

NORTH CAROLINA REGISTER

VOLUME 33 • ISSUE 16 • Pages 1659 – 1749

February 15, 2019

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PUBLISHED BY

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NORTH CAROLINA REGISTER
Publication Schedule for January 2019 – December 2019

FILING DEADLINES			NOTICE OF TEXT		PERMANENT RULE			TEMPORARY RULES
Volume & issue number	Issue date	Last day for filing	Earliest date for public hearing	End of required comment Period	Deadline to submit to RRC for review at next meeting	RRC Meeting Date	Earliest Eff. Date of Permanent Rule	270 th day from publication in the Register
33:13	01/02/19	12/06/18	01/17/19	03/04/19	03/20/19	04/18/19	05/01/19	09/29/19
33:14	01/15/19	12/19/18	01/30/19	03/18/19	03/20/19	04/18/19	05/01/19	10/12/19
33:15	02/01/19	01/10/19	02/16/19	04/02/19	04/22/19	05/16/19	06/01/19	10/29/19
33:16	02/15/19	01/25/19	03/02/19	04/16/19	04/22/19	05/16/19	06/01/19	11/12/19
33:17	03/01/19	02/08/19	03/16/19	04/30/19	05/20/19	06/20/19	07/01/19	11/26/19
33:18	03/15/19	02/22/19	03/30/19	05/14/19	05/20/19	06/20/19	07/01/19	12/10/19
33:19	04/01/19	03/11/19	04/16/19	05/31/19	06/20/19	07/18/19	08/01/19	12/27/19
33:20	04/15/19	03/25/19	04/30/19	06/14/19	06/20/19	07/18/19	08/01/19	01/10/20
33:21	05/01/19	04/09/19	05/16/19	07/01/19	07/22/19	08/15/19	09/01/19	01/26/20
33:22	05/15/19	04/24/19	05/30/19	07/15/19	07/22/19	08/15/19	09/01/19	02/09/20
33:23	06/03/19	05/10/19	06/18/19	08/02/19	08/20/19	09/19/19	10/01/19	02/28/20
33:24	06/17/19	05/24/19	07/02/19	08/16/19	08/20/19	09/19/19	10/01/19	03/13/20
34:01	07/01/19	06/10/19	07/16/19	08/30/19	09/20/19	10/17/19	11/01/19	03/27/20
34:02	07/15/19	06/21/19	07/30/19	09/13/19	09/20/19	10/17/19	11/01/19	04/10/20
34:03	08/01/19	07/11/19	08/16/19	09/30/19	10/21/19	11/21/19	12/01/19	04/27/20
34:04	08/15/19	07/25/19	08/30/19	10/14/19	10/21/19	11/21/19	12/01/19	05/11/20
34:05	09/03/19	08/12/19	09/18/19	11/04/19	11/20/19	12/19/19	01/01/20	05/30/20
34:06	09/16/19	08/23/19	10/01/19	11/15/19	11/20/19	12/19/19	01/01/20	06/12/20
34:07	10/01/19	09/10/19	10/16/19	12/02/19	12/20/19	01/16/20	02/01/20	06/27/20
34:08	10/15/19	09/24/19	10/30/19	12/16/19	12/20/19	01/16/20	02/01/20	07/11/20
34:09	11/01/19	10/11/19	11/16/19	12/31/19	01/21/20	02/20/20	03/01/20	07/28/20
34:10	11/15/19	10/24/19	11/30/19	01/14/20	01/21/20	02/20/20	03/01/20	08/11/20
34:11	12/02/19	11/06/19	12/17/19	01/31/20	02/20/20	03/19/20	04/01/20	08/28/20
34:12	12/16/19	11/21/19	12/31/19	02/14/20	02/20/20	03/19/20	04/01/20	09/11/20

This document is prepared by the Office of Administrative Hearings as a public service and is not to be deemed binding or controlling.

EXPLANATION OF THE PUBLICATION SCHEDULE

This Publication Schedule is prepared by the Office of Administrative Hearings as a public service and the computation of time periods are not to be deemed binding or controlling. Time is computed according to 26 NCAC 2C .0302 and the Rules of Civil Procedure, Rule 6.

GENERAL

The North Carolina Register shall be published twice a month and contains the following information submitted for publication by a state agency:

- (1) temporary rules;
- (2) text of proposed rules;
- (3) text of permanent rules approved by the Rules Review Commission;
- (4) emergency rules
- (5) Executive Orders of the Governor;
- (6) final decision letters from the U.S. Attorney General concerning changes in laws affecting voting in a jurisdiction subject of Section 5 of the Voting Rights Act of 1965, as required by G.S. 120-30.9H; and
- (7) other information the Codifier of Rules determines to be helpful to the public.

COMPUTING TIME: In computing time in the schedule, the day of publication of the North Carolina Register is not included. The last day of the period so computed is included, unless it is a Saturday, Sunday, or State holiday, in which event the period runs until the preceding day which is not a Saturday, Sunday, or State holiday.

FILING DEADLINES

ISSUE DATE: The Register is published on the first and fifteen of each month if the first or fifteenth of the month is not a Saturday, Sunday, or State holiday for employees mandated by the State Personnel Commission. If the first or fifteenth of any month is a Saturday, Sunday, or a holiday for State employees, the North Carolina Register issue for that day will be published on the day of that month after the first or fifteenth that is not a Saturday, Sunday, or holiday for State employees.

LAST DAY FOR FILING: The last day for filing for any issue is 15 days before the issue date excluding Saturdays, Sundays, and holidays for State employees.

NOTICE OF TEXT

EARLIEST DATE FOR PUBLIC HEARING: The hearing date shall be at least 15 days after the date a notice of the hearing is published.

END OF REQUIRED COMMENT PERIOD
An agency shall accept comments on the text of a proposed rule for at least 60 days after the text is published or until the date of any public hearings held on the proposed rule, whichever is longer.

DEADLINE TO SUBMIT TO THE RULES REVIEW COMMISSION: The Commission shall review a rule submitted to it on or before the twentieth of a month by the last day of the next month.



