Tim Muhs
200 Pine Mill Lane
Apex, NC 27502

July 16, 2013

N.C. Rules Review Commission
6714 Mail Service Center
Raleigh, NC 27699-6714

Re: 15A NCAC 02B .0295
Mitigation Program Requirements for Protection and Maintenance of Riparian Buffers

Members of the Commission:

The rule referenced above will increase the costs of doing business in North Carolina. Therefore, I request that the above rule(s) be reviewed in the upcoming legislative session as set out in N.C.G.S. 150B-21.3. I further request that the rule(s) be subject to a delayed effective date as set out in that same provision.

Thank you for your consideration.

Tim Muhs

FILED
2013 JUN -5 PM 3:48
OFFICE OF ADMINISTRATIVE HEARINGS

Christopher A Huysman
510 Snow Lane
Sparta, NC 28675

June 2, 2013

N.C. Rules Review Commission
6714 Mail Service Center
Raleigh, NC 27699-6714

Re: [15A NCAC 02B .0295]
Mitigation Program Requirements for Protection and Maintenance of Riparian Buffers

Members of the Commission:

I request that the above rule(s) be reviewed in the upcoming legislative session as set out in N.C.G.S. 150B-21.3. I further request that the rule(s) be subject to a delayed effective date as set out in that same provision.

The proposed changes increase the regulatory burden and, if fully enacted, will substantially increase mitigation costs for many applicants for state environmental permits. Specifically, the rules require the establishment of bonds, easements and endowments as part of the application process. There is no certainty that the preparation of these costly and legally binding requirements will ensure the approval of a pending application for a state permit nor improve the environmental quality of the buffers.

Thank you for your consideration.

Christopher Huysman

CC:
Rep. Jeffery Elmore, House of Representatives
300 N. Salisbury Street, Room 306A3
Raleigh, NC 27603-5925

FILED
2013 JUN -7 AM 11: 02
OFFICE OF ADMINISTRATIVE HEARINGS

Ed Neill
PO Box 3916
Hickory, NC 28603

June 4, 2013

N.C. Rules Review Commission
6714 Mail Service Center
Raleigh, NC 27699-6714

Re: [15A NCAC 02B .0295]
Mitigation Program Requirements for Protection and Maintenance of Riparian Buffers

Members of the Commission:

I request that the above rule(s) be reviewed in the upcoming legislative session as set out in N.C.G.S. 150B-21.3. I further request that the rule(s) be subject to a delayed effective date as set out in that same provision.

The proposed changes increase the regulatory burden and, if fully enacted, will substantially increase mitigation costs for many applicants for state permits. I believe this is more about the desire and not so well hidden agenda of a faction within NCDENR to prevent growth. This spirit of obstructionism does not conform to today's promote growth attitude and any approval of this scorched earth tactic needs to be defeated. North Carolina recently has ranked in the top 5 each year for recruitment potential but performed in the bottom 40. The wettest state in the continental 48 (lineal feet of stream per square mile of territory) can't afford for environmental staff to pervert the legislative intent to this degree.

Thank you for your consideration.

Ed Neill

Ed Neill

CC:
Representative Andy Wells
NC House of Representatives
16 W. Jones Street, Room 2221
Raleigh, NC 27601-1096

Representative Mitchell Setzer
NC House of Representatives
16 W. Jones Street, Room 1206
Raleigh, NC 27601-1096

Printed from the Charlotte Observer - www.CharlotteObserver.com C-4

Posted: Sunday, Jun. 02, 2013

The huge costs of the regulatory state

By George Will

PUBLISHED IN: VIEWPOINT

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Texting while driving is dangerous, especially if you are driving a train. A commuter train engineer was texting on Sept. 12, 2008, near Los Angeles, when he missed a stop signal and crashed into a freight train. Twenty-five people died.

Congress supposedly is incapable of acting quickly, and we are supposed to regret this. In 2008, however, Congress acted with dispatch. We should regret that it did. Herewith another lesson about the costs of the regulatory state, especially when it is excited, eager to make a gesture, and propelled by an uninformed consensus.

