

1 pursuant to this section shall become effective as provided in G.S. 150B-21.3(b1) as though 10
2 or more written objections had been received as provided by G.S. 150B-21.3(b2).

3 **SECTION 3.(a)** Existing Development Rule 15A NCAC 02B .0266 Disapproved.
4 – Pursuant to G.S. 150B-21.3(b1), Existing Development Rule 15A NCAC 02B .0266, as
5 adopted by the Environmental Management Commission on May 8, 2008, and approved by the
6 Rules Review Commission on November 20, 2008, is disapproved.

7 **SECTION 3.(b)** References in the North Carolina Administrative Code to the rule
8 cited in Section 3(a) of this act shall be deemed to refer to the equivalent provisions of this act.

9 **SECTION 3.(c)** Nutrient Monitoring. – The Department shall maintain an ongoing
10 program to monitor water quality in each arm of Jordan Reservoir. The Department shall also
11 accept water quality sampling data from a monitoring program implemented by a local
12 government or nonprofit organization if the data meets quality assurance standards established
13 by the Department. On March 1, 2014, the Department shall report the results of monitoring in
14 each arm of Jordan Reservoir to the Environmental Review Commission. The Department shall
15 submit an updated report under this section every three years thereafter until such time as the
16 lake is no longer impaired by nutrient pollution.

17 **SECTION 3.(d)** Control of Nutrient Loading From Existing Development. – The
18 Department shall require implementation of reasonable nutrient load reduction measures for
19 existing development in each arm of the Jordan Reservoir, as provided in this act. The
20 Department shall determine whether nutrient load reduction measures for existing development
21 are necessary in each subwatershed of Jordan Reservoir and require implementation of
22 reasonable nutrient reduction measures in accordance with an adaptive management program as
23 follows:

- 24 (1) Stage 1 Adaptive Management Program to Control Nutrient Loading From
25 Existing Development. –
26 a. Municipalities and counties located in whole or in part in the Jordan
27 watershed shall implement a Stage 1 adaptive management program
28 to control nutrient loading from existing development in the Jordan
29 watershed. The Stage 1 adaptive management program shall meet the
30 requirements set out in 40 C.F.R. § 122.34 as applied by the
31 Department in the NPDES General Permit for municipal separate
32 storm sewer systems in effect on July 1, 2009. The Stage 1 adaptive
33 management program shall include all of the following measures:
34 1. A public education program to inform the public of the
35 impacts of nutrient loading and measures that can be
36 implemented to reduce nutrient loading from stormwater
37 runoff from existing development.
38 2. A mapping program that includes major components of the
39 municipal separate storm sewer system, including the location
40 of major outfalls, as defined in 40 Code of Federal
41 Regulations §122.26(b)(5) (July 1, 2008) and the names and
42 location of all waters of the United States that receive
43 discharges from those outfalls, land use types, and location of
44 sanitary sewers.
45 3. A program to identify and remove illegal discharges.
46 4. A program to identify opportunities for retrofits and other
47 projects to reduce nutrient loading from existing developed
48 lands.
49 5. A program to ensure maintenance of best management
50 practices implemented by the local government.

- 1 b. The Department shall accept local government implementation of
2 another stormwater program or programs meeting the standards set
3 out in this section as satisfying one or more of the requirements set
4 forth in sub-subdivision a. of this subdivision. The local government
5 shall provide technical information sufficient to demonstrate the
6 adequacy of the alternative program or program elements.
- 7 c. A Stage 1 adaptive management program to control nutrient loading
8 from existing development shall be implemented as follows:
- 9 1. No later than December 31, 2009, each local government
10 shall submit its Stage 1 adaptive management program to the
11 Commission for review and approval.
- 12 2. Within six months following submission of a Stage 1
13 adaptive management program, the Division shall
14 recommend that the Commission approve or disapprove the
15 program. The Commission shall either approve the program
16 or require changes based on the standards set out in
17 sub-subdivision a. of this subdivision. If the Commission
18 requires changes, the local government shall submit revisions
19 responding to the required changes within two months and
20 the Department shall provide follow-up recommendations to
21 the Commission within two months after receiving revisions.
- 22 3. Within three months following Commission approval of a
23 Stage 1 adaptive management program, the local government
24 shall begin implementation of the program. Each local
25 government shall report annually to the Department on
26 implementation of its program.
- 27 (2) Stage 2 Adaptive Management Program to Control Nutrient Loading From
28 Existing Development. –
- 29 a. If the March 1, 2017, report or any subsequent monitoring report for
30 an arm of Jordan Reservoir required under Section 3(c) of this act
31 shows that nutrient-related water quality standards are not being
32 achieved, a municipality or county located in whole or in part in the
33 subwatershed of that arm of Jordan Reservoir shall develop and
34 implement a Stage 2 adaptive management program to control
35 nutrient loading from existing development in the Jordan watershed,
36 as provided in this act. The Department shall defer development and
37 implementation of Stage 2 adaptive management programs to control
38 nutrient loading from existing development required in an arm of
39 Jordan Reservoir by this subdivision if it determines that additional
40 reductions in nutrient loading from existing development in that arm
41 will not be necessary to achieve nutrient-related water quality
42 standards. In making this determination, the Department shall
43 consider the anticipated effect of measures implemented or scheduled
44 to be implemented to reduce nutrient loading from sources in the arm
45 other than existing development. If any subsequent monitoring report
46 for an arm of Jordan Reservoir required under Section 3(c) of this act
47 shows that nutrient-related water quality standards have not been
48 achieved, the Department shall notify the municipalities and counties
49 located in whole or in part in the subwatershed of that arm of Jordan
50 Reservoir and the municipalities and counties shall develop and

