

**Environmental Management Commission's
Statement of Impact of Proposed
Consolidated Buffer Mitigation Rule**

The Environmental Management Commission (EMC) seeks to adopt 15A NCAC 02B .0295 in order to comply with the effective date of a recent act of the General Assembly. This rule adoption is authorized by Section 2 of SL 2014-95.

Specifically, Section 2 of SL 2014-95 states that the Environmental Management Commission shall adopt a *Mitigation Program Requirements for the Protection and Maintenance of Riparian Buffers* Rule, pursuant to G.S. 150B-21.1, no later than October 1, 2014. It further states that the rule adopted pursuant to Section 2 shall be substantively identical to the recommended rule text contained in the April 10, 2014 Consolidated Buffer Mitigation Rule Stakeholder Report.

Pursuant to G.S. 143-214.20, the EMC is to adopt rule(s) concerning the construction of alternative measures of buffer mitigation that reduce nutrient loading as well as or better than the riparian buffer that is lost. The EMC began rulemaking in September 2009 and adopted Rule 15A NCAC 02B .0295 on May 9, 2013. On July 18, 2013, the Rules Review Commission (RRC) approved the Rule, however more than ten letters of objection were received. The Department of Environment and Natural Resources requested the Division of Water Resources assemble a stakeholder group to resolve the objections to the rule. The group came to a consensus on all the revisions to the OAH draft rule; those recommendations were included in the April 10, 2014 Consolidated Buffer Mitigation Rule Stakeholder Report. The revisions proposed in the Stakeholder Report include improving clarity of rule language through definitions and tables, expanding restoration methods to include natural regeneration, allowing buffer mitigation credit up to 200 feet from the stream bank, providing flexibility for sites with existing impervious surfaces or stormwater conveyances and allowing mitigation on ephemeral channels and ditches.

Section 1 of SL 2014-95 disapproved the rule adopted by the EMC on May 9, 2013 and approved by the RRC on July 18, 2013, which means there is still no rule in place concerning the construction of alternative measures of buffer mitigation that reduce nutrient loading as well as or better than the riparian buffer that is lost as required in G.S. 143-214.20.

To comply with the requirement set forth in G.S. 143-214.20 and Section 2 of SL 2014-95, the EMC is pursuing temporary rulemaking to adopt a *Mitigation Program Requirements for the Protection and Maintenance of Riparian Buffers* Rule (15A NCAC 02B .0295).