State of North Carolina

ROY COOPER
GOVERNOR

January 13, 2019

EXECUTIVE ORDER NO. 86

**DECLARATION OF A STATE OF EMERGENCY AND TEMPORARY SUSPENSION OF
MOTOR VEHICLE REGULATIONS TO ENSURE RESTORATION OF UTILITY
SERVICES AND THE TRANSPORTATION OF ESSENTIALS**

WHEREAS, a winter storm (the "Storm") has caused significant impacts to public and private property in the State of North Carolina and has disrupted essential utility services and systems; and

WHEREAS, N.C. Gen. Stat. §§ 166A-19.10 and 166A-19.20 authorize the Governor to declare a state of emergency and exercise the powers and duties set forth therein to direct and aid in the response to, recovery from, and mitigation against emergencies; and

WHEREAS, the widespread disruption of essential utility services from the Storm constitutes a state of emergency for the State of North Carolina as defined in N.C. Gen. Stat. §§ 166A-19.3(6) and 166A-19.3(19); and

WHEREAS, the emergency area, as defined in N.C. Gen. Stat. §§ 166A-19.3(7) and 166A-19.20(b), is the entire State of North Carolina; and

WHEREAS, certain measures are necessary to ensure the protection and safety of North Carolina residents and coordinate the emergency response among state and local entities and officials; and

WHEREAS, the impacts from the Storm require the transportation of vehicles bearing equipment and supplies for utility restoration and debris removal, and carrying essentials such as food and medicine, through North Carolina highways; and

WHEREAS, the uninterrupted supply of electricity, fuel oil, diesel oil, gasoline, kerosene, propane, liquid petroleum gas, food, water, livestock and poultry feed, and medical supplies to residential and commercial establishments is essential before, during, and after the Storm and any interruption in the delivery of those commodities threatens the public welfare; and

WHEREAS, the prompt restoration of utility services is essential to the safety and well-being of the State's residents; and

WHEREAS, pursuant to N.C. Gen. Stat. § 166A-19.30(b)(3), the Governor, with the concurrence of the Council of State, may regulate and control the flow of vehicular traffic and the operation of transportation services; and

WHEREAS, with the concurrence of the Council of State, I have found that vehicles engaging in debris removal, bearing equipment and supplies for utility restoration, and carrying essentials must adhere to the registration requirements of N.C. Gen. Stat. §§ 20-86.1 and 20-382, the fuel tax requirements of N.C. Gen. Stat. §§ 105-449.45, 105-449.47, and 105-449.49, and the size and weight requirements of N.C. Gen. Stat. §§ 20-116, 20-118, and 20-119; and

WHEREAS, I have found that the State's residents may suffer losses and will likely suffer imminent further widespread damage within the meaning of N.C. Gen. Stat. §§ 166A-19.3(3) and 166A-19.21(b); and

WHEREAS, 49 C.F.R. § 390.23 allows the Governor of a state to suspend the rules and regulations under 49 C.F.R. Parts 390-399 for up to thirty (30) days if the Governor determines that an emergency condition exists; and

WHEREAS, pursuant to N.C. Gen. Stat. § 166A-19.70, the Governor may declare that the health, safety, or economic well-being of persons or property requires that the maximum hours of service for drivers prescribed by N.C. Gen. Stat. § 20-381 should be waived for (1) persons transporting essential fuels, food, water, and medical supplies; and (2) vehicles used in the restoration of utility services.

NOW, THEREFORE, by the authority vested in me as Governor by the Constitution and the laws of the State of North Carolina, **IT IS ORDERED**:

Section 1.

I hereby declare that a state of emergency, as defined in N.C. Gen. Stat. §§ 166A-19.3(6) and 166A-19.3(19), exists in the State of North Carolina, due to the loss of power and other essential utilities that were impacted by the Storm.

For purposes of this Executive Order, the emergency area is the State of North Carolina ("the Emergency Area").

Section 2.

I order all state and local government entities and agencies to cooperate in the implementation of the provisions of this declaration and the provisions of the North Carolina Emergency Operations Plan ("the Plan").

Section 3.

I delegate to Erik A. Hooks, the Secretary of the North Carolina Department of Public Safety ("DPS"), or his designee, all power and authority granted to and required of me by Article 1A of Chapter 166A of the North Carolina General Statutes for the purpose of implementing the Plan and deploying the State Emergency Response Team to take the appropriate actions necessary to promote and secure the safety and protection of the populace in North Carolina.

Section 4.

Further, Secretary Hooks, as Chief Coordinating Officer for the State of North Carolina, shall exercise the powers prescribed in N.C. Gen. Stat. § 143B-602.

Section 5.

I further direct Secretary Hooks or his designee to seek assistance from any and all agencies of the United States Government as may be needed to meet the emergency and seek reimbursement for costs incurred by the State in responding to this emergency.

Section 6.

DPS, in conjunction with the North Carolina Department of Transportation ("DOT"), shall waive the maximum hours of service for drivers prescribed by DPS pursuant to N.C. Gen. Stat. § 20-381.

Section 7.

DPS, in conjunction with DOT, shall waive certain size and weight restrictions and penalties arising under N.C. Gen. Stat. §§ 20-116, 20-118, and 20-119, certain registration requirements and penalties arising under N.C. Gen. Stat. §§ 20-86.1 and 20-382, and certain registration and filing requirements and penalties arising under N.C. Gen. Stat. §§ 105-449.45, 105-449.47, and 105-449.49

for vehicles transporting equipment and supplies for the restoration of utility services and transportation facilities, and vehicles carrying essentials and equipment for any debris removal.

Section 8.

Notwithstanding the waivers set forth above, size and weight restrictions and penalties have not been waived under the following conditions:

- a. When the vehicle weight exceeds the maximum gross weight criteria established by the manufacturer (GVWR) or 90,000 pounds gross weight, whichever is less.
- b. When the tandem axle weight exceeds 42,000 pounds and the single axle weight exceeds 22,000 pounds.
- c. When a vehicle and vehicle combination exceed twelve (12) feet in width and the total overall vehicle combination's length exceeds seventy-five (75) feet from bumper to bumper.
- d. Vehicles and vehicle combinations subject to exemptions or permits by authority of this Executive Order shall not be exempt from the requirement of having (A) a yellow banner on the front and rear that is seven (7) feet long and eighteen (18) inches wide and bears the legend "Oversized Load" in ten (10) inch black letters, 1.5 inches wide and (B) red flags measuring eighteen (18) inches square on all sides at the widest point of the load. In addition, when operating between sunset and sunrise, a certified escort shall be required for loads exceeding eight (8) feet six (6) inches in width.

