

TITLE 15A – DEPARTMENT OF ENVIRONMENTAL QUALITY

Notice is hereby given in accordance with G.S. 150B-21.2 that the Environmental Management Commission intends to amend the rule cited as 15A NCAC 02B .0315.

Link to agency website pursuant to G.S. 150B-19.1(c): <https://deq.nc.gov/news/events/public-notice-hearings>

Proposed Effective Date: May 1, 2023

Public Hearing:

Date: November 3, 2022

Time: 6:00 p.m.

Location: Durham Tech-Northern Durham Center, 2401 Snow Hill Road, Building 1-Room 130, Durham, NC 27712

Reason for Proposed Action: *Proposed Reclassification of Teer Quarry and a Portion of Eno River in Durham County (Neuse River Basin) to Class WS-IV CA (Critical Area)*

The City of Durham has requested the reclassification of (Nello) Teer quarry and a segment of the Eno River in Durham County (Neuse River Basin). The quarry and Eno River segment are to be reclassified from WS-IV (Protected Area or PA) to WS-IV Critical (CA) because the City of Durham seeks to construct a new intake in the river, pump water from the riverine intake to the quarry, and utilize the quarry's waters as a public water supply. Water in the quarry will be used to help meet local water demands.

Teer quarry is located adjacent to the southern side of the Eno River, approximately five miles west of Falls Lake, and at the northern terminus of Denfield Street in Durham, NC. The proposed riverine intake is located about 1.1 miles downstream of the U.S. 501 bridge. The boundary for the proposed CA for the quarry consists of the top of the quarry's berm whereas the boundary for the proposed CA for the new intake would extend approximately 0.5 mile from and draining to that intake. There are no named tributaries to the river or quarry included in this proposal. The waters to be reclassified meet surface water supply water quality standards according to 2021 DWR studies.

Sampling of groundwater wells adjacent to the quarry has revealed the presence of contaminants from releases of petroleum hydrocarbons and chlorinated solvents associated with historical uses of the area. The levels of various contaminants including 1,4-dioxane have been found to exceed associated groundwater (2L) standards. The consulting firm (ELMSS) that has conducted the most recent groundwater sampling in the area found that groundwater flow in the depth zones where these levels were detected is toward the quarry. DWR concurs with the consulting firm's recommendation of continued annual monitoring in the area and increased surface water monitoring to confirm that impacts from groundwater are not affecting the quarry's surface water.

If reclassified, restrictions associated with new development and new industrial process wastewater discharges would apply, and no new landfills and no new residual or septage land application sites would be allowed in the proposed CAs. There are no permitted or planned wastewater discharges, and no known planned land applications sites, landfills, or developments that would be impacted by the proposal. The subject watershed consists mainly of developed single-family residential areas plus two developed industrial parcels. DWR staff worked with the NC Wildlife Resources Commission (WRC) and City of Durham staff to come to an agreement in 2019 regarding the conditions pertaining to water quantity by which the City of Durham would be allowed to (1) withdraw water for water supply purposes from the Eno River as well as Lake Michie and Little River Reservoir and transfer those waters into the Teer quarry, and (2) use water in the Teer quarry for water supply. In addition, Durham County and the City of Durham are the only local governments with jurisdiction in the reclassification area and are the only local governments that would need to modify their water supply watershed protection ordinance within the required 270 days after the reclassification effective date. Furthermore, letters of no objection were received from the parties that are subject to the Voluntary Eno River Capacity Use Area Water Management Operations Plan (WMOP) along with the City of Durham, which are the Town of Hillsborough (Hillsborough Water System), Orange-Alamance Water System, and Resco Products (formerly Piedmont Minerals). Lastly, a regulatory impact analysis for this proposal, which has been approved by OSBM, shows a one-time cost of \$2,000 to the state associated with notification, review, and approval of ordinance changes. The analysis also shows a one-time shared cost of \$8,000 to the City of Durham and Durham County affiliated with rezoning and ordinance text amendments.