In 2008, California's 53-person congressional delegation was 12 percent of the House, and 24 percent of a House majority. So in less than a month after the commuter train collision, Congress, with scant opposition from railroads, and without meaningful cost-benefit analyses, passed legislation requiring most railroads to implement, by 2015, Positive Train Control (PTC), a technology to stop trains by overriding some human mistakes.

So far, railroads have spent more than $2.7 billion on a system estimated to cost up to $14 billion – plus perhaps $1 billion in annual maintenance. PTC has not been installed, partly because it is not sufficiently developed. CSX Corp., which includes railroads among its assets, says the railroad industry is the nation's most capital-intensive – and the $11 billion combined capital investments of all U.S. railroads in 2010 were approximately equal to the cost of PTC. The 2015 mandate will not be met.

The Federal Railroad Administration estimates that were PTC to be installed on thousands of locomotives and tens of thousands of miles of track, it would prevent perhaps 2 percent of the approximately 2,000 collisions and derailments, preventing seven deaths and 22 injuries annually. But because a dollar spent on X cannot be spent on Y, the PTC mandate must mean the sacrifice of other investments crucial to railroad safety.

Before returning to Harvard Law School, Cass Sunstein was Barack Obama's administrator of the Office of Information and Regulatory Affairs, measuring the benefits of regulations against their costs. Testifying to a House subcommittee on Jan. 26, 2011, Sunstein was asked if he could identify an administration regulation whose "benefits have not justified the cost." He replied:

"There is only one big one that comes to mind. It is called Positive Train Control, and it is a statutory requirement, and the Department of Transportation had to issue it as a matter of law even though the monetizable benefits are lower than the monetizable costs. There aren't a lot like that."

Concerning Sunstein's sanguine conclusion, skepticism is permitted. Wayne Crews of the Competitive Enterprise Institute has recently published his "Ten Thousand Commandments: An Annual Snapshot of the Federal Regulatory State." It notes that regulation, the "hidden tax," costs almost $2 trillion not counted among the official federal outlays. Using mostly government data, Crews concludes:

The cost of regulations ($1.806 trillion) is now more than half the size of the federal budget and 11.6 percent of GDP. This costs $14,768 per U.S. household. Regulatory compliance costs exceed the combined sum of income taxes paid by corporations ($237 billion) and individuals ($1.165 trillion). Then add $61 billion in on-budget spending by agencies that administer regulations.

Crews' "Anti-Democracy Index" measures "the ratio of regulations issued by agencies relative to laws passed by Congress." In 2012, the index was 29, meaning that 29 times more regulations were issued by agencies than there were laws passed by Congress. "This disparity," Crews writes, "highlights a substantial delegation of lawmaking power to unelected agency officials."

Congress relishes such delegation because responsibility is time-consuming and potentially hazardous politically. Hence the Senate refuses to pass legislation the House passed in 2011 to require Congress to vote approval of any "major" regulation, defined as any with an economic impact of $100 million or more. If Congress were more clearly responsible for burdening the economy with such regulations, it would be less likely to pass them as sincerity gestures.

Internal Revenue Service misbehavior in the regulation of political advocacy, combined with the imminent expansion of the IRS to enable it to administer the coercions that are Obamacare, is sensitizing Americans to some of the costs of the regulatory state. There are many others, hidden but huge.

Email: georgewill@washpost.com.

Subscribe to The Charlotte Observer.

Tim Baumgartner
232 Saddle Ridge Drive
Willow Springs, North Carolina 27952

June 19, 2013

N.C. Rules Review Commission
6714 Mail Service Center
Raleigh, NC 27699-6714

Re: 15A NCAC 02B .0295
Mitigation Program Requirements for Protection and Maintenance of Riparian Buffers

Members of the Commission:

The rule referenced above will significantly perpetuate undue regulatory burdens and expense to businesses and taxpayers in North Carolina. Expense required to meet the rule is not proportionate to the benefits to the citizens of North Carolina nor benefit to our State's natural resources. The buffer rules as proposed are not the most effective means of achieving the statutory goals for improving water quality.

There two specific items among several others that are of note:

1) The rules state "Shall include a minimum of five native hardwood species". These species generally are climax species which are forced into the mitigation site when early successional species may be more appropriate. The buffer rules should be focused on the most efficient and effective water quality measures. Nutrient uptake is generally considered much more efficient when the forest reaches a more mature structure. Use of faster growing early successional species is more appropriate to accomplish this goal.

