



PAT MCCRORY
Governor

DONALD R. VAN DER VAART
Secretary

MEMORANDUM

TO: ENVIRONMENTAL REVIEW COMMISSION
The Honorable Jimmy Dixon, Co-Chairman
The Honorable Chuck McGrady, Co-Chairman
The Honorable Trudy Wade, Co-Chairman

FROM: Mollie Young, Director of Legislative Affairs, NCDEQ

SUBJECT: Nutrient Rules for Falls and Jordan Lakes Report

Pursuant to S.L. 2016-94, section 14.13 (d), "No later than December 31, 2016, the Department of Environmental Quality shall report to the Environmental Review Commission a list of any other rules and any acts of the General Assembly changing the rules identified in this subsection, and the Environmental Management Commission's review shall include the rules identified in this section and in that report."

If you have any questions or need additional information, please contact me by phone at (919) 339-9433 or via e-mail at mollie.young@ncdenr.gov.

Cc: Don Van der Vaart, Secretary, NCDEQ
Tom Reeder, Assistant Secretary for Environment, NCDEQ
Jay Zimmerman, Director of Water Resources, NCDEQ
Lanier McRee, Fiscal Research Division, NCGA



Laws and Rules Changing the Falls Water Supply and Jordan Water Supply Nutrient Strategies

Presented to the Environmental Review Commission of the North Carolina General Assembly

December 1, 2016



Water Resources
ENVIRONMENTAL QUALITY

Overview

Section 14.13 of Session Law 2016-94 sets forth several new provisions governing the management and regulation of nutrient-related water pollution in North Carolina. The Falls of the Neuse Reservoir (“Falls Lake”) and the B. Everett Jordan Reservoir (“Jordan Lake”) are subject to many of the law’s provisions. The watersheds draining to both lakes are subject to an integrated and customized set of regulations for different nutrient pollution sources. These regulations, adopted by the Environmental Management Commission, are known colloquially as the Falls and Jordan Lake strategies.

Section 14.13(d) charges the Department of Environmental Quality (DEQ) to research and document any laws or rules that have changed the text or implementation of the Jordan and Falls Lake strategies. This brief report fulfills that directive.

Laws and Rules

The following are clarifications regarding the enumeration of rules in the Jordan and Falls Lake strategies in Session Law 2016-94:

- The Jordan Lake goals rule, 15A NCAC 02B .0262, was omitted from Session Law 2016-94 §14.13(d)(2).
- The Neuse buffer rule, 15A NCAC 02B .0233, is not part of the Falls Lake strategy and was not enumerated in S.L. 2016-94(d)(1). However, it does provide buffer protections in the Falls Lake watershed analogous to those found in the Jordan Lake watershed.
- 15A NCAC 02B .0268, entitled “Jordan Water Supply Nutrient Strategy: Mitigation for Riparian Buffers,” was repealed effective October 24, 2014. The rule was replaced by 15A NCAC 02B .0295, entitled “Mitigation Program Requirements for Protection and Maintenance of Riparian Buffers,” which was enacted temporarily on October 24, 2014 and permanently on November 1, 2015. The rule applies to Jordan and Falls watersheds and supplants all watershed-specific buffer mitigation rules.
- 15A NCAC 02B .0269, entitled “Riparian Buffer Mitigation Fees to the NC Ecosystem Enhancement Program*,” was transferred to 15A NCAC 02R .0601 effective May 1, 2015 and continues to apply to all watersheds with buffer mitigation provisions.

Additionally, a table of laws amending the Jordan and Falls Lake strategy rules is provided below. Language from some earlier laws has been fully incorporated into rule language by the Environmental Management Commission. Later laws delaying implementation or modifying the buffer rules, while fully effective, have not yet been codified into rule language. These textual rule changes will occur as part of the rules readoption process called for in G.S. 150B-21.3A and pursuant to the findings and requirements of S.L. 2016-94. Finally, the series of three-year delays noted in the table below have not been incorporated into rule language, with the exception of a general note directing readers to review S.L 2013-395 in applicable Jordan Lake strategy rules.

* Now the N.C. Division of Mitigation Services

List of laws affecting implementation of the Jordan and Falls Lake strategies

Session Law	Section(s)	H/S Bill #	Overview	Language incorporated into present rule?
2009-216	All	H239	Jordan wastewater rule compliance date changes and disapproval and replacement of existing development rule	Y
2009-484	6-10	S838	Jordan new development, state/federal, and buffer rule adjustments	Y
2011-394	14	H119	Jordan wastewater rule compliance date changes	Y
2012-187	12.1	S810	Interpretation of WS-V water quality standards in Jordan and Falls rules	N/A
2012-200	9	S229	Jordan new development rule implementation delay	Y
2012-201	11	H953	Jordan new development rule implementation delay	Y
2013-395	All	S515	First Jordan three-year implementation delay, Jordan buffer rule adjustments	N/A, N
2013-413	52	H74	Exempts agricultural ponds from all buffer rules	N
2015-241	14.5	H97	Second three-year Jordan implementation delay, demonstration project extension	N/A
2015-246	2, 13	H44	Prohibits local enforcement of voluntary state rules and limits application of all state buffer rules	N
2016-94	14.13	H1030	Ends Jordan demonstration project, repeals the associated three-year implementation delay (SL 2015-241), authorizes UNC-led studies to evaluate nutrient management approaches, requires EMC to review Falls and Jordan nutrient strategies, defers action on related rules until completion of those studies and reviews, allows use of Chesapeake Bay stormwater practices and credits.	N/A

Appendix: Session Law 2016-94 §14.13(d)

SECTION 14.13.(d) As part of the periodic review and readoption of rules required by G.S. 150B-21.3A, the Environmental Management Commission shall, based on the study required by subsection (c) of this section and any monitoring or modeling study conducted pursuant to existing regulations as defined in this section, review the following Nutrient Strategies:

- (1) The Falls Water Supply Nutrient Strategy, 15A NCAC 2B .0275 through .0282 and .0315.
- (2) The Jordan Lake Water Supply Nutrient Strategy, 15A NCAC 2B .0263 through .0273 and .0311.
- (3) Any changes to these regulations imposed by acts of the General Assembly.

The schedule set forth in this subsection shall modify the review and readoption schedule set by the Rules Review Commission under G.S. 150B-21.3A to the extent the schedules conflict. No later than December 31, 2016, the Department of Environmental Quality shall report to the Environmental Review Commission a list of any other rules and any acts of the General Assembly changing the rules identified in this subsection, and the Environmental Management Commission's review shall include the rules identified in this section and in that report. As part of its rule review process, the Environmental Management Commission shall (i) hold public hearings in the upstream and downstream portions of the Falls Lake and Jordan Lake river basins and subbasins and (ii) no later than December 31, 2016, convene a stakeholder working group that represents all classes of users and all geographic parts of the impacted river basins and subbasins and that will provide input to the Environmental Management Commission regarding the revision to the Nutrient Strategies. The Environmental Management Commission shall issue recommendations for revisions of the Nutrient Strategies based on its review and begin rule readoption required by G.S. 150B-21.3A no later than March 15, 2019. For purposes of the G.S. 150B-21.3A readoption process, the Nutrient Strategies shall be considered "necessary with substantive public interest."