

Jordan Nutrient Rules Update Pursuant to Various Legislative Actions

This document provides interested parties a status update by N.C. Division of Water Resources Planning staff on the Jordan Lake nutrient management strategy in light of the range of legislative actions since strategy initiation in 2009. This update will cover the following subjects:

- Overall status of Jordan rules, reflecting session law 2013-395 – Jordan rule delays and buffer rule revisions
- Session law 2013-360 - In-lake water quality improvement demonstration project
- Session law 2014-90 – Revisions to “development” definition for state stormwater programs
- 2014 Jordan legislative committee
- Rule amendments to incorporate 2009-2012 Jordan session laws
- Jordan rules re-adoption per Session law 2013-413 - Upcoming rule amendments

2013 SESSION LAWS

One of the 2013 session laws delays additional Jordan rule implementation steps by three years and makes three specific revisions to the Jordan Riparian Buffer Rule, while the other authorizes a new *Jordan Lake Water Quality Improvement Project*.

Session Law 2013-395, Effective August 23, 2013

Additional Rule Implementation Delay: The delay is established by a single sentence:

“Section 1.(b) The implementation dates of the Jordan Lake Rules and Jordan Lake Session Laws that begin July 1, 2013, or later shall be delayed for a period of three years.”

Division staff interprets this statement to mean that any specific implementation dates beyond July 1, 2013 will be delayed by three years, while any implementation that was required on dates prior to July 1, 2013 will continue on its required course.

The following is planning staff’s rule-by-rule interpretation of the revised implementation dates pursuant to the legislation, followed by a status update on each rule. Note that some of the dates build on previous session laws enacted in 2009, 2011 and 2012; those session laws are noted for reference purposes following each rule title.

15A NCAC 02B .0264: Agriculture

- The date by which the agricultural community is required to meet its nitrogen and phosphorus goals (both cropland and pastureland) is moved from within six years of

the effective date of the rule to within nine years of the effective date, or by August 11, 2018. The Watershed Oversight Committee (WOC) shall present an accounting report on Crop Year 2017 to the Environmental Management Commission at the commission's September 2018 meeting.

- If the commission determines that the agricultural community has not met its nitrogen and phosphorus goals by August 11, 2018, it shall require additional best management practice implementation as needed or consider alternative recommendations by the WOC to ensure that the goals are met within 12 years (vs. nine years) of the effective date of the rule, or by August 11, 2021.
- *Implementation Status: Agricultural activities and BMP implementation toward goals continue to be reported to the division annually by the WOC. The most recent report, covering 2012, found that the Lower New Hope and Haw River subwatersheds were meeting their cropland nitrogen requirements. Only the Lower New Hope subwatershed was meeting its pastureland nitrogen requirements. However pasture management in the Haw subwatershed, which comprises 80% of the entire Jordan watershed, had met 5% towards its 8% requirement. In addition to nitrogen requirements, qualitative phosphorus indicators met rule requirements in finding that there was no increased risk of phosphorus loss in the three subwatersheds.*

15A NCAC 02B .0265: Stormwater Management for New Development
(See also SL 2009-484, 2012-200 & 2012-201)

- Delays the required implementation date of local new development stormwater permitting programs from August 2014 to August 2017.
- Local governments that are voluntarily implementing Jordan new development programs are not prohibited from continuing to do so.
- [Note that session law 2013-41, which temporarily prohibited the adoption of local environmental ordinances that regulate a field that is also regulated by a state environmental agency without a unanimous vote expired October 1, 2014, and no further session law was enacted in 2014 to replace it.]
- *Implementation Status: The EMC approved new development programs for all Jordan local governments in May 2012. Ten of 33 local governments reportedly began implementing their programs in 2012 and an eleventh in 2013.*

15A NCAC 02B .0266: Stormwater Management for Existing Development
(see also SL 2009-216)

- Delays the required commission approval date of DWR's model program from December 2013 to December 2016.
- Delays lake monitoring-based, conditional trigger dates for implementing load-reducing Stage 2 requirements by three years. No other aspects of the requirements are modified. The new trigger dates are as follows:

- Local governments in the Upper New Hope (UNH) subwatershed will be notified to develop a Stage 2 program if the division's March 1, 2017 monitoring report shows that nutrient-related water quality standards are not met in that arm of the lake. After commission approval of programs, UNH local governments will begin implementing by June 2018.
- Local governments in the Haw and Lower New Hope (LNH) subwatersheds will be notified to develop a Stage 2 program if the division's March 1, 2020 monitoring report shows that nutrient-related water quality standards are not met in those arms of the lake. Haw and LNH local governments will begin implementing their commission-approved programs by June 2021.
- Local governments in the UNH subwatershed will be notified to modify their Stage 2 Programs if the division's March 1, 2026 monitoring report shows that nutrient-related water quality standards are still not met in that arm of the lake.
- *Implementation Status:*
 - *Local governments continue to implement their Stage 1 existing development programs launched in 2010 and continue to submit annual reports each October.*
 - *Division planning staff continues to develop crediting for additional load reducing measures for use towards existing development stormwater compliance. Availability of measures will be announced as their standards and associated crediting are approved for use.*
 - *During summer 2013, under a Section 205j contract, the consulting firm Tetra Tech assembled the available science and made credit method recommendations on six of the highest priority nutrient measures, as identified by the Nutrient Scientific Advisory Board (NSAB). DWR planning section staff is utilizing those recommendations to develop practice standards and guidance. Draft guidance for each measure is currently being taken through the NSAB, which will be followed by revisions, public comment periods and final approvals in late 2014 and into early 2015.*
 - *The Upper Neuse River Basin Association obtained funding from its members and the North Carolina Department of Environment and Natural Resources in 2013 to contract a sweep of the science and development of credit accounting recommendations for a large number of potentially creditable nutrient measures. That contract, utilizing Cardno-Entrix and the Center for Watershed Protection, was launched in March 2014 and is designed to develop credit recommendations for approximately two dozen additional measures over a two-year period.*