Section 9.

Vehicles referenced under Sections 7 and 8 of this Executive Order shall be exempt from the following registration requirements:

- a. The requirement to obtain a temporary trip permit and pay the associated \$50.00 fee listed in N.C. Gen. Stat. § 105-449.49 is waived for such vehicles. No filing of a quarterly fuel tax return is required as the exemption in N.C. Gen. Stat. § 105-449.45(b)(1) applies.
- b. The registration requirements under N.C. Gen. Stat. § 20-382.1 concerning intrastate for-hire authority and N.C. Gen. Stat. § 20-382 concerning interstate for-hire authority are waived; however, vehicles shall maintain the required limits of insurance as required.
- c. Non-participants in North Carolina's International Registration Plan and International Fuel Tax Agreement will be permitted to enter North Carolina in accordance with the exemptions identified by this Executive Order.

Section 10.

The size and weight exemption for vehicles will be allowed on all DOT designated routes, except those routes designated as light traffic roads under N.C. Gen. Stat. § 20-118. This order shall not be in effect on bridges posted pursuant to N.C. Gen. Stat. § 136-72.

Section 11.

The waiver of regulations under Title 49 of the Code of Federal Regulations does not apply to the Commercial Drivers' License and Insurance Requirements. This waiver shall be in effect for thirty (30) days or the duration of the emergency, whichever is less.

Section 12.

The North Carolina State Highway Patrol shall enforce the conditions set forth in Sections 6 through 11 of this Executive Order in a manner that does not endanger North Carolina motorists.

Section 13.

Upon request by law enforcement officers, exempted vehicles must produce documentation sufficient to establish that their loads are being used for bearing equipment and supplies for utility restoration, or debris removal, or carrying essentials in commerce, in the State of North Carolina.

Section 14.

This Executive Order does not prohibit or restrict lawfully possessed firearms or ammunition or impose any limitation on the consumption, transportation, sale, or purchase of alcoholic beverages as provided in N.C. Gen. Stat. § 166A-19.30(c).

Section 15.

Pursuant to N.C. Gen. Stat. § 166A-19.23, this declaration triggers the prohibition against excessive pricing as provided in N.C. Gen. Stat. §§ 75-37 and 75-38 in the Emergency Area.

Section 16.

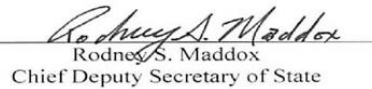
This Executive Order is effective immediately and shall remain in effect for thirty (30) days or the duration of the emergency, whichever is less.

IN WITNESS WHEREOF, I have hereunto signed my name and affixed the Great Seal of the State of North Carolina at the Capitol in the City of Raleigh, this 13th day of January in the year of our Lord two thousand and nineteen.



Roy Cooper
Governor

ATTEST:



Rodney S. Maddox
Chief Deputy Secretary of State





State of North Carolina

ROY COOPER
GOVERNOR

January 17, 2018

EXECUTIVE ORDER NO. 87

NOTICE OF TERMINATION OF EXECUTIVE ORDER NO. 67

WHEREAS, the undersigned issued Executive Order No. 51 on 7 September 2018 ("Executive Order 51"), which declares a State of Emergency to provide for the health, safety, and welfare of North Carolina residents and visitors affected by Hurricane Florence (the "Hurricane"); and

WHEREAS, Executive Order 51 invokes the North Carolina Emergency Management Act (the "Act") and authorizes the Governor to exercise the powers and duties set forth therein to direct and aid in the response to, recovery from, and mitigation against emergencies; and

WHEREAS, North Carolina's response to and recovery from the Hurricane has been impeded by the loss and/or destruction of North Carolinians' birth certificates and other vital records; and

WHEREAS, the undersigned, pursuant to the Act and with the concurrence of the Council of State, issued Executive Order No. 67 on 23 October 2018 ("Executive Order 67") to suspend the collection of certain fees for North Carolina vital records; and

WHEREAS, the suspension of the collection of certain vital records fees was necessary to help rehabilitate North Carolinians and restore property impacted by the Hurricane; and

WHEREAS, suspension of the collection of these fees is no longer necessary.

NOW, THEREFORE, by the authority vested in me as Governor by the Constitution and the laws of the State of North Carolina, **IT IS ORDERED**:

Section 1.

Executive Order 67 is hereby rescinded.

IN WITNESS WHEREOF, I have hereunto signed my name and affixed the Great Seal of the State of North Carolina at the Capitol in the City of Raleigh, this 17th day of January in the year of our Lord two thousand and nineteen.



Roy Cooper
Governor

ATTEST:



Elaine F. Marshall
Secretary of State





State of North Carolina

ROY COOPER

GOVERNOR

January 23, 2019

EXECUTIVE ORDER NO. 88

NOTICE OF TERMINATION OF EXECUTIVE ORDER NO. 86

WHEREAS, Executive Order No. 86, *Declaration of a State of Emergency and Temporary Suspension of Motor Vehicle Regulations to Ensure Restoration of Utility Services and the Transportation of Essentials*, was issued on 13 January 2019 ("Exec. Order 86"), and declared a state of emergency for the entire State of North Carolina due to the widespread power outages from a winter storm; and

WHEREAS, Exec. Order 86 also waived the maximum hours of service for drivers transporting supplies and equipment for utility restoration and essentials in commerce, and, with the concurrence of the Council of State, temporarily suspended size and weight restrictions on vehicles used for utility restoration and carrying essentials on the interstate and intrastate highways due to the impacts from the winter storm.

NOW, THEREFORE, by the authority vested in me as Governor by the Constitution and the laws of the State of North Carolina, **IT IS ORDERED**:

Section 1.

Pursuant to N.C. Gen. Stat. § 166A-19.20(c), the declared state of emergency and the transportation waivers in Exec. Order 86 are hereby terminated immediately.

IN WITNESS WHEREOF, I have hereunto signed my name and affixed the Great Seal of the State of North Carolina at the Capitol in the City of Raleigh, this 23rd day of January in the year of our Lord two thousand and nineteen.

