant to 15A NCAC 02B .0101(e)(3) and 15A NCAC 02B .0223. The rules enumerated in Item (3) of this Rule together constitute the Tar-Pamlico nutrient strategy, and shall be implemented in accordance with 15A NCAC 02B .0223. This rule establishes the framework of the Tar-Pamlico nutrient strategy:

(1) SCOPE AND LIMITATION. The Tar-Pamlico nutrient strategy rules require controls to reduce nitrogen and phosphorus loads from significant sources of these nutrients throughout the Tar-Pamlico Basin. These Rules do not address sources for which there is insufficient scientific knowledge to base regulation. The Commission may undertake additional rulemaking in the future or make recommendations to other rulemaking bodies as deemed appropriate to more fully address nutrient sources to the Pamlico River Estuary.

(2) GOALS. To achieve the purpose of the Tar-Pamlico nutrient strategy, the Commission has established the goals of reducing the average annual load of nitrogen delivered to the Pamlico River Estuary from point and nonpoint sources to a level 30 percent below a 1991 baseline, and thereafter maintaining it at or below that level, and of reducing average annual phosphorus load to 1991 baseline level and thereafter maintaining it at or below that level.

(3) RULES ENUMERATED. The rules of the Tar-Pamlico nutrient strategy are titled as follows:

(a) Rule .0730 Purpose and Scope;

(b) Rule .0731 Stormwater Management for New Development;

(c) Rule .0732 Agriculture;

(d) Rule .0733 Non-Association Dischargers

(e) Rule .0734 Riparian Buffer Protection; and

(f) Rule .0735 Buffer Program Delegation;

(4) ADAPTIVE MANAGEMENT. Given ongoing impairment of the Pamlico estuary approximately a decade following full implementation of the above rules, the Division shall pursue fuller evaluation of the basin's nutrient dynamics to inform and guide adaptive management. Evaluation shall seek to utilize all sources of available information, including stakeholder input, and shall consider drivers, character and shifts in the impairment with time, trends and character of loading delivered to the estuary, and distribution and character of loading inputs to the basin and changes to those inputs over time. Evaluation shall address the extent to which the reduction goals identified above have been achieved and shall, based on its findings, provide recommendations on management needs. The Division shall seek to complete an evaluation within three years of the effective date of this rule and shall distribute its findings, which may recommend regulatory and non-regulatory actions, upon completion. The Division shall also report biannually to the Water Quality Committee

Commented [A1]: Note: This is a new rule proposed for the Tar-Pamlico Nutrient Strategy. It is added to be consistent with the other nutrient management strategies that have similar rules in place to explain the overall purpose, scope, and geographic applicability of the nutrient strategy requirements. It provides a list of the rules that make up the strategy and the overall reduction goal to be achieved.

Effect: Adds clarity to purpose of the nutrient management strategy, provides for adaptive management in implementation and will result in biannual reports from the Division to the WQC on implementation progress.

Commented [A2]: Note: Statement on what sources are addressed under the rules and the Commissions ability to undertake additional rulemaking.

Effect: No Impact

Commented [A3]: Note: Statement providing the overall strategy nitrogen and phosphorus reduction goals.

Effect: No Impact

Commented [A4]: Note: Provides updated Rule References to point to new .0700 Rule numbers

Effect: No Impact

Commented [A5]: Note: Includes adaptive management language recognizing the ongoing water quality issues in the estuary and the availability of more information to evaluate implementation as time goes on. Establishes date by which evaluation would be completed and recommendations made. Added requirement for Division to report to the WQC biannually on implementation progress.

Effect: Provides for better tracking of progress and ability for management strategy to be modified based on evaluation of additional data and strategy effectiveness.

of the Commission on implementation progress and reductions achieved by sources subject to the Tar-Pamlico nutrient strategy.

(5) GEOGRAPHIC APPLICABILITY. The Tar-Pamlico nutrient strategy shall apply in all areas draining to waters within hydrologic units 03020101, 03020102, 03020103, 03020104, and portions of 03020105 located on the Albemarle-Pamlico peninsula unless individual strategy rules describe other boundaries.

(6) PENALTIES. Failure to meet requirements of Rules the Tar-Pamlico nutrient strategy of this Section may result in 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; 143-215.3(a)(1); 143-215.6A; 143-215.6B; 143-215.6C; 143-282(d);*
Eff. [New Date].

Commented [A6]: Note: Includes explanation of geographic area to which the Tar-Pamlico nutrient strategy rules apply.

Effect: Provides better clarity on areas subject to the rules. Omits Ocracoke Island, small portions of Core Banks, and portions of Carteret County including Cedar Island, Atlantic, and Sea level from the geographic area subject to the Tar-Pamlico buffer and agriculture rule requirements. There is no indication of nutrient impairment in these omitted areas that are disconnected from the Ta-Pamlico Estuary TMDL.

Commented [A7]: Note: Statement addressing potential consequences of note meeting the requirements of the rules. Consistent with purpose & scope rule language in other nutrient strategies.

Effect: No Impact

[.0258 is proposed for amendment and transfer to 15A NCAC 02B .0731]
Last Revised August 18, 2017

15A NCAC 02B .0258 is proposed for amendment as follows:

15A NCAC 02B ~~.0258~~ .0731 TAR-PAMLICO RIVER ~~BASIN-~~NUTRIENT ~~SENSITIVE WATERS MANAGEMENT~~ STRATEGY: ~~BASINWIDE~~ STORMWATER ~~REQUIREMENTS~~

(a) PURPOSE. The purpose of this Rule ~~are as follows.~~is to achieve and maintain the nitrogen and phosphorus loading reduction goals for the Tar-Pamlico River Estuary set out in Rule .0730 of this Section from an undeveloped condition on lands in the Tar-Pamlico River Basin on which new development occurs. Nothing in this Rule preempts local governments from implementing requirements that are more restrictive than those set forth in this Rule.

~~(1) To achieve and maintain a reduction in nitrogen loading to the Pamlico estuary from lands in the Tar-Pamlico River Basin on which new development occurs. The goal of this Rule is to achieve a 30 percent reduction relative to pre-development levels;~~

~~(2) To limit phosphorus loading from these lands to the estuary. The goal of this Rule is to limit phosphorus loading to pre-development levels;~~

~~(3) To provide control for peak stormwater flows from new development lands to ensure that the nutrient processing functions of existing riparian buffers and streams are not compromised by channel erosion; and~~

~~(4) To minimize, to the greatest extent practicable, nitrogen and phosphorus loading to the estuary from existing developed areas in the basin.~~

(b) APPLICABILITY. The following local governments shall implement stormwater management requirements as part of the Tar-Pamlico River Nutrient Sensitive Waters stormwater management strategy. Municipalities shall implement this rule throughout their corporate limits and extraterritorial jurisdiction, while counties shall implement this rule throughout their direct territorial jurisdictions. Counties named in this Item may implement this rule within municipalities not named in this Item in accordance with G.S. 160A-360(d).~~This Rule shall apply to local governments in the Tar-Pamlico basin according to the following criteria.~~

(1) Local governments designated by the Commission in 2001 as subject to this Rule:~~This Rule shall apply to the following municipal areas:~~

(A) Greenville
(B) Henderson
(C) Oxford
(D) Rocky Mount
(E) Tarboro
(F) Washington
(G) Beaufort County
(H) Edgecombe County
(I) Franklin County
(J) Nash County
(K) Pitt County

Commented [A1]: Change: Updated Purpose statement to clarify goal of this rule is to achieve reductions from new development and point to overall strategy reduction goals established in Rule .0730.

Effect: No substantive change. Improved clarity of rule purpose.

Commented [A2]: Change: Added additional local governments to which the requirements of this rule shall apply based on assessment of growth by looking at overall populations and growth rate over the past 15 years. Added counties and municipalities with populations greater than 20K and 5K respectively that have a growth rate of approximately 200 or more people a year.

Effect: Improved coverage of rule requirements. Addresses holes in strategy coverage where larger and fast growing communities were previously left out of the original rule. These newly named local governments will be required to develop and adopt local programs including local ordinances to implement the rule requirements. Fiscal impact will be determined during the rulemaking process.

(2) Additional local government designated by the Commission in 2018 as subject to this Rule:~~This Rule shall apply to the following counties:~~

(A) Granville County ~~Beaufort~~

(B) Vance County ~~Edgecombe~~

(C) Wilson County~~Franklin~~

~~(D) Nash~~

~~(E) Pitt~~

~~(3) The Environmental Management Commission may designate additional local governments as subject to this Rule by amending this Rule based on the potential of those jurisdictions to contribute significant nutrient loads to the Tar-Pamlico River. At a minimum, the Commission shall review the need for additional designations as part of the Basinwide process for the Tar-Pamlico River Basin. The Commission shall consider, at a minimum, the following criteria related to local governments: population within the basin, population density, past and projected growth rates, proximity to the estuary, and the designation status of municipalities within candidate counties.~~

(3) EXEMPTION. A stormwater management plan is not required for new development on an individual single family lots if the development meets the following criteria:

(A) It is not part of a larger common plan of development or sale; and

(B) The project does not result in greater than 5 percent built upon area on the lot or it is for purposes of a single family residence on a lot 5 acres in size or greater.

(c) LOCAL PROGRAM IMPLEMENTATION REQUIREMENTS. All local governments subject to this Rule shall ~~develop stormwater management programs for submission to and approval by the Commission according to the following minimum standards:~~ implement stormwater management programs approved by the Commission pursuant to the timeframes set out in Paragraph (e) of this Rule, or any subsequent modification to those plans approved by the Director, according to the following requirements and the standards contained in Paragraph (d) of this Rule:

(1) ~~A~~ The requirement ~~that a stormwater management plan~~ for local government approval of a stormwater plan for all proposed ~~new developments proposed within their jurisdictions.~~ new development projects disturbing one acre or more for single family and duplex residential property and recreational facilities, and one-half acre or more for commercial, industrial, institutional, multifamily residential, or local government property. Where proposed new development on an existing developed lot not part of a larger common plan of development results in built-upon area exceeding 24 percent, a stormwater plan addressing the new built-upon area shall be required. ~~These stormwater plans shall not be approved by the subject local governments unless the following criteria are met:~~

(2) A plan to ensure maintenance of stormwater control measures (SCMs) implemented to comply with this rule for the life of the development;

(3) A plan to ensure enforcement and compliance with the provisions in Paragraph (d) of this Rule for the life of the development;

Commented [A3]: **Change:** Provided exemption for individual single lot residential projects under a 5% BUA or of a certain size and not part of a larger common plan of development. Addition in response to stakeholder input and based on scenarios run using the latest accounting tool, projects meeting these criteria are assumed to already be meeting the required export rate targets.

Effect: Provides straightforward path for projects meeting these criteria to show compliance with the rule export targets without the cost of having to run export calculations and submitting a stormwater plan.

Commented [A4]: **Change:** Reorganized rule text to clearly state the requirements subject local governments must meet in their local implementation programs.

Effect: Provides clear separation between local government and developer requirements under the rule. Makes rule text current and clarifies that all local governments implementing programs continue to implement. Improved clarity. No substantive impact.

Commented [A5]: **Change:** Included land disturbance thresholds previously included in model program to provide information in one location.

Effect: Improved clarity and ease of finding information. No change in thresholds.

Commented [A6]: **Change:** Language added to address cumulative impacts in cases where small land disturbances add up over time to exceeded land disturbance thresholds that require a stormwater plan to be submitted.

Effect: Captures projects with cumulative impacts over land disturbance thresholds over time that would previously have been missed under the rule. Only requires the new BUA to be treated. Addresses loophole in previous rule language.

(4) A public education program to inform citizens how to reduce nutrient pollution and to inform developers about the nutrient set forth in Paragraph (d);

(5) A mapping program that includes major components of the municipal separate storm sewer system, waters of the State, land use types, and location of sanitary sewers; and

(6) A program to identify and remove illegal discharges.

(d) DEVELOPMENT PROJECT REQUIREMENTS. A proposed development project shall be approved by a subject local government when the applicable requirements of Paragraph (c) and the following criteria are met:

~~(A) The nitrogen load contributed by the proposed new development activity shall not exceed 70 percent of the average nitrogen load contributed by the non-urban areas in the Tar-Pamlico River basin based on land use data and nitrogen export research data. Based on 1995 land use data and available research, the nitrogen load value shall be 4.0 pounds per acre per year;~~

~~(B) The phosphorus load contributed by the proposed new development activity shall not exceed the average phosphorus load contributed by the non-urban areas in the Tar-Pamlico River basin based on land use data and phosphorus export research data. Based on 1995 land use data and available research, the phosphorus load value shall be 0.4 pounds per acre per year;~~

~~(C) The new development shall not cause erosion of surface water conveyances. At a minimum, the new development shall not result in a net increase in peak flow leaving the site from pre-development conditions for the 1-year, 24-hour storm event; and~~

(1) The project area shall meet either a nitrogen loading rate target of 4.0 pounds/acre/year and a phosphorus loading rate target of 0.8 pounds/acre/year or the definition of runoff volume match provided in 15A NCAC 02H .1002. Except as otherwise stated in this Paragraph, the project may meet the loading rate target through use of nutrient offset credit pursuant to Rule .0703 of this Section

(2) Nutrient loading rates, and reductions resulting from the use of SCMs, shall be determined through the use of the tool most recently approved by the Division for stormwater nutrient accounting or an alternative method at least as protective as accepted by the Divisions;

(3) Projects resulting in greater than 24 percent built-upon area shall install a primary SCM that meets the design specifications provided in 15A NCAC 02H .1003 for all impervious area on the project site;

(4) Projects with less than 24 percent built upon area shall meet the low density design requirements provided in 15A NCAC 02H .1003 for dispersed flow, vegetative conveyances, and curb outlet systems;

(5) Proposed new development undertaken by a local government solely as a public road or public sidewalk project or proposed new development subject to the jurisdiction of the Surface Transportation Board shall be exempt from the requirements of Sub-Paragraphs (d)(3) and (d)(4) of this Rule;

(6) Proposed development projects that would replace or expand existing structures and would result in a net increase in built-upon area shall be responsible for nutrient loading from the area of disturbance less any preexisting built-upon area located in the disturbance area. The developer shall have the

Commented [A7]: Change: This language was moved up to this location from elsewhere in the rule.

Effect: Improved clarity concerning local government responsibilities.

Commented [A8]: Change: Reorganized this section to make it easier for the development community to identify the requirements their development projects need to meet.

Effect: Provides clear separation between local government and developer requirements under the rule. Improved Clarity.

Commented [A9]: Change: Updated this language to recognize there are multiple ways for a developer to meet runoff requirements for a proposed project including meeting the export rates targets as well as meeting the requirements through runoff volume match or the use of offsite nutrient offsets.

Effect: Improved clarity and added flexibility by providing multiple pathways for compliance.

Commented [A10]: Change: Increased phosphorus loading rate target from 0.4 to .08 lbs/acre/year based on additional science the Division has compiled since the rules were originally adopted regarding export rates from crop, pasture, and forest lands - which are used in developing the target export rate.

Effect: Phosphorus export rate target based on more recent science and better reflects actual loading rates and requires less treatment / offset credit and will also reduce cost of meeting the rule requirements.

Commented [A11]: Change: Added requirement that only the most recently approved stormwater accounting tool (or Division approved equivalent) is to be used for calculating loading rates and reductions to ensure all developers and local governments are using the same accounting tool based on the most recent available data.

Effect: Provides improved consistency of rule implementation.

Commented [A12]: Change: Eliminated outdated onsite treatment threshold pounds and replaced with onsite treatment requirement of one SCM minimum for projects exceeding 24% BUA or not meeting loading rate targets.

Effect: Eliminates the 6 & 10 lbs/ac/yr onsite treatment thresholds required before developer could go offsite for a nutrient reduction buydown. Improves agreement of Neuse rule with Phase II Stormwater requirements. Fiscal impact will be determined during the rulemaking process.

Commented [A13]: Change: Added low density option to better align rule with options provided under Phase II stormwater requirements.

... [1]

Commented [A14]: Change: In response to stakeholder input added option for local government road and sidewalk projects that have limited or no space for SCMs to meet export targets entirely through the use of offsite nutrient offsets.

... [2]

Commented [A15]: Change: Updated language addressing redevelopment scenarios per new definition of development in Session Law 2014-90 to make it clear that the area of disturbance minus any preexisting BUA must be treated when development replaces or expands existing development resulting in net increase in BUA.

... [3]

option to either achieve the nutrient percent loading reduction goals established in Rule .0730 of this Section or meet the nutrient loading rate targets of this Paragraph;

(7) Proposed new development projects that utilize an offsite SCM that meets the design specifications provided in 15A NCAC 02H .1003 and is dedicated to treating an area encompassing the project shall be considered compliant with the treatment requirements Subparagraph (d)(3) of this Rule;

(8) SCMs shall meet a required storm depth of one inch in non-coastal counties and one and one-half inches in coastal counties;

~~(D) Developers shall have the option of partially offsetting their nitrogen and phosphorus loads by providing treatment of off-site developed areas. The off-site area must drain to the same classified surface water, as defined in the Schedule of Classifications, 15A NCAC 2B .0316, that the development site drains to most directly. The developer must provide legal assurance of the dedicated use of the off-site area for the purposes described here, including achievement of specified nutrient load reductions and provision for regular operation and maintenance activities, in perpetuity. The legal assurance shall include an instrument, such as a conservation easement, that maintains this restriction upon change of ownership or modification of the off-site property. Before using off-site treatment, the new development must attain a maximum nitrogen export of six pounds/acre/year for residential development and 10 pounds/acre/year for commercial or industrial development.~~

(9) Where pursuant to G.S. 153A-454 and G.S. 160A-459 a local government program does not review a development project proposed by a state or federal entity, the entity shall obtain Department review and approval; and

(10) Proposed new development shall demonstrate compliance with the riparian buffer protection requirements of Rule .0734 of this Section or subsequent amendments or replacements to those requirements.