- 1 implement a Stage 2 adaptive management program as provided in
2 this subdivision.
- 3 b. The Department shall establish a load reduction goal for existing
4 development for each municipality and county required to implement
5 a Stage 2 adaptive management program to control nutrient loading
6 from existing development. The load reduction goal shall be
7 designed to achieve an eight percent (8%) reduction in nitrogen
8 loading of surface water from existing development and a five
9 percent (5%) reduction in phosphorus loading of surface water from
10 existing development relative to the baseline period 1997 through
11 2001 and reaching Jordan Reservoir from existing developed lands
12 within the municipal limits or county boundary. The baseline load
13 shall be calculated by applying the Tar-Pamlico Nutrient Export
14 Calculation Worksheet, Piedmont Version, dated October 2004, to
15 acreages of different types of existing development within the local
16 government planning jurisdiction during the baseline period. The
17 baseline load may also be calculated using an equivalent or more
18 accurate method acceptable to the Division and recommended by the
19 Scientific Advisory Board established pursuant to Section 4(a) of this
20 act. The baseline load for a municipality or county shall not include
21 nutrient loading from lands under State or federal control or lands in
22 agriculture or forestry. The load reduction goal shall be adjusted to
23 account for nutrient loading increases from lands developed
24 subsequent to the baseline period but prior to implementation of new
25 development stormwater programs.
- 26 c. Based on findings under sub-subdivisions a. and b. of this
27 subdivision, the Department shall notify the local governments in
28 each subwatershed that either:
- 29 1. Implementation of a Stage 2 adaptive management program
30 to control nutrient loading from existing development will be
31 necessary to achieve water quality standards in an arm of the
32 reservoir and direct the municipalities and counties in the
33 subwatershed to develop a load reduction program in
34 compliance with this section.
- 35 2. Implementation of a Stage 2 adaptive management program
36 to control nutrient loading from existing development is not
37 necessary at that time but will be reevaluated in three years
38 based on the most recent water quality monitoring
39 information.
- 40 d. A local government receiving notice of the requirement to develop
41 and implement a Stage 2 adaptive management program to control
42 nutrient loading from existing development under this section shall
43 not be required to submit a program if the local government
44 demonstrates that it has already achieved the reductions in nutrient
45 loadings required by sub-subdivision b. of this subdivision.
- 46 e. Within six months after receiving notice to develop and implement a
47 Stage 2 adaptive management program to control nutrient loading
48 from existing development, each local government shall submit to
49 the Commission a program that is designed to achieve the reductions
50 in nutrient loadings established by the Division pursuant to
51 sub-subdivision b. of this subdivision. A local government program

1 may include nutrient management strategies that are not included in
2 the model program developed pursuant to Section 3(c) of this act in
3 addition to or in place of any component of the model program. In
4 addition, a local government may satisfy the requirements of this
5 subdivision through reductions in nutrient loadings from other
6 sources in the same subwatershed to the extent those reductions go
7 beyond measures otherwise required by statute or rule. A local
8 government may also work with other local governments within the
9 same subwatershed to collectively meet the required reductions in
10 nutrient loadings from existing development within their combined
11 jurisdictions. Any credit for reductions achieved or obtained outside
12 of a local government's planning jurisdiction shall be adjusted based
13 on transport factors established by the Department document
14 Nitrogen and Phosphorus Delivery from Small Watersheds to Jordan
15 Lake, dated June 30, 2002.