Comments may be submitted to: Elizabeth Kountis, DEQ-DWR Planning Section, 1611 Mail Service Center, Raleigh, NC 27699-1611; email Elizabeth.kountis@ncdenr.gov

Comment period ends: November 14, 2022

Procedure for Subjecting a Proposed Rule to Legislative Review: If an objection is not resolved prior to the adoption of the rule, a person may also submit written objections to the Rules Review Commission after the adoption of the Rule. If the Rules Review Commission receives written and signed objections after the adoption of the Rule in accordance with G.S. 150B-21.3(b2) from 10 or more persons clearly requesting review by the legislature and the Rules Review Commission approves the rule, the rule will become effective as provided in G.S. 150B-21.3(b1). The Commission will receive written objections until 5:00 p.m. on the day following the day the Commission approves the rule. The Commission will receive those objections by mail, delivery service, hand delivery, or facsimile transmission. If you have any further questions concerning the submission of objections to the Commission, please call a Commission staff attorney at 984-236-1850.

Fiscal impact. Does any rule or combination of rules in this notice create an economic impact? Check all that apply.

☒ State funds affected

- ☒ Local funds affected
☐ Substantial economic impact (\geq \$1,000,000)
☒ Approved by OSBM
☐ No fiscal note required

CHAPTER 02 - ENVIRONMENTAL MANAGEMENT

SUBCHAPTER 02B - SURFACE WATER AND WETLAND STANDARDS

SECTION .0300 - ASSIGNMENT OF STREAM CLASSIFICATIONS

15A NCAC 02B .0315 NEUSE RIVER BASIN

(a) Classifications assigned to the waters within the Neuse River Basin are set forth in the Neuse River Basin Classification Schedule, which may be inspected at the following places:

- (1) the Internet at <https://deq.nc.gov/about/divisions/water-resources/water-planning/classification-standards/river-basin-classification>; and
- (2) the following offices of the North Carolina Department of Environmental Quality:
 - (A) Raleigh Regional Office
3800 Barrett Drive
Raleigh, North Carolina;
 - (B) Washington Regional Office
943 Washington Square Mall
Washington, North Carolina;
 - (C) Wilmington Regional Office
127 Cardinal Drive Extension
Wilmington, North Carolina; and
 - (D) Division of Water Resources
Central Office
512 North Salisbury Street
Raleigh, North Carolina.

(b) The Neuse River Basin Classification Schedule was amended effective:

- (1) March 1, 1977 see Paragraph (c) of this Rule;
- (2) December 13, 1979 see Paragraph (d) of this Rule;
- (3) September 14, 1980 see Paragraph (e) of this Rule;
- (4) August 9, 1981 see Paragraph (f) of this Rule;
- (5) January 1, 1982 see Paragraph (g) of this Rule;
- (6) April 1, 1982 see Paragraph (h) of this Rule;
- (7) December 1, 1983 see Paragraph (i) of this Rule;
- (8) January 1, 1985 see Paragraph (j) of this Rule;
- (9) August 1, 1985 see Paragraph (k) of this Rule;
- (10) February 1, 1986 see Paragraph (l) of this Rule;
- (11) May 1, 1988 see Paragraph (m) of this Rule;
- (12) July 1, 1988 see Paragraph (n) of this Rule;
- (13) October 1, 1988 see Paragraph (o) of this Rule;
- (14) January 1, 1990 see Paragraph (p) of this Rule;
- (15) August 1, 1990;
- (16) December 1, 1990 see Paragraph (q) of this Rule;
- (17) July 1, 1991 see Paragraph (r) of this Rule;
- (18) August 3, 1992;
- (19) April 1, 1994 see Paragraph (t) of this Rule;
- (20) July 1, 1996 see Paragraph (u) of this Rule;
- (21) September 1, 1996 see Paragraph (v) of this Rule;
- (22) April 1, 1997 see Paragraph (w) of this Rule;
- (23) August 1, 1998 see Paragraph (x) of this Rule;
- (24) August 1, 2002 see Paragraph (y) of this Rule;
- (25) July 1, 2004 see Paragraph (z) of this Rule;
- (26) November 1, 2007 see Paragraph (aa) of this Rule;
- (27) January 15, 2011 see Paragraph (bb) of this Rule; ~~and~~
- (28) July 1, 2012 see Paragraph (cc) of this ~~Rule~~; Rule; and
- (29) May 1, 2023 see Paragraph (dd) of this Rule.

(c) The Neuse River Basin Classification Schedule was amended effective March 1, 1977 with the a total of 179 streams in the Neuse River Basin reclassified from Class D to Class C.