2) Buffer restoration is constantly a default to comply with water quality generated mitigation requirements. In many situations, stormwater management techniques may generate greater pollutant removal and hydrologic benefits to the state, but the rules require applicants with such opportunities to first demonstrate "no practical alternative" to planting trees.

I request that the above rule(s) be reviewed in the upcoming legislative session as set out in N.C.G.S. 150B-21.3. I further request that the rule(s) be subject to a delayed effective date as set out in that same provision.

Thank you for your consideration.

Tim Baumgartner

Michael Ellison
126 Streamview Drive
Cary, NC 27519

June 18, 2013

N.C. Rules Review Commission
6714 Mail Service Center
Raleigh, NC 27699-6714

Re: 15A NCAC 02B .0295
Mitigation Program Requirements for Protection and Maintenance of Riparian Buffers

Members of the Commission:

If enacted in the form approved by the Environmental Management Commission, the rule referenced above will substantially increase the regulatory burdens and associated costs for businesses and taxpayers in North Carolina, without commensurate benefits to the people or the State's natural resources. The proposed rules do not describe the most effective nor efficient means of achieving the statutory goals of improving water quality in the various river basins. Finally, as proposed, the buffer mitigation rules intentionally ignore sound science in order to achieve a political objective not related to the statutory basis for the rules. These are just a few of the many shortcomings in the proposed rule; brief examples are provided below.

Increased regulatory burdens and costs
The proposed rule states, "any applicant... shall submit to the Division a written mitigation PROPOSAL... " (emphasis added). "The proposal shall include conservation easements..., a non-wasting endowment..., and a completion bond(s)..." Each of these items is expensive, and in total can easily cost several tens of thousands of dollars, all for a proposal that the Division may summarily reject. The Division also sets itself as the sole arbiter of "appropriate functional criteria to measure the anticipated benefits of the mitigation." Given the Division's longstanding predilections for departing from the written bounds of duly enacted rules and statutes, a potentially endless cycle of applicant proposals, Division comments, responses and re-submittals; each with costs borne by the applicants, will retard economic growth and the exercise of property rights in the state.

Not the most effective and efficient means of achieving the statutory goals
Tremendous efficiencies would be gained, both in cost to applicants and benefits to water quality, if the following were explicitly allowed by rule:

- Riparian buffer restoration up to 200 feet from streams, as is allowed in the nutrient offset mitigation rules for other river basins;
- Mitigation along ephemeral streams and ditches, as is allowed in the nutrient offset mitigation rules for other river basins;
- Elimination of zonal and locational mitigation ratios that do little more than complicate compliance and corrupt the language;
- Enumeration and description of specific alternative buffer mitigation options with associated mitigation credit structures to prevent additional perpetual cycles of applicant proposal, Division comments and applicant response/re-submittal. In many situations,

stormwater management techniques may generated greater pollutant removal and hydrologic benefits to the state, but the rules require applicants with such opportunities to first demonstrate "no practical alternative" to planting trees.

Intentional rejection of accepted science in favor of unrelated political objective
The rule states in (f)(6)(B) that a vegetation plan "shall include a minimum of five native hardwood tree species." Division staff have a long history of requiring climax species to be planted on mitigation sites in contradiction to the standard restoration practice of planting early seral stage species such as red maple and sweet gum, which tend to naturally colonize and thrive on disturbed sites used for buffer restoration. Division staff responsible (in part) for this rule told me that the Wildlife Resources Commission staff insisted that at least five species, among them oaks and other mast-producing climax species, must be planted for acceptable buffer mitigation. The natural colonizers grow faster, much faster, thereby attenuating pollutants and restoring other riparian buffer functions faster. They also have significantly higher survival rates, which helps reduce costs.

These are just a few of the many shortcomings in the proposed rule. Regarding qualifications, I have over twenty years of experience as an environmental consultant and contractor, and have restored thousands of acres of riparian forest throughout North Carolina and the eastern U.S.

In light of the foregoing, I request that the above rule(s) be reviewed in the upcoming legislative session as set out in N.C.G.S. 150B-21.3. I further request that the rule(s) be subject to a delayed effective date as set out in that same provision.

Thank you for your consideration. Please call me at 919-609-8917 if you need additional information.