~~(2) A public education program to inform citizens of how to reduce nutrient pollution and to inform developers about the nutrient and flow control requirements set forth in Part (e)(1).~~

~~(3) A mapping program that includes major components of the municipal separate storm sewer system, waters of the State, land use types, and location of sanitary sewers.~~

~~(4) A program to identify and remove illegal discharges.~~

~~(5) A program to identify and prioritize opportunities to achieve nutrient reductions from existing developed areas.~~

~~(6) A program to ensure maintenance of BMPs implemented as a result of the provisions in Subparagraphs (e)(1) and (e)(5).~~

~~(7) A program to ensure enforcement and compliance with the provisions in Subparagraph (e)(1).~~

~~(8) Local governments may include regional or jurisdiction-wide strategies within their stormwater programs as alternative means of achieving partial nutrient removal or flow control. At a minimum, such strategies shall include demonstration that any proposed measures will not contribute to degradation of surface water quality, degradation of aquatic or wetland habitat or biota, or~~

Commented [A16]: Change: Based on stakeholder input added the option for developers to use "Regional" offsite SCMs to provide treatment for projects. This option may be particularly useful for municipalities with limited space for SCMs in downtown areas.

Effect: Provides an additional option and improved flexibility for meeting the requirements of this rule.

Commented [A17]: Change: Added storm depth requirements for SCMs to be consistent with requirements in 2H stormwater rules.

Effect: Ensures proper SCM design and establishes consistency across stormwater rules

Commented [A18]: Change: Added language addressing enforcement of rule requirements by local governments on state and federal entities within their jurisdiction (in cases where they do not already have an NPDES permit).

Effect: Recognizes local governments have the authority to require state and federal entities to meet the requirements of their local stormwater ordinances. In cases where Local governments do not enforce these requirements the Division shall do so. Fiscal impact will be evaluated during the rulemaking process.

Commented [A19]: Change: Moved expectation to demonstrate buffer rule compliance from model program.

Effect: Clarifies requirements addressed in local government programs. No Impact.

~~destabilization of conveyance structure of involved surface waters. Such local governments shall also be responsible for including appropriate supporting information to quantify nutrient and flow reductions provided by these measures and describing the administrative process for implementing such strategies.~~

(e) RULE IMPLEMENTATION

(1) Within 4 months of the effective date of this Rule, the Division shall submit a model local stormwater program embodying the elements in Paragraphs (c) and (d) of this Rule to the Commission for approval. The Division shall work in cooperation with subject local governments in developing this model program.

(3) Local governments designated by the Commission in 1998 and additional local governments designated herein as subject to this Rule shall submit a local stormwater program for approval by the Commission within 6 months and 12 months, respectively, of the Commission's approval of the model local program. These local programs shall meet or exceed the requirements in Paragraphs (c) and (d) of this Rule.

(4) The Division shall provide recommendations to the Commission regarding proposed local stormwater programs. The Commission shall either approve the programs or require changes based on the standards set out in Paragraphs (c) and (d) of this Rule. Should the Commission require changes, the applicable local government shall have three months to submit revisions, and the Division shall provide follow-up recommendations to the Commission within two months after receiving revisions;

(5) Within six months after the Commission's approval of a local program, the affected local government shall complete adoption of and implement its local stormwater management program.

(6) Local governments administering a stormwater management program shall submit annual reports in electronic format to the Division documenting their progress regarding each program implementation requirement in Paragraph (c) and net changes to nitrogen load by October 30 of each year. Annual reports shall also include as appendices all data utilized by nutrient calculation tools for each development stormwater plan approved in accordance with this rule.

(7) Any significant modifications to a local government's program shall be submitted to the Director for approval.

~~(d) TIMEFRAME FOR IMPLEMENTATION. The timeframe for implementing the stormwater management program shall be as follows:~~

~~(1) Within 12 months of the effective date of this Rule, the Division shall submit a model local stormwater program that embodies the minimum criteria described in Paragraph (c) of this Rule to the Commission for approval. The Division shall work in cooperation with subject local governments in developing this model program.~~

~~(2) Within 12 months of the Commission's approval of the model local stormwater program or within 12 months of a local government's later designation pursuant to Subparagraph (b)(3), subject local governments shall submit their local stormwater management programs to the Commission for review~~

Commented [A20]: Change: This language was moved to Paragraph (c). Dropped the requirement for identifying stormwater retrofits based on stakeholder input.

Effect: Placement in Paragraph (c) provides better organization and clarity for local government responsibilities and elements to include in their local programs. Not change in implementation other than removing outdated and unnecessary requirement for identifying retrofit locations.

Commented [A21]: Change: Updated rule implementation timeline and added timeline for Division to develop model and new subject local governments to submit local programs.

Effect: Provides timeline for local governments who are added to this rule when they will be expected to begin implementing the requirements. Fiscal impact will be determined during the rulemaking process.

Commented [A22]: Change: Provide timelines for local governments to complete local programs allowing for more time for newly named communities.

Effect: Local governments that are already implementing will be provided 6 months to revise and submit their local programs. New subject communities will be provided more time – up to 12 months to develop and submit their programs for approval.

Commented [A23]:
Change: Added New Annual Reporting Language clarifying what needs to be included in the submittal.

Effect: Provides more useful information to the Division for tracking implementation and rule compliance

~~and approval. These local programs shall meet or exceed the requirements in Paragraph (c) of this Rule.~~

~~(3) Within 18 months of the Commission's approval of the model local stormwater program or within 18 months of a local government's later designation pursuant to Subparagraph (b)(3), subject local governments shall adopt and implement their approved local stormwater management program.~~

~~(4) Local governments administering a stormwater management program shall submit annual reports to the Division documenting their progress and net changes to nitrogen load by October 30 of each year.~~

(f) COMPLIANCE. A local government's authority to approve new development stormwater plans for compliance with this rule pursuant to Paragraph (d) shall be contingent upon maintaining its own compliance with this rule. A local government that fails to submit an acceptable local stormwater management program within the timeframe established in this Rule, ~~or~~ fails to implement an approved program, or fails to comply with annual reporting requirements shall be in violation of this Rule. ~~In this case, the stormwater management requirements for its jurisdiction shall be administered through the NPDES municipal stormwater permitting program per 15A NCAC 2H .0126. Any local government that is subject to an NPDES municipal stormwater permit pursuant to this Rule shall:~~

~~(1) Develop and implement comprehensive stormwater management program to reduce nutrients from both existing and new development. This stormwater management program shall meet the requirements of Paragraph (c) of this Rule for new and existing development.~~

~~(2) Be subject to the NPDES permit for at least one permitting cycle (five years) before it is eligible to submit a local stormwater management program to the Commission for consideration and approval.~~

History Note: *Authority G.S. 143-214.1; 143-214.7; 143-215.3(a)(1); 143-215.6A; 143-215.6B; 143-215.6C; 143-282(d);*
Eff. April 1, 2001.
Amended Eff. [New Date]

Commented [A24]: **Change:** Added stronger language to deal with noncompliance of the rule requirements.

Effect: Clarifies expectations and potential recourse for noncompliance with the rule requirements.

Page 3: [1] Commented [A13] **Author**

Change: Added low density option to better align rule with options provided under Phase II stormwater requirements.

Effect: Establishes minimum site design requirements for low density projects. Fiscal impact will be determined during the rulemaking process.

Page 3: [2] Commented [A14] **Author**

Change: In response to stakeholder input added option for local government road and sidewalk projects that have limited or no space for SCMs to meet export targets entirely through the use of offsite nutrient offsets.

Effect: Provides flexibility and potentially more cost-effective ways for projects meeting these criteria to meet the requirements of the rule.

Page 3: [3] Commented [A15] **Author**

Change: Updated language addressing redevelopment scenarios per new definition of development in Session Law 2014-90 to make it clear that the area of disturbance minus any preexisting BUA must be treated when development replaces or expands existing development resulting in net increase in BUA.

Effect: Reduces the area and amount of treatment required under redevelopment scenarios. Aligns rule with session law.

[.0256 is proposed for amendment and transfer to 15A NCAC 02B .0732]

Last Revised August 18, 2017

15A NCAC 02B .0256 is proposed for amendment as follows:

15A NCAC 02B ~~.0256~~ .0732 TAR-PAMLICO RIVER ~~BASIN-NUTRIENT SENSITIVE WATERS MANAGEMENT~~ ~~BASIN-~~NUTRIENT STRATEGY: ~~AGRICULTURAL NUTRIENT CONTROL STRATEGY~~ AGRICULTURE

(a) PURPOSE. ~~The purpose of this Rule is to set forth a process by which agricultural operations in the Tar-Pamlico River Basin will collectively limit their nitrogen and phosphorus loading to the Pamlico estuary. The purpose is to achieve and maintain a 30 percent reduction in collective nitrogen loading from 1991 levels within five to eight years and to hold phosphorus loading at or below 1991 levels within four years of Commission approval of a phosphorus accounting methodology.~~ The purpose of this Rule is to maintain or exceed the percentage reduction goals defined in Rule .0730 of this Section for the collective agricultural loading of nitrogen and phosphorus from the 1991 baseline levels, to the extent that best available accounting practices will allow, on all lands used for agricultural production as described in Paragraph (b) of this Rule, This Rule requires persons engaging in agricultural operations in the Basin to implement land management practices that will collectively, on a basin basis, achieve and maintain strategy nutrient reduction goals of a 30 percent reduction in nitrogen loading from 1991 levels and no increase in phosphorus loading from 1991 levels. Local committees and a Basin committee will coordinate activities and account for progress.

~~(1) PROCESS. This Rule requires farmers in the Basin to implement land management practices that collectively, on a county or watershed basis, will achieve the nutrient goals. Local committees and a Basin committee will develop strategies, coordinate activities and account for progress.~~

~~(2) LIMITATION. This Rule may not fully address the agricultural nitrogen reduction goal of the Tar-Pamlico Nutrient Sensitive Waters Strategy in that it does not address atmospheric sources of nitrogen to the Basin, including atmospheric emissions of ammonia from sources located both within and outside of the Basin. As better information becomes available from ongoing research on atmospheric nitrogen loading to the Basin from these sources, and on measures to control this loading, the Commission may undertake separate rule-making to require such measures it deems necessary from these sources to support the goals of the Tar-Pamlico Nutrient Sensitive Waters Strategy.~~

(b) APPLICABILITY. ~~This Rule shall apply to all persons engaging in agricultural operations in the Tar-Pamlico River Basin except certain persons engaged in such operations for educational purposes. Persons engaged for educational purposes shall be those persons involved in secondary school or lesser grade level activities that are a structured part of an organized program conducted by a public or private educational institution or by an agricultural organization. Educational activities shall not include research activities in support of commercial production.~~ This Rule shall apply to all persons engaging in agricultural operations, generally including those related to crops, horticulture, livestock, and poultry, in the geographic area subject to the Tar-Pamlico nutrient strategy as described in Rule .0730 of this Section. This Rule applies to livestock and poultry operations above the size thresholds in this Item in addition to requirements for animal operations set forth in general permits issued pursuant to G.S. 143-215.10C. Nothing in this Rule shall be deemed to allow the violation of any assigned surface water, groundwater, or air quality standard by any agricultural operation,

Commented [A1]: Change: Revised to capture substance of proposed repealed rule 02B .0255, which set the reduction goal for agriculture.

Effect: Streamlined content. No substantive change.

including any livestock or poultry operation below the size thresholds in this Item. Nothing in this Rule shall be deemed to allow the violation of any assigned surface water, groundwater, or air quality standard by any agricultural operation, including any livestock or poultry operation below the size thresholds in this Item. For the purposes of this Rule, agricultural operations are activities that relate to any of the following pursuits:

(1) The commercial production of crops or horticultural products other than trees. As used in this Rule, commercial shall mean activities conducted primarily for financial profit.

(2) Research activities in support of such commercial production.

(3) The production or management of any of the following number of livestock or poultry at any time, excluding nursing young:

(A) ~~20~~5 or more horses;

(B) 20 or more cattle;

(C) 20 or more swine not kept in a feedlot, or150 or more swine;

(D) 120 or more sheep;

(E) 130 or more goats;

(F) 650 or more turkeys;

(G) 3,500 or more chickens; or

(H) ~~A number of any~~ Any single species of any other livestock or poultry, or any combination of species of livestock or poultry that exceeds 20,000 pounds of live weight at any time.

(4) Certain tree-harvesting activities described and defined as follows.

(A) The one-time harvest of trees on land within a riparian buffer described in 15A NCAC 02B ~~.0259~~ .0734 that was open farmland on September 1, 2001. This one-time harvest of trees may be conducted within one tree cropping interval only under a verifiable farm plan that received final approval from a local agricultural agency on or after September 1, 2001 and that expressly allowed the harvest of trees no earlier than 10 years after the trees are established and the return of the land to another agricultural pursuit.

(B) The one-time harvest of trees on land within a riparian buffer described in 15A NCAC 02B ~~0259~~ .0734 that had trees established under an agricultural incentive program as of September 1, 2001.

(C) All tree harvesting described in Subparagraphs (b)(4)(A) and (b)(4)(B) of this Rule shall comply with Forest Practices Guidelines Related to Water Quality codified at 15A NCAC 01I. The nutrient removal functions that were provided by trees prior to their harvest shall be replaced by other measures that are implemented by the owner of the land from which the trees are harvested.

(D) The following definitions shall apply to terms used in Subparagraphs (b)(4)(A) through (b)(4)(C) of this Rule.

Commented [A2]: Change: Added specificity to applicability description and size thresholds for livestock to conform with Tar-Pamlico ag rule.

Effect: Reduces uncertainty, narrows scope of applicability

(i) "Agricultural incentive program" means any of the following programs and any predecessor program to any of the following programs:

(I) Agriculture Cost Share Program for Nonpoint Source Pollution Control established by G.S. 143-215.74.

(II) Conservation Reserve Enhancement Program established by 7 C.F.R. Part 1410 (January 1, 2001 Edition) and 15A NCAC 06G .0101 through 15A NCAC 06G .0106.

(III) Conservation Reserve Program established by 7 C.F.R. Part 1410 (January 1, 2001 Edition).

(IV) Environmental Quality Incentives Program established by 7 C.F.R. Part 1466 (January 1, 2001 Edition).

(V) Wetlands Reserve Program established by 7 C.F.R. Part 1467 (January 1, 2001 Edition).

(VI) Wildlife Habitat Incentives Program established by 7 C.F.R. Part 636 (January 1, 2001 Edition).

(ii) "Local agricultural agency" means the North Carolina Cooperative Extension Service, the Farm Services Agency of the United States Department of Agriculture, the Natural Resources Conservation Service of the United States Department of Agriculture, a Soil and Water Conservation District created pursuant to G.S. 139-5, or their successor agencies.

(iii) "Open farmland" means the footprint of land used for pasture or for crops or horticultural products other than trees. Open farmland may contain scattered trees if an open canopy existed on September 1, 2001 as determined from the most recent aerial photographs taken prior to September 1, 2001 for the Farm Services Agency of the United States Department of Agriculture.

(iv) "Tree" means a woody plant with a diameter equal to or greater than five inches when measured at a height of four and one-half feet above the ground.

(v) "Tree cropping interval" means the time required to establish and grow trees that are suitable for harvesting. The tree-cropping interval shall be set out in the farm plan and shall be no less than 10 years after the trees are established.

(c) IMPLEMENTATION PROCESS. ~~This Rule shall be implemented through a cooperative effort between a Basin Oversight Committee and Local Advisory Committees in each county or watershed.~~ A Basin Oversight Committee and county-level Local Advisory Committees shall coordinate activities and account for progress. The membership, roles and responsibilities of these committees are set forth in Paragraphs ~~(f)~~ (d) and ~~(g)~~ (e) of this Rule. ~~Committees' activities shall be guided by the following constraints:~~ Accounting for nutrient-reducing actions on agricultural lands within the basin shall follow requirements set forth in Subparagraph (d)(3) of this Rule. Producers may be eligible to obtain cost

share and technical assistance from the NC Agriculture Cost Share Program and similar federal programs to contribute to their counties' ongoing nutrient reductions. Committee activity shall be guided by the following:

~~(1) The Commission shall determine whether each Local Advisory Committee has achieved its nitrogen reduction goal within five years of the effective date of this Rule, and its phosphorus loading goal within four years of the date that a phosphorus accounting method is approved by the Commission, both based on the accounting process described in Paragraphs (f) and (g) of this Rule. Should the Commission determine that a Local Advisory Committee has not achieved its nitrogen goal within five years, then the Commission shall require additional BMP implementation as needed to ensure that the goal is met within eight years of the effective date of this Rule. The Commission shall similarly review compliance with the phosphorus goal four years after it approves a phosphorus accounting method, and shall require additional BMP implementation as needed to meet that goal within an additional three years from that date. All persons subject to this Rule who have not implemented BMPs in accordance with an option provided in Subparagraphs (d)(1) or (d)(2) of this Rule shall be subject to such further requirements deemed necessary by the Commission for any Local Advisory Committee that has not achieved a nutrient goal.~~

~~(2) Should a committee not form or not follow through on its responsibilities such that a local strategy is not implemented in keeping with Paragraph (g) of this Rule, the Commission may require all persons subject to this Rule in the affected area to implement BMPs as set forth in Paragraph (e) of this Rule.~~

(1) OPTIONS FOR INDIVIDUAL OPERATIONS. Persons subject to this Rule may elect to implement practices meeting the standards identified in Paragraph (f) of this Rule that contribute to maintenance of collective local compliance with the goal identified in Paragraph (a) of this Rule, but are not required to implement any specific practices provided their basin collectively maintains compliance with the goal.