(d) The Neuse River Basin Classification Schedule was amended effective December 13, 1979 as follows: Little River [Index No. 27-57-(21.5)] from source to the dam at Wake Forest Reservoir has been reclassified from Class A-II to Class A-II and B.

- (e) The Neuse River Basin Classification Schedule was amended effective September 14, 1980 as follows: The Eno River from Durham County State Road 1003 to U.S Highway 501 [Index No. 27-2-(16)] was reclassified from Class C and B to Class A-II and B.
- (f) The Neuse River Basin Classification Schedule was amended effective August 9, 1981 to remove the swamp water designation from all waters designated SA in the Neuse River Basin.
- (g) The Neuse River Basin Classification Schedule was amended effective January 1, 1982 as follows: The Trent River from the mouth of Brice Creek to the Neuse River [Index No. 27-101-(39)] was reclassified from Class SC Sw to Class SB Sw.
- (h) The Neuse River Basin Classification Schedule was amended effective April 1, 1982 as follows:
- (1) Longview Branch from source to Crabtree Creek [Index No. 27-33-(21)] was reclassified from Class C1 to Class C.
 - (2) Watson Branch from source to Walnut Creek [Index No. 27-34-(8)] was reclassified from Class C1 to Class C.
- (i) The Neuse River Basin Classification Schedule was amended effective December 1, 1983 to add the Nutrient Sensitive Waters classification to the entire river basin above Falls dam.
- (j) The Neuse River Basin Classification Schedule was amended effective January 1, 1985 as follows: Nobel Canal from source to Swift Creek [Index No. 27-97-(2)] was reclassified from Class C1 to Class C.
- (k) The Neuse River Basin Classification Schedule was amended effective August 1, 1985 as follows:
- (1) Southeast Prong Beaverdam Creek from source to Beaverdam Creek [Index No. 27-33-15(2)] was reclassified from Class C1 to Class C.
 - (2) Pigeon House branch from source to Crabtree Creek [Index No. 27-33-(18)] was reclassified from Class C1 to Class C.
 - (3) Rocky Branch from source to Pullen Road [Index No. 27-34-6-(1)] was reclassified from Class C1 to Class C.
 - (4) Chavis Branch from source to Watson Branch [Index No. 27-37-8-1] was reclassified from Class C1 to Class C.
- (l) The Neuse River Basin Classification Schedule was amended effective February 1, 1986 to reclassify all Class A-I and Class A-II streams in the Neuse River Basin to WS-I and WS-III.
- (m) The Neuse River Basin Classification Schedule was amended effective May 1, 1988 to add the Nutrient Sensitive Waters classification to the waters of the Neuse River Basin below the Falls Lake dam.
- (n) The Neuse River Basin Classification Schedule was amended effective July 1, 1988 as follows:
- (1) Smith Creek [Index No. 27-23-(1)] from source to the dam at Wake Forest Reservoir has been reclassified from Class WS-III to WS-I.
 - (2) Little River [Index No. 27-57-(1)] from source to the N.C. Hwy. 97 Bridge near Zebulon including all tributaries has been reclassified from Class WS-III to WS-I.
 - (3) An unnamed tributary to Buffalo Creek just upstream of Robertson's Pond in Wake County from source to Buffalo Creek including Leo's Pond has been reclassified from Class C to B.