Michael Ellison

Christopher Ellis
3617 Fescue Drive
Greenville, NC 27834

Thursday, June 20, 2013
N.C. Rules Review Commission
6714 Mail Service Center
Raleigh, NC 27699-6714

Re: 15A NCAC 02B .0295
Mitigation Program Requirements for Protection and Maintenance of Riparian Buffers

Members of the Commission:

The above referenced rule will impede economic development and infringe on private property rights. I therefore request that the above rule(s) be reviewed in the upcoming legislative session as set out in N.C.G.S. 150B-21.3. I further request that the rule(s) be subject to a delayed effective date as set out in that same provision.

Thank you for your consideration.

Christopher Ellis

Christopher Ellis

Eric Ellis
123 Skipwyth Circle
Cary, NC 27519

Thursday, June 20, 2013
N.C. Rules Review Commission
6714 Mail Service Center
Raleigh, NC 27699-6714

Re: 15A NCAC 02B .0295
Mitigation Program Requirements for Protection and Maintenance of Riparian Buffers

Members of the Commission:

The above referenced rule will impede economic development and infringe on private property rights. I therefore request that the above rule(s) be reviewed in the upcoming legislative session as set out in N.C.G.S. 150B-21.3. I further request that the rule(s) be subject to a delayed effective date as set out in that same provision.

Thank you for your consideration.

William Ellis

HOME BUILDERS ASSOCIATION
OF RALEIGH - WAKE COUNTY

5580 Centerview Drive, Suite 115, Raleigh, NC 27606 • Phone 919.233.2033 • Fax 919.233.2036 •
www.hbawake.com

21 June 2013

Mr. Ralph A. Walker, Chairman
N.C. Rules Review Commission
6714 Mail Service Center
Raleigh, NC 27699-6714

RE: 15A NCAC 2B .0295 Mitigation Program Requirements for Protection and Maintenance of Riparian Buffers

Dear Mr. Walker:

I would like to register my objection to the above-referenced rules adopted by the North Carolina Environmental Management Commission on May 9, 2013.

I request that 15A NCAC 2B .0295 be referred to the General Assembly for its review pursuant to G. S. 150B-21.3. I further request that the rule be subject to a delayed effective date as set out in that same provision.

Sincerely,

Suzanne Harris

Suzanne Harris
Vice President of Governmental Affairs
Home Builders Association of Raleigh-Wake County
5580 Centerview Drive, Suite 115
Raleigh, NC 27606

From: Marlene Sanford [msanford@trebic.org]
Sent: Friday, June 21, 2013 2:30 PM
To: Deluca, Joe
Subject: Objection to 15A NCAC 2B .0295 Mitigation Program Requirements for Protection and Maintenance of Riparian Buffers

TREBIC
Triad Real Estate and Building Industry Coalition
115 South Westgate Dr Greensboro, NC 27407 Phone: 336-855-1453 Fax: 336-458-0370: 1830 Eastch

20 June 2013

Mr. Ralph A. Walker, Chairman
N.C. Rules Review Commission
6714 Mail Service Center
Raleigh, NC 27699-6714

RE: 15A NCAC 2B .0295 Mitigation Program Requirements for Protection and Maintenance of Riparian Buffers

Dear Mr. Walker:

I would like to register my objection to the above-referenced rules adopted by the North Carolina Environmental Management Commission on May 9, 2013.

I request that 15A NCAC 2B .0295 be referred to the General Assembly for its review pursuant to G. S. 150B-21.3. I further request that the rule be subject to a delayed effective date as set out in that same provision.

Sincerely,

Marlene Sanford
President

FILED
2013 JUL 16 AM 10: 18
OFFICE OF
ADMIN HEARINGS

Tamp Bandy
1646 Machine Shop Road
Hickory, NC 28602

June 20, 2013

N.C. Rules Review Commission
6714 Mail Service Center
Raleigh, NC 27699-6714

Re: [15A NCAC 02B .0295]
Mitigation Program Requirements for Protection and Maintenance of Riparian Buffers

Members of the Commission:

I writing to express my concern about changes associated with the above reference rule(s). Specifically, the rules require the establishment of bonds, easements and endowments as part of the application process. There is no certainty that the preparation of these costly and legally binding requirements will ensure the approval of a pending application for a state permit nor improve the environmental quality of the buffers.

