

William G. Ross Jr., Secretary North Carolina Department of Environment and Natural Resources

Alan W. Klimek, P.E. Director Division of Water Quality

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MEMO

TO:

Interested Parties

FROM:

Coleen Sullins

RE:

Buffer mitigation and the mining industry

As you may know, the Water Quality Committee and the NC Mining Commission recently directed their staff to meet to discuss various approaches that the mining industry could use to meet the buffer mitigation requirements of the Neuse, Catawba and Tar-Pamlico Riparian Buffer Protection Programs. The rules for those programs list mining as either "allowable" if buffers are established along relocated streams or "allowable with mitigation" if buffers cannot be established along relocated streams (15A NCAC 2B .0233 (5), 2B .0243 (5), and 2B .0259 (5) for the Neuse, Catawba and Tar-Pamlico basins, respectively). The following regulatory guidance helps clarify the mitigation requirement of these rules in the context of the mining industry.

- I. Allowable without additional mitigation Where a mining activity can relocate a stream channel with a 50 foot wide buffer on both sides of the new stream channel with diffuse flow, then no additional mitigation is required.
- Allowable with mitigation Where a mining activity cannot relocate a 11. stream channel with a 50 foot wide buffer, then the rules require compensatory mitigation to replace the buffer along the stream which is proposed to be impacted at the ratios specified in the rules. In many instances, the reclamation plan for the mine will result in a permanent waterbody (usually a lake or pond) within the footprint of the mine. In those cases, creation of a 50 foot wide wooded buffer with diffuse flow around the edge of the permanent waterbody may provide compensatory mitigation for impacts to buffers along the streams that will be impacted. Written DWQ approval will be needed for the mitigation plan in accordance with 15A NCAC 2B .0242 (9), 2B .0244 (9) and 2B .0260 (9) for the Neuse, Catawba and Tar-Pamlico basins, respectively. This plan must provide a schedule for planting and five years of monitoring of the buffer and must be coordinated with the Mining Permit issued by the NC Division of Land Resources. In addition as required for all mitigation sites, a conservation easement will need to be placed on the portion of the lake buffer that is needed or proposed for mitigation in order to provide long-



term protection for these areas. Explicit provision can be made for water-dependent activities that may impact the buffer such as boat ramps and docks. The Division of Land Resources will then include this requirement in the Mining Permit in order to coordinate the permitting requirements of our two agencies. This buffer requirement could be put in place once the mining is completed as long as the long-term provision for the buffer is reflected in the mining plan. In some instances, buffer may be created beyond the requirements of the buffer rules. In those cases, the extra buffer may be sold or used for compensatory mitigation for other projects. Finally, this mitigation effort could coincide with the undisturbed mining buffer required by the Mining Permit.

If you have any questions concerning this guidance, please contact Mr. John Dorney of my staff at 919-733-9646.

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