



Riparian Buffers and Water Supply: Proposed Rule Changes

WNC Water Quality Conference – July 26, 2018
Sue Homewood, NC Division of Water Resources



Rulemaking – History and Schedule

| | |
|-----------------------|--|
| 2014-2018 | Rule drafting, stakeholder sessions, department review |
| March 2018 | EMC approved draft rules to public notice |
| May 1 to July 2, 2018 | Public Comment Period |
| May 23, 2018 | Public Hearing (Raleigh) |
| June 7, 2018 | Public Hearing (Kernersville) |
| (Nov. 2018) | EMC approves final rules |
| (Dec. 2018) | RRC approval |
| (Jan. 2019) | Rules effective in NCAC* |

* some rules are tied to session laws that require NCGA review

Rule drafts

- Rule text shown as strikethrough/underline

- Rule drafts located online:

<https://deq.nc.gov/permits-regulations/rules-regulations/proposed-rules>

- Search for DEMLR or DWR
- Organized by Section
(e.g. 15A NCAC 02B .0600)
- Includes:
 - Rules
 - Notice of Text
 - Regulatory Impact Analysis

15A NCAC 02B .0600 Water Quality Management Plans: Goose Creek, Riparian Buffers, Catawba Buffers, Water Supply

Associated Files



[Rules_02B_0600.pdf](#)

PDF • 719.7 KB

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[Notice of Text_02B_02H.pdf](#)

PDF • 274.11 KB

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[Regulatory Impact Analysis_02B.0600s.pdf](#)

PDF • 275.37 KB

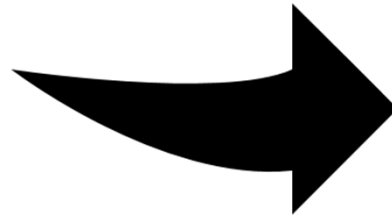
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Riparian Buffer Protection Proposed Rule Revisions



Buffer Rules Are Moving!

02B .0200
Standards



02B .0600
WQ Management Plans

02B .0700
Nutrient Strategies



Buffer Rules – Organization

| Rule | Current Citation | Proposed Citation |
|---|-------------------------|--------------------------|
| Goose Buffer, Authorizations, Forestry | .0605-.0608 | .0605-.0608 |
| Buffer Definitions | - | .0610 |
| Buffer Authorizations | - | .0611 |
| Buffer – Forestry | - | .0612 |
| Catawba Buffer | .0243 | .0614 |
| Neuse Buffer | .0233 | .0714 |
| Neuse Buffer Delegation | .0241 | .0715 |
| Randleman Buffer | .0250 | .0724 |
| Tar-Pam Buffer | .0259 | .0734 |
| Tar-Pam Buffer Delegation | .0261 | .0735 |

Buffer – Approvals

Category of Uses:

| Current Term | Proposed Term | Listed in Table of Uses? | Permitting |
|---------------------------|--|--------------------------|---|
| Exempt | Deemed Allowable | Yes | None |
| Allowable | Allowable upon Authorization | Yes | Buffer Authorization |
| Allowable with Mitigation | Allowable with Mitigation upon Authorization | Yes | Buffer Authorization |
| Prohibited | Prohibited | Yes | Variance |
| Prohibited | Allowable with Exception | No | Currently Variance; Proposed Authorization |



Buffer – Approvals

“Variances” → Proposed “Exceptions”

- Minor:

| Current | Proposed |
|------------------------------------|---|
| Minor Variance = impacts to Zone 2 | Minor Variance = impacts to $\leq 1/3$ acre |
| No timeframe for final action | 60 days for final action |

- Major:

| Current | Proposed |
|--|---|
| Major Variance = impacts to Zone 1 (or Zone 1 &2) | Major Variance = impacts to $> 1/3$ acre |
| Major Variance – required approval from EMC | Major Variance – public notice on website/email listserv |
| No timeframe | 60 days to notice 60 days from notice for final action |

Buffer – Approvals

Hardships:

| Current | Proposed |
|---|--|
| (i) Practical difficulties or unnecessary hardships | (A) Practical difficulties or unnecessary hardships |
| (A) No reasonable return/no reasonable use | (B) No reasonable return/no reasonable use |
| (B) Hardship from Rule not other factors | |
| (C) Due to physical nature of property which is different from neighboring property | (C) Due to physical nature of property |
| (D) Did not cause hardship by violating Rule | (D) Did not cause hardship |
| (E) Did not purchase after effective date | |
| (F) Hardship is unique to applicants property | |
| (ii) In harmony with purpose and intent | (E) In harmony with purpose and intent, public safety/welfare assured, WQ protected, substantial justice |
| (iii) Public safety/welfare assured, WQ protected, substantial justice | |

Buffer – Approvals

- Variances → Variances
 - Follow process per 15A NCAC 02B .0226
 - Public notice
 - Decision by EMC

What is “Prohibited?”