I request that the above rule(s) be reviewed in the upcoming legislative session as set out in N.C.G.S. 150B-21.3. I further request that the rule(s) be subject to a delayed effective date as set out in that same provision.

Thank you for your consideration.

Tamp Bandy

Tamp Bandy

Clay Neill
PO Box 3916
Hickory, NC 28603

FILED
2013 JUL 16 AM 10: 18
OFFICE OF
ADMIN HEARINGS

June 20, 2013

N.C. Rules Review Commission
6714 Mail Service Center
Raleigh, NC 27699-6714

Re: [15A NCAC 02B .0295]
Mitigation Program Requirements for Protection and Maintenance of Riparian Buffers

Members of the Commission:

I request that the above rule(s) be reviewed in the upcoming legislative session as set out in N.C.G.S. 150B-21.3. I further request that the rule(s) be subject to a delayed effective date as set out in that same provision.

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Thank you for your consideration.

Clay Neill

CC:
Representative Andy Wells
NC House of Representatives
16 W. Jones Street, Room 2221
Raleigh, NC 27601-1096

Representative Mitchell Setzer
NC House of Representatives
16 W. Jones Street, Room 1206
Raleigh, NC 27601-1096

FILED

2013 JUL -8 PM 2:38

OFFICE OF
ADMIN HEARINGS

Shawn D. Wilkerson
819 Linda Lane
Charlotte, NC 28211

July 1, 2013

N.C. Rules Review Commission
6714 Mail Service Center
Raleigh, NC 27699-6714

Re: 15A NCAC 02B .0295
Mitigation Program Requirements for Protection and Maintenance of Riparian Buffers

Members of the Commission:

After in-depth discussions with Division of Water Quality staff concerning my objections to the noted proposed rule, I withdraw my objections to the rule. Staff was able to help me understand the constraints and complications to some of my proposed revisions as well as some of the flexibility contained in the proposed language.

Thank you for your consideration. Please call me at 704-458-1836 if you need additional information.

Shawn D. Wilkerson

STATE OF NORTH CAROLINA

COUNTY OF _Mecklenburg_____

I, a Notary Public, do hereby certify that __Shawn D. Wilkerson_____ personally appeared before me this day and acknowledged the due execution of the foregoing instrument. Witness my hand and official seal

This the _1st__ day of July, 2013_____ .

(Official seal.)

CHARLOTTE P. KINNEY
NOTARY PUBLIC
Mecklenburg County, North Carolina

Charlotte P. Kinney

Notary Public

Printed Name: _Charlotte P. Kinney_____

My Commission Expires:

__Jan. 31, 2016_____

Shawn D. Wilkerson
819 Linda Lane
Charlotte, NC 28211

June 18, 2013

N.C. Rules Review Commission
6714 Mail Service Center
Raleigh, NC 27699-6714

Re: 15A NCAC 02B .0295
Mitigation Program Requirements for Protection and Maintenance of Riparian Buffers

Members of the Commission:

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buffer mitigation. The natural colonizers grow faster, much faster, thereby attenuating pollutants and restoring other riparian buffer functions faster. They also have significantly higher survival rates, which helps reduce costs.

These are just a few of the many shortcomings in the proposed rule. Regarding qualifications, I have over fifteen years of experience as an environmental consultant and contractor, and have restored hundreds of acres of riparian forest throughout North Carolina and the eastern U.S.

In light of the foregoing, I request that the above rule(s) be reviewed in the upcoming legislative session as set out in N.C.G.S. 150B-21.3.

Thank you for your consideration. Please call me at 919-609-8917 if you need additional information.