Roy Cooper
Governor

ATTEST:

Elaine F. Marshall
Secretary of State





State of North Carolina

ROY COOPER

GOVERNOR

January 23, 2019

EXECUTIVE ORDER NO. 89

NOTICE OF TERMINATION OF EXECUTIVE ORDER NOS. 52, 55, AND 59

WHEREAS, Executive Order No. 52, *Temporary Suspension of Motor Vehicle Regulations to Ensure Restoration of Utility Services and Transporting Essentials*, issued on 7 September 2018, waived the maximum hours of service for drivers transporting supplies and equipment for utility restoration; waived certain restrictions and registration requirements for vehicles transporting equipment and supplies for the restoration of utility services and transportation facilities and vehicles carrying essentials and equipment for debris removal; and temporarily suspended the weighing of vehicles used to transport livestock, poultry, crops ready to be harvested, and feed to livestock and poultry in the Emergency Area as defined therein due to the impacts from Hurricane Florence; and

WHEREAS, Executive Order No. 55, *Amending Executive Order No. 52 and Providing for Temporary Suspension of Motor Vehicle Regulations to Ensure Restoration of Utility Services and Transporting Essentials*, issued on 14 September 2018, and in compliance with the Pets Evacuation and Transportation Standards Act, § 42 U.S.C.A. 5196 (2017) (the "PETS Act"), waived the maximum hours of service for drivers transporting companion and service animals, exempted certain requirements for vehicle combinations transporting certain commodities, and exempted certain requirements for vehicles transporting mobile homes for emergency housing relief due to the impacts from Hurricane Florence; and

WHEREAS, Executive Order No. 59, *Amending Executive Order No. 55, Partially Rescinding Executive Order No. 52, and Providing for Temporary Suspension of Motor Vehicle Regulations to Ensure Restoration of Utility Services and Transporting Essentials*, issued on 20 September 2018, partially rescinded Executive Order No. 52, and allowed for the expedited movement of certain vehicles transporting equipment and supplies to prevent undue delay in Emergency Area relief efforts.

NOW, THEREFORE, by the authority vested in me as Governor by the Constitution and the laws of the State of North Carolina, **IT IS ORDERED**:

Section 1.

Pursuant to N.C. Gen. Stat. § 166A-19.70 and § 166A-19.10(b)(2), the transportation waivers in Executive Order No. 52, Executive Order No. 55 and Executive Order No. 59 are hereby terminated effective January 23, 2019.

IN WITNESS WHEREOF, I have hereunto signed my name and affixed the Great Seal of the State of North Carolina at the Capitol in the City of Raleigh, this 23rd day of January in the year of our Lord two thousand and nineteen.


Roy Cooper
Governor

ATTEST:


Elaine F. Marshall
Secretary of State



Note from the Codifier: The notices published in this Section of the NC Register include the text of proposed rules. The agency must accept comments on the proposed rule(s) for at least 60 days from the publication date, or until the public hearing, or a later date if specified in the notice by the agency. If the agency adopts a rule that differs substantially from a prior published notice, the agency must publish the text of the proposed different rule and accept comment on the proposed different rule for 60 days. Statutory reference: G.S. 150B-21.2.

TITLE 11 – DEPARTMENT OF INSURANCE

Notice is hereby given in accordance with G.S. 150B-21.2 and G.S. 150B-21.3A(c)(2)g. that the Code Officials Qualifications Board intends to readopt with substantive changes the rules cited as 11 NCAC 08 .0602, .0707, .0714 and readopt without substantive changes the rule cited as 11 NCAC 08 .0708.

Pursuant to G.S. 150B-21.2(c)(1), the text of the rule(s) proposed for readoption without substantive changes are not required to be published. The text of the rules are available on the OAH website: <http://reports.oah.state.nc.us/ncac.asp>.

Link to agency website pursuant to G.S. 150B-19.1(c): <http://www.ncdoi.com/Is/Rules.aspx>

Proposed Effective Date: July 1, 2019

Public Hearing:

Date: April 23, 2019

Time: 12:30 p.m.

Location: 2nd Floor, Room 245 (Albemarle Building) located at 325 N. Salisbury Street, Raleigh, NC 27603

Reason for Proposed Action: *The rules are being readopted pursuant to G.S. 150B-21.3A(d)(2). Amendments are being proposed for 11 NCAC 08 .0707 and 11 NCAC 08 .0714 to reflect changes made to the Code Officials Qualifications Board's statutes from Session Law 2018-19.*

Comments may be submitted to: Loretta Peace-Bunch, North Carolina Department of Insurance, 1201 Mail Service Center, Raleigh, NC 27699-1201; phone (919) 807-6004; email Loretta.Peace-bunch@ncdoi.gov

Comment period ends: April 23, 2019

Procedure for Subjecting a Proposed Rule to Legislative

Review: If an objection is not resolved prior to the adoption of the rule, a person may also submit written objections to the Rules Review Commission after the adoption of the Rule. If the Rules Review Commission receives written and signed objections after the adoption of the Rule in accordance with G.S. 150B-21.3(b2) from 10 or more persons clearly requesting review by the legislature and the Rules Review Commission approves the rule, the rule will become effective as provided in G.S. 150B-21.3(b1). The Commission will receive written objections until 5:00 p.m. on the day following the day the Commission approves the rule. The Commission will receive those objections by mail, delivery service, hand delivery, or facsimile transmission. If you have any further questions concerning the submission of objections to the

Commission, please call a Commission staff attorney at 919-431-3000.

Fiscal impact (check all that apply).

- ☐ State funds affected
- ☐ Environmental permitting of DOT affected
- ☐ Analysis submitted to Board of Transportation
- ☐ Local funds affected
- ☐ Substantial economic impact (≥\$1,000,000)
- ☐ Approved by OSBM
- ☐ No fiscal note required by G.S. 150B-21.4
- ☒ No fiscal note required by G.S. 150B-21.3A(d)(2)

**CHAPTER 08 - ENGINEERING AND BUILDING CODES
DIVISION**

**SECTION .0600 - QUALIFICATION
BOARD-PROBATIONARY CERTIFICATE**

**11 NCAC 08 .0602 NATURE OF PROBATIONARY
CERTIFICATE**

(a) A probationary certificate may be ~~issued~~, issued without ~~examination~~, examination to any newly employed or newly promoted code enforcement official who lacks a standard certificate that covers the new position. A probationary certificate shall be issued for three years only and shall not be renewed. During the ~~three-year~~ three-year period, the official shall complete the requirements set forth in 11 NCAC 08 .0706 to qualify for the appropriate standard certificate. A probationary certificate shall authorize ~~authorizes~~ the official, during the effective period of the certificate, to hold the position of the type, level, and location specified. The certificate shall be conditioned on the applicant's completion of a high school diploma or a high school equivalency certificate (~~GED~~) and meeting one of the following:

- (1) working under supervision ~~sufficient~~ sufficient, as determined by a supporting letter provided for in 11 NCAC 08 .0706(b), to protect the public health and safety;
- (2) possessing a minimum of two years of design, construction, or inspection experience working under a certified inspector or under a licensed professional engineer, registered architect, or licensed contractor;
- (3) possessing one of the experience qualifications listed in 11 NCAC 08 .0706 in each area of code enforcement for which the probationary certificate is issued; or
- (4) achieving a minimum score of 70 percent on the probationary prequalification exam administered by the Board in each area of code enforcement for which the probationary certificate is issued.

