

July 2, 2018

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Subject: Buffer Rules, 15A NCAC 2B, Rules .0610 and .0714

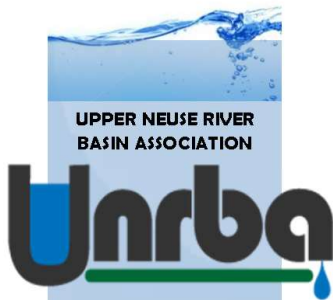
The UNRBA membership includes several water and sewer system owners that own and operate distribution and collection systems. As a result, the UNRBA offers the following comments for your consideration.

### **Regulatory Impact Analysis**

The UNRBA has concerns about the Regulatory Impact Analyses (RIA) provided for this set of rules. As presented, the RIA contends that the amendments noticed for comments “will impose a less stringent burden on regulated persons.” There are several practical impacts that have not been evaluated and this has created issues related to this determination. However, the most basic issue is that the rules as revised will, if adopted, result in more stringent requirements on local governments that own and operate water and sewer utilities with line locations in the buffer area. Also, the agency does not address whether the amendments are “without substantive change.” The agency position on noticing these referenced rules without properly assessing the potential impacts of proposed changes, is an important procedural deviation, subject to challenge and could invalidate further consideration of the changes. The failure to properly reflect the potential impacts makes consideration of the proposed changes inappropriate for consideration at this time. The UNRBA believes that either the agency needs to restore the rules to a true “no impact” condition that is consistent with its current RIA or take the rules off of the current schedule, reengage the stakeholders impacted, and evaluate accurately the “real” impacts of the rules it plans to send forward for readoption.

### **Specific Issues with the Revisions Proposed**

The noted rules for readoption, 15A NCAC 2B .0610(16) and 15A NCAC 2B .0714(6), contain a number of changes to how a project is or can become exempted from rule coverage. The proposed conditions for exemption impose substantial and new fiscal burdens on local governments relative to projects that are exempt under current rules. The proposed modifications to (6)(a) changes the date that qualifies for exemption. The current rule for exemption only requires that the use has been existing and present in the buffer as of July 22, 1997. The current rule specifically includes utility lines. The proposed rule for readoption adds two requirements for exemption; (A) if is now deemed an allowable activity by the revised table of uses



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Town of Wake Forest

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and Sewer Authority

Soil and Water  
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in Item (10) of the rule and (B) it was conducted and maintained pursuant to an Authorization Certificate or Variance issued by the Authority. This will place some jurisdictions at risk of having to deal with projects previously exempted. Member jurisdictions are filing more detailed comments on this point, but the UNRBA certainly recommends maintain the way the current rule operates.

Prior definitions in the rule did not include the term “(16) Existing utility line maintenance corridor” which now appears in proposed rule 15A NCAC 2B .0610. It includes important term of limitation that in order to meet the definition “the vegetation has been mowed, cut or otherwise maintained within the last 10 years.” This provision should not be included in the rule.

Sewer systems utilize gravity sewers wherever possible. This is a practical approach and it also helps minimize the potential for Sanitary Sewer Overflows due to pump issues. As a result of this approach, sewer collection lines are often located in the riparian buffer of streams and other regulated waters under this rule. When providing repair or replacement of a sewer line, the repairs will necessarily occur in the utility easement. The statutory and DEQ-issued Sewer Collection Permit issued by DEQ, requires immediate repair any breach in a line resulting in a discharge of sewage. The collection system permit and the General Statutes (for smaller system owners) also requires sewer utilities to maintain and repair the lines to avoid failures resulting in overflows of untreated sewage. The proposed rule conflicts with and requires, and in some instances, requires the sewer system owner to provide mitigation for that is a compliance requirement of the Sewer Collection Permit.

The revised rule makes other critical changes in Item (10) under the category “Utility – sewer lines.” As required under these proposed changes, a replacement or rehabilitation of an existing sewer line is for the first time defined to be within the term “New Sewer Line Construction Activities.” This is a substantial and real impact cost. The proposal includes that a local government is required to replant the area where an emergency repair occurs within two months with “comparable vegetation.” What type of vegetation is “comparable.” This requirement could result in the need for planting of mature plants, at very high cost.

In order to maintain capacity and meet system needs, older sewers that need to be replaced may also need to be upsized. Under the proposed requirements in the rules offered for these type projects, sewer utilities are required to leave vegetative root systems and stumps in place. If the disturbed area is more than 150 linear feet, mitigation is required to be provided by the sewer utility. Mitigation is also triggered if the disturbed area is wider than 20 linear feet. This is a big concern for main interceptor lines.

There are a number of changes to 15A NCAC 2B .0610 MANAGING ACTIVITIES WITHIN RIPARIAN BUFFERS: DEFINITIONS that need to be revised. Because there seems to have been little coordination of these changes with affected utilities, the UNRBA recommends that if the agency would like to seek changes to these provisions that the rules be removed from consideration and better coordinated with the utility owners. As noted, if the rules are returned to a true “no impact” status, then future changes can be taken up when the rules are up for later review.

The proposed changes to the rules have not been properly evaluated and the impact considered. The cost of managing water and sewer utilities are a huge part of these utility activities for several of the jurisdictions in the UNRBA. Before DEQ proceeds with making recommendations to the EMC and

before the EMC acts, the rules should be modified to a “no impact” condition or that the rules be reopened for additional evaluation and coordination with the stakeholders.

Thank you for the opportunity to comment on these rules. If you have any questions, please let me know.