Shawn D. Wilkerson

FILED
2013 JUL 16 AM 8:34
OFFICE OF
ADM. HEARINGS

Environmental Banc & Exchange
Capital • Experience • Expertise

10055 Red Run Boulevard
Suite 130
Owings Mills, MD 21117
p 410.356.5159
p 888.781.7075
f 410.356.5822

909 Capability Drive
Suite 3100
Raleigh, NC 27606
p 919.829.9909
f 919.829.9913

604 Greene Street
Suite 100
Camden, SC 29020
p 803.432.4890
f 410.356.5822

137 ½ East Main Street
Suite 210
Oak Hill, WV 25901
p 304.465.4300
f 304.465.4302

1514 South Church Street
Suite 103
Charlotte, NC 28203
p 919.829.9909
f 919.829.9913

www.ebxusa.com

Norton Webster
Environmental Bane & Exchange, LLC
909 Capability Drive, Suite 3100
Raleigh, NC 27606

July 15, 2013

N.C. Rules Review Commission
6714 Mail Service Center
Raleigh, NC 27699-6714

Re: 15A NCAC 02B .0295
Mitigation Program Requirements for Protection and Maintenance of Riparian Buffers

Members of the Commission:

Environmental Bane & Exchange, LLC would like to rescind its letter dated June 19, 2013 regarding 15A NCAC 02B .0295 Mitigation Program Requirements for Protection and Maintenance of Riparian Buffers. Our concerns have been address in the most recent changes to the rule.

Again, thank you for your time and consideration in this matter.

Sincerely,

Norton Webster

STATE OF NORTH CAROLINA

COUNTY OF WAKE

I, Cara S. Conder, a Notary Public for said County and State aforesaid, certify that Norton Webster, personally came before me this day and acknowledged that he is Manager of ENVIRONMENTAL BANC & EXCHANGE, LLC, a corporation, and that he as Manager being authorized to do so, executed the foregoing letter on behalf of the corporation.
Witness my hand and official seal, this 15th day of July, 2013

Cara S. Conder
Notary Public

CARA S. CONDER
NOTARY
MY COMMISSION EXPIRES 5/24/2017
PUBLIC
WAKE COUNTY, NC

Environmental Banc & Exchange
Capital • Experience • Expertise

10055 Red Run Boulevard
Suite 130
Owings Mills, MD 21117
p 410.356.5159
p 888.781.7075
f 410.356.5822

909 Capability Drive
Suite 3100
Raleigh, NC 27606
p 919.829.9909
f 919.829.9913

604 Greene Street
Suite 100
Camden, SC 29020
p 803.432-4890
f 410.356.5822

www.ebxusa.com

Norton Webster
Environmental Banc & Exchange, LLC
909 Capability Drive, Suite 3100
Raleigh, NC 27606

June 19, 2013

N.C. Rules Review Commission
6714 Mail Service Center
Raleigh, NC 27699-6714

Re: 15A NCAC 02B .0295
Mitigation Program Requirements for Protection and Maintenance of Riparian Buffers

Members of the Commission:

Environmental Banc & Exchange, LLC (EBX) specializes in the protection and restoration of rare, diminishing, and degraded ecosystems and resources, and is a leader in the nationwide practice of environmental banking and turn-key provider of ecosystem mitigation and restoration solutions. The firm is responsible for mitigation banks and client specific projects that will restore, enhance and preserve over 127 miles of stream and over 12,839 acres of wetlands; reduce over 578,471 pounds of nutrients; and rehabilitate and preserve over 5,866 acres of critical habitats. EBX has been working in North Carolina since 1998 with our first mitigation bank with the North Carolina Department of Transportation, and now have banks sites in addition to full-delivery mitigation projects for the NC Ecosystem Enhancement Program throughout the state. We work with private and public sector clients through its offices in Raleigh, North Carolina; Baltimore, Maryland; Camden, South Carolina; and Oak Hill, West Virginia. We request that the above rule be reviewed in the upcoming legislative session as set out in N.C.G.S. 150B-21.3. We further request that the rule be subject to a delayed effective date as set out in that same provision.

The rule approved by the Environmental Management Commission will increase the regulatory burdens and associated costs for businesses and taxpayers in North Carolina without commensurate benefits to the people or the State's natural resources. The proposed rule does not describe the most effective nor efficient means of achieving the statutory goals of improving water quality.

The proposed rule states, "any applicant… shall submit to the Division a written mitigation proposal… The proposal shall include conservation easements…, a non-wasting endowment…, and a completion bond(s)…" Each of these requirements is expensive and can easily cost several tens of thousands of dollars, all for a proposal that the Division may reject. This puts an undo cost on the mitigation provider. Please consider this rule to be reviewed in the upcoming legislative session.

Thank you for your consideration.

Norton Webster