~~(b) A probationary certificate shall be issued if the Board determines from the information provided on the application that the applicant may obtain the experience required by Paragraph (a)(3) of this Rule before the expiration of the probationary certificate.~~

Authority G.S. 143-151.12(2); 143-151.13(d).

SECTION .0700 - QUALIFICATION BOARD-STANDARD CERTIFICATE

11 NCAC 08 .0707 SPECIAL CIRCUMSTANCES

(a) Licensed County Electrical Inspector. Certificates issued Pursuant pursuant to G.S. 143-151.13(e), the Board will, without requiring an examination, issue a standard certificate to any person holding a currently valid certificate as a county electrical inspector, issued by the Commissioner of Insurance under G.S. 153A-351. Such certificate G.S. 143-151.13(e) shall be for the electrical inspector level corresponding to the level at which the applicant is currently certified.

(b) Registered Architect, Licensed General Contractor, Licensed Plumbing or Heating Contractor, Licensed Electrical Contractor, Registered Professional Engineer. Pursuant to Applicants for certification under G.S. 143-151.13(f) the Board will, without requiring an examination, issue a standard certificate to any person G.S. 143-151.13(f) shall who successfully completes complete the Board's prescribed short course course, as set out in 11 NCAC 08 .0706(g)(3), concerning state building code State Building Code regulations rules and code enforcement administration prior to being certified, and who is Applicants under this Paragraph shall be currently registered or licensed (as of June 13, 1977) by the State of North Carolina as an architect, a general contractor, a plumbing or heating contractor, an electrical contractor, or a professional engineer. engineer to receive certification. The standard certificate thus issued will shall authorize the person to practice as a qualified code enforcement official of the type and at the performance level determined by the Board to be appropriate appropriate, in accordance with 11 NCAC 08 .0706, in light of the applicant's education, training, and experience.

(c) Certified Code Enforcement Official From Another State. Pursuant to G.S. 143-151.14, the Board may, will, without requiring an examination, issue a standard certificate to any person who successfully completes the Board's prescribed short course concerning state building code regulations and code enforcement administration and who holds a currently valid certificate as a qualified code enforcement official from another state or territory whose standards are acceptable to the Board and not lower than those required of North Carolina applicants, applicants, under Article 9C of the North Carolina General Statutes and all applicable administrative rules governing Code Enforcement Officials.

(d) Certified Code Enforcement Official with International Code Council Certification. Applicants for certification pursuant to G.S. 143-151.14(b) shall meet the experience requirements specified in 11 NCAC 08 .0706 to be eligible for consideration. The short course required by G.S. 143-151.14 (c) is set out in 11 NCAC 08 .0706(g)(3). Standard certificates issued under this

Rule shall expire if the required short course is not completed within three years of certification.

(e) Comity Applicants. Comity applicants as set out in in Paragraphs (c) and (d) of this Rule shall meet the experience requirements specified in 11 NCAC 08 .0706 to be eligible for comity consideration. The successful completion of a law and administration course and a standard technical course, as set out in 11 NCAC 08 .0706(g)(3), in the area and level of the standard certificate must be completed within three years to maintain any standard certificate issued due to comity. Standard certificates issued under comity shall expire if required courses are not completed within the three-year period.

Authority G.S. 143-151.13; 143-151.14.

11 NCAC 08 .0708 CERTIFICATE (READOPTIO WITHOUT SUBSTANTIVE CHANGES)

11 NCAC 08 .0714 INACTIVE CODE ENFORCEMENT OFFICIALS

(a) A CEO either who is no longer employed by a ~~city, county, or state~~ local inspection department or who remains employed by a ~~city, county, or state~~ local inspection department but no longer has Code enforcement responsibility shall be is deemed inactive. Inactive CEOs ~~are neither~~ shall not be subject to certificate renewal requirements nor continuing education requirements.

(b) When an inactive CEO wishes to become reemployed as an active CEO, the CEO shall must complete continuing education courses within one year after reemployment to re-activate certificates in addition to completing the courses required for renewal of certificates as follows:

- (1) A CEO who has been on inactive status for more than two years and who has not been continuously employed by a ~~city, county, or state~~ local inspection department during the period of inactive status shall complete continuing education courses of ~~six 12~~ hours for each technical area in which the CEO is certified.
- (2) A CEO who has been on inactive status for more than two years and who has been continuously employed by a ~~city, county, or state~~ local inspection department during the period of inactive status shall complete continuing education courses of ~~three six~~ hours for each technical area in which the CEO is certified.
- (3) A CEO who has been on inactive status for two years or less shall complete CE courses of ~~four~~ two hours for each technical area in which the CEO is certified.

Authority G.S. 143-151.13A(b); 143-151.13A(d); 143-151.15.

TITLE 14B – DEPARTMENT OF PUBLIC SAFETY

Notice is hereby given in accordance with G.S. 150B-21.2 that the Alarm Systems Licensing Board intends to amend the rules cited

as 14B NCAC 17 .0201, .0203, .0204, .0209, .0301, .0302, .0306, .0502, and .0505.

Link to agency website pursuant to G.S. 150B-19.1(c):
<https://www.ncdps.gov/dps-services/permits-licenses/alarm-system-licensing-board>

Proposed Effective Date: June 1, 2019

Public Hearing:

Date: March 5, 2019

Time: 2:00 p.m.

Location: Alarm Systems Licensing Board, 3101 Industrial Drive, Suite 104, Raleigh, NC 27609

Reason for Proposed Action: The Board is amending the above-referenced rules to create the ability for new and renewal licensing and registrations to be submitted via online application. The rules include proposed changes to the licensing and registration application fee structure.