- (o) The Neuse River Basin Classification Schedule was amended effective October 1, 1988 as follows:
- (1) Walnut Creek (Lake Johnson, Lake Raleigh) [Index No. 27-34-(1)]. Lake Johnson and Lake Raleigh have been reclassified from Class WS-III to Class WS-III B.
 - (2) Haw Creek (Camp Charles Lake)(Index No. 27-86-3-7) from the backwaters of Camp Charles Lake to dam at Camp Charles Lake has been reclassified from Class C to Class B.
- (p) The Neuse River Basin Classification Schedule was amended effective January 1, 1990 as follows:
- (1) Neuse-Southeast Pamlico Sound ORW Area which includes all waters within a line beginning at the southwest tip of Ocracoke Island, and extending north west along the Tar-Pamlico River Basin and Neuse River Basin boundary line to Lat. 35 degrees 06' 30", thence in a southwest direction to Ship Point and all tributaries, were reclassified from Class SA NSW to Class SA NSW ORW.
 - (2) Core Sound (Index No. 27-149) from northeastern limit of White Oak River Basin (a line from Hall Point to Drum Inlet) to Pamlico Sound and all tributaries, except Thorofare, John Day Ditch were reclassified from Class SA NSW to Class SA NSW ORW.
- (q) The Neuse River Basin Classification Schedule was amended effective December 1, 1990 with the reclassification of the following waters as described in (1) through (3) of this Paragraph.
- (1) Northwest Creek from its source to the Neuse River (Index No. 27-105) from Class SC Sw NSW to Class SB Sw NSW;
 - (2) Upper Broad Creek [Index No. 27-106-(7)] from Pamlico County SR 1103 at Lees Landing to the Neuse River from Class SC Sw NSW to Class SB Sw NSW; and
 - (3) Goose Creek [Index No. 27-107-(11)] from Wood Landing to the Neuse River from Class SC Sw NSW to Class SB Sw NSW.
- (r) The Neuse River Basin Classification Schedule was amended effective July 1, 1991 with the reclassification of the Bay River [Index No. 27-150-(1)] within a line running from Flea Point to the Hammock, east to a line running from Bell Point to Darby Point, including Harper Creek, Tempe Gut, Moore Creek and Newton Creek, and excluding that portion of the Bay River landward of a line running from Poorhouse Point to Darby Point from Classes SC Sw NSW and SC Sw NSW HQW to Class SA NSW.
- (s) The Neuse River Basin Classification Schedule was amended effective August 3, 1992 with the reclassification of all water supply waters (waters with a primary classification of WS-I, WS-II or WS-III). These waters were reclassified to WS-I, WS-II, WS-III, WS-IV or WS-V as defined in the revised water supply protection rules (15A NCAC 02B .0100, .0200 and .0300), which became effective on August 3, 1992. In some cases, streams with primary classifications other than WS were reclassified to a WS classification due to their proximity and linkage to water supply waters. In other cases, waters were reclassified from a WS classification to an alternate appropriate primary classification after being identified as downstream of a water supply intake or identified as not being used for water supply purposes.
- (t) The Neuse River Basin Classification Schedule was amended effective April 1, 1994 as follows:
- (1) Lake Crabtree [Index No. 27-33-(1)] was reclassified from Class C NSW to Class B NSW.