(2) MAINTENANCE OF GOAL. Accounting shall annually demonstrate maintenance or exceedence of the nitrogen reduction goal for the basin. Where three sequential annual reports show that the Basin did not meet its nitrogen and phosphorus reduction goals, the Basin Oversight Committee shall work with the Division of Soil and Water Conservation and Local Advisory Committees, particularly those representing counties not meeting the goals, to seek reduction actions by operations to bring agriculture collectively back into compliance, and shall report on their efforts in subsequent annual reports. Should subsequent annual reports not reverse the trend of non-compliance, the Commission may seek a more specific implementation plan from the Basin Oversight Committee, which may include an assessment of need for specific action by the Commission.

~~(d) OPTIONS FOR MEETING RULE REQUIREMENTS. Persons subject to this Rule shall register their operations with their Local Advisory Committee according to the requirements of Paragraph (g) of this Rule within one year of the effective date of this Rule. Such persons may elect to implement any BMPs they choose that are recognized by the Basin~~

Commented [A3]: **Change:** Part of content reorganization/streamlining consistent with other ag rules.

Effect: Clarity, brevity. No substantive change

Commented [A4]: **Change:** Added language clarifying individual's ability to meet requirements through the collective compliance approach.

Effect: Improved clarity. No Impact.

Commented [A5]: **Change:** Adds express ability for EMC to seek corrective action.

Effect: Probably no practical difference.

~~Oversight Committee as nitrogen-reducing BMPs within five years of the effective date of this Rule. Persons who implement one of the following two options within five years of the effective date of this Rule for nitrogen-reducing BMPs and within four years of the date that a phosphorus accounting method is approved by the Commission shall not be subject to any additional requirements that may be placed on persons under Paragraph (e) of this Rule. Persons subject to this Rule shall be responsible for implementing and maintaining the BMPs used to meet the requirements of this Rule for as long as they continue their agricultural operation. If a person ceases an operation and another person assumes that operation, the new operator shall be responsible for implementing BMPs that meet the requirements of this Paragraph.~~

~~(1) Option 1 is to implement site-specific BMPs that are accepted by the Local Advisory Committee as fully satisfying a person's obligations under this Rule based on BMP implementation needs identified in the local nutrient control strategy required under Subparagraph (g)(3)of this Rule and on nutrient reduction efficiencies established by the Basin Oversight Committee as called for under Subparagraphs (f)(2) and (f)(3) of this Rule.~~

~~(2) Option 2 is to implement standard BMPs that persons subject to this Rule choose from the alternatives established pursuant to Paragraph (e) of this Rule.~~

~~(e) STANDARD BEST MANAGEMENT PRACTICES (BMPs). Standard BMPs shall be individual BMPs or combinations of BMPs that achieve at least a 30 percent reduction in nitrogen loading and no increase in phosphorus loading relative to conditions that lack such BMPs. Standard BMPs shall be established for the purposes of this Rule by one of the following processes:~~

~~(1) The Soil and Water Conservation Commission may elect to approve, under its own authorities, standard BMP options for the Tar-Pamlico River Basin based on nutrient reduction efficiencies established by the Basin Oversight Committee pursuant to Subparagraph (f)(3) of this Rule and using criteria for nitrogen- and phosphorus-reducing BMPs as described in rules adopted by the Soil and Water Conservation Commission, including 15A NCAC 06E .0104 and 15A NCAC 06F .0104. One purpose of this process is to provide persons subject to this Rule the opportunity to work with the Soil and Water Conservation Commission in its development of standard BMP options; or~~

~~(2) In the unlikely event that the Soil and Water Conservation Commission does not approve an initial set of standard BMP options for the Tar-Pamlico River Basin within one year of the effective date of this Rule, then the Environmental Management Commission may approve standard BMP options within eighteen months of the effective date of this Rule. In that event, the standard BMP options approved by the Commission shall be designed to reduce nitrogen and phosphorus loading, as specified at the beginning of Paragraph (e) of this Rule, from agricultural sources through structural, management, or buffering farming BMPs or animal waste management plan components.~~

~~(f)~~ (d) BASIN OVERSIGHT COMMITTEE. The Basin Oversight Committee shall have the following membership, role and responsibilities:

(1) MEMBERSHIP. ~~The Commission shall~~ ~~delegate to the Secretary the responsibility of forming a Basin Oversight Committee within two months of the effective date of this Rule. Members shall be~~

Commented [A6]: **Change:** Language removed to reflect current implementation status through the collective compliance approach. Eliminates individual option of standard BMPs vs. collective compliance.

Effect: No practical Impact

~~appointed for five-year terms and shall serve at the pleasure of the Secretary. Until such time as the Commission determines that long-term maintenance of the nutrient loads is assured, the Secretary shall either reappoint members or replace members every five years. The Secretary~~ shall ~~solicit nominations for membership on this Committee to represent each of the following interests, from interested parties, and shall appoint one nominee to represent~~ maintain one member for each ~~interest. The Secretary may appoint a replacement at any time for an interest in Parts (f)(1)(F) through (f)(1)(J) of this Rule upon request of representatives of that interest:~~ The Director of the Division of Water Resources shall be responsible for maintaining the following membership composition. Until such time as the Commission determines that long-term compliance with this rule is assured, the Director shall solicit one nomination for membership on this Committee from each agency in Sub-Paragraphs (d)(1)(A) through (d)(1)(E). The Director may appoint a replacement at any time for an interest in Sub-Paragraphs (d)(1)(F) through (d)(1)(I) upon request of representatives of that interest or by the request of the Commissioner of Agriculture:

(A) Division of Soil and Water Conservation;

(B) United States Department of Agriculture-Natural Resources Conservation Service (shall serve in an "ex-officio" non-voting capacity and shall function as a technical program advisor to the Committee);

(C) North Carolina Department of Agriculture and Consumer Services;

(D) North Carolina Cooperative Extension Service;

(E) Division of Water ~~Quality;~~ Resources.

(F) Up to two ~~Environmental~~ environmental interests;

(G) Basinwide farming interests;

(H) Pasture-based livestock interests; ~~and~~

~~(I) Cropland farming interests; and~~ General farming interests; and

~~(J)~~(I) The scientific community with experience related to water quality problems in the Tar-Pamlico River Basin.

(2) ROLE. The Basin Oversight Committee shall:

~~(A) Develop a tracking and accounting methodology pursuant to Subparagraph (f)(3) of this Rule. A final nitrogen methodology shall be submitted to the Commission for approval within one year after the effective date of this Rule. A final methodology for phosphorus shall be submitted at the earliest date possible as determined by the Basin Oversight Committee with input from the technical advisory committee described in Part (f)(2)(D) of this Rule.~~

(A) Continue to review, approve and summarize local nitrogen and phosphorus reduction annual reports to ensure ongoing implementation of the accounting methods approved by the Commission in October 2002 for nitrogen and November 2005 for phosphorus as conforming

Commented [A7]: **Change:** Added an additional environmental representative and to the Committee Membership. Provided process for appointing members to fill empty seats.

Effect: Consistency of interests represented across watersheds. Improved clarity on process for appointing new members. No Impact on rule implementation.

Commented [A8]: **Change:** Updated the language addressing accounting methodologies recognizing the Basin Oversight Committee has developed tools currently used for tracking progress with the required reduction goals.

Effect: Improved clarity and brings the rule language up to date reflecting how the rule requirements are being implemented.

to the requirements of Subparagraph (d)(3) of this Rule. Continue to present these reports as initiated in 2002, to the Director annually;

(B) Take actions called for under Subparagraphs (c)(2) as needed to address maintenance of the nitrogen and phosphorus reductions goals;

(C) Identify and implement future refinements to the accounting methodology as needed to reflect advances in scientific understanding, including establishment of nutrient reduction efficiencies for BMPs.

(D) ~~Appoint a~~ Reassemble as needed a phosphorus technical advisory committee ~~within 6 months of the effective date of this Rule~~ to update the qualitative phosphorus method approved by the Commission in October 2005, titled Accounting Method for Tracking Relative Changes in Agricultural Phosphorus Loading to the Tar-Pamlico River, in order to revise phosphorus baseline values and annual changes in factors affecting agricultural phosphorus loss. ~~to inform the Basin Oversight Committee on rule related issues. The Basin Oversight Committee shall direct the committee to take the following actions at a minimum: monitor advances in scientific understanding related to phosphorus loading, evaluate the need for additional management action to meet the phosphorus loading goal, and report its findings to the Basin Oversight Committee on an annual basis. The Basin Oversight Committee shall in turn report these findings and its recommendations to the Commission on an annual basis following the effective date of this Rule, until such time as the Commission, with input from the Basin Oversight Committee, determines that the technical advisory committee has fulfilled its purpose. The Basin Oversight Committee shall solicit nominations for this committee from the Division of Soil and Water Conservation, United States Department of Agriculture Natural Resources Conservation Service, North Carolina Department of Agriculture and Consumer Services, North Carolina Cooperative Extension Service, Division of Water Quality, environmental interests, agricultural interests, and the scientific community with experience related to the committee's charge.~~

~~(D) Review, approve and summarize county or watershed local strategies and present these strategies to the Commission for approval within two years after the effective date of this Rule.~~

~~(E) Establish minimum requirements for, review, approve and summarize local nitrogen and phosphorus loading annual reports as described under Subparagraph (g)(5) of this Rule, and present these reports to the Commission each October, until such time as the Commission determines that annual reports are no longer needed to assure long-term maintenance of the nutrient goals.~~

(3) ACCOUNTING METHODOLOGY. ~~The Basin Oversight Committee shall develop an accounting methodology that meets the following requirements:~~

Commented [A9]: **Change:** Updated the language addressing accounting methodologies recognizing the Basin Oversight Committee has developed tools currently used for tracking progress with the required reduction goals.

Effect: Improved clarity and brings the rule language up to date reflecting how the rule requirements are being implemented.

~~(A) The methodology shall quantify baseline total nitrogen and phosphorus loadings from agricultural operations in each county and for the entire basin.~~

~~(B) The methodology shall include a means of tracking implementation of BMPs, including number, type, and area affected.~~

~~(C) The methodology shall include a means of estimating incremental nitrogen and phosphorus reductions from actual BMP implementation and of evaluating progress toward the nutrient goals from BMP implementation. The methodology shall include nutrient reduction efficiencies for individual BMPs and combinations of BMPs that can be implemented toward the nitrogen and phosphorus goals.~~

~~(D) The methodology shall allow for future refinements to the nutrient baseline loading determinations, and to the load reduction accounting methodology.~~

~~(E) The methodology shall provide for quantification of changes in nutrient loading due to changes in agricultural land use, modifications in agricultural activity, or changes in atmospheric nitrogen loading to the extent allowed by advances in technical understanding.~~

~~(F) The methodology shall include a method to track maintenance of the nutrient net loads after the initial eight years of this Rule, including tracking of changes in BMPs and additional BMPs to offset new or increased sources of nutrients from agricultural operations.~~

Success in meeting this Rule's purpose will be gauged by estimating percentage changes in nitrogen loss from agricultural lands in the Tar-Pamlico Basin and by evaluating broader trends in indicators of phosphorus loss from agricultural lands in the Tar-Pamlico Basin. The Basin Oversight Committee shall develop maintain, and update as indicated elsewhere in this Paragraph, accounting methods that meet the following requirements:

(A) The nitrogen method shall estimate baseline and annual total nitrogen losses from agricultural operations in each county and for the entire Tar-Pamlico Basin. Baseline losses and relative loss reduction progress shall be adjusted as frequently as can be supported by available data to account for lands permanently removed from agricultural control through development;

(B) The nitrogen and phosphorus methods shall include a means of tracking implementation of BMPs, including number, type, and area affected;

(C) The nitrogen method shall include a means of estimating incremental nitrogen loss reductions from implementation of BMPs that conform to requirements of Paragraph (g) of this Rule and of evaluating progress toward and maintenance of the nutrient objectives from changes in BMP implementation, fertilization, and changes in individual crop acres;

(D) The nitrogen and phosphorus methods shall be refined as research and technical advances allow; and

Commented [A10]: Change: Added language requiring evaluation and adjustment of baseline losses and relative loss reduction progress based on data availability to address agricultural land lost to development.

Effect: Agriculture's reduction progress will be measured against an updated baseline that reflects the nutrient contributions from lands still within the Agriculture universe. Fiscal impact will be evaluated during rulemaking process.

(E) The phosphorus method shall quantify baseline values for and annual changes in factors affecting agricultural phosphorus loss as identified in the report by the phosphorus technical advisory committee described elsewhere in this Paragraph.

~~(g)~~(e) LOCAL ADVISORY COMMITTEES. The Local Advisory Committees shall have the following membership, roles, and responsibilities:

(1) MEMBERSHIP. ~~A~~ Per S.L. 2001, c. 355, a Local Advisory Committee shall be ~~appointed~~ maintained as provided in this Paragraph in each county ~~(or~~ or watershed as specified by the Basin Oversight ~~Committee)~~ Committee, within the Tar-Pamlico River Basin. ~~As directed by S.L. 2001, c. 355, the Local Advisory Committees shall be appointed on or before November 1, 2001.~~ They shall terminate upon a finding by the ~~Environmental Management~~ Commission that the long-term maintenance of nutrient loads in the Tar-Pamlico River Basin is assured. Each Local Advisory Committee shall consist of:

(A) One representative of the local Soil and Water Conservation District;

(B) One local representative of the United States Department of Agriculture- Natural Resources Conservation Service;

(C) One local representative of the North Carolina Department of Agriculture and Consumer Services;

(D) One local representative of the North Carolina Cooperative Extension Service;

(E) One local representative of the North Carolina Division of Soil and Water Conservation; and

(F) ~~At least five, but not more than 10 farmers who reside in the county or watershed.~~ At least two farmers that reside in the county.

(2) APPOINTMENT OF MEMBERS. ~~The~~ Per S.L. 2001, c. 355, the Director of the Division of Water ~~Quality~~ Resources and the Director of the Division of Soil and Water Conservation of the Department of ~~Environment and Natural Resources~~ Agriculture and Consumer Services shall jointly appoint members described in Subparagraphs (e)(1)(A), (e)(1)(B), (e)(1)(D), and (e)(1)(E) of this Rule. As directed by S.L. 2001, c. 355, the Commissioner of Agriculture shall appoint the members described in Subparagraphs (e)(1)(C) and (e)(1)(F) of this Rule from persons nominated by nongovernmental organizations whose members produce or manage significant agricultural commodities in each county or watershed. Members of the Local Advisory Committees shall serve at the pleasure of their appointing authority.

(3) ROLE. The Local Advisory Committees shall:

(A) Continue to submit annual reports to the Basin Oversight Committee estimating total crop production on agricultural operations for the preceding calendar year, summarizing land use changes in the county and making recommendations to the Basin Oversight Committee on the need for updates to the accounting methodology. Reports shall include documentation on the BMPs implemented, including type and location, that satisfy the requirements identified in Paragraph (f) of this Rule and documentation of any expired contracts for BMPs; and

Commented [A11]: **Change:** Technical corrections updating Session Law References and Agency names.

Effect: No Impact. Improved Clarity

(B) Take actions called for under Subparagraph (c)(2) as needed to address maintenance of the nitrogen and phosphorus reduction goals.

~~(A) Conduct a registration process for persons subject to this Rule. This registration process shall be completed within one year after the effective date of this Rule. It shall obtain information that shall allow Local Advisory Committees to develop local strategies in accordance with Subparagraph (g)(4) of this Rule. At minimum, the registration process shall request the type and acreage of agricultural operations, nutrient reducing BMPs implemented since January 1, 1992 and their operational status, and the acres affected by those BMPs. It shall provide persons with information on requirements and options under this Rule, and on available technical assistance and cost share options;~~

~~(B) Designate a member agency to compile and retain copies of all individual plans produced to comply with this Rule;~~

~~(C) Develop local nutrient control strategies for agricultural operations, pursuant to Subparagraph (g)(4) of this Rule, to meet the nitrogen and phosphorus goals assigned by the Basin Oversight Committee. The nitrogen component of the control strategy shall be submitted to the Basin Oversight Committee no later than twenty-three months from the effective date of this Rule. The phosphorus component of the control strategy shall be submitted within one year of the date that the Commission approves a phosphorus accounting methodology as described in Part (f)(2)(A) of this Rule;~~

~~(D) Ensure that any changes to the design of the local strategy will continue to meet the nutrient goals of this Rule; and~~

~~(E) Submit annual reports to the Basin Oversight Committee, pursuant to Subparagraph (g)(5) of this Rule, each May until such time as the Commission determines that annual reports are no longer needed to assure long-term maintenance of the nutrient goals.~~

~~(4) LOCAL NUTRIENT CONTROL STRATEGIES. The Local Advisory Committees shall be responsible for developing county or watershed nutrient control strategies that meet the following requirements. If a Local Advisory Committee fails to submit a nutrient control strategy as required in Part (g)(3)(C) of this Rule, the Commission may develop one based on the accounting methodology that it approves pursuant to Part (f)(2)(A) of this Rule.~~

~~(A) Local nutrient control strategies shall be designed to achieve the required nitrogen reduction goals within five years after the effective date of this Rule, and to maintain those reductions in perpetuity or until such time as this Rule is revised to modify this requirement. Strategies shall be designed to meet the phosphorus loading goals within four years of the date that the Commission approves a phosphorus accounting methodology as described in Part (f)(2)(A) of this Rule.~~

~~(B) Local nutrient control strategies shall specify the numbers and types of all agricultural operations within their areas, numbers of BMPs that will be implemented by enrolled~~

Commented [A12]: **Change:** Updates role of the local advisory committees LACs.

