

**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.