- 16 f. Within six months following submission of a local government's
17 Stage 2 adaptive management program to control nutrient loading
18 from existing development, the Department shall recommend that the
19 Commission approve or disapprove the program. The Commission
20 shall approve the program if it meets the requirements of this
21 subdivision, unless the Commission finds that the local government
22 can, through the implementation of reasonable and cost-effective
23 measures not included in the proposed program, meet the reductions
24 in nutrient loading established by the Department pursuant to
25 sub-subdivision b. of this subdivision by a date earlier than that
26 proposed by the local government. If the Commission finds that there
27 are additional or alternative reasonable and cost-effective measures,
28 the Commission may require the local government to modify its
29 proposed program to include such measures to achieve the required
30 reductions by the earlier date. If the Commission requires such
31 modifications, the local government shall submit a modified program
32 within two months. The Department shall recommend that the
33 Commission approve or disapprove the modified program within
34 three months after receiving the local government's modified
35 program. In determining whether additional or alternative load
36 reduction measures are reasonable and cost effective, the
37 Commission shall consider factors including, but not limited to, the
38 increase in the per capita cost of a local government's stormwater
39 management program that would be required to implement such
40 measures and the cost per pound of nitrogen and phosphorus
41 removed by such measures. The Commission shall not require
42 additional or alternative measures that would require a local
43 government to:
- 44 1. Install or require installation of a new stormwater collection
45 system in an area of existing development unless the area is
46 being redeveloped.
 - 47 2. Acquire developed private property.
 - 48 3. Reduce or require the reduction of impervious surfaces within
49 an area of existing development unless the area is being
50 redeveloped.

- 1 g. Within three months after the Commission's approval of a Stage 2
2 adaptive management program to control nutrient loading from
3 existing development, the local government shall complete adoption
4 and begin implementation of its program.
- 5 h. Each local government implementing a Stage 2 adaptive
6 management program to control nutrient loading from existing
7 development shall submit an annual report to the Division
8 summarizing its activities in implementing its program.
- 9 i. If at any time the Department finds, based on water quality
10 monitoring, that an arm of the Jordan Reservoir has achieved
11 compliance with water quality standards, the Department shall notify
12 the local governments in the subwatershed. Subject to the approval of
13 the Commission, a local government may modify its Stage 2 adaptive
14 management program to control nutrient loading from existing
15 development to maintain only those measures necessary to prevent
16 increases in nutrient loading from existing development.

17 **SECTION 3.(e)** Model Stage 2 Adaptive Management Program to Control
18 Nutrient Loading From Existing Development. – No later than December 31, 2014, the
19 Department shall submit a model Stage 2 adaptive management program to control nutrient
20 loading from existing development to the Commission for approval. The model program shall
21 identify specific load reduction practices and programs and reduction credits associated with
22 each practice or program. In developing the model program, the Department shall consider the
23 findings and recommendations of the Scientific Advisory Board established pursuant to Section
24 4(a) of this act and comments submitted by municipalities and counties identified in 15A
25 NCAC 02B .0262(7) (Jordan Water Supply Nutrient Strategy: Purpose and Scope). The
26 Commission shall review the model program and either approve the program or return it to the
27 Department with requested changes. The Department shall revise the model program to address
28 changes requested by the Commission. The Commission shall approve a final model program
29 no later than December 31, 2015.

30 **SECTION 3.(f)** Additional Measures to Reduce Nitrogen Loading From Existing
31 Development in the Upper New Hope Creek Arm of the Jordan Reservoir. –

- 32 (1) If the March 1, 2026, report or any subsequent monitoring report for the
33 Upper New Hope Creek Arm of Jordan Reservoir shows that nutrient-related
34 water quality standards are not being achieved, a municipality or county
35 located in whole or in part in the Upper New Hope Creek Subwatershed
36 shall modify its Stage 2 adaptive management program to control nutrient
37 loading from existing development to achieve additional reductions in
38 nitrogen loading from existing development. The modified Stage 2 adaptive
39 management program shall be designed to achieve a total reduction in
40 nitrogen loading from existing development of thirty-five percent (35%)
41 relative to the baseline period 1997 through 2001. The Department shall
42 notify local governments of the requirement to submit a modified Stage 2
43 adaptive management program. Submission, review and approval, and
44 implementation of a modified Stage 2 adaptive management program shall
45 follow the process, timeline, and standards set out in sub-subdivisions e.
46 through g. of subdivision (2) of Section 3(d) of this act.
- 47 (2) At the request of one or more local governments located in whole or in part
48 in the Upper New Hope Creek Subwatershed, the Commission may initiate
49 alternative regulatory actions authorized by State or federal law, including,
50 but not limited to, the granting of a variance and the establishment of

1 alternative water quality standards for the Upper New Hope Creek Arm of
2 Jordan Reservoir.

3 **SECTION 3.(g)** Enforcement. – The Department shall enforce the provisions of
4 this act as provided in G.S. 143-215.6A, 143-215.6B, and 143-215.6C.