Comments may be submitted to: Phil Stephenson, Field Services Supervisor, 3101 Industrial Drive, Suite 104, Raleigh, NC 27609; phone (919) 788-5320; fax (919) 715-0370; email Phillip.Stephenson@ncdps.gov

Comment period ends: April 16, 2019

Procedure for Subjecting a Proposed Rule to Legislative Review: If an objection is not resolved prior to the adoption of the rule, a person may also submit written objections to the Rules Review Commission after the adoption of the Rule. If the Rules Review Commission receives written and signed objections after the adoption of the Rule in accordance with G.S. 150B-21.3(b2) from 10 or more persons clearly requesting review by the legislature and the Rules Review Commission approves the rule, the rule will become effective as provided in G.S. 150B-21.3(b1). The Commission will receive written objections until 5:00 p.m. on the day following the day the Commission approves the rule. The Commission will receive those objections by mail, delivery service, hand delivery, or facsimile transmission. If you have any further questions concerning the submission of objections to the Commission, please call a Commission staff attorney at 919-431-3000.

Fiscal impact (check all that apply).

- ☐ State funds affected
- ☐ Environmental permitting of DOT affected
- ☐ Analysis submitted to Board of Transportation
- ☐ Local funds affected
- ☐ Substantial economic impact (≥\$1,000,000)
- ☐ Approved by OSBM
- ☒ No fiscal note required by G.S. 150B-21.4

CHAPTER 17 - ALARM SYSTEMS LICENSING BOARD

SECTION .0200 – PROVISIONS FOR LICENSEES

14B NCAC 17 .0201 APPLICATION FOR LICENSE

(a) Each applicant for a license shall ~~complete~~ submit an online application form on the website provided by the Board. ~~This form and one additional copy shall be submitted~~ When this online application is submitted, to the administrator it and shall be accompanied by:

- (1) one set of classifiable fingerprints on an ~~applicant card~~ F.B.I. fingerprint card provided by the ~~Board;~~ Board and mailed separately to the Board's office;
- (2) one head and shoulders digital photograph of the applicant in JPG format of acceptable quality for identification, taken within six months prior to the online submission, and ~~submitted by e mail to PPSASL-Photos@ncdps.gov or by compact disc;~~ uploaded with the application submission;
- (3) statements of the results of a statewide criminal history records search by the reporting service designated by the Board pursuant to G.S. 74D-2.1(a) for any state where the applicant has resided within the preceeding 60 months; and
- (4) the applicant's application ~~fee;~~ and fee along with a four dollar (\$4.00) convenience fee and credit card transaction fee.
- (5) ~~an Equifax credit check run within 30 days of the license application submission date.~~

(b) Each applicant shall ~~provide~~ upload evidence of high school graduation either by diploma, G.E.D. certificate, or other equivalent documentation.

(c) Each applicant for a license shall meet personally with either a Board investigator, the Screening Committee, the Director, or a Board representative designated by the Director prior to being issued a license. The applicant shall discuss the provisions of G.S. 74D and the administrative rules in this Chapter during the personal meeting. The applicant shall sign a form provided by the Board indicating that the applicant has reviewed the information with the Board's representative and that the applicant understands G.S. 74D and the administrative rules in this Chapter.

(d) Each applicant for a branch office license shall ~~complete~~ submit an online application form on the website provided by the Board. ~~This form online application shall be submitted to the Director and~~ shall be accompanied by the branch office application fee.

Authority G.S. 74D-2; 74D-2.1; 74D-3; 74D-5; 74D-7.

14B NCAC 17 .0203 FEES FOR LICENSE

(a) Application license fees ~~shall be~~ are as follows: follows plus a four dollar (\$4.00) convenience fee and credit card transaction fee:

- (1) one hundred fifty dollars (\$150.00) non-refundable initial application ~~fee;~~ fee.
- (2) three hundred seventy-five dollar (\$375.00) biennial fee for a new or renewal ~~license;~~ license.
- (3) one hundred fifty dollars (\$150.00) branch office license ~~fee;~~ fee.

- (4) one hundred dollars (\$100.00) late renewal fee to be paid in addition to the renewal fee if the license has not been renewed on or before the expiration date.
- (b) Fees shall be paid as follows:
 - (1) ~~if the application is submitted by hand delivery, U.S. Mail, or delivery services, payment shall be by check or money order made payable to the Alarm Systems Licensing Board; or~~
 - (2) ~~if the application if is submitted online, payment shall be by credit card, e-check or other form of electronic funds or electronic funds transfer.~~

Authority G.S. 74D-7.

14B NCAC 17 .0204 RENEWAL OF LICENSE

- (a) Each applicant for a license renewal shall ~~complete a renewal form~~ submit an on-line renewal application on the website provided by the Board. This ~~form~~ online application shall be submitted ~~to the Director~~ not less than 30 days prior to expiration of the applicant's current license and shall be accompanied by:
 - (1) ~~two head and shoulders color photographs of the applicant of acceptable quality for identification and made within 90 days of the application one inch by one inch in size;~~
 - (2)(1) statements of the result of a ~~local~~ statewide criminal history records search by the reporting ~~services~~ service designated by the Board pursuant to G.S. 74D-2.1 for any state where the applicant has resided within the preceeding 24 months;
 - (3)(2) the applicant's renewal fee as set forth in .0203(a)(2); and
 - (4)(3) proof of liability insurance pursuant to G.S. Sec. 74D-9.
- (b) Applications for renewal shall be submitted not less than 30 days before the expiration date of the license. No renewal shall be granted more than 90 days after the date of expiration of a license. ~~Renewals shall be dated on the next day following expiration of the prior license.~~
- (c) Applications for renewal submitted after the expiration date of the license shall be accompanied by the late renewal fee established by Rule .0203 of this Section and shall be submitted not later than 90 days after the expiration date of the license.
- (d) The Director shall approve or deny all applications for renewal. All denials shall be submitted to the Board for a final Board decision.
- (e) Members of the armed forces whose licenses are in good standing and to whom G.S. 105-249.2 grants an extension of time to file a tax return shall be granted the same extension of time to pay the license renewal fee and to complete the continuing education requirements prescribed in Section .0500 of this Chapter. A copy of the military order or the extension approval by the Internal Revenue Service or by the North Carolina Department of Revenue shall be furnished to the Board.