Effect: No Impact. Brings rule language up to date and better reflects how requirements are currently being implemented.

~~operations and acres to be affected by those BMPs, estimated nitrogen and phosphorus reductions, schedule for BMP implementation, and operation and maintenance requirements.~~

~~(C) Local nutrient control strategies may prioritize BMP implementation to establish the most efficient and effective means of achieving the nutrient goals.~~

~~(5) ANNUAL REPORTS. The Local Advisory Committees be responsible for submitting annual reports for their counties or watersheds. Annual reports shall be submitted to the Basin Oversight Committee each May until such time as the Commission determines that annual reports are no longer needed to assure long-term maintenance of the nutrient goals. Annual reports shall quantify progress toward the nutrient goals with sufficient detail to allow for compliance monitoring at the farm level. The Basin Oversight Committee shall determine reporting requirements to meet these objectives. Those requirements may include information on BMPs implemented by individual farms, proper BMP operation and maintenance, BMPs discontinued, changes in agricultural land use or activity, and resultant net nutrient loss changes.~~

(f) PRACTICE STANDARDS. To receive nutrient reduction credit under the accounting methods described elsewhere in this Rule, a BMP shall be included in the Commission-approved accounting method, or in a subsequent revision to that method identified in annual reporting, and it shall be implemented according to applicable nutrient-related standards identified by the BOC and established by the NC Soil and Water Conservation Commission or the USDA-Natural Resources Conservation Service in North Carolina.

History Note: *Authority G.S. 143-214.1; 143-214.7; 143-215.3(a)(1); 143-215.6A; 143-215.6B; 143-215.6C; S.L. 2001-355;*
Eff. September 1, 2001;
Temporary Amendment Eff. January 1, 2002 (exempt from 270 day requirement-S.L. 2001-355).
Amended Eff. [New Date].

Commented [A13]: Change: Removed language related to activities the Local Advisory Committees have already completed. Updated language on LAC's role provided in Sub-paragraph (e)(3)(A).

Effect: No practical impact. Brings rule language up to date.

Commented [A14]: Change: Annual Reporting language has been moved to Subparagraph (d)(2)(a).

Effect: No Impact

Commented [A15]: Change: Added practice standards requirements for BMPs

Effect: Ensures proper BMP implementation and use of approved accounting methods to earn nutrient reduction credit.

[.0229 is proposed for amendment and transfer to 15A NCAC 02B .0733]
Last Revised August 18, 2017

15A NCAC 02B .0229 is proposed for amendment as follows:

15A NCAC 02B ~~.0229~~.0733 TAR-PAMLICO ~~RIVER BASIN - NUTRIENT SENSITIVE WATERS MANAGEMENT~~ NUTRIENT STRATEGY: ~~NUTRIENT OFFSET PAYMENTS FOR NON-TAR-PAMLICO BASIN ASSOCIATION MEMBERS~~ NON-ASSOCIATION DISCHARGERS

(a) ~~All waters of the Tar-Pamlico River Basin have been supplementally classified nutrient sensitive waters (NSW) pursuant to 15A NCAC 2B .0223.~~ The following procedures are to be implemented in accordance with ~~15A NCAC 2B~~ Rule .0223 of this Subchapter in all waters ~~of the Tar-Pamlico River Basin~~ covered by the Tar Pamlico nutrient strategy for those wastewater dischargers who are not members of the Tar-Pamlico Basin Association;

(b) Existing wastewater dischargers expanding to greater than 0.5 million gallons per day ~~(MGD), who are not members of the Tar-Pamlico Basin Association,~~ (MGD) shall be required to permanently offset their additional annual nutrient loads by funding nonpoint source control ~~programs~~ projects approved by the Division ~~of Water Quality~~ prior to the issuance of their NPDES permit and at each renewal. Nitrogen and phosphorus loads shall be offset at the rate of 110 percent of the cost to implement BMPs designed to permanently reduce that same load created by expanding the discharge above 0.5 MGD. Equations for calculating the offset costs are:

(1) For an existing facility with permitted flow of less than or equal to 0.5 MGD as of December 8, 1994 expanding to greater than 0.5 ~~MGD who is not a member of the Tar-Pamlico Basin Association:~~ MGD:

Payment=((PF_e x (TN+TP) x ~~1384) (0.5~~ 3,044)-(0.5 x (TN+TP) x ~~1384))~~ 3,044)) x (BMP_c x 1.1) where:

Payment = the nutrient offset payment ($);

PF_e = Permitted Flow including expansion (MGD);

TN = ~~6~~ 3 mg/l total nitrogen for domestic discharges or BAT for industrial discharges;

TP = ~~1~~ 0.5 mg/l total phosphorus for domestic discharges or BAT for industrial discharges;

~~1384~~ 3,044 = conversion factor;

0.5 = the permitted flow (MGD) above which payment for additional nutrient loading is required;

BMP_c = Best Management Practice cost-effectiveness rate in ~~$/kg as set in 15A NCAC 2B .0237 of this Section;~~ $/lb of permanently sustained annual mass load reduction. Dischargers shall determine this value based on the option to which they select to make payment, the ~~NC Ecosystem Enhancement Program~~ Division of Mitigation Services or another provider of offset credits approved by the Division. The cost-effectiveness rate shall be determined by the chosen entity based on the requirements of Rule ~~.0240~~ .0703 of this Section, and approval of a provider's project and offset payments shall follow the requirements of that Rule;

1.1 = 110 percent of the cost for the nonpoint source controls.

(2) For an expanding facility with a permitted flow of greater than or equal to 0.5 MGD as of December 8, ~~1994 who is not a member of the Tar-Pamlico Basin Association:~~ 1994:

Payment=((PF_e x (TN+TP) x ~~1384) (PF~~ 3,044)-(PF x (TN+TP) x ~~1384))~~ 3,044)) x (BMP_c x 1.1) where:

Payment = the nutrient offset payment ($);

Commented [A1]: Change: Added language requiring additional new loads from expanding dischargers must be permanently offset to clarify the time element of the offset requirement

Effect: Clarification. No Impact on implementation.

Commented [A2]: Change: Throughout the rule updated conversion factors offset calculation formula reflecting a change in unit from dollar per kilogram to dollars per pound. Also, updated concentration limits for calculating offsets needed for new, and expanding discharges to better reflect current treatment technology capabilities.

Effect: Offset needs expressed in pounds instead of kilograms. Lowered limits will require additional treatment but is in line with current treatment capabilities. Fiscal Impact will be evaluated during the rulemaking process.

Commented [A3]: Change: Throughout the rule updated BMP cost-effectiveness rate from fixed rate in Rule .0237 to process established in the Nutrient Offset Rule .0703.

Effect: Clarifies how BMP cost-effectiveness rate will be determined for use in this calculation. Fiscal Impact will be evaluated during the rulemaking process.

PF_e = Permitted Flow including expansion (MGD);
PF = Permitted Flow as of December 8, 1994 (MGD);
TN = ~~6~~ 3 mg/l total nitrogen for domestic discharges or BAT for industrial discharges;
TP = ~~1~~ 0.5 mg/l total phosphorus for domestic discharges or BAT for industrial discharges;
~~1384~~ 3,044 = conversion factor;
BMP_c = Best Management Practice cost-effectiveness rate in ~~$/kg as set in 15A NCAC 2B .0237 of this Section;~~ $/lb of permanently sustained annual mass load reduction. Dischargers shall determine this value based on the option to which they select to make payment, the Division of Mitigation Services or another provider of offset credits approved by the Division. The cost-effectiveness rate shall be determined by the chosen entity based on the requirements of Rule ~~.0240~~ .0703 of this Section, and approval of an offset provider's project and offset payments shall follow the requirements of that Rule;
1.1 = 110 percent of the cost for the nonpoint source controls.

(c) New wastewater dischargers with permitted flows greater than or equal to 0.05 ~~MGD, who are not members of the Tar-Pamlico Basin Association,~~ MGD shall be required to offset their nutrient loads by funding nonpoint source control programs approved by the Division ~~of Water Quality~~ prior to the issuance of their NPDES permit and at each renewal. Nitrogen and phosphorus loads shall be offset at the rate of 110 percent of the cost to implement BMPs designed to reduce that same loading created by the new discharge above 0.05 MGD. The equation for calculating the offset costs is:

Payment = PF x (TN+TP) x ~~1384~~ 3,044 x (BMP_c x 1.1) where:
Payment = the nutrient offset payment ($);
PF = Permitted Flow (MGD);
TN = ~~6~~ 3 mg/l total nitrogen for domestic discharges or BAT for industrial discharges;
TP = ~~1~~ 0.5 mg/l total phosphorus for domestic discharges or BAT for industrial discharges;
~~1384~~ 3,044 = conversion factor;
BMP_c = Best Management Practice cost-effectiveness rate in ~~$/kg as set in 15A NCAC 2B .0237 of this Section;~~ $/lb of permanently sustained annual mass load reduction. Dischargers shall determine this value based on the option to which they select to make payment, the ~~NC~~ Division of Mitigation Services or another provider of offset credits approved by the Division. The cost-effectiveness rate shall be determined by the chosen entity based on the requirements of Rule .0703 of this Section, and approval of a provider's project and offset payments shall follow the requirements of that Rule;
1.1 = 110 percent of the cost for the nonpoint source controls.

(d) Existing wastewater dischargers expanding to greater than 0.5 ~~MGD, who are not members of the Tar-Pamlico Basin Association,~~ MGD may petition the Commission or its designee for an exemption from Paragraph (b) of this Rule upon meeting all of the following conditions:

(1) For industrial facilities:

(A) The facility has reduced its annual average TN loading by 30 percent from its annual average 1991 TN loading or nitrogen is not part of the waste stream above background levels;

Commented [A4]: Change: Same updates to conversion factors, concentration limits for same reasons as explained in Paragraph (b)

Effect: Same as explained for Paragraph (b)

Commented [A5]:
Change: Same updates BMP cost-effectiveness rate for same reasons as explained in Sub-paragraph (b)(1)

Effect: Same as explained for Sub-paragraph (b)(1)

Commented [A6]:
Change: Same updates to conversion factors, concentration limits for same reasons as explained in Paragraph (b)

Effect: Same as explained for Paragraph (b)

Commented [A7]: Change: Same updates BMP cost-effectiveness rate for same reasons as explained in Sub-paragraph (b)(1)

Effect: Same as explained for Sub-paragraph (b)(1)

(B) The facility has reduced its annual average TP loading by 30 percent from its annual average 1991 TP loading or phosphorus is not part of the waste stream above background levels;

(C) The expansion does not result in annual average TN loading greater than 70 percent of the 1991 annual average TN load. Permit limits may be established to insure that the 70 percent load is not exceeded;

(D) The expansion does not result in annual average TP loading greater than 70 percent of the 1991 annual average TP load. Permit limits may be established to insure that the 70 percent load is not exceeded;

(E) To maintain its exemption from Paragraph (b) of this Rule, a facility must continue to meet the requirements of Subparagraph (d)(1) Parts (A) through (D) of this Rule.

(2) For municipal facilities:

(A) The facility has reduced its annual average TN loading by 30 percent from its annual average 1991 TN loading;

(B) The facility has reduced its annual average TP loading by 30 percent from its annual average 1991 TP loading;

(C) The expansion does not result in annual average TN loading greater than 70 percent of the 1991 annual average TN load. Permit limits may be established to insure that the 70 percent load is not exceeded;

(D) The expansion does not result in annual average TP loading greater than 70 percent of the 1991 annual average TP load. Permit limits may be established to insure that the 70 percent load is not exceeded;

(E) To maintain its exemption from Paragraph (b) of this Rule, a facility must continue to meet the requirements of Subparagraph (d)(2) Parts (A) through (D) of this Rule.

History Note: *Authority G.S. 143-214.1;*
Eff. April 1, 1997.
Amended Eff. [New Date].

15A NCAC 02B .0734 is proposed for adoption as follows:

15A NCAC 02B ~~.0259~~.0734 TAR-PAMLICO RIVER BASIN: NUTRIENT SENSITIVE WATERS MANAGEMENT STRATEGY: PROTECTION AND MAINTENANCE OF EXISTING RIPARIAN BUFFERS

The following is the management strategy for maintaining and protecting existing riparian buffers in the Tar-Pamlico River Basin.

(1) PURPOSE. The purpose of this Rule shall be to maintain and protect ~~and preserve~~ existing riparian ~~buffers, to maintain their nutrient removal functions,~~buffers in the ~~entire~~ Tar-Pamlico River ~~Basin, whose surface waters are described in the Schedule of Classifications, 15A NCAC 02B .0316.~~Basin to maintain their nutrient removal functions.

~~(2) DEFINITIONS. For the purpose of this Rule, these terms shall be defined as follows:~~

~~(a) "Channel" means a natural water-carrying trough cut vertically into low areas of the land surface by erosive action of concentrated flowing water or a ditch or canal excavated for the flow of water. (current definition in Forest Practice Guidelines Related to Water Quality, 15A NCAC 01I .0102)~~

~~(b) "DBH" means Diameter at Breast Height of a tree, which is measured at 4.5 feet above ground surface level.~~

~~(c) "Ditch or canal" means a man-made channel other than a modified natural stream constructed for drainage purposes that is typically dug through inter-stream divide areas. A ditch or canal may have flows that are perennial, intermittent, or ephemeral and may exhibit hydrological and biological characteristics similar to perennial or intermittent streams.~~

~~(d) "Ephemeral (stormwater) stream" means a feature that carries only stormwater in direct response to precipitation with water flowing only during and shortly after large precipitation events. An ephemeral stream may or may not have a well-defined channel, the aquatic bed is always above the water table, and stormwater runoff is the primary source of water. An ephemeral stream typically lacks the biological, hydrological, and physical characteristics commonly associated with the continuous or intermittent conveyance of water.~~

~~(e) "Forest plantation" means an area of planted trees that may be conifers (pines) or hardwoods. On a plantation, the intended crop trees are planted rather than naturally regenerated from seed on the site, coppice (sprouting), or seed that is blown or carried into the site.~~

~~(f) "High Value Tree" means a tree that meets or exceeds the following standards: for pine species, 14 inch DBH or greater or 18 inch or greater stump diameter; and, for hardwoods and wetland species, 16 inch DBH or greater or 24 inch or greater stump diameter.~~

Commented [HK1]: no effect - update citation

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~~(g) "Intermittent stream" means a well-defined channel that contains water for only part of the year, typically during winter and spring when the aquatic bed is below the 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 conveyance of water.~~

~~(h) "Modified natural stream" means an on-site channelization or relocation of a stream channel and subsequent relocation of the intermittent or perennial flow as evidenced by topographic alterations in the immediate watershed. A modified natural stream must have the typical biological, hydrological, and physical characteristics commonly associated with the continuous conveyance of water.~~

~~(i) "Perennial stream" means a well-defined channel that contains water year round during a year of normal rainfall with the aquatic bed located below the water table for most of the year. Groundwater is the primary source of water for a perennial stream, but it also carries stormwater runoff. A perennial stream exhibits the typical biological, hydrological, and physical characteristics commonly associated with the continuous conveyance of water.~~

~~(j) "Perennial waterbody" means a natural or man-made basin that stores surface water permanently at depths sufficient to preclude growth of rooted plants, including lakes, ponds, sounds, non-stream estuaries and ocean. For the purpose of the State's riparian buffer protection program, the waterbody must be part of a natural drainageway (i.e., connected by surface flow to a stream).~~

~~(k) "Stream" means a body of concentrated flowing water in a natural low area or natural channel on the land surface.~~

~~(l) "Surface waters" means all waters of the state as defined in G.S. 143-212 except underground waters.~~

~~(m) "Tree" means a woody plant with a DBH equal to or exceeding five inches.~~ **Commented [HK3]:** no effect – moved definitions to .0701

(2)~~(3)~~ 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 Tar-Pamlico River Basin, excluding Ocracoke Island. **Commented [HK4]:** no effect - clarification **Commented [HK5]:** excluding Ocracoke Island from the buffer rules as it's downstream of the impairment.

