

# Definition of Swamp Waters/Water Quality Standards: U.S. Environmental Protection Agency Denial of North Carolina Reclassification



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The United States Environmental Protection Agency (“EPA”) addressed the State of North Carolina’s (i.e., North Carolina Department of Environmental Quality [“NDEQ”]) reclassification of the Lower Cape Fear River (“LCFR”) as coming within the definition of “swamp waters.”

EPA states in its July 24th letter that pursuant to its Section 303(c) Clean Water Act review it is disapproving NDEQ’s revisions because they do not meet the State’s existing definition of swamp waters.

Section 303 of the Clean Water Act requires that each state develop water quality standards (“WQS”) for jurisdictional waters of the United States within their borders. WQS serve a dual purpose. They establish the water quality goals for a specific body of water and also serve as the regulatory basis for the development of water-quality based effluent limits and strategies for individual point source discharges. The particular WQS deemed applicable to a waterbody can therefore be an important determinant of the effluent limits a discharging facility will need to attain.

A WQS consists of three parts:

1. the designated uses of a water body;
2. the water quality criteria (“WQC”) that are necessary to protect existing uses and to attain the beneficial uses designated by the state; and
3. an anti-degradation statement or policy to protect existing uses in high quality water

Section 303(c) specifies that the adoption of WQS is primarily the responsibility of the states. However, the states must adopt uses consistent with Clean Water Act objectives and WQCs sufficient to protect the chosen uses. EPA is required to ensure that the state WQS, along with any changes, meet the minimum requirements of the Clean Water Act. EPA will assess whether the WQS protects state criteria and/or designated uses by taking into account the water’s use and value for public water supplies, propagation of fish and wildlife, recreational purposes, and agricultural, industrial, navigation, and other purposes. The Clean Water Act regulations provide for EPA review of any state WQS changes. Therefore, any state WQS changes must be submitted to EPA.

The same section of the Clean Water Act requires that the states specify one or more uses for all waterbodies within their jurisdiction. States have some latitude in specifying uses for various waterbodies. A use classification can either be an existing use or a higher quality use that has not yet been determined

(i.e., a “designated use”). The standards or criteria associated with the designated use will be a key determinant of the assimilated capacity available in the waterbody.

EPA states in its July 24th letter that NDEQ April 9th correspondence transmitted several revisions of the state’s regulatory text to incorporate the addition of a supplemental Swamp classification to the already existing classifications associated with the 15-mile long section of the LCFR. Such letter is also stated to have provided details on a companion water quality management strategy.

EPA notes that in North Carolina all tidal salt waters are at least covered by the designated use of Class Salt Water (which is considered a primary classification). North Carolina is stated to have added the Swamp water label as a supplemental classification to the primary classification. Swamp waters are stated to be defined by the state regulations as “. . . those waters which are classified by the Environmental Management Commission and which are topographically located so as to generally have very low velocities and have other characteristics which are different from adjacent streams draining steeper topography.”

The federal agency further states that revising the designated use of the LCFR to add the Swamp water supplemental classification to the existing Salt Water Class C primary classification allows lower dissolved oxygen and pH criteria than allowed under the Salt Water Class C classification, where lower dissolved oxygen or pH concentrations are caused by natural conditions.

In assessing whether to approve or disapprove the North Carolina action, the federal agency states that the Swamp water supplemental classification is considered a designated use change. As a result, the requirements at 40 C.F.R. § 131.1.10(e) and Section 303(c)(2)A were stated to have been considered in its assessment.

EPA undertakes an analysis of the North Carolina revisions. The federal agency disapproves of such revisions concluding that the documentation provided does not meet the State of North Carolina’s existing definition of swamp waters. Further, it concludes that the state has not addressed certain technical concerns expressed in EPA’s formal comments to the state in 2015.

A copy of the [July 24th letter](#) can be found here.