Authority G.S. G.S. 74D-2(a); 74D-5; 74D-7; 93B-15.

14B NCAC 17 .0209 COMPANY BUSINESS LICENSE

- (a) Any firm, association, or corporation required to be licensed pursuant to G.S. 74D-2(a) shall ~~submit~~ upload an application for a company business license on a form on the website provided by the Board. A sole proprietorship that is owned and operated by an individual holding a current alarm systems business license shall be exempt from this Rule. This application form shall include such information as the firm, association, or corporation name; the address of its principal office within the State; all past convictions for criminal offenses of any company director or officer; information concerning the past revocation, suspension or denial of a business or professional license to any director or officer; a list of all directors and officers of the firm, association, or corporation; a list of all persons, firms, associations, corporations or other entities owning 10 percent or more of the outstanding shares of any class of stock; and the name and address of the qualifying agent.
- (b) In addition to the items required in Paragraph (a) of this Rule, an out-of-state company shall file with its license application form a copy of its certificate of authority to transact business in this state issued by the North Carolina Secretary of State, in accordance with G.S. 55-15-01, and a consent to service of process and pleadings that is authenticated by its company seal and accompanied by a duly-certified copy of the resolution of the board of directors authorizing the proper officer or officers to execute this consent.
- (c) After filing a completed ~~written~~ online application with the Board, the Board shall conduct a background investigation to ascertain if the qualifying agent is in a management position. The Board shall also determine if the directors or officers have the requisite good moral character as defined in G.S. 74D-6(3). It shall be prima facie evidence of good moral character if a director or officer has not been convicted by any local, State, federal, or military court of any crime involving the use, carrying, or possession of a firearm; conviction of any crime involving the use, possession, sale, manufacture, distribution, or transportation of a controlled substance, drug, narcotic, or alcoholic beverage; conviction of a crime involving assault or an act of violence; conviction of a crime involving breaking or entering, burglary, larceny, or any offense involving moral turpitude; or does not have a history of addiction to alcohol or a narcotic drug. For the purposes of this Section, "conviction" means and includes the entry of a plea of guilty, no contest, or a verdict rendered in open court by a judge or jury.
- (d) Upon satisfactory completion of the background investigation, a company business license shall be issued if all requirements of this Rule are met. A company business license issued by the Board shall be displayed at the principal place of business within the State of North Carolina.
- (e) The company business license shall be issued only to a corporation and shall not be construed to extend to a licensing of its directors, officers, or employees.
- (f) The issuance of the company business license is issued to the firm, association, or corporation in addition to the license issued to the qualifying agent. The qualifying agent for the firm, association, or corporation that has been issued the company business license shall be responsible for assuring compliance with G.S. 74D.

(g) Within 90 days of the death of a licensee, the existing qualifying agent or a newly designated replacement qualifying agent for the company may submit a written request to the Board, asking that the deceased licensee's license number remain on company advertisements. The Board shall permit the use of the deceased licensee's license number only if the current qualifying agent's license number is printed immediately adjacent to and in the same size print as the deceased licensee's license number.

Authority G.S. 74D-2(a); 74D-5.

SECTION .0300 – PROVISIONS FOR REGISTRANTS

14B NCAC 17 .0301 APPLICATION FOR REGISTRATION

(a) Each licensee or qualifying agent shall submit ~~and sign an application form~~ an online application for the registration of his or her employee on ~~a form~~ the website provided by the Board. ~~This form, when~~ When this online application is submitted ~~sent to the Board,~~ it shall be accompanied by:

- (1) one set of classifiable fingerprints on a standard F.B.I. ~~applicant finger-print card mailed separately to the Board's office;~~
- (2) one original signed S.B.I. release of information form uploaded online and the original mailed separately to the Board's office;
- ~~(2)(3)~~ (3) one head and shoulders digital photograph of the applicant ~~in JPG format~~ of acceptable quality for identification, taken within six months prior to online submission, and ~~submitted~~ uploaded with the application submission; submission, e-mail to PPSASL-Photos@ncdps.gov or by compact disc;
- ~~(3)(4)~~ (4) statements of the results of a statewide criminal history records search by the reporting service designated by the Board pursuant to G.S. 74D-2.1(a) for any state where the applicant has resided within the preceeding 60 months; ~~and~~
- ~~(4)(5)~~ (5) the registration fee required by Rule .0302 of this ~~Section.~~ Section along with a four dollar (\$4.00) convenience fee and credit card transaction fee; and
- (6) a completed affidavit form and public notice statement form.

(b) The employer of an applicant who is currently registered with another alarm business shall complete an online application form provided by the Board. This form shall be accompanied by the applicant's multiple registration fee. fee along with a four dollar (\$4.00) convenience fee and credit card transaction fee. This online application shall be accompanied by a completed affidavit form and public notice statement form.

(c) The employer of each applicant for registration shall print and retain a copy of the applicant's online application in the individual applicant's personnel file in the employer's office.

~~(d) The employer of an applicant for registration shall complete and submit to the Board a certification of the background and criminal record check of each applicant signed by the licensee or qualifying agent. A copy of this certification shall be retained in the individual applicant's personnel file in the employer's office.~~

Authority G.S. 74D-2.1; 74D-5; 74D-8.

14B NCAC 17 .0302 FEES FOR REGISTRATION

(a) Registration fees are as ~~follows:~~ follows plus a four dollar (\$4.00) convenience fee and credit card transaction fee.

- (1) ~~Forty five dollar (\$45.00)~~ Fifty dollar (\$50.00) non-refundable biennial registration fee; fee.
- (2) Ten dollar (\$10.00) non-refundable fee for registration of an employee who changes employment to another ~~licensee;~~ licensee.
- (3) Ten dollar (\$10.00) non-refundable annual multiple registration fee; fee.
- ~~(4) Ten dollar (\$10.00) fee for each reconsideration of a registration permit that has been previously filed with the Board but returned to the licensee or applicant for correctable errors;~~
- ~~(5)(4)~~ (4) Twenty dollar (\$20.00) late renewal fee to be paid for an application submitted no more than 30 days from the date the registration expires and to be paid in addition to the renewal fee.