- (2) The Eno River from Orange County State Road 1561 to Durham County State Road 1003 [Index No. 27-10-(16)] was reclassified from Class WS-IV NSW to Class WS-IV B NSW.
- (3) Silver Lake (Index No. 27-43-5) was reclassified from Class WS-III NSW to Class WS-III B NSW.
- (u) The Neuse River Basin Classification Schedule was amended effective July 1, 1996 with the reclassification of Austin Creek [Index Nos. 27-23-3-(1) and 27-23-3-(2)] from its source to Smith Creek from classes WS-III NSW and WS-III NSW CA to class C NSW.
- (v) The Neuse River Basin Classification Schedule was amended effective September 1, 1996 with the reclassification of an unnamed tributary to Hannah Creek (Tuckers Lake) [Index No. 27-52-6-0.5] from Class C NSW to Class B NSW.
- (w) The Neuse River Basin Classification Schedule was amended effective April 1, 1997 with the reclassification of the Neuse River (including tributaries) from mouth of Marks Creek to a point 1.3 miles downstream of Johnston County State Road 1908 to class WS-IV NSW and from a point 1.3 miles downstream of Johnston County State Road 1908 to the Johnston County Water Supply intake (located 1.8 miles downstream of Johnston County State Road 1908) to class WS-IV CA NSW [Index Nos. 27-(36) and 27-(38.5)].
- (x) The Neuse River Basin Classification Schedule was amended effective August 1, 1998 with the revision of the Critical Area and Protected Area boundaries surrounding the Falls Lake water supply reservoir. The revisions to these boundaries are the result of the US Army Corps of Engineers raising the lake's normal pool elevation. The result of these revisions is the Critical and Protected Area boundaries (classifications) may extend further upstream than the current designations. The Critical Area for a WS-IV reservoir is defined as 0.5 miles and draining to the normal pool elevation. The Protected Area for a WS-IV reservoir is defined as 5 miles and draining to the normal pool elevation. The normal pool elevation of the Falls Lake reservoir has changed from 250.1 feet mean sea level (msl) to 251.5 feet msl.
- (y) The Neuse River Basin Classification Schedule was amended effective August 1, 2002 with the reclassification of the Neuse River [portions of Index No. 27-(56)], including portions of its tributaries, from a point 0.7 mile downstream of the mouth of Coxes Creek to a point 0.6 mile upstream of Lenoir County proposed water supply intake from Class C NSW to Class WS-IV NSW and from a point 0.6 mile upstream of Lenoir County proposed water supply intake to Lenoir proposed water supply intake from Class C NSW to Class WS-IV CA NSW.
- (z) The Neuse River Basin Classification Schedule was amended effective July 1, 2004 with the reclassification of the Neuse River (including tributaries in Wake County) [Index Nos. 27-(20.7), 27-21, 27-21-1] from the dam at Falls Lake to a point 0.5 mile upstream of the Town of Wake Forest Water Supply Intake (former water supply intake for Burlington Mills Wake Finishing Plant) from Class C NSW to Class WS-IV NSW and from a point 0.5 mile upstream of the Town of Wake Forest proposed water supply intake to Town of Wake Forest proposed water supply intake [Index No. 27-(20.1)] from Class C NSW to Class WS-IV NSW CA. Fantasy Lake [Index No. 27-57-3-1-1], a former rock quarry within a WS-II NSW water supply watershed, was reclassified from Class WS-II NSW to Class WS-II NSW CA.
- (aa) The Neuse River Basin Classification Schedule was amended effective November 1, 2007 with the reclassification of the entire watershed of Deep Creek (Index No. 27-3-4) from source to Flat River from Class WS-III NSW to Class WS-III ORW NSW.
- (bb) The Neuse River Basin Classification Schedule was amended effective January 15, 2011 with the reclassification of all Class C NSW waters and all Class B NSW waters upstream of the dam at Falls Reservoir from Class C NSW and Class B NSW to Class WS-V NSW and Class WS-V & B NSW, respectively. All waters within the Falls Watershed are within a designated Critical Water Supply Watershed and are subject to a special management strategy specified in Rules .0275 through .0283 of this Subchapter.
- (cc) The Neuse River Basin Classification Schedule was amended effective July 1, 2012 as follows:
 - (1) Johnston County owned quarry near Little River [Index No. 27-57-(20.2)] from Class C NSW to Class WS-IV NSW CA. The Division of Water Resources maintains a Geographic Information Systems data layer of this quarry;
 - (2) a portion of the Neuse River [Index Number 27-(41.7)] from a point approximately 1.4 miles downstream of Gar Gut to a point approximately 1.7 miles upstream of Bawdy Creek from Class WS-V NSW to Class WS-IV NSW; and
 - (3) a portion of the Neuse River [Index No. 27-(49.5)] from a point approximately 0.5 mile upstream of S.R. 1201 (Johnston County intake) to S.R. 1201 (Johnston County intake) from Class WS-IV NSW to Class WS-IV NSW CA.
- (dd) The Neuse River Basin Classification Schedule was amended effective May 1, 2023 as follows:
 - (1) City of Durham owned Nello Teer quarry near Eno River [Index No. 27-2-(19)] from Class WS-IV NSW to Class WS-IV NSW CA. The Division of Water Resources maintains a Geographic Information Systems data layer of this quarry; and
 - (2) a portion of the Eno River [Index No. 27-2-(19)] from a point approximately 0.7 miles downstream of U.S. Highway 501 to a City of Durham raw intake located about 1.1 miles downstream of U.S. Highway 501 from Class WS-IV NSW to Class WS-IV NSW CA.

History Note: Authority G.S. 143-214.1; 143-215.1; 143-215.3(a)(1);
 Eff. February 1, 1976;
 Amended Eff. November 1, 2007; July 1, 2004 (see SL 2001-361); August 1, 2002; August 1, 1998; April 1, 1997;
 September 1, 1996; July 1, 1996; April 1, 1994; August 3, 1992; July 1, 1991;
 Amended Eff. January 15, 2011 (this permanent rule replaces the temporary rule approved by the RRC on December 16, 2010);
 Amended Eff. July 1, 2012;
 Readopted Eff. November 1, ~~2019~~ 2019;
 Amended Eff. May 1, 2023.