

15A NCAC 02B .0715 NEUSE RIVER BASIN: NUTRIENT SENSITIVE WATERS MANAGEMENT STRATEGY: DELEGATION OF AUTHORITY FOR THE PROTECTION AND MAINTENANCE OF EXISTING RIPARIAN BUFFERS

(a) **PURPOSE.** This Rule sets out the requirements for delegation of the responsibility for implementing and enforcing the Neuse Basin riparian buffer protection program, as described in Rule .0714 of this Section, to local governments.

(b) **PROCEDURES FOR GRANTING DELEGATION.** The Commission shall grant local government delegation of the Neuse River Basin Riparian Buffer Protection requirements, as described in Rule .0714 of this Section, according to the following procedures:

- (1) Local governments within the Neuse River Basin may submit a written request to the Commission for authority to implement and enforce the Neuse River Basin riparian buffer protection requirements within their jurisdiction by establishing a riparian buffer program to meet the requirements of Rule .0714 of this Section. The written request to establish a riparian buffer program shall include the following:
 - (A) Documentation that the local government has land use jurisdiction for the riparian buffer. This can be demonstrated by delineating the local land use jurisdictional boundary on the USGS 1:24,000 topographical map(s) or other finer scale map(s);
 - (B) Documentation that the local government has the administrative organization, staff, legal authority, financial resources, and other resources necessary to implement and enforce the Neuse River Basin riparian buffer protection requirements based on its size and projected amount of development;
 - (C) The local government ordinances, resolutions, or regulations necessary to establish a riparian buffer program meet the requirements of Rule .0714 of this Section and G.S. 143-214.23A;
 - (D) Documentation that the local government's riparian buffer program shall comply with all requirements set forth in G.S. 143-214.23A; and
 - (E) A plan to address violations with site-specific remedies and actions including civil or criminal remedies that shall restore riparian buffer nutrient removal functions on violation sites and provide a deterrent against the occurrence of future violations.
- (2) 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) **APPOINTMENT OF A RIPARIAN BUFFER PROTECTION ADMINISTRATOR.** Upon receiving delegation, local governments shall appoint a Riparian Buffer Protection Administrator(s) who shall coordinate the implementation and enforcement of the program. The Administrator(s) shall attend an initial training session by the Division and be certified to make on-site determinations pursuant to G.S. 143-214.25A. The Administrator(s) shall ensure that local government staff working directly with the program receive training to understand, implement, and enforce the program and are certified to make on-site determinations pursuant to G.S. 143-214.25A. At any time that a local government does not have anyone on staff certified to make on-site determinations pursuant to G.S. 143-214.25A, it shall notify the Division within 30 calendar days and provide a proposed schedule to secure a certified staff member. The local government shall coordinate with the Division to provide on-site determinations until a new certified staff member is secured by the local government.

(d) **PROCEDURES FOR USES WITHIN RIPARIAN BUFFERS THAT ARE ALLOWABLE UPON AUTHORIZATION AND ALLOWABLE WITH MITIGATION UPON AUTHORIZATION.** Upon receiving delegation, local governments shall review applications requesting an Authorization Certificate pursuant to the requirements set forth in Rule .0611 of this Section.

(e) **EXCEPTIONS.** Upon receiving delegation, local governments shall review applications requesting an Authorization Certificate with Exception pursuant to the requirements set forth in Rule .0611 of this Section.

(f) **LIMITS OF DELEGATED LOCAL AUTHORITY.** The Division shall have jurisdiction to the exclusion of local governments to implement the State's riparian buffer protection requirements for the following types of activities:

- (1) Activities conducted under the authority of the State;
- (2) Activities conducted under the authority of the United States;
- (3) Activities conducted under the authority of multiple jurisdictions;
- (4) Activities conducted under the authority of units of local government;
- (5) Forest harvesting activities described in Rule .0612 of this Section; and

- (6) Agricultural activities.
- (g) RECORD-KEEPING REQUIREMENTS. Delegated local governments shall maintain on-site records for a minimum of five years and shall furnish a copy of these records to the Division within 30 calendar days of receipt of a written request for them. Each delegated local governments records shall include the following:
- (1) A copy of all Authorization Certificate with Exception requests;
 - (2) Findings on all Authorization Certificate with Exception requests;
 - (3) The results of all Authorization Certificate with Exception proceedings;
 - (4) A record of complaints and action taken as a result of the complaints;
 - (5) Records for on-site determinations as described in Rule .0714(4) of this Section; and
 - (6) Copies of all requests for authorization, records approving authorization, and Authorization Certificates.
- (h) AUDITS OF LOCAL AUTHORITIES. The Division shall audit delegated local governments to ensure the local programs are being implemented and enforced in keeping with the requirements of this Rule and Rule .0714 of this Section. The audit shall consist of a review of all local government activities with regards to implementation of this Rule and Rule .0714 of this Section.
- (i) PROCEDURES FOR RESCINDING DELEGATION. Upon determination by the Division that a delegated local government is failing to implement or enforce the Neuse Basin riparian buffer protection requirements in keeping with the request approved under Paragraph (b) of this Rule, the Commission shall notify the delegated local government in writing of the local program's deficiencies. If the delegated local government has not corrected the deficiencies within 90 calendar days of receipt of the written notification, then the Commission shall rescind the delegation of authority to the local government and the Division shall implement and enforce the Neuse River Basin riparian buffer protection requirements within their jurisdiction.
- (j) DELEGATION. The Commission may delegate its duties and powers for granting and rescinding local government delegation of the Neuse River Basin riparian buffer protection requirements, in whole or in part, to the Director.

History Note: Authority 143-214.1; 143-214.7; 143-214.23; 143-214.23A; 143-215.3(a)(1); 143-215.3(a)(4); 143B-282(d); S.L. 1998-221; Eff. August 1, 2000; Readopted Eff. June 15, 2020 (The provisions of this Rule were transferred from 15A NCAC 02B .0241).