(3) BUFFERS PROTECTED. The following minimum criteria shall be used for identifying regulated buffers: **Commented [HK6]:** No effect – reorganization

(a) A surface water shall be subject to this Rule if the feature is approximately shown on any of the following references:

(i) The most recent version of the published manuscript of the soil survey map that shows stream layers prepared by the Natural Resources Conservation Service of the United States Department of Agriculture;

(ii) The most recent version of the 1:24,000 scale (7.5 minute) quadrangle topographic maps prepared by the United States Geologic Survey (USGS); or **Commented [HK7]:** No effect – moved from below

(iii) Other maps approved by the Geographic Information Coordinating Council and by the Environmental Management Commission as more accurate than those identified in Sub-Item (3)(a)(i) and (3)(a)(ii) of this Rule. Other maps may be submitted to the Division for review and recommendation to the Environmental Management Commission. Prior to recommendation to the Environmental Management Commission, the Division shall issue a 30-calendar day public notice through the Division's Mailing List in accordance with 15A NCAC 02H .0503. Division staff shall present recommendations including comments received during the public notice period to the Environmental Management Commission for a final decision. Maps approved under this Sub-Item shall not apply to projects that are existing and ongoing within the meaning of this Rule as set out in Item (6) of this Rule;

(b) This Rule shall apply to activities conducted within 50-foot wide riparian buffers directly adjacent to surface waters in the Tar-Pamlico River Basin (intermittent streams, perennial streams, lakes, ponds, reservoirs and estuaries), excluding ~~wetlands.~~wetlands;

(c) ~~Except as described in Sub-Item (4)(a)(iii) of this Rule, wetlands~~Wetlands adjacent to surface waters or within 50 feet of surface waters shall be considered as part of the riparian buffer but are regulated pursuant to 15A NCAC 02H ~~.0506.~~ 0506;

(d) Stormwater runoff from activities conducted outside the riparian buffer shall comply with Item (9) of this Rule;

~~The riparian buffers protected by this Rule shall be measured pursuant to Item (4) of this Paragraph. For the purpose of this Rule, a surface water shall be present if the feature is approximately shown on either the most recent version of the soil survey map prepared by the Natural Resources Conservation Service of the United States Department of Agriculture or the most recent version of the 1:24,000 scale (7.5 minute) quadrangle topographic maps prepared by the United States Geologic Survey (USGS). Riparian buffers adjacent to surface waters that do not appear on either of the maps shall not be subject to this Rule. Riparian buffers adjacent to surface waters that appear on the maps shall be subject to this Rule unless one of the following applies:~~

(e) Riparian buffers protected by this Rule shall be measured pursuant to Item (8) of this Rule;

(f) A riparian buffer may be exempt from this Rule as described in Items (5), (6) and (7) of this Rule; and

(g) No new clearing, grading or development shall take place nor shall any new building permits be issued in violation of this Rule.

~~(a)~~(4) ~~EXEMPTION WHEN~~ AN ON-SITE ~~DETERMINATION SHOWS THAT SURFACE WATERS ARE NOT PRESENT.~~DETERMINATION. When a landowner or other affected party believes that the maps listed in Sub-Items (3)(a) have inaccurately depicted surface ~~waters.~~waters or the specific

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Commented [HK15]: No effect – moved to (3)(a) above

Commented [HK16]: No effect - reorganization

Commented [HK17]: Clarification – wording in Jordan buffer rule

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origination point of a stream, or the specific origination point of a stream is in question or unclear, he or she shall ~~consult~~ request the ~~Division or the appropriate delegated local authority. Upon request, the Division or delegated local authority shall~~Authority to make an on-site ~~determinations.~~determination. On-site determinations shall be made by Authority staff that are certified pursuant to G.S. 143-214.25A. Registered Foresters under Chapter 89B of the General Statutes who are employees of the North Carolina Forest Service of the Department of Agriculture and Consumer Services can make on-site determinations for forest harvesting operations and practices. On-site determinations shall expire five years from the date of the determination. Any disputes over on-site determinations shall be referred to the Director in writing within 60 calendar days of written notification from the Authority.~~writing.~~ ~~A determination of the Director as to the accuracy or application of the maps~~The Director's determination is subject to review as provided in ~~Articles 3 and 4 of~~G.S. 150B.

(5) EXEMPTION BASED ON ON-SITE DETERMINATION. Surface waters that appear on the maps listed in Sub-Item (3)(a) of this Rule shall not be subject to this Rule if an on-site determination shows that they fall into one of the following ~~categories.~~categories:

~~(i)~~(a) Ditches and manmade conveyances other than modified natural streams unless constructed for navigation or boat access.

~~(ii)~~(b) Manmade ponds and lakes that are ~~located outside natural drainage ways.~~not fed by an intermittent or perennial stream nor have a direct discharge point to an intermittent or perennial stream.

~~(iii)~~(c) Ephemeral (stormwater) streams.

(d) The absence on the ground of a corresponding perennial waterbody, intermittent waterbody, lake, pond or estuary.

~~(b)~~(6) EXEMPTION WHEN EXISTING USES ARE PRESENT AND ONGOING. This Rule shall not apply to portions of the riparian buffer where a use is existing and ~~ongoing according to the following:~~ongoing.

~~(i)~~(a) A use shall be considered existing ~~if~~if:

(i) ~~it~~It was present within the riparian buffer as of January 1, ~~2000.~~2000 and has continued to exist since that time;

(ii) It was a deemed allowable activity as listed in Item (10) of this Rule; or

(iii) It was conducted and maintained pursuant to an Authorization Certificate or Variance issued by the Authority.

(b) Existing and ongoing uses shall include, but not be limited to, agriculture, buildings, industrial facilities, commercial areas, transportation facilities, maintained lawns, maintained utility lines and on-site sanitary sewage ~~systems.~~ systems, any of which involve either specific periodic management of vegetation or displacement of vegetation by structures or regular activity.

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Commented [HK23]: No effect – incorporating statute
Commented [HK24]: Codifying policy. Consistent with timeframe of Corps determinations.
Commented [HK25]: Codifying policy. Consistent with timeframes for appeal in G.S. 150B.
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(c) Only the portion of the riparian buffer that contains the footprint of the existing and ongoing use is exempt from this Rule.

(d) Change of ownership through purchase or inheritance is not a change of use.

(e) Activities necessary to maintain existing and ongoing uses are allowed provided that the site remains similarly vegetated, no built upon area is added within the riparian buffer where it did not exist prior to January 1, 2000,~~no additional vegetation is removed from Zone 1, except that grazed or trampled by livestock,~~ and the site is in compliance with Item (9) of this Rule.~~existing diffuse flow is maintained. Grading and revegetating Zone 2 is allowed provided that the health of the vegetation in Zone 1 is not compromised, the ground is stabilized and existing diffuse flow is maintained.~~

(f) This Rule shall apply at the time an existing and ongoing use is changed to another use. Change of use shall involve the initiation of any activity not defined as existing and ongoing in Sub-Items (6)(a) through (6)(e) of this Rule.

~~(ii) At the time an existing use is proposed to be converted to another use, this Rule shall apply. An existing use shall be considered to be converted to another use if any of the following applies:~~

~~(A) Impervious surface is added to the riparian buffer in locations where it did not exist previously.~~

~~(B) An agricultural operation within the riparian buffer is converted to a non-agricultural use.~~

~~(C) A lawn within the riparian buffer ceases to be maintained.~~

(7) EXEMPTION FOR PONDS CONSTRUCTED AND USED FOR AGRICULTURAL PURPOSES. This Rule shall not apply to a freshwater pond if all of the following conditions are met:

(a) The property on which the pond is located is used for agriculture as that term is defined in G.S. 106-581.1.

(b) Except for this Rule, the use of the property is in compliance with all other water quality and water quantity statutes and rules applicable to the property before July 22, 1997.

(c) The pond is not a component of an animal waste management system as defined in G.S. 143-215.10B (3).

~~(4)~~(8) ZONES OF THE RIPARIAN BUFFER. The protected riparian buffer shall have two zones as follows:

(a) Zone 1 shall consist of a vegetated area that is undisturbed except for uses provided for in Item ~~(6)~~(10) of this Rule. The location of Zone 1 shall be as follows:

(i) For intermittent and perennial streams, Zone 1 shall begin at the most landward limit of the top of bank or the rooted herbaceous vegetation and extend landward a distance of 30 feet on all sides of the ~~surface water,~~stream measured horizontally on a line perpendicular to the ~~surface water,~~stream (where an intermittent or perennial stream begins or ends, including when it goes underground, enters or

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Commented [HK48]: added per SL 2013-413

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exits a culvert, or enters or exits a wetland, the required distance shall be measured as a radius around the beginning or the end).

(ii) For ponds, lakes and reservoirs located within a natural drainage way, Zone 1 shall begin at the ~~most landward limit of the~~ normal water level ~~or the rooted herbaceous vegetation~~ and extend landward a distance of 30 feet, measured horizontally on a line perpendicular to the surface water.

(iii) For surface waters within the 20 Coastal Counties (defined in ~~15A NCAC 02B .0202)~~Rule .0202 of this Subchapter) and within the jurisdiction of the Division of Coastal Management, Zone 1 shall begin at the most landward limit ~~of:~~

~~(A) the normal high water level;~~

~~(B) the normal water level; or~~

~~(C) the landward limit of coastal wetlands as defined by the Division of Coastal Management;~~

of the normal high water level or the normal water level and extend landward a distance of 30 feet, measured horizontally on a line perpendicular to the surface water, whichever is more restrictive.

(b) Zone 2 shall consist of a stable, vegetated area that is undisturbed except for activities and uses provided for in Item ~~(6)~~(10) of this Rule. Grading and revegetating Zone 2 is allowed provided that the health of the vegetation in Zone 1 is not compromised. Zone 2 shall begin at the outer edge of Zone 1 and extend landward 20 feet as measured horizontally on a line perpendicular to the surface water. The combined width of Zones 1 and 2 shall be 50 feet on all sides of the surface water.

~~(5) DIFFUSE FLOW REQUIREMENT. Diffuse flow of runoff shall be maintained in the riparian buffer by dispersing concentrated flow and reestablishing vegetation.~~

~~(a) Concentrated runoff from new ditches or manmade conveyances shall be converted to diffuse flow before the runoff enters Zone 2 of the riparian buffer.~~

~~(b) Periodic corrective action to restore diffuse flow shall be taken if necessary to impede the formation of erosion gullies.~~

(9) STORMWATER RUNOFF THROUGH THE RIPARIAN BUFFER. Drainage conveyances include drainage ditches, roadside ditches, and stormwater conveyances. The following stormwater conveyances through the riparian buffer are either deemed allowable or allowable upon authorization, as defined in Sub-Item (10)(a) of this Rule, provided that they do not erode through the buffer and do not cause erosion to the receiving waterbody. Stormwater conveyances through the riparian buffer that are not listed below shall be allowable with exception as defined in Sub-Item (10)(a)(v) of this Rule.

(a) The following are deemed allowable as defined in Sub-Item (10)(a)(i) of this rule:

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Commented [HK52]: clarification

Commented [HK53]: removed for simplicity

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Commented [HK57]: removed diffuse flow requirement; instead provide options for stormwater discharges.

Commented [HK58]: Removed diffuse flow requirement; instead provide options for stormwater discharges

Commented [HK59]: Organization

(i) New drainage conveyances that comply with a stormwater management plan reviewed and approved under a state stormwater program or a state-approved local government stormwater program, which includes a Primary SCM, as defined in 15A NCAC 02H .1002, to treat the drainage area to the conveyance;

(ii) New stormwater flow to existing drainage conveyances provided that the addition of new flow does not result in the need to alter the conveyance.

(b) The following are allowable upon authorization as defined in Sub-Item (10)(a)(ii) of this Rule:

(i) New drainage conveyances when a Primary SCM as defined in 15A NCAC 02H .1002 is provided to treat the drainage area to the conveyance;

(ii) New drainage conveyances when the drainage area to the conveyance is demonstrated via approved nutrient calculation methodologies to meet the nutrient loading goals as outlined in 15A NAC 02B .0258(c)(1)(A) and (B);

(iii) New drainage conveyances when the flow rate of the conveyance is less than 0.5 cubic feet per second during the peak flow from the 0.75 inch per hour storm;

(iv) New stormwater runoff that has been treated through a level spreader-filter strip that complies with 15A NCAC 02H .1059;

(v) Realignment of existing roadside drainage ditches retaining or improving the design dimensions provided that no additional travel lanes are added and the minimum required roadway typical section is used based on traffic and safety considerations;

(vi) Realignment of existing conveyances retaining or improving the design dimensions provided that the size of the drainage area and the percent built-upon area within the drainage area remain the same;

(vii) New or altered drainage conveyances applicable to publicly funded and maintained linear transportation provided that SCMs, or BMPs from the NCDOT Stormwater Best Management Practices Toolbox, are employed;

(viii) New drainage conveyances applicable to linear transportation projects that do not provide a stormwater management facility due to topography constraints provided other measures are employed to protect downstream water quality to the maximum extent practical;

(ix) New drainage conveyances where the drainage area to the conveyance has no new built-upon area as defined in 15A NCAC 02H .1002 and the conveyance is necessary for bypass of existing drainage only.

~~(6)~~(10) ~~TABLE OF~~ USES. Uses within the riparian buffer, or outside the buffer with hydrological impacts on the riparian buffer, shall be designated as deemed allowable, allowable upon authorization, allowable with mitigation upon authorization, or prohibited.

Commented [HK60]: New use – allows for DWR to accept local government review of a SMP without having to review for meeting diffuse flow

Commented [HK61]: No change – moved from table

Commented [HK62]: Organization

Commented [HK63]: No change – moved from table

Commented [HK64]: New use

Commented [HK65]: New use

Commented [HK66]: No change – from diffuse flow language above

Commented [HK67]: New use

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Commented [HK69]: New Use

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(a) Potential new uses shall have the following requirements:

(i) DEEMED ALLOWABLE. Uses designated as deemed allowable in Sub-Items (9)(a) and (10)(b) of this Rule may occur within the riparian buffer. Deemed allowable uses shall be designed, constructed and maintained to minimize vegetation and soil disturbance and to provide the maximum water quality protection practicable, including construction, monitoring, and maintenance activities. In addition, deemed allowable uses shall meet the requirements listed in Sub-Item (10)(b) of this Rule for the specific use.

(ii) ALLOWABLE UPON AUTHORIZATION. Uses designated as allowable upon authorization in Sub-Items (9)(b) and (10)(b) of this Rule require a written Authorization Certificate from the Authority for impacts within the riparian buffer provided that there are no practical alternatives to the requested use pursuant to Rule .0705 of this Section.

(iii) ALLOWABLE WITH MITIGATION UPON AUTHORIZATION. Uses designated as allowable with mitigation allowable upon authorization in Sub-Item (10)(b) of this Rule require a written Authorization Certificate from the Authority for impacts within the riparian buffer provided that there are no practical alternatives to the requested use pursuant to Rule .0705 of this Section and an appropriate mitigation strategy has received written approval pursuant to Item (11) of this Rule.

(iv) PROHIBITED. Uses designated as prohibited in Sub-Item (10)(b) of this Rule may not proceed within the riparian buffer unless a Variance is granted pursuant to Rule .0226 of this Section. Mitigation may be required as a condition of variance approval.

(v) ALLOWABLE WITH EXCEPTION. Uses not designated as deemed allowable, allowable upon authorization, allowable with mitigation upon authorization or prohibited in Sub-Item (10)(b) of this Rule require a written Authorization Certificate with Exception from the Authority for impacts within the riparian buffer pursuant to Rule .0705 of this Section and an appropriate mitigation strategy that has received written approval pursuant to Item (11) of this Rule.

(b) The following ~~chart~~ table sets out ~~the~~ potential new uses within the riparian buffer, or outside the buffer with hydrological impacts on the riparian buffer, and designates ~~them~~~~their designation under this Rule~~ as ~~exempt~~,deemed allowable, allowable upon authorization, or allowable with ~~mitigation, or prohibited~~ mitigation upon authorization.: ~~The requirements for each category are given in Item (7) of this Rule.~~

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Commented [HK75]: Update terminology

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Commented [HK77]: Update terminology

Commented [HK78]: No effect – moved from (7) below

Commented [HK79]: Changed to variance process set out in Rule .0226

Commented [HK80]: New category – instead of deeming all activities not listed in the table as "prohibited" they will go through buffer authorization process but still have to meet hardships.