5 **SECTION 3.(h)** Collective Compliance. – Local governments that are subject to
6 regulation under this act may establish collective programs to comply with the requirements of
7 this act.

8 **SECTION 3.(i)** Report. – The Division shall report annually to the Commission
9 regarding the implementation of adaptive management programs to control nutrient loading
10 from existing development in the Jordan watershed.

11 **SECTION 3.(j)** Additional Rule-Making Authority. – The Commission shall adopt
12 a rule to replace Sections 3(c) through 3(i) of this act. Notwithstanding G.S. 150B-19(4), the
13 rule adopted by the Commission pursuant to this section shall be substantively identical to the
14 provisions of Sections 3(c) through 3(f) of this act. Rules adopted pursuant to this section are
15 not subject to G.S. 150B-21.9 through G.S. 150B-21.14. Rules adopted pursuant to this section
16 shall become effective as provided in G.S. 150B-21.3(b1) as though 10 or more written
17 objections had been received as provided by G.S. 150B-21.3(b2).

18 **SECTION 4.(a)** Scientific Advisory Board for Nutrient-Impaired Waters
19 Established. – No later than July 1, 2010, the Secretary shall establish a Nutrient Sensitive
20 Waters Scientific Advisory Board. The Scientific Advisory Board shall consist of no fewer than
21 five and no more than 10 members with the following expertise or experience:

- 22 (1) Representatives of one or more local governments in the Jordan Reservoir
23 watershed. Local government representatives shall have experience in
24 stormwater management, flood control, or management of a water or
25 wastewater utility.
- 26 (2) One member with at least 10 years of professional or academic experience
27 relevant to the management of nutrients in impaired water bodies and
28 possessing a graduate degree in a related scientific discipline, such as aquatic
29 science, biology, chemistry, geology, hydrology, environmental science,
30 engineering, economics, or limnology.
- 31 (3) One professional engineer with expertise in stormwater management,
32 hydrology, or flood control.
- 33 (4) One representative of the Department of Transportation with expertise in
34 stormwater management.
- 35 (5) One representative of a conservation organization with expertise in
36 stormwater management, urban landscape design, nutrient reduction, or
37 water quality.

38 **SECTION 4.(b)** Duties. – No later than July 1, 2012, the Scientific Advisory
39 Board shall do all of the following:

- 40 (1) Identify management strategies that can be used by local governments to
41 reduce nutrient loading from existing development.
- 42 (2) Evaluate the feasibility, costs, and benefits of implementing the identified
43 management strategies.
- 44 (3) Develop an accounting system for assignment of nutrient reduction credits
45 for the identified management strategies.
- 46 (4) Identify the need for any improvements or refinements to modeling and
47 other analytical tools used to evaluate water quality in nutrient-impaired
48 waters and nutrient management strategies.

49 **SECTION 4.(c)** Report; Miscellaneous Provisions. – The Scientific Advisory
50 Board shall also advise the Secretary on any other issue related to management and restoration
51 of nutrient-impaired water bodies. The Scientific Advisory Board shall submit an annual report

1 to the Secretary no later than July 1 of each year concerning its activities, findings, and
2 recommendations. Members of the Scientific Advisory Board shall be reimbursed for
3 reasonable travel expenses to attend meetings convened by the Department for the purposes set
4 out in this section.

5 **SECTION 5. No Preemption.** – A local government may adopt and implement a
6 stormwater management program that contains provisions that are more restrictive than the
7 standards set forth in Sections 2 and 3 of this act or in any rules concerning stormwater
8 management in the Jordan watershed adopted by the Commission. This section shall not be
9 construed to authorize a local government to impose stormwater management requirements on
10 lands in agriculture or forestry.

11 **SECTION 6. Construction of Act.** –

12 (1) Except as specifically provided in Sections 2(c) and 3(j) of this act, nothing
13 in this act shall be construed to limit, expand, or otherwise alter the authority
14 of the Commission or any unit of local government.

15 (2) This act shall not be construed to affect any delegation of any power or duty
16 by the Commission to the Department or subunit of the Department.

17 **SECTION 7. Note to Revisor of Statutes.** – Notwithstanding G.S. 164-10, the
18 Revisor of Statutes shall not codify any of the provisions of this act. The Revisor of Statutes
19 shall set out the text of Section 2 of this act as a note to G.S. 143-215.1 and may make notes
20 concerning this act to other sections of the General Statutes as the Revisor of Statutes deems
21 appropriate. The Revisor of Statutes shall set out the text of Section 3 of this act as a note to
22 G.S. 143-214.7 and may make notes concerning this act to other sections of the General
23 Statutes as the Revisor of Statutes deems appropriate.

24 **SECTION 8. Effective Date.** – This act is effective when it becomes law.