

# Rules rewrite worries groups

Few had input on new river regulations

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**RALEIGH** A plan to update regulations that protect streams and rivers was adopted last year after a nearly five-year process that incorporated input from a wide range of interests.

In just five months this winter, the McCrory administration re-wrote those rules with the help of private companies that had a financial stake in the outcome – including the company where state Department of Environment and Natural Resources Secretary John Skvarla once worked.

In addition, the complaints about the rules that led to the rewrite were made by both the industry and DENR employees.

State regulators say the rewrite was only technical, but advocates are still trying to decipher what it means for the forested buffers that protect rivers and streams.

Some environmental organizations say the changes could harm water quality in North Carolina, although they cannot say that for certain. DENR, meanwhile, says all the rewrite did was clarify an unwieldy set of rules, while giving the mitigation banking industry more options, which also helps protect the environment.

Environmental groups that  
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## RULES

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had been following the development of the new rules for years were surprised to find out the rules had been rewritten at all. They didn't find out about it until this month, when a low-profile bill surfaced in the General Assembly that would authorize replacing the rules with the version written by the seven-member group.

"I didn't even know they had met or issued a report," said Heather Jacobs Deck, riverkeeper with the Pamlico-Tar River Foundation, who was involved with the original rules. "That was a shock. We had no idea. It was a little frustrating to know at the end of the process there were tweaks and other changes. We weren't part of it."

### Industry involved

The stakeholders who were involved were representatives of three mitigation banking firms – companies that help developers offset environmental damage by restoring or enhancing land elsewhere through the use of credits: Restoration Systems, Wildlands Engineering and Environmental Bank & Exchange.

Skvarla was CEO at Restoration Systems until McCrory named him to lead DENR last year. He has said his interest in the company is in a blind trust.

Also in the group was PCS Phosphate, a mining company, two representatives from DENR and an official with the state Department of Transportation.

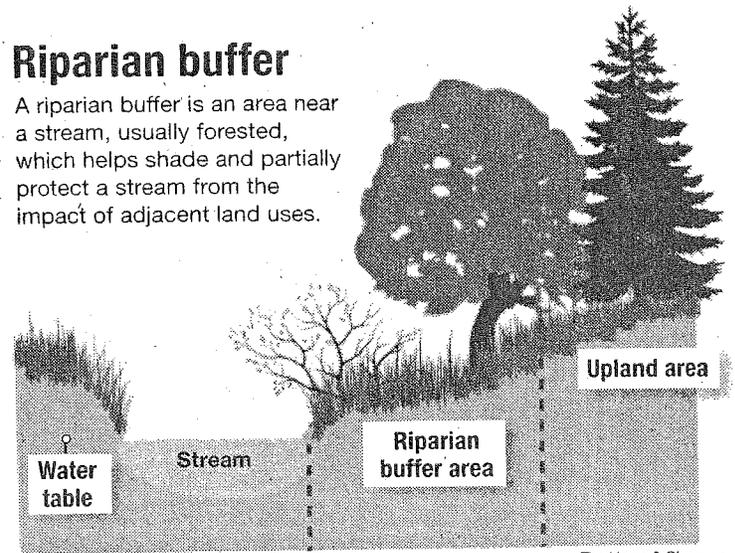
Michael Ellison of DENR, who was part of the group, says the original process included a wide variety of stakeholders but not anyone from the companies actually doing the mitigation. He said this smaller group simply took the results of the multiyear effort and came up with more focused, practical improvements to apply to those rules.

"What we came up with will result in net environmental benefits," Ellison said.

Part of the suspicion over how the rules rewrite was handled stems from environmentalists' fear that the McCrory administration is hostile to safeguards against pollution in favor of making regulations more busi-

## Riparian buffer

A riparian buffer is an area near a stream, usually forested, which helps shade and partially protect a stream from the impact of adjacent land uses.



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ness-friendly, amid a time of cuts to budgets and regulations.

Since Republicans took control of the legislature, rules meant to clean up Jordan Lake have been put on hold while they try an experimental product instead. And DENR has found itself on the defensive over its regulation of Duke Energy's coal ash storage, in the wake of a massive spill in February followed by an ongoing federal investigation.

But the zeal for cutting out cumbersome regulations was underway in Democratic Gov. Bev Perdue's administration and in the legislature before the Republican takeover of 2011. In 2010, Perdue issued an executive order directing state agencies to stop making new rules and to identify unnecessary and outdated ones.

By then, legislators had already directed the Environmental Management Commission to take another look at riparian buffer mitigation, which had developed in North Carolina over the 1990s in a haphazard way. Rules had been written around the needs of individual river basins and watersheds, and didn't add up to a cohesive whole, Ellison said.

### Letters from DENR

New rules also needed to incorporate the latest science and practices, including new alternatives for how to go about mitigation projects. Years of study and input led to the commission adopting

new regulations in May 2013, and the state Rules Review Commission signed off on them that July.

Under state law, if 10 or more people object to a Rules Review Commission decision, the legislature has to make the final call or let the rules go into effect.

A homebuilders association in Wake County, a real estate and building coalition in the Triad, a mitigation banking company, an engineer who does wetlands projects and at least three DENR officials writing as private citizens – including Ellison – were among those who wrote letters objecting to the rules.

Ellison said he wasn't involved in writing the first set of rules and never saw them until early last year. In his letter, he wrote that the proposed rules "intentionally ignore sound science in order to achieve a political objective."

Another letter claimed there is a "not so well hidden agenda of a faction within NCDENR to prevent growth." That is just the kind of supposed agenda that Skvarla said he took office to combat.

But DENR spokesman Drew Elliot said Skvarla was not involved in setting up the smaller stakeholder group that began meeting in October. Skvarla's company was selected to participate by an industry association and not DENR, Ellison said.

"He's supportive of having rules that are common sense and are supported by science and experience, and are not unnecessarily burdensome to economic develop-

ment," Elliot said of Skvarla. "Everybody who works for Secretary Skvarla knows that."

### **Disagreement over impact**

Ellison said environmental interests in the smaller group were represented by DENR, rather than advocacy organizations, in order to work out technical issues.

"I don't think there's anything to fight over, that advocacy groups wouldn't support," he said. "... This isn't a radical rewrite."

But some environmentalists still have concerns. The new rules give mitigation companies new ways to make money through buffer mitigation projects in stream beds that are mostly dry and in drainage ditches. They also reduce the ratio of land that has to be enhanced to offset damage under some circumstances.

And they allow a smaller buffer area to be developed in some cases. They eliminate the requirement that annual reports be submitted for engineered structures such as stormwater ponds and pipes.

Some of these changes "could result in weaker mitigation requirements that may, indeed, impact water quality," Deck, the riverkeeper, said.

The bill that has been filed to enact the rewrite was approved in a House subcommittee last week, and is presumably headed to the floor for a vote before the short session ends.

Mary Mclean Asbill of the Southern Poverty Law Center, spoke against SB883 at the meeting, citing those concerns as well as the way the new rules were written.

"That's a messed-up process," she said. "That's not the way rules are done in North Carolina."

If the bill is enacted into law, the rewritten rules would take effect on a temporary basis, and then the job of writing permanent rules would return to the Environmental Management Commission. Its membership has changed since it approved the old rules: Legislation last year swept them all out of office, ending their terms in July and reducing members from 19 to 15, five of whom were reappointed.

The governor and General Assembly make the appointments.