- *In summer 2012, the division initiated a Section 319 grant contract with the consulting firm Tetra Tech to develop a watershed model to estimate baseline loads and load reduction goals from the existing developed lands of local governments and state and federal entities in the Jordan watershed. The model was completed in October 2013 and was followed by a third-party review stage. Reviews were provided by two independent reviewers and two stakeholder reviewers, and with the endorsement of the NSAB, Tetra Tech made necessary revisions to the model report and performed supplementary analyses. The work was completed in September 2014. DWR staff is working through remaining issues associated with the modeling, and will use the model results to develop existing development load reduction goals in 2015. The reports and other information on the model can be found at: <http://www.tjcog.org/jordan-jurisdictional-allocation-model-development.aspx>.*

15A NCAC .02B 0270: Wastewater Discharge Requirements

(See also SL 2009-216 and 2011-394)

- Delays from calendar year 2016 to calendar year 2019, which is the date dischargers of 0.1 MGD or greater are to limit their total nitrogen discharges to their active individual discharge allocations. Compliance is further delayed to calendar 2021 if the discharger has received an authorization pursuant to G.S. 143-215.1 for construction, installation, or alteration of its treatment works for purposes of complying with its total nitrogen load.
- *Implementation Status: Dischargers continue to comply with phosphorus limits that were required by calendar 2010.*

15A NCAC 02B .0271: Stormwater Requirements for State and Federal Entities

(see also SL 2009-484)

- Delays lake monitoring-based, conditional trigger dates for implementing existing development load-reducing requirements in an identical manner to the delays described above for local government existing development implementation.
- *Implementation Status: State and federal entities continue to comply with new development stormwater requirements that began for the N.C. Department of Transportation (DOT) in January 2013 and for other entities in the summer of 2012.*

15A NCAC 02B .0267: Protection of Existing Riparian Buffers

(See also SL 2009-484)

- No delays, as the buffer rules were fully implemented before 2013.
- *Implementation Status: Rule implementation continues. Implementation began in August 2009 for state and federal entities and in DWR-implemented areas. Local*

governments began implementing their local programs by March 2011. See below for the effect of the session law's changes to the content of the buffer protection rule.

Buffer Rule Changes: The second part of Session Law 2013-395 makes three changes to rule **15A NCAC 02B .0267: Protection of Existing Riparian Buffers**. Two of the changes are to the table of uses found in Item (9), while the third is a definition change:

- Non-electric utilities in zone two, other than perpendicular crossings, are now categorized in the table of uses as an “exempt” use. They were previously categorized as “allowable”.
- The piping of a stream allowed under a permit issued by the United State Army Corp of Engineers is now categorized in the table of uses as an “allowable” use. This was previously not listed in the table of uses, and therefore not allowable.
- The definition of “airport facilities” in item (2) (b) is amended to include any aeronautic industrial facilities that require direct access to the airfield.

Implementation Status: DWR has been implementing buffer requirements pursuant to these changes since the August 2013 effective date of the session law. In areas where local governments implement the buffer requirements:

- *A local government may choose to amend its ordinance to capture these changes. Amended ordinances must be sent to DWR for the director's approval.)*
- *A local government may also choose not to make these changes to its ordinance, which would result in the ordinance being more stringent than the state requirements. Section 1 of the Jordan Buffer Rule states that local governments may implement buffer requirements more stringent than the Rule.*
- *[Note: Session Law 2013-413, which temporarily prohibited the adoption of local environmental ordinances that regulate a field that is also regulated by a state environmental agency without a unanimous vote expired in October 1, 2014, and no further session law was enacted in 2014 to replace it.]*

Session Law 2013-360 (State Budget Bill), Effective July 26th, 2013

In-Lake Water Quality Improvement Demonstration Project: This lengthy session law has a three-page section (14.3A) that authorizes a 24 -month “Jordan Lake Water Quality Improvement Demonstration Project” funded by \$1.95 million from the Clean Water Management Trust Fund and the N.C. Department of Environment and Natural Resources (DENR.) The intent of the project is to improve water quality in the lake by suppressing phytoplankton activity such that chlorophyll-*a*, pH and turbidity measurements will meet state water quality standards within the project areas.