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Commented [HK83]: No effect - clarification

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Commented [HK85]: No effect – update terminology

Commented [HK86]: No effect – update terminology

Commented [HK87]: No effect – update terminology

Commented [HK88]: Moved to (a) above

	~~Exempt~~ Deemed Allowable	Allowable Upon Authorization	Allowable with Mitigation Upon Authorization	Prohibited
Airport facilities: • Vegetation removal activities necessary to comply with Federal Aviation Administration requirements (e.g. line of sight requirements) provided the disturbed areas are stabilized and revegetated	X			
• Airport facilities that impact equal to or less than ~~150 linear feet or~~ one-third of an acre of riparian buffer		X		
• Airport facilities that impact greater than ~~150 linear feet or~~ one-third of an acre of riparian buffer			X	
Archaeological activities	X			
Bridges • Impact equal to or less than one-tenth of an acre of riparian buffer	X			
• Impact greater than one-tenth of an acre of riparian buffer		X		
Dam maintenance activities • Dam maintenance activities that do not cause additional riparian buffer disturbance beyond the footprint of the existing dam or those covered under a U.S. Army Corps of Engineers permit	X			
• Dam maintenance activities that do cause additional riparian buffer disturbance beyond the footprint of the existing dam or those not covered under a U.S. Army Corps of Engineers permit		X		
~~Drainage ditches, roadside ditches and stormwater outfalls through riparian buffers:~~ ~~• Existing drainage ditches, roadside ditches, and stormwater outfalls provided that they are managed to minimize the sediment, nutrients and other pollution that convey to waterbodies~~	~~X~~	~~X~~		

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Commented [HK90]: No effect – update terminology

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Commented [HK92]: Codifying policy

Commented [HK93]: Removed linear feet; will just reference square feet for east of implementation

Commented [HK94]: Removed linear feet; will just reference square feet for east of implementation

Commented [HK95]: Added new use to allow bridges with less than 1/10 to be deemed allowable; consistent with road impacts

Commented [HK96]: Require authorization certificate for new impacts to buffers

	~~Exempt~~ Deemed Allowable	Allowable Upon Authorization	Allowable with Mitigation Upon Authorization	Prohibited
• ~~New drainage ditches, roadside ditches and stormwater outfalls provided that a stormwater management facility is installed to control nitrogen and attenuate flow before the conveyance discharges through the riparian buffer~~				
• ~~New drainage ditches, roadside ditches and stormwater outfalls that do not provide control for nitrogen before discharging through the riparian buffer~~				~~X~~
• ~~Excavation of the streambed in order to bring it to the same elevation as the invert of a ditch~~				~~X~~
Drainage of a pond ~~in a natural drainage way~~ subject to Item (4) of this Rule provided that a new riparian buffer ~~that meets the requirements of Items (9)(4) and (5)(10) of this Rule~~ is established ~~adjacent to the new channel~~ by natural regeneration or planting, within 50 feet of any stream which naturally forms or is constructed within the drained pond area. Drained ponds shall be allowed to naturalize for a minimum of six months from completion of the draining activity before a stream determination is conducted pursuant to Item (4) of this Rule.	X			
~~Driveway crossings of streams and other surface waters subject to this Rule:~~				
• ~~Driveway crossings on single family residential lots that disturb equal to or less than 25 linear feet or 2,500 square feet of riparian buffer~~	~~X~~			
• ~~Driveway crossings on single family residential lots that disturb greater than 25 linear feet or 2,500 square feet of riparian buffer~~		~~X~~		
• ~~In a subdivision that cumulatively disturb equal to or less than 150 linear feet or one third of an acre of riparian buffer~~		~~X~~		
			~~X~~	

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Commented [HK98]: No effect - clarification

Commented [HK99]: Clarification of regeneration process after pond is drained

	~~Exempt~~ Deemed Allowable	Allowable Upon Authorization	Allowable with Mitigation Upon Authorization	Prohibited
• ~~In a subdivision that cumulatively disturb greater than 150 linear feet or one-third of an acre of riparian buffer~~				
Fences:				
• Fencing livestock out of surface waters	X			
• Installation does not result in removal of trees	X			
• Installation results in removal of trees~~Fences provided that disturbance is minimized and installation does not result in removal of forest vegetation~~		X		
Forest harvesting - see ~~Item (11)(15) of this~~ Rule .0706 of this Section				
Fertilizer application: • One-time fertilizer application to establish replanted ~~vegetation~~ vegetation. This only applies to the one-time application of fertilizer in the riparian buffer. No runoff from this one-time application in the riparian buffer is allowed in the applicable surface water. • Ongoing fertilizer application	X			X
Grading ~~and revegetation~~ in Zone 2 only provided that ~~diffuse flow and~~ the health of existing vegetation in Zone 1 is not ~~compromised~~ compromised, Item (9) of this Rule is complied with, and disturbed areas are stabilized and revegetated	X			
~~Greenway / hiking trails~~Greenways, trails, sidewalks or linear pedestrian/bicycle transportation system: • In Zone 2 provided that no built upon area is added within the buffer • When built upon area is added to the buffer, equal to or less than ten (10) feet wide with two (2) foot wide shoulders. Must be located outside Zone 1 unless there is no practical alternative	X	X	X	

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Commented [HK91]: No effect – update terminology

Commented [HK100]: Moved below with road impacts

Commented [HK101]: New deemed allowable use

Commented [HK102]: No effect - grammar

Commented [HK103]: New allowable use

Commented [HK104]: No effect – update citation

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Commented [HK106]: No effect – clarification and updated citation

	~~Exempt~~ Deemed Allowable	Allowable Upon Authorization	Allowable with Mitigation Upon Authorization	Prohibited
• When built upon area is added to the buffer, greater than ten (10) feet wide with two (2) foot wide shoulders. Must be located outside Zone 1 unless there is no practical alternative				
Historic preservation	X			
Landfills as defined by G..S. 130A-290.				X
Mining activities: • Mining activities that are covered by the Mining Act provided that new riparian buffers that meet the requirements of Items ~~(4)~~(8) and ~~(5)~~(9) of this Rule are established adjacent to the relocated channels • Mining activities that are not covered by the Mining Act OR where new riparian buffers that meet the requirements or Items ~~(4)~~(8) and ~~(5)~~(9) of this Rule are not established ~~adjacent to the relocated channels~~ • Wastewater or mining dewatering wells with approved NPDES permit	X	X	X	
~~Non-electric utility lines:~~ ~~– Impacts other than perpendicular crossings in Zone 2 only[3]~~ ~~– Impacts other than perpendicular crossings in Zone 1[3]~~		~~X~~	~~X~~	
~~Non-electric utility line perpendicular crossings of streams and other surface waters subject to this Rule[3]:~~ ~~– Perpendicular crossings that disturb equal to or less than 40 linear feet of riparian buffer with a maintenance corridor equal to or less than 10 feet in width~~ ~~– Perpendicular crossings that disturb equal to or less than 40 linear feet of riparian buffer with a maintenance corridor greater than 10 feet in width~~	~~X~~	~~X~~ ~~X~~		

Commented [HK89]: No effect – update terminology

Commented [HK90]: No effect – update terminology

Commented [HK91]: No effect – update terminology

Commented [HK107]: Codifying policy

Commented [HK108]: No effect – update citation

Commented [HK109]: No effect – update citation

Commented [HK110]: Allows mining activities that do not relocate channels to pursue an authorization certificate

Commented [HK111]: Moved to below

	~~Exempt~~ Deemed Allowable	Allowable Upon Authorization	Allowable with Mitigation Upon Authorization	Prohibited
~~– Perpendicular crossings that disturb greater than 40 linear feet but equal to or less than 150 linear feet of riparian buffer with a maintenance corridor equal to or less than 10 feet in width~~ ~~– Perpendicular crossings that disturb greater than 40 linear feet but equal to or less than 150 linear feet of riparian buffer with a maintenance corridor greater than 10 feet in width~~ ~~– Perpendicular crossings that disturb greater than 150 linear feet of riparian buffer~~			~~X~~ ~~X~~	
On-site sanitary sewage systems - new ones that use ground absorption				X
~~Overhead electric utility lines:~~ ~~– Impacts other than perpendicular crossings in Zone 2 only[3]~~ ~~– Impacts other than perpendicular crossings in Zone 1[1,2,3]~~	~~X~~ ~~X~~			
~~Overhead electric utility line perpendicular crossings of streams and other surface waters subject to this Rule[3]:~~ ~~– Perpendicular crossings that disturb equal to or less than 150 linear feet of riparian buffer[1]~~ ~~– Perpendicular crossings that disturb greater than 150 linear feet of riparian buffer[1,2]~~	~~X~~	~~X~~		
~~Periodic maintenance of~~ Maintenance access on modified natural streams or canals: a grassed travel way on one side of the water body when less impacting alternatives are not practical. The width and specifications of the travel way shall be only that needed for equipment access and operation. The travel way shall be located to maximize stream shading~~such as canals and a grassed travelway on~~		X		

Commented [HK89]: No effect – update terminology

Commented [HK90]: No effect – update terminology

Commented [HK91]: No effect – update terminology

Commented [HK112]: Moved to below

Commented [HK113]: Moved to below

Commented [HK114]: Moved to below

	~~Exempt~~ Deemed Allowable	Allowable Upon Authorization	Allowable with Mitigation Upon Authorization	Prohibited
~~one side of the surface water when alternative forms of maintenance access are not practical~~				

[4] ~~Provided that, in Zone 1, all of the following BMPs for overhead utility lines are used. If all of these BMPs are not used, then the overhead utility lines shall require a no practical alternative evaluation by the Division.~~

- ~~A minimum zone of 10 feet wide immediately adjacent to the water body shall be managed such that only vegetation that poses a hazard or has the potential to grow tall enough to interfere with the line is removed.~~
- ~~Woody vegetation shall be cleared by hand. No land grubbing or grading is allowed.~~
- ~~Vegetative root systems shall be left intact to maintain the integrity of the soil. Stumps shall remain where trees are cut.~~
- ~~Rip rap shall not be used unless it is necessary to stabilize a tower.~~
- ~~No fertilizer shall be used other than a one-time application to re-establish vegetation.~~
- ~~Construction activities shall minimize the removal of woody vegetation, the extent of the disturbed area, and the time in which areas remain in a disturbed state.~~
- ~~Active measures shall be taken after construction and during routine maintenance to ensure diffuse flow of stormwater through the buffer.~~
- ~~In wetlands, mats shall be utilized to minimize soil disturbance.~~

[3] ~~Provided that poles or towers shall not be installed within 10 feet of a water body unless the Division completes a no practical alternative evaluation.~~

[3] ~~Perpendicular crossings are those that intersect the surface water at an angle between 75° and 105°.~~

	~~Exempt~~ Deemed Allowable	Allowable Upon Authorization	Allowable with Mitigation Upon Authorization	Prohibited
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:	X			

Commented [HK89]: No effect – update terminology

Commented [HK90]: No effect – update terminology

Commented [HK91]: No effect – update terminology

Commented [HK115]: clarification

Commented [HK116]: Incorporated relevant footnotes into uses within the table

Commented [HK117]: No effect – updated terminology

	~~Exempt~~ Deemed Allowable	Allowable Upon Authorization	Allowable with Mitigation Upon Authorization	Prohibited
• Pedestrian access trail equal to or less than six (6) feet wide that does not result in the removal of any tree(s) within the riparian buffer and does not result in any built upon area being added to the riparian buffer		X		
• Pedestrian access trail equal to or less than six (6) feet wide where the installation or use results in the removal of tree(s) or addition of built upon area to the riparian buffer			X	
• Pedestrian access trail greater than six (6) feet wide				
Playground equipment:				
• Playground equipment on single family lots provided that installation and use does not result in removal of vegetation	X			
• Playground equipment on single family lots where installation or use results in the removal of vegetation		X		
• Playground equipment installed on lands other than single-family lots ~~or that requires removal of vegetation~~		X		
Ponds created or modified by impounding streams subject to the buffers pursuant to Item (3) of this Rule and not used as stormwater control measures (SCMs):~~Ponds in natural drainage ways, excluding dry ponds:~~		X		
• New ponds provided that a riparian buffer that meets the requirements of Items ~~(4)~~(8) and ~~(5)~~(9) of this Rule is established adjacent to the pond			X	
• New ponds where a riparian buffer that meets the requirements of Items ~~(4)~~(8) and ~~(5)~~(9) of this Rule is NOT established adjacent to the pond				

Commented [HK117]: No effect – updated terminology

Commented [HK118]: New use to allow for impacts to buffer for access trails to surface waters and associated docking facilities

Commented [HK119]: No effect – split into two bullets for clarification

Commented [HK120]: No effect - clarification

Commented [HK121]: No effect – update citation

Commented [HK122]: No effect – update citation

	~~Exempt~~ Deemed Allowable	Allowable Upon Authorization	Allowable with Mitigation Upon Authorization	Prohibited
Protection of existing structures and facilities, including existing utility lines, ~~structures, facilities and streambanks~~ when this requires additional disturbance of the riparian buffer ~~or the stream channel~~		X		
~~Railroad impacts other than crossings of streams and other surface waters subject to this Rule.~~			~~X~~	
~~Railroad crossings of streams and other surface waters subject to this Rule:~~ • ~~Railroad crossings that impact equal to or less than 40 linear feet of riparian buffer~~ • ~~Railroad crossings that impact greater than 40 linear feet but equal to or less than 150 linear feet or one-third of an acre of riparian buffer~~ • ~~Railroad crossings that impact greater than 150 linear feet or one-third of an acre of riparian buffer~~	~~X~~	~~X~~	~~X~~	
Removal of previous fill or debris provided that ~~diffuse flow is maintained~~Item (9) of this Rule is complied with and any vegetation removed is restored	X			
Residential Properties: Where application of this Rule would preclude construction of a single-family residence and necessary infrastructure, such as an on-site wastewater system, the single-family residence may encroach on the buffer if all of the following conditions are met: (1) the residence is set back the maximum feasible distance from the top of the bank, rooted herbaceous vegetation, normal high-water level, or normal water level, whichever is applicable, on the existing lot and designed to minimize encroachment into the riparian buffer; (2) the residence is set back a minimum of 30 feet landward of the top of the bank, rooted herbaceous vegetation, normal high-water level, or normal water level, whichever is applicable; (3) the				

Commented [HK117]: No effect – updated terminology

Commented [HK123]: No effect – streambanks in table below; clarified "structures and facilities" includes existing utility lines

Commented [HK124]: Moved to below

Commented [HK125]: Moved to below

Commented [HK126]: No effect - update citation

	~~Exempt~~ Deemed Allowable	Allowable Upon Authorization	Allowable with Mitigation Upon Authorization	Prohibited
residence complies with Item (9) of this Rule; and (4) if the residence will be served by an on-site wastewater system, no part of the septic tank or drainfield may encroach into the riparian buffer		X		
• The residence and necessary infrastructure impact Zone 2 only			X	
• The residence or necessary infrastructure impact Zone 1				
Restoration or enhancement (wetland, stream) as defined in 33 CFR Part 332 available free of charge on the internet at: http://water.epa.gov/lawsregs/guidance/wetlands/wetlandsmitigation_index.cfm:				
• Wetland or stream restoration that does not require written Division approval that results in impacts to the riparian buffer	X			
• Wetland or stream restoration that requires written Division approval that results in impacts to the riparian buffer		X		
~~Road~~ Road, driveway or railroad impacts other than perpendicular crossings of streams and other surface waters subject to this Rule			X	
~~Road~~ Road, driveway or railroads: perpendicular crossings of streams and other surface waters subject to this ~~Rule~~ Rule or perpendicular entry into the buffer that does not cross a stream or other surface water subject to this Rule:	X			
• ~~Road crossings that impact~~Impact equal to or less than one-tenth of an acre ~~40 linear feet~~ of riparian buffer		X		
• ~~Road crossings that impact~~Impact greater than one-tenth of an acre ~~40 linear feet~~ but equal to or less than ~~150 linear feet or~~ one-third of an acre of riparian buffer			X	
• ~~Road crossings that impact~~Impact greater than ~~150 linear feet or~~ one-third of an acre of riparian buffer		X		

Commented [HK117]: No effect – updated terminology

Commented [HK127]: Incorporating SL 2011-394 and SL 2012-200

Commented [HK128]: New use to allow impacts to Zone 1 for single-family residences

Commented [HK129]: Moved from below

Commented [HK130]: No effect – incorporating road, driveway and railroad into one row as requirements were all the same

Commented [HK131]: No effect – incorporating road, driveway and railroad into one row as requirements were all the same

Commented [HK132]: Clarification

Commented [HK133]: No effect - grammar

Commented [HK134]: Removed linear feet; will just reference square feet for ease of implementation

Commented [HK135]: No effect - grammar

Commented [HK136]: Removed linear feet; will just reference square feet for ease of implementation

Commented [HK137]: No effect - grammar

Commented [HK138]: Removed linear feet; will just reference square feet for ease of implementation

	~~Exempt~~ Deemed Allowable	Allowable Upon Authorization	Allowable with Mitigation Upon Authorization	Prohibited
• Driveway crossings in a subdivision that cumulatively disturb equal to or less than one-third of an acre of riparian buffer • Driveway crossings in a subdivision that cumulatively disturb greater than one-third of an acre of riparian buffer			X	
Road relocation of existing private access roads associated with public road projects where necessary for public safety: • Less than or equal to 2,500 square feet of riparian buffer impact • Greater than 2,500 square feet of riparian buffer impact		X	X	
Scientific studies and stream gauging	X			
Slatted uncovered decks, including steps, which are associated with a dwelling, provided that it meets the requirements of Items (8) and (9) of this Rule and: • Installation does not result in removal of vegetation in Zone 1 • Installation results in removal of vegetation in Zone 1		X	X	
Stormwater ~~management ponds excluding dry ponds:~~Control Measure (SCM) as defined in 15A NCAC 02H .1002: • ~~New stormwater management ponds provided that a riparian buffer that meets the requirements of Items (4) and (5) of this Rule is established adjacent to the pond~~In Zone 2 if Item (9) of this Rule is complied with • ~~New stormwater management ponds where a riparian buffer that meets the requirements of Items (4) and (5) of this Rule is NOT established adjacent to the pond~~In Zone 1		X	X	
~~Stream restoration~~	~~X~~			

Commented [HK117]: No effect – updated terminology

Commented [HK139]: Moved from above

Commented [HK140]: New use

Commented [HK141]: New use

Commented [HK142]: Changes uses to allow any SCM in the buffer instead of just wet ponds.

