

Lower Neuse Basin Association®
Neuse River Compliance Association®

Post Office Box 1410
Clayton, North Carolina 27528 – 1410

February 20, 2018

Mr. J.D. Solomon, Chairman
and EMC Commissioners
N.C. Environmental Management Commission
1611 Mail Service Center
Raleigh, N.C. 27699 - 1617

Dear Chairman Solomon and Commissioners:

I am writing this letter as chairman of the Lower Neuse Basin Association (“LNBA”) and the Neuse River Compliance Association (“NRCA”). At the January 10, 2018 meeting, the Water Quality Committee approved draft rules revising the riparian buffer requirements for the Neuse River Basin. On behalf of the Associations, I respectfully request that the EMC amend paragraph (6) of draft rule 15A NCAC 2B .0714 before the rule is sent to public notice and comment.

This request arises from the requirements imposed on sewer utilities by the Collection System Permit issued under the authority of this Commission. It is a violation of this permit for sewage to discharge from the sewer collection system, except into the treatment facility. These discharges are known as “SSOs” [sanitary sewer overflows]. This permit and the accompanying requirement were put in place after many sewer lines had already been installed in areas now designated as riparian buffers under the riparian buffer rule. The sewer utility is required to immediately repair any source from which a SSO arises as well as to maintain and expand the lines as necessary to prevent SSOs. A regular cause of SSOs is the intrusion of tree roots into the sewer lines.

In an effort to prevent SSOs from being caused by tree root intrusion, the Collection System permit strongly encourages sewer utilities to maintain the easement in a condition free from trees and their root systems. However, the Division’s permit leaves to the sewer utility discretion on how to effectively manage the easement areas. New technology makes it possible to maintain the lines with use of a cutting tool that passes through the sewer line itself and allows the easements to continue to provide nutrient uptake by trees. However, the draft rule will require a sewer utility to pay compensatory mitigation for its disturbance of existing trees when it repairs or a break or replaces such a line. That requirement is an unreasonable burden on sewer utilities.

The draft rule should be revised to make compliance with the SSO requirements of the Commission’s Collection System permit an exemption from the Existing Uses requirements for compensatory mitigation requirements of the rule. As presently written, the draft rule will require compensatory mitigation in numerous remedial actions

including the replacement of sewer lines that are in disrepair or that need to be replaced with larger capacity lines. See .0714 (10) at pp 22-25.

The requested change to the draft rule will be accomplished if the rule is revised to read:

“(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.

A use shall be considered exiting if:

It was present in the riparian buffer as of July 22, 1997 and has continued to exist since that time;

It was a deemed allowable activity as listed in Item (10) of this Rule; or

It was conducted and maintained pursuant to an Authorization Certificate or Variance issued by the Authority; or

It is determined by the permit holder to be necessary to comply with a Collection System permit issued pursuant to N.C. General Statute §143-215.1(d).

Existing and ongoing uses shall include, but not be limited to, agriculture, buildings, industrial facilities, commercial areas, transportation facilities, maintained lawns (i.e. can be mowed without a chain-saw or bush-hog), maintained (i.e. vegetation management has occurred with the last ten years as the permit holder deems necessary) utility line corridors and on-site sanitary sewage systems, any of which involve specific periodic maintenance 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 and ongoing use is exempt from the Rule.

Change of ownership through purchase or inheritance is not a change of use.

Activities necessary to maintain existing and ongoing uses are allowed provided that the site remains similarly vegetated unless the permit holder deems otherwise to comply with a Collection System permit, 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.

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)(c) of this Rule.”

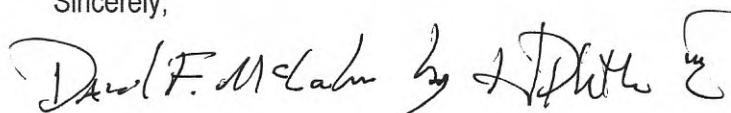
Chairman Solomon

February 22, 2018

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Thank you for the opportunity to submit these comments. If you require additional information or have questions about our proposal please contact me or Haywood Phthisic, LNBA/NRCA Executive Director.

Sincerely,

A handwritten signature in black ink that reads "Daniel F. McLawhorn by Haywood Phthisic". The signature is written in a cursive style.

Daniel F. McLawhorn, Chairman

cc: LNBA/NRCA Boards

Haywood Phthisic

Lower Neuse Basin Association/Neuse River Compliance Association
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Town of Apex	City of Goldsboro
Town of Benson	Town of Havelock
Town of Cary	Johnston County
Town of Clayton	Town of Kenly
Contentnea MSD	Town of LaGrange
Town of Farmville	City of New Bern
Dupont-Kinston	City of Raleigh
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