- The session law required DENR to contract with a third party that can deploy floating arrays of 36 in-lake, long-distance water circulators. Twenty-four circulators will be placed in the Morgan Creek arm of the lake and 12 in the Haw River arm.
- The department is required to monitor, evaluate, and report on the performance of the circulators in reducing the adverse impacts of harmful algal blooms and excessive chlorophyll in the lake by focusing on nutrient related physical, chemical and biological parameters. DENR shall submit an interim report on the findings of the demonstration project to the Environmental Review Commission and the Fiscal Research Division of the General Assembly by October 1, 2015. A final report shall be submitted by April 1, 2016.

Status: The U.S. Army Corps of Engineers' public comment period for the project's Environmental Assessment document ended on April 6, 2014. The Corps issued a Finding of No Significant Impact (FONSI) on July 10, 2014, and the circulators were deployed on July 21, 2014. The Environmental Assessment can be found on the Corps' Jordan Lake website at:

<http://www.saw.usace.army.mil/Locations/DistrictLakesandDams/BEverettJordan.aspx>

Division monitoring reports and other information for the circulator project are being posted at <http://portal.ncdenr.org/web/wq/jordancirculator>

SESSION LAW 2014-90

Only one session law was enacted in 2014 that potentially had a direct effect on the Jordan lake nutrient management strategy. Session law 2014-90 applies to state stormwater programs. Section 2 adds the following language to the definition of "development" in G.S. 143-214.7.

"..When additional development occurs at a site that has existing development, the built-upon area of the existing development shall not be included in the density calculations for additional stormwater control requirements, and stormwater control requirements cannot be applied retroactively to existing development, unless otherwise required by federal law.

The significance of this session law for the Jordan stormwater rules is being evaluated by legal counsel. Staff will share a determination when it becomes available.

JORDAN LEGISLATIVE COMMITTEE, 2014

The 2013-2014 Legislative Research Commission established a study committee on Jordan Lake to consider all issues deemed relevant when addressing water quality in Jordan Lake. The committee was made up of six senators and six representatives. The committee held four monthly meetings from January through April 2014. DWR's director, Tom Reeder, gave presentations at each meeting that

covered the history and water quality of the lake; the status and projected implementation costs of the Jordan Rules; other potential in-lake water quality improvement options; and a summary of the planned in-lake water quality demonstration project, as well as the associated monitoring and data collection. The committee also heard from several watershed utilities' directors and an operator of small private wastewater facilities, regarding their jurisdiction's efforts and costs to meet the wastewater rule requirements at their facilities. At the final meeting, the committee received comments from the general public. No further meetings were held by the committee beyond the April meeting, and no bills specifically regarding the Jordan Rules were introduced at the 2014 General Assembly Short session. Relevant information, including the committee's membership, authorization letter, agendas, minutes and presentations can be found at:

http://www.ncleg.net/gascripts/Committees/Committees.asp?sAction=ViewCommittee&sActionDetails=Non-Standing_6612.

RULE AMENDMENTS TO INCORPORATE 2009-2012 SESSION LAWS

As a separate matter, the session laws affecting Jordan Lake, which were enacted in 2009, 2011 and 2012, require the Environmental Management Commission (EMC) to amend the Jordan rules to incorporate the session law provisions in a "substantively identical" manner. This rule amendment process is purely a housekeeping exercise to ensure that all of the Jordan regulations ultimately reside in one place. The requirements of the session laws were enacted upon their effective dates, and the follow-up rule amendment process does not alter the rule requirements or implementation timing in any way.

Status: During 2013, the division carried out this rulemaking process to incorporate the original 2009 session laws, as well as the 2011 and 2012 session laws into the affected rules. Amended rules were adopted by the commission in November 2013 and approved by the Rules Review Commission (RRC) in December 2013. The amended rules went before the 2014 General Assembly. No action was taken. The amended rules became effective on July 7, 2014. The most recent versions can be found on the Jordan website at: <http://www.jordanlake.org/web/jordanlake/read-the-rules>. Further revisions will need to be made to incorporate amendments required by the 2013 session laws.

UPCOMING RULE AMENDMENTS PER SESSION LAW 2013-413

Session law 2013-413 established the requirement of periodic rule revisions for state agencies. Section 3(b) of the session law requires this review at least every ten years. It also required all rules found to be "necessary with substantive public interest" to be posted for public comment, potentially revised and readopted. Section 3(d) of the Session Law determined that rules related to surface water quality and wetlands were to be reviewed in the first year (2014). Accordingly, at its September 11, 2014, meeting, the EMC made a final determination that rules found in Sections 02B, 02H, 02T and 02U of the North Carolina Administrative code were "necessary with substantive public interest", and the RRC approved

this determination at its October 16, 2014 meeting. Therefore DWR will go through the review and public comment process and re-adopt all nutrient management strategy rules , which are located in Section 02B, in addition to the rest of the 02B, 02H, 02T and 02U rules. Staff will also use this opportunity to incorporate the delays mandated to the Jordan nutrient strategy per session law 2013-395 and described in the preceding section. The RRC has not set a deadline for completing the stakeholder and readoption process yet. However, the Division intends to initiate stakeholder processes in 2015. We will provide notice when this approaches.