Commented [HK143]: Moved to above

	~~Exempt~~ Deemed Allowable	Allowable Upon Authorization	Allowable with Mitigation Upon Authorization	Prohibited
Streambank or shoreline stabilization		X		
Temporary roads, provided that the disturbed area is restored to pre-construction topographic and hydrologic conditions and replanted with comparable vegetation within two (2) months of when construction is complete. Tree planting may occur during the dormant season. At the end of five years, the restored wooded buffer shall comply with the restoration criteria in Paragraph (i) of Rule .0295 of this Section:~~roads:~~				
• ~~Temporary roads that disturb less~~Less than or equal to 2,500 square feet ~~provided that vegetation is restored within six months of initial disturbance~~of riparian buffer disturbance	X			
• ~~Temporary roads that disturb greater~~Greater than 2,500 square feet of riparian buffer disturbance~~provided that vegetation is restored within six months of initial disturbance~~		X		
• ~~Temporary roads used for~~Associated with culvert installation or bridge construction or replacement ~~provided that restoration activities such as soil stabilization and revegetation, occur immediately after construction~~		X		
Temporary sediment and erosion control devices provided that the disturbed area is restored to preconstruction topographic and hydrologic conditions and replanted with comparable vegetation within two (2) months of when construction is complete. Tree planting may occur during the dormant season. At the end of five years, the restored buffer shall comply with the restoration criteria in Paragraph (i) of Rule .0295 of this Section:~~devices:~~	X			

Commented [HK117]: No effect – updated terminology

Commented [HK144]: No effect - clarification

Commented [HK145]: clarification

Commented [HK146]: no effect - grammar

Commented [HK147]: moved to wording above

Commented [HK148]: no effect - grammar

Commented [HK149]: moved to wording above

Commented [HK150]: no effect - grammar

Commented [HK151]: moved to wording above

Commented [HK152]: added language for restoring temporarily disturbed area; consistent with requirement for temporary roads

	~~Exempt~~ Deemed Allowable	Allowable Upon Authorization	Allowable with Mitigation Upon Authorization	Prohibited
• In Zone 2 only provided ground cover is established within the timeframes required by the Sedimentation and Erosion Control Act, vegetation in Zone 1 is not compromised, ~~that the vegetation in Zone 1 is not compromised~~ and that discharge is released ~~as diffuse flow~~ in accordance with Item ~~(5)~~(9) of this Rule		X		
• In Zones 1 and 2 to control impacts associated with uses approved by the Authority ~~Division~~ or that have received ~~a variance~~an exception provided that sediment and erosion control for upland areas is addressed ~~to the maximum extent practical~~ outside the buffer	X			
• In-stream temporary erosion and sediment control measures for work within a stream channel that is authorized under Sections 401 and 404 of the Federal Water Pollution Control Act		X		
• In-stream temporary erosion and sediment control measures for work within a stream that has written approval from the Division and the U.S. Army Corps of Engineers under Sections 401 & 404 of the Federal Water Pollution Control Act				
~~Underground electric utility lines:~~ ~~– Impacts other than perpendicular crossings in Zone 2 only[3]~~ ~~– Impacts other than perpendicular crossings in Zone 1[4]~~	~~X~~ ~~X~~			
~~Underground electric utility line perpendicular crossings of streams and other surface waters subject to this Rule:~~ ~~– Perpendicular crossings that disturb less than or equal to 40 linear feet of riparian buffer[4]~~ ~~– Perpendicular crossings that disturb greater than 40 linear feet of riparian buffer[4]~~	~~X~~	~~X~~		

Commented [HK117]: No effect – updated terminology

Commented [HK153]: incorporate compliance with E&SC plan

Commented [HK154]: no effect – update citation

Commented [HK155]: no effect – update name

Commented [HK156]: no effect – update terminology

Commented [HK157]: removed unnecessary language; this will be reviewed as part of the no practical alternatives analysis

Commented [HK158]: clarification

Commented [HK159]: moved to below

Commented [HK160]: moved to below

	~~Exempt~~ Deemed Allowable	Allowable Upon Authorization	Allowable with Mitigation Upon Authorization	Prohibited
Utility – Sewer lines:				
• Perpendicular crossings of streams and other surface waters subject to this Rule or perpendicular entry into the buffer that does not cross a stream or other surface water subject to this Rule:				
○ Construction activities that disturb less than or equal to 40 linear feet of riparian buffer provided that vegetative root systems and stumps shall be left intact to maintain the integrity of the soil except in the trench where trees are cut and that vegetation is allowed to regenerate in disturbed areas with the exception of a maintenance corridor equal to or less than 20 feet in width	X			
○ Construction activities that disturb greater than 40 linear feet and less than or equal to 150 linear feet of riparian buffer provided that vegetative root systems and stumps shall be left intact to maintain the integrity of the soil except in the trench where trees are cut and that vegetation is allowed to regenerate in disturbed areas with the exception of a maintenance corridor equal to or less than 20 feet in width		X		
○ Construction activities that disturb greater than 150 linear feet of riparian buffer			X	
○ Any activities with a permanent maintenance corridor greater than 20 feet in width			X	
• Impacts other than perpendicular crossings:				

Commented [HK117]: No effect – updated terminology

Commented [HK161]: changed 3 categories of utilities from (1) non-electric, (2) electric aerial and (3) electric underground to (1) sewer lines, (2) non-sewer underground and (3) non-sewer aerial

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Commented [HK162]: clarify this use can include perpendicular entry into the buffer that doesn't cross stream (e.g., connecting to an existing line)

Commented [HK163]: increased maintenance corridor from 10 feet to 20 feet

Commented [HK164]: changed from allowable with mitigation to allowable

Commented [HK165]: no change

Commented [HK166]: changed from allowable to allowable with mitigation. Also expanded use for any perpendicular crossing, not just those less than 40 linear feet

Commented [HK167]: no change

	~~Exempt~~ Deemed Allowable	Allowable Upon Authorization	Allowable with Mitigation Upon Authorization	Prohibited
○ Impacts in Zone 2 provided vegetation is re-established after disturbance and the function of Zone 1 is not compromised	X			
○ Impacts in Zone 1 less than 2,500 square feet when impacts are solely the result of tying to an existing utility line and provided that land grubbing or grading is not conducted within 10 feet immediately adjacent to the water		X		
○ Impacts to Zone 1 for the replacement of an existing sewer line within Zone 1 provided that the new line is within an existing Right-of-Way and land grubbing or grading is not conducted within 10 feet immediately adjacent to the water		X		
○ Impacts to Zone 1 for the purpose of reclaiming a maintenance corridor for an existing sewer line provided that trees and shrubs are not cleared within 10 feet immediately adjacent to the water		X		
○ Impacts to Zone 1 other than noted above			X	
• Vegetation maintenance activities along an existing utility line beyond the footprint of an existing utility line maintenance corridor where the total maintenance corridor is equal to or less than 20 linear feet in width		X		
• Vegetation maintenance activities along an existing utility line beyond the footprint of an existing utility line maintenance corridor where the total maintenance corridor is greater than 20 linear feet in width			X	

Commented [HK117]: No effect – updated terminology

Commented [HK168]: changed from allowable to deemed allowable

Commented [HK169]: Changed from all impacts to Zone 1 triggering mitigation to only impacts above 2,500 square feet when not tying into an existing line

Commented [HK170]: New uses to accommodate replacement of existing sewer lines within Zone 1

Commented [HK171]: Changed from all impacts to Zone 1 triggering mitigation to only impacts above 2,500 square feet when not tying into an existing line

Commented [HK172]: New uses to allow for vegetation maintenance beyond the maintenance corridor

	~~Exempt~~ Deemed Allowable	Allowable Upon Authorization	Allowable with Mitigation Upon Authorization	Prohibited
Utilities – Non-sewer underground lines:				
• Perpendicular crossings of streams and other surface waters subject to this Rule or perpendicular entry into the buffer that does not cross a stream or other surface water subject to this Rule:				
○ Construction activities that disturb less than or equal to 50 linear feet of riparian buffer provided that vegetative root systems and stumps shall be left intact to maintain the integrity of the soil except in the trench where trees are cut and that vegetation is allowed to regenerate in disturbed areas with the exception of a maintenance corridor equal to or less than 30 feet in width	X			
○ Construction activities that disturb greater than 50 linear feet and less than or equal to 150 linear feet of riparian buffer provided that vegetative root systems and stumps shall be left intact to maintain the integrity of the soil except in the trench where trees are cut and that vegetation is allowed to regenerate in disturbed areas with the exception of a maintenance corridor equal to or less than 30 feet in width		X		
○ Construction activities that disturb greater than 150 linear feet of riparian buffer			X	
○ Any activities with a permanent maintenance corridor greater than 30 feet in width			X	
• Impacts other than perpendicular crossings:				

Commented [HK117]: No effect – updated terminology

Commented [HK173]: Changed 3 categories of utilities from (1) non-electric, (2) electric aerial and (3) electric underground to (1) sewer lines, (2) non-sewer underground and (3) non-sewer aerial

Commented [HK174]: Clarify this use can include perpendicular entry into the buffer that doesn't cross stream (e.g., connecting to an existing line)

Commented [HK175]: Changed 40 feet to 50 feet. Added language re maintenance corridor.

Commented [HK176]: Capped allowable use to impacts less than 150

Commented [HK177]: Changed use from allowable to allowable with mitigation for impacts greater than 150 feet

Commented [HK178]: New use

Commented [HK179]: No change

	~~Exempt~~ Deemed Allowable	Allowable Upon Authorization	Allowable with Mitigation Upon Authorization	Prohibited
○ Impacts in Zone Two provided vegetation is re-established after disturbance and the function of Zone 1 is not compromised	X			
○ Impacts in Zone One less than 2,500 square feet when impacts are a result of tying to an existing utility line and provided that land grubbing or grading is not conducted within 10 feet immediately adjacent to the water		X		
○ Impacts in Zone One other than listed above			X	
• Vegetation maintenance activities along an existing utility line beyond the footprint of an existing utility line maintenance corridor where the total maintenance corridor is equal to or less than 30 linear feet in width		X		
• Vegetation maintenance activities along an existing utility line beyond the footprint of an existing utility line maintenance corridor where the total maintenance corridor is greater than 30 linear feet in width			X	
Utilities – Non-sewer aerial lines:				
• Perpendicular crossings of streams and other surface waters subject to this Rule or perpendicular entry into the buffer that does not cross a stream or other surface water subject to this Rule:				
○ Disturb equal to or less than 150 linear feet of riparian buffer provided that a minimum zone of 10 feet wide immediately adjacent to the water body is managed such that only vegetation that poses a hazard or has the	X			

Commented [HK117]: No effect – updated terminology

Commented [HK180]: No change

Commented [HK181]: Capped impacts to zone 1 to less than 2,500 square feet when not tying into an existing line before triggering mitigation

Commented [HK182]: New uses to allow for vegetation maintenance beyond the maintenance corridor

Commented [HK183]: Changed 3 categories of utilities from (1) non-electric, (2) electric aerial and (3) electric underground to (1) sewer lines, (2) non-sewer underground and (3) non-sewer aerial

Commented [HK184]: Clarify this use can include perpendicular entry into the buffer that doesn't cross stream (e.g., connecting to an existing line)

	~~Exempt~~ Deemed Allowable	Allowable Upon Authorization	Allowable with Mitigation Upon Authorization	Prohibited
potential to grow tall enough to interfere with the line is removed, that no land grubbing or grading is conducted in Zone 1, and that that poles or aerial infrastructure are not installed within 10 feet of a water body				
○ Disturb greater than 150 linear feet of buffer		X		
• Impacts other than perpendicular crossings:				
○ Impacts in Zone Two		X		
○ Impacts in Zone One provided that a minimum zone of 10 feet wide immediately adjacent to the water body is managed such that only vegetation that poses a hazard or has the potential to grow tall enough to interfere with the line is removed, that no land grubbing or grading is conducted in Zone 1, and that that poles or aerial infrastructure are not installed within 10 feet of a water body			X	

Commented [HK117]: No effect – updated terminology

Commented [HK185]: No change

Commented [HK186]: No change

Commented [HK187]: No change

Commented [HK188]: Changed from deemed allowable to allowable; consistent with other utility line uses

[4] ~~Provided that, in Zone 1, all of the following BMPs for underground utility lines are used. If all of these BMPs are not used, then the underground utility line shall require a no practical alternative evaluation by the Division.~~

- ~~Woody vegetation shall be cleared by hand. No land grubbing or grading is allowed.~~
- ~~Vegetative root systems shall be left intact to maintain the integrity of the soil. Stumps shall remain, except in the trench, where trees are cut.~~
- ~~Underground cables shall be installed by vibratory plow or trenching.~~
- ~~The trench shall be backfilled with the excavated soil material immediately following cable installation.~~
- ~~No fertilizer shall be used other than a one-time application to re-establish vegetation.~~
- ~~Construction activities shall minimize the removal of woody vegetation, the extent of the disturbed area, and the time in which areas remain in a disturbed state.~~

- Active measures shall be taken after construction and during routine maintenance to ensure diffuse flow of stormwater through the buffer.
- In wetlands, mats shall be utilized to minimize soil disturbance.

	Exempt Deemed Allowable	Allowable Upon Authorization	Allowable with Mitigation Upon Authorization	Prohibited
Vehicle access roads and boat ramps (excluding parking areas) leading to surface water, docks, fishing piers, and other water dependent activities:				
• Single vehicular access road and boat ramp to the surface water but not crossing the surface water that are restricted to the minimum width practicable not to exceed 15 feet in width		X		
• Vehicular access roads and boat ramps to the surface water but not crossing the surface water that are restricted to the minimum width practicable and exceed 15 feet in width			X	
Vegetation management:				
• Emergency fire control measures provided that topography is and hydrology are restored	X			
• Periodic mowing and harvesting of plant products in Zone 2 only	X			
• Placement of mulch ring around restoration plantings for a period of five years from the date of planting	X			
• Planting non-invasive vegetation to enhance the riparian buffer	X			
• Pruning forest vegetation provided that the health and function of the forest vegetation is not compromised	X			
• Removal of individual trees which are in danger of causing damage to dwellings, utility lines, other structures or human lifelife, or are imminently endangering stability of the streambank provided that the stumps are left or ground in place without causing additional land disturbance.	X X X			

Commented [HK189]: Moved relevant language into table

Commented [HK190]: No effect – update terminology

Commented [HK191]: New use to allow for vehicle access roads and boat ramps to surface waters and associated docking facilities

Commented [HK192]: Clarification

Commented [HK193]: New use

Commented [HK194]: Clarification

Commented [HK195]: No effect - clarification

Commented [HK196]: Clarification

	~~Exempt~~Deemed Allowable	Allowable Upon Authorization	Allowable with Mitigation Upon Authorization	Prohibited
• Removal of individual trees that are dead, diseased or damaged				
• Removal or poison ~~ivy~~ivy, oak or sumac Removal can include application of pesticides within the riparian buffer if the pesticides are certified by EPA for use in or near aquatic sites and are applied in accordance with the manufacturer's instructions. If removal is significant, then the riparian buffer shall be replanted with non-invasive species.				
• Removal of understory nuisance vegetation as defined in: Smith, Cherri L. 2008. Invasive Plants of North Carolina. Dept. of Transportation. Raleigh, NC (available at http://portal.ncdenr.org/c/document_library/get_file?uuid=0acc6377-ea07-42dc-bb27-45a78d1c7ebe&groupId=38364)~~1998. Exotic Plant Guidelines. Dept. of Environment and Natural Resources. Division of Parks and Recreation. Raleigh, NC. Guideline #30~~. Removal can include application of pesticides within the riparian buffer is the pesticides are certified by EPA for use in or near aquatic sites and are applied in accordance with the manufacturer's instructions. If removal is significant then the riparian buffer shall be replanted with non-invasive species.				
• Removal of woody vegetation in Zone 1 provided that Item (9) of this Rule is complied with			X	
Water dependent structures (except for boat ramps) as defined in ~~15A NCAC 2B~~Rule .0202 of this Section		X		
Water supply reservoirs:		X		

Commented [HK190]: No effect – update terminology

Commented [HK197]: New use

Commented [HK198]: Allow for removal of additional nuisance species and allows for use of pesticides

Commented [HK199]: Update citation; allow for use of pesticides

Commented [HK200]: Per SL 2015-246

Commented [HK201]: No effect – boat ramps addressed above

Commented [HK202]: No effect – update citation

	~~Exempt~~Deemed Allowable	Allowable Upon Authorization	Allowable with Mitigation Upon Authorization	Prohibited
• New reservoirs provided that a riparian buffer that meets the requirements of Items ~~(4)~~(8) and ~~(5)~~(9) of this Rule is established adjacent to the reservoir • New reservoirs where a riparian buffer that meets the requirements of Items ~~(4)~~(8) and ~~(5)~~(9) of this Rule is NOT established adjacent to the reservoir			X	
Water wells	X			
Wildlife passage structures		X		
~~Wetland restoration~~	~~X~~			

~~(7) REQUIREMENTS FOR CATEGORIES OF USES. Uses designated as exempt, allowable, allowable with mitigation and prohibited in Item (6) of this Rule shall have the following requirements:~~

~~(a) EXEMPT. Uses designated as exempt are allowed within the riparian buffer. Exempt uses shall be designed, constructed and maintained to minimize soil disturbance and to provide the maximum water quality protection practicable. In addition, exempt uses shall meet requirements listed in Item (6) of this Rule for the specific use.~~

~~(b) ALLOWABLE. Uses designated as allowable may proceed within the riparian buffer provided that there are no practical alternatives to the requested use pursuant to Item (8) of this Rule. These uses require written authorization from the Division or the delegated local authority.~~

~~(c) ALLOWABLE WITH MITIGATION. Uses designated as allowable with mitigation may proceed within the riparian buffer provided that there are no practical alternatives to the requested use pursuant to Item (8) of this Rule and an appropriate mitigation strategy has been approved pursuant to Item (10) of this Rule. These uses require written authorization from the Division or the delegated local authority.~~

~~(d) PROHIBITED. Uses designated as prohibited may not proceed within the riparian buffer unless a variance is granted pursuant to Item (9) of this Rule. Mitigation may be required as one condition of a variance approval.~~

~~(8) DETERMINATION OF ANO PRACTICAL ALTERNATIVES." Persons who wish to undertake uses designated as allowable or allowable with mitigation shall submit a request for a "no practical~~

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alternatives" determination to the Division or to the delegated local authority. The applicant shall certify that the criteria identified in Sub-Item (8)(a) of this Rule are met. The Division or the delegated local authority shall grant an Authorization Certificate upon a "no practical alternatives" determination. The procedure for making an Authorization Certificate shall be as follows:

(a) For any request for an Authorization Certificate, the Division or the delegated local authority shall review the entire project and make a finding of fact as to whether the following requirements have been met in support of a "no practical alternatives" determination:

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

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

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

(b) Requests for an Authorization Certificate shall be reviewed and either approved or denied within 60 days of receipt of a complete submission based on the criteria in Sub-Item (8)(a) of this Rule by either the Division or the delegated local authority. Failure to issue an approval or denial within 60 days shall constitute that the applicant has demonstrated "no practical alternatives." The Division or the delegated local authority may attach conditions to the Authorization Certificate that support the purpose, spirit and intent of the riparian buffer protection program. Complete submissions shall include the following:

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

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

(iii) The location of the activity, including the jurisdiction;

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

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

(vi) Plans for any best management practices proposed to be used to control the impacts associated with the activity.

