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) LOCAL GOVERNMENTS INCLUDED. All local governments that have land use authority within designated water supply watersheds shall adopt and enforce ordinances and watershed maps that meet or exceed the requirements of G.S. 143-214.5 and Rules .0621 through .0624 of this Section. Local governments may use the Commission's model Watershed Protection Ordinance available at no cost at http://watersupplywatershed.nc.gov as the basis for their ordinance, or may propose an alternative ordinance that meets or exceeds the requirements of Rules .0621 through .0624 of this Section.

(2) COMMISSION APPROVAL. Local government water supply watershed protection 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 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 Rules .0621 through .0624 of this Section and G.S. 143-214.5. The local government may begin implementing the ordinances prior to receiving approval by the Commission. The following items shall be included in the submission in either paper or electronic format:

(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) 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.

(3) WATERSHED BOUNDARY INTERPRETATION. Major landmarks, such as highways or property lines, may be used to delineate the outer boundary of the critical areas, balance of watershed areas, and protected areas if these landmarks are adjacent to the outer boundary of the critical areas, the balance of watershed areas, or the protected areas as specified in 15A NCAC 02B .0202. Local governments may extend the critical, balance of watershed, 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 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 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.

(4) REVISIONS TO ORDINANCES AND MAPS. 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 (2) 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; except, revisions regarding expansions or deletions to watershed maps shall be approved by the Commission or its designee prior to local government adoption.

(5) VARIANCES. For all proposed major and minor variances, as those terms are defined in Rule .0621, 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 G.S. 160A-393, as appropriate, showing that:

(a) there are difficulties or hardships that prevent compliance with the ordinance;

(b) the variance is in accordance with the general purpose and intent of the local watershed protection ordinance; and

(c) granting the variance, the project will ensure equal or better protection of waters of the State than the requirements of Rules .0621-.0624 of this Section and that the stormwater controls will function in perpetuity.

For all proposed major and minor variances, the local government considering or requesting the variance shall notify and allow a 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, or equivalent local quasi-judicial body, hereafter referred to as "the Board," may attach conditions to the major or minor variance approval that support the purpose of the local watershed protection ordinance. The Board may authorize minor variances for development activities on a case-by-case basis. For major variances, if the Board decides in favor of granting the major variance, then it shall 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 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 Board. The 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 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.

(6) RECORDKEEPING REQUIREMENTS. Local governments shall maintain the following records and furnish a copy of these records to the Division upon request:

(a) a copy of all variance requests and associated documents;

(b) findings of fact on all variance requests;

(c) a description of all projects for which the local government has granted a variance to the requirements of Rules .0621-.0624 of this Section;

(d) an accounting of projects approved under the local government's 10/70 Option (as described in Rule .0624 of this Section), as applicable; and

(e) records of inspections of SCMs pursuant to Item (7) of this Rule.

(7) OPERATION AND MAINTENANCE OF SCMS. Wherever in this 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 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.

(8) ENFORCEMENT. 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 G.S. 143-215.6A(e). When the Commission assumes a local water supply watershed 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 requirements of this Section shall be approved by the Commission or its designee prior to local government issuance.

(9) DELEGATION. The Commission may delegate such matters as variance approval, extension of deadlines for submission of 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);*
Eff. March 1, 2019 (Portions of this Rule were previously codified in 15A NCAC 02B .0104).