

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 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) 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. 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 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) 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) For the purposes of implementing the water supply watershed protection rules (15A NCAC 2B .0100, .0200 and .0300) and the requirements of G.S. 143-214.5, the following schedule of implementation shall be applicable:

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;

By July 1, 1993 - Affected 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;

By October 1, 1993 - Affected 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;

By January 1, 1994 -Affected 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.

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, .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.

(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.

(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:

- (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.

(h) 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) 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) The Commission may designate water supply watersheds or portions thereof as critical water supply watersheds pursuant to G.S. 143-214.5(b).

(l) 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.

(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) 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; and
- (2) Animal operation deemed permitted and permitted under 15A NCAC 2H .0217 are allowed in all classified water supply watersheds.

(q) 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.

(r) 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.

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 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 11 .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.

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.