(c) Any disputes over determinations regarding Authorization Certificates shall be referred to the Director for a decision. The Director's decision is subject to review as provided in Articles 3 and 4 of G.S. 150B.

(9) VARIANCES. Persons who wish to undertake uses designated as prohibited may pursue a variance. The Division or the appropriate delegated local authority may grant minor variances. The variance request procedure shall be as follows:

(a) For any variance request, the Division or the delegated local authority shall make a finding of fact as to whether the following requirements have been met:

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

(A) If the applicant complies with the provisions of this Rule, he/she can secure no reasonable return from, nor make reasonable use of, his/her property. Merely proving that the variance would permit a greater profit from the property shall not be considered adequate justification for a variance. Moreover, the Division or delegated local authority shall consider whether the variance is the minimum possible deviation from the terms of this Rule that shall make reasonable use of the property possible.

(B) The hardship results from application of this Rule to the property rather than from other factors such as deed restrictions or other hardship.

(C) The hardship is due to the physical nature of the applicant's property, such as its size, shape, or topography, which is different from that of neighboring property.

(D) The applicant did not cause the hardship by knowingly or unknowingly violating this Rule.

(E) The applicant did not purchase the property after the effective date of this Rule, and then request an appeal.

(F) The hardship is unique to the applicant's property, rather than the result of conditions that are widespread. If other properties are equally subject to the hardship created in the restriction, then granting a variance would be a special privilege denied to others, and would not promote equal justice;

(ii) The variance is in harmony with the general purpose and intent of the State's riparian buffer protection requirements and preserves its spirit; and

(iii) In granting the variance, the public safety and welfare have been assured, water quality has been protected, and substantial justice has been done.

(b) MINOR VARIANCES. A minor variance request pertains to activities that are proposed only to impact any portion of Zone 2 of the riparian buffer. Minor variance requests shall

~~be reviewed and approved based on the criteria in Sub-Item (9)(a) of this Rule by the either the Division or the delegated local authority pursuant to G.S. 153A Article 18, or G.S. 160A Article 19. The Division or the delegated local authority may attach conditions to the variance approval that support the purpose, spirit and intent of the riparian buffer protection program. Requests for appeals of decisions made by the Division shall be made to the Office of Administrative Hearings. Request for appeals made by the delegated local authority shall be made to the appropriate Board of Adjustment under G.S. 160A 388 or G.S. 153A 345.~~

~~(c) MAJOR VARIANCES. A major variance request pertains to activities that are proposed to impact any portion of Zone 1 or any portion of both Zones 1 and 2 of the riparian buffer. If the Division or the delegated local authority has determined that a major variance request meets the requirements in Sub-Item (9)(a) of this Rule, then it shall prepare a preliminary finding and submit it to the Commission. Preliminary findings on major variance requests shall be reviewed by the Commission within 90 days after receipt by the Director. Requests for appeals of determinations that the requirements of Sub-Item (9)(a) of this Paragraph have not been met shall be made to the Office of Administrative Hearings for determinations made by the Division or the appropriate Board of Adjustments under G.S. 160A 388 or G.S. 153A 345 for determinations made by the delegated local authority. The purpose of the Commission's review is to determine if it agrees that the requirements in Sub-Item (9)(a) of this Rule have been met. Requests for appeals of decisions made by the Commission shall be made to the Office of Administrative Hearings. The following actions shall be taken depending on the Commission's decision on the major variance request:~~

~~(i) Upon the Commission's approval, the Division or the delegated local authority shall issue a final decision granting the major variance.~~

~~(ii) Upon the Commission's approval with conditions or stipulations, the Division or the delegated local authority shall issue a final decision, which includes these conditions or stipulations.~~

~~(iii) Upon the Commission's denial, the Division or the delegated local authority shall issue a final decision denying the major variance.~~

~~(10)~~(11) MITIGATION. Persons who wish to undertake uses designated as allowable with mitigation upon authorization as defined in Sub-Item (10)(a)(iii) of this Rule or allowable with exception as defined in Sub-Item (10)(a)(v) of this Rule shall meet the following requirements in order to proceed with their proposed use.

(a) Obtain ~~a determination of "no practical alternatives" to the proposed use~~ an Authorization Certificate pursuant to ~~Item (8) of this Rule.~~Rule .0705 of this Section; and

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(b) Obtain written approval for a mitigation proposal pursuant to ~~15A NCAC 02B .0260~~ Rule .0295 of this Section.

~~(11) REQUIREMENTS SPECIFIC TO FOREST HARVESTING. The following requirements shall apply for forest harvesting operations and practices.~~

~~(a) The following measures shall apply in the entire riparian buffer:~~

~~(i) Logging decks and sawmill sites shall not be placed in the riparian buffer.~~

~~(ii) Access roads and skid trails shall be prohibited except for temporary and permanent stream crossings established in accordance with 15A NCAC 01I .0203. Temporary stream crossings shall be permanently stabilized after any site disturbing activity is completed.~~

~~(iii) Timber felling shall be directed away from the stream or water body.~~

~~(iv) Skidding shall be directed away from the stream or water body and shall be done in a manner that minimizes soil disturbance and prevents the creation of channels or ruts.~~

~~(v) Individual trees may be treated to maintain or improve their health, form or vigor.~~

~~(vi) Harvesting of dead or infected trees or application of pesticides necessary to prevent or control extensive tree pest and disease infestation shall be allowed. These practices must be approved by the Division of Forest Resources for a specific site. The Division of Forest Resources must notify the Division of all approvals.~~

~~(vii) Removal of individual trees that are in danger of causing damage to structures or human life shall be allowed.~~

~~(viii) Natural regeneration of forest vegetation and planting of trees, shrubs, or ground cover plants to enhance the riparian buffer shall be allowed provided that soil disturbance is minimized. Plantings shall consist primarily of native species.~~

~~(ix) High intensity prescribed burns shall not be allowed.~~

~~(x) Application of fertilizer shall not be allowed except as necessary for permanent stabilization.~~

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

~~(b) In Zone 1, forest vegetation shall be protected and maintained. Selective harvest as provided for below is allowed on forest lands that have a deferment for use value under forestry in accordance with G.S. 105-277.2 through G.S. 277.6 or on forest lands that have a forest management plan prepared or approved by a registered professional forester. Copies of either the approval of the deferment for use value under forestry or the forest~~

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~~management plan shall be produced upon request. For such forest lands, selective harvest is allowed in accordance with the following:~~

~~(i) Tracked or wheeled vehicles are not permitted except at stream crossings designed, constructed and maintained in accordance with 15A NCAC 01I .0203.~~

~~(ii) Soil disturbing site preparation activities are not allowed.~~

~~(iii) Trees shall be removed with the minimum disturbance to the soil and residual vegetation.~~

~~(iv) The following provisions for selective harvesting shall be met:~~

~~(A) The first 10 feet of Zone 1 directly adjacent to the stream or waterbody shall be undisturbed except for the removal of individual high value trees as defined provided that no trees with exposed primary roots visible in the streambank be cut.~~

~~(B) In the outer 20 feet of Zone 1, a maximum of 50 percent of the trees greater than five inches dbh may be cut and removed. The reentry time for harvest shall be no more frequent than every 15 years, except on forest plantations where the reentry time shall be no more frequent than every five years. In either case, the trees remaining after harvest shall be as evenly spaced as possible.~~

~~(C) In Zone 2, harvesting and regeneration of the forest stand shall be allowed provided that sufficient ground cover is maintained to provide for diffusion and infiltration of surface runoff.~~

(12) REQUIREMENTS SPECIFIC TO LOCAL GOVERNMENTS WITH STORMWATER PROGRAMS FOR NITROGEN CONTROL. Local governments ~~in the Tar-Pamlico River Basin~~ that are required to have local stormwater programs ~~to control nitrogen loading~~pursuant to Rule.0258 of this Section shall have two options for ensuring protection of riparian buffers on new developments within their jurisdictions as follows.

(a) Obtain authority to implement a local riparian buffer protection program pursuant to ~~15A NCAC 02B .0261~~.Rule .0735 of this Section.

(b) Refrain from issuing local approvals for new development projects unless either:

(i) The person requesting the approval does not propose to impact the riparian buffer ~~of a surface water that appears on either the most recent versions of the soil survey maps prepared by the Natural Resources Conservation Service of the United States Department of Agriculture or the most recent versions of the 1:24,000 scale (7.5 minute quadrangle) topographic maps prepared by the United States Geologic Survey (USGS).~~as described in Item (3) of this Rule.

(ii) The person requesting the approval proposes to impact the riparian buffer ~~of a surface water that appears on the maps~~as described in ~~Sub-Item (12)(b)(i) of this Paragraph~~Item (3) of this Rule and either:

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(A) Has received an on-site determination from the ~~Division~~ Authority pursuant to ~~Sub-Item (3)(a)~~Item (4) of this Rule that surface waters are not present;

(B) Has received an Authorization Certificate from the Authority ~~Division~~ pursuant to ~~Item (8)(12) of this~~ Rule .0705 of this Section for uses designated as ~~Allowable~~ allowable upon authorization under this Rule;

(C) Has received an Authorization Certificate from the Authority ~~Division~~ pursuant to ~~Item (8) of this~~ Rule .0705 of this Section and obtained the ~~Division's~~ Authority's approval on a mitigation plan pursuant to Item ~~(10)~~(11) of this Rule for uses designated as ~~Allowable~~ allowable with Mitigation upon authorization under this Rule; or

(D) Has received ~~a variance from the Commission~~an exception from the Authority pursuant ~~to Item (9) of this Rule~~ Rule .0705 of this Section.

(13) OTHER LAWS, REGULATIONS AND PERMITS. In all cases, compliance with this Rule does not preclude the requirement to comply with all federal, state and local regulations and laws.

History Note: *Authority 143-214.1; 143-214.7; 143-215.3(a)(1); 143-215.6A; 143-215.6B; 143-215.6C; 143B-282(d); S.L. 1999, c. 329, s. 7.1; S.L 2011, c. 394; S.L. 2012, c. 200; S.L. 2013, c. 413.*
Temporary Adoption Eff. January 1, 2000;
Eff. August 1, 2000.

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15A NCAC 02B .0735 is proposed for adoption as follows:

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

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

(1) PROCEDURES FOR GRANTING ~~AND RESCINDING~~ DELEGATION. The Commission shall grant ~~and rescind~~ local government delegation of the Tar-Pamlico River Basin Riparian Buffer Protection requirements, as described in Rule ~~15A NCAC 2B. 0259,~~.0735 of this Section according to the following ~~procedures.~~procedures:

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

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

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

(iii) The local government ~~has adopted~~ ordinances, resolutions, or regulations necessary to establish ~~and maintain the Tar-Pamlico Basin riparian buffer protection requirements; and~~a riparian buffer program to meet the requirements of Rule .0734 of this Section, which shall include the following requirements:

(A) All riparian protection areas shall be recorded on all new or modified plats;

(B) The land within a riparian buffer area shall not be treated as if the land is the property of the state or any of its subdivisions unless the land or an interest therein has been acquired by the state or its subdivision by a conveyance or by eminent domain;

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Commented [HK5]: moved to item (8) below

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(C) Land within a riparian buffer area in which neither the State nor its subdivisions holds any property interest may be used by the property owner to satisfy any other development-related regulatory requirements based on property size, including, but not limited to, residential density and nonresidential intensity calculations and yields, tree conservation purposes, open space or conservation area requirements, setbacks, perimeter buffers, and lot area requirements;

(D) When riparian buffer requirements are placed outside of lots in portions of a subdivision that are designated as common areas or open space and neither the State nor its subdivisions holds any property interest in that riparian buffer area, the local government shall attribute to each lot abutting the riparian buffer area a proportionate share based on the area of all lots abutting the riparian buffer area for purposes of development-related regulatory requirements based on property size, including, but not limited to, residential density and nonresidential intensity calculations and yields, tree conservation purposes, open space or conservation area requirements, setbacks, perimeter buffers, and lot area requirements; and

(E) A requirement that no new clearing, grading or development take place nor any new building permits be issued in violation of Rule .0714 of this Section.

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

(b) If the local government is establishing a riparian buffer program that exceeds the requirements set forth in Rule .0714 of this Section in order to comply with or implement federal or state law, or as a condition of a permit, certificate, or other approval issued by a federal or state agency, the local government shall provide supporting documentation with their request for Commission approval.

(c) If the local government is establishing a riparian buffer program that exceeds the requirements set forth in Rule .0714 of this Section not as a requirement to comply with or implement federal or state law and not as a condition of a permit, certificate, or other approval issued by a federal or state agency, the local government shall provide scientific studies of the local environmental and physical conditions that support the necessity of the buffer requirements that exceed those established in Rule .0714 of this Section. The Commission shall not approve the ordinance unless it finds that the scientific evidence

presented by the local government supports the necessity of a riparian buffer program that exceeds the requirements set forth in Rule .0714 of this Section.

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

~~(c) The Commission, upon determination that a delegated local authority is failing to implement or enforce the Tar-Pamlico Basin riparian buffer protection requirements in keeping with a request approved under Sub-item (1)(b) of this Rule, shall notify the delegated local authority in writing of the local program's inadequacies. If the delegated local authority has not corrected the deficiencies within 90 days of receipt of the written notification, then the Commission shall rescind the delegation of authority to the local government and shall implement and enforce the Tar-Pamlico Basin riparian buffer protection requirements.~~

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

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

(3) PROCEDURES FOR USES WITHIN RIPARIAN BUFFERS THAT ARE ALLOWABLE UPON AUTHORIZATION AND ALLOWABLE WITH ~~MITIGATION.~~MITIGATION UPON AUTHORIZATION. Upon receiving delegation, local ~~authorities~~ governments shall review ~~proposed uses within the riparian buffer and issue approvals if the uses meet the Tar-Pamlico Basin riparian buffer protection requirements. Delegated local authorities shall issue an Authorization Certificate for uses if the proposed use meets the Tar-Pamlico Basin riparian buffer protection requirements, or provides for appropriate mitigated provisions to the Tar-Pamlico Basin riparian buffer protection requirements. The Division may challenge a decision made by a delegated local authority for a period of 30 days after the Authorization Certificate is issued. If the Division does~~

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Commented [HK28]: Ensures on-site determinations continue when local governments don't have anyone on staff certified to make calls. This is codifying current practice.

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~~not challenge an Authorization Certificate within 30 days of issuance, then the delegated local authority's decision shall stand.~~applications requesting an Authorization Certificate pursuant to the requirements set forth in Rule .0705 of this Section.

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

(5) LIMITS OF DELEGATED LOCAL AUTHORITY. The ~~Commission~~ Division shall have jurisdiction to the exclusion of local governments to implement the Tar-Pamlico Basin riparian buffer protection requirements for the following types of activities:

(a) Activities conducted under the authority of the State;

(b) Activities conducted under the authority of the United States;

(c) Activities conducted under the authority of multiple jurisdictions;

(d) Activities conducted under the authority of local units of ~~government.~~government;

(e) Forest harvesting activities described in Rule .0706 of this Section; and

(f) Agricultural activities.

(6) RECORD-KEEPING REQUIREMENTS. Delegated local ~~authorities~~ governments shall maintain on-site records for a minimum of 5 years. Delegated local ~~authorities~~ governments must furnish a copy of these records to the ~~Director~~ Division within 30 calendar days of receipt of a written request for the records. ~~The Division shall inspect local riparian buffer protection programs to ensure that the programs are being implemented and enforced in keeping with a request approved under Sub-item (1)(b) of this Rule.~~ Each delegated local ~~authority's~~ government's records shall include the following:

(a) A copy of ~~variance~~ Authorization Certificate with exception requests;

(b) The ~~variance~~ Authorization Certificate with exception request's finding of fact;

(c) The result of the ~~variance~~ Authorization Certificate with exception proceedings;

(d) A record of complaints and action taken as a result of the complaint;

(e) Records for stream origin calls and stream ratings; and

(f) Copies of request for authorization, records approving authorization and Authorization Certificates.

(7) AUDITS OF LOCAL AUTHORITIES. The Division shall regularly audit delegated local governments to ensure the local programs are being implemented and enforced in keeping with the requirements of this Rule and Rule .0734 of this Section.

(8) PROCEDURES FOR RESCINDING DELEGATION. Upon determination by the Division that a delegated local government is failing to implement or enforce the Tar-Pamlico Basin riparian buffer protection requirements in keeping with the request approved under Subparagraph (1)(d) of this

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Rule, the Commission shall notify the delegated local government in writing of the local program's inadequacies. If the delegated local government has not corrected the deficiencies within 90 calendar days of receipt of the written notification, then the Commission shall rescind the delegation of authority to the local government and the Division shall implement and enforce the Tar-Pamlico River Basin riparian buffer protection requirements within their jurisdiction.

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

History Note: *Authority G S. 143-214.1; 143-214.7; 143-215.3(a)(1); 143-215.6A; 143-215.6B; 143-215.6C; 143B-282(d); S.L. 1999; c. 329, s. 7.1;*
Temporary Adoption Eff. January 1, 2000;
Eff. August 1, 2000.
Amended Eff. INSERT DATE

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