Ongoing
fertilizer application

New Landfills

New on-site sanitary
sewage systems
(that use ground absorption)

Buffer – Incorporated SLs

| Session Law | Rules Affected | Summary |
|---------------|---------------------|---|
| 2005-447 | All | <ul style="list-style-type: none"> • Prohibits LGs from regulating forestry |
| 2011-394 (17) | 20 coastal counties | <ul style="list-style-type: none"> • Single-family residence allowable in Zone 2 |
| 2012-200 (8) | Neuse & Tar-Pam | <ul style="list-style-type: none"> • Expanded SL 2011-394 to all of Neuse and Tar Basins |
| 2013-395 (2) | Jordan | <ul style="list-style-type: none"> • Exempt non-electric utility, non-perpendicular Zone 2 impacts • Exempt stream piping • Changed airport definition |
| 2013-413 (52) | All | <ul style="list-style-type: none"> • Exempts ag ponds |
| 2015-246 (13) | All | <ul style="list-style-type: none"> • Changed start point at CAMA marsh • Case-by-case approvals for view corridors • Limits on local governments |
| 2017-209 (9) | All | <ul style="list-style-type: none"> • Exempts veg removal for public safety on publically owned spaces |
| 2017-209 (10) | Catawba | <ul style="list-style-type: none"> • Exempts walking trails on public land |

Buffer – Stormwater

- Removed requirement for “diffuse flow”
- Provide options for stormwater:
 - Deemed Allowable
 - New conveyance from a Primary SCM (reviewed by LG or State Stormwater Permitting Program [ORW, HQW etc])
 - New flow to existing conveyance provided no alteration
 - Allowable upon Authorization
 - New conveyance from a Primary SCM (not reviewed by LG or State Stormwater Permitting Program)
 - New conveyance – meets onsite nutrient loading for strategy
 - New conveyance with flow <0.5 cfs
 - New conveyance through level spreader-filter strip
 - Realignment of roadside ditches
 - Realignment of existing conveyances
 - New or altered conveyance for linear transportation project
 - New conveyance with no new built-upon area

Buffer – Utilities

- Utilities – reorganized from:

- (1) Nonelectric
- (2) Overhead electric
- (3) Underground electric

to

- (1) Sewer lines
- (2) Non-sewer underground
- (3) Non-sewer aerial

Summary of Key Revisions

02B .0600 Goose Creek and 02B .0720 Randleman Lake

Goose Creek Watershed

- Corrections and updated citations
- **Stormwater:** Update rule references for consistency with 02H Stormwater rules

Randleman Lake Watershed

- Corrections, clarifications and updated citations
- Moved to 02B .0720 section
- **Stormwater:**
 - Reorganized for clarity and consistency with WSW rules
 - Update rule references for consistency with 02H Stormwater rules
 - Strike language that is repetitive of WSW, buffer rules, statute



Water Supply Watershed Protection Program Proposed Rule Revisions



Water Supply Rules Are Moving!

02B .0100 & .0200
Standards



02B .0600
Water Quality Management Plans

Proposed WSWP Rules

02B .0620 Purpose

02B .0621 Definitions

02B .0622 Applicability and Effective Dates

02B .0623 Program Administration

02B .0624 NPS and Stormwater Pollution Control



Water Supply Rules – Key Revisions

• **02B .0620 – Purpose**

- New language
- References WS classification standards in 02B .0200

• **02B .0621 – Definitions**

- New definitions for frequently used terms
- Update definition of built-upon area - #57 stone
- Codify method for calculating variance to vegetated setback



Water Supply Rules – Key Revisions

• **02B .0623 – Program Administration**

- Eliminate requirement to submit variance summaries to DEMLR (instead provide upon request)
- Clarify process for LG submission of ordinance changes
- List sources that can be used to “approximate normal pool elevation”



Water Supply Rules – Key Revisions

•02B .0624 – Stormwater Control

- Updates to match 02H .1000 Stormwater Rules and MDC (runoff volume match, curb outlet swales, SCMs other than wet ponds)
- Organize current BUA/density requirements into a table
- Allow LG's to offer both 10/70 option and HD option
- Exempt expansion of SFR development
- Allow BUA criteria for SFR development
- Allow stream determinations where USGS maps do not distinguish I/P streams

| 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-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% built-upon area | 12% built-upon area | 12 to 30% built-upon area |

Questions?

Buffer Rules

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