(b) Fees shall be paid as follows:

- (1) ~~if the application is submitted by hand delivery, U.S. Mail, or delivery service, payment shall be by check or money order made payable to the Alarm Systems Licensing Board; or~~
- (2) ~~if the application is submitted online, payment shall be by credit card, e-check or other form of~~ or electronic funds transfer.

Authority G.S. 74D-7.

14B NCAC 17 .0306 RENEWAL OR REREGISTRATION OF REGISTRATION

(a) Each applicant for renewal of a registration identification card or his employer shall complete ~~a~~ an online form on the website provided by the Board. This online form shall be submitted not less than ~~30~~ 90 days prior to expiration of the applicant's current card and shall be accompanied by:

- (1) ~~two~~ one digital head and shoulders color ~~photographs~~ photograph of the applicant of acceptable quality for identification and made within 90 days of the application ~~one inch by one inch in size;~~ uploaded online with application submission;
- (2) statements of the result ~~of a local criminal history records search by the City or County Bureau or Clerk of Superior Court in each county where the applicant has resided within the immediately preceeding 24 months; and of a statewide criminal history records search by the reporting service designated by the Board pursuant to G.S. 74D-2.1(a) for any state where the applicant has resided within the preceeding 48 months; and~~
- (3) the applicant's renewal fee. fee along with the four dollar (\$4.00) convenience fee and credit card transaction fee.

(b) Each licensee shall provide each applicant for registration or re-registration ~~an~~ a copy of the online submitted application form

provided by the Board. This form shall be submitted to the Board online and accompanied by:

- (1) ~~two one digital~~ head and shoulders ~~color photographs~~ photograph of the applicant of acceptable quality for identification and made within 90 days of the application uploaded online with the application submission; and
- (2) the applicant's registration fee, fee along with the four dollar (\$4.00) convenience fee and credit card transaction fee.

(c) The employer of each applicant for a registration renewal or reregistration shall give the applicant a copy of the online application which will serve as a record of application for renewal and shall retain a copy of the applicant's online renewal application in the individual's personnel file in the employer's office.

(d) Members of the armed forces whose registrations are in good standing and to whom G.S. 105-249.2 grants an extension of time to file a tax return are granted that same extension of time to pay the registration renewal fee and to complete the continuing education requirements prescribed by Section .0500 of this Chapter. A copy of the military order or the extension approval by the Internal Revenue Service or by the North Carolina Department of Revenue must be furnished to the Board.

Authority G.S. 74D-7; 74D-8; 93B-15.

SECTION .0500 - CONTINUING EDUCATION FOR LICENSEES

14B NCAC 17 .0502 REQUIRED CONTINUING EDUCATION HOURS

Each licensee shall complete at least six credit hours of continuing education training during each two year renewal period. Each registrant shall complete at least three credit hours of continuing education training during each renewal period. Only registrants who engage in installation, service, sales, or monitoring of alarm systems shall be required to complete the continuing education requirements. Credit shall be given only for classes that have been pre-approved by the Board. A licensee or registrant who attends a complete meeting of a regularly-scheduled meeting of the Alarm Systems Licensing Board shall receive three credit hours for each meeting that the licensee or registrant attends. The Board approved continuing education form(s) showing the credit hours earned must be uploaded online and submitted with each licensee or registrant's online application submission.

Authority G.S. 74D-2; 74D-5.

14B NCAC 17 .0505 RECORDING AND REPORTING CONTINUING EDUCATION CREDITS

(a) Each licensee shall be responsible for recording and reporting continuing education credits to the Board at the time of license or registration renewal. For each course taken the report shall include a certificate of course completion that is signed by at least one course instructor, indicates the name of the licensee or registrant who completed the course, indicates the date of course completion, and indicates the number of hours taken by the licensee or registrant. Credit shall not be given if a certificate of

course completion is dated more than two years from the license or registration permit renewal date. Each course instructor shall maintain a course roster and shall verify the identity of each participant by a government issued photo identification, such as a driver's license. This roster shall be delivered to the Board's office within two weeks of the completion date of the course.

(b) All online applications for renewal of a license or registration permit shall have CE Certificates ~~attached,~~ uploaded, verifying completion of the required number of credit hours. If an applicant is filing an application designated as "new" and the applicant has been licensed or registered for any period of time within the previous two years, the applicant shall ~~attach~~ upload CE Certificates verifying completion of the required number of credit hours. An applicant shall not be required to submit a CE Certificate if the applicant is filing an application designated as a "transfer" or "duplicate" and if the applicant has a current registration card issued by the Board.

Authority G.S. 74D-2; 74D-5.

TITLE 15A – DEPARTMENT OF ENVIRONMENTAL QUALITY

Notice is hereby given in accordance with G.S. 150B-21.2 and G.S. 150B-21.3A(c)(2)g. that the Environmental Management Commission intends to adopt the rules cited as 15A NCAC 02B .0701 and .0703 and readopt with substantive changes the rules cited as 15A NCAC 02B .0229, .0232, .0234-.0240 and .0255-.0258.

Pursuant to G.S. 150B-21.17, the Codifier has determined it impractical to publish the text of rules proposed for repeal unless the agency requests otherwise. The text of the rule(s) are available on the OAH website at <http://reports.oah.state.nc.us/ncac.asp>.

Link to agency website pursuant to G.S. 150B-19.1(c):
<https://deq.nc.gov/permits-regulations/rules-regulations/proposed-rules>

Link to Public Notices and Hearings:
<https://deq.nc.gov/news/events/public-notice-hearings>

Proposed Effective Date: *November 1, 2019*

Public Hearing:

Date: *March 26, 2019*

Time: *6:00 p.m.*

Location: *Administration Building Auditorium, Lenoir Community College, 231 North Carolina Hwy 58, Kinston, NC 28504*

Public Hearing:

Date: *March 28, 2019*

Time: *6:00 p.m.*

Location: *Council Chambers, Clayton Town Hall, 111 E 2nd Street, Clayton, NC 27520*

PROPOSED RULES

Reason for Proposed Action: *This package of rules has been proposed by the Environmental Management Commission to meet the requirements of G.S. 150B-21.3A "Periodic Review and Expiration of Existing Rules."*

The Commission specifically requests comment on rule language options proposed in 15A NCAC 02B .0703(d)(3) regarding the generation of nutrient offset credits and stream, buffer, or wetland mitigation credits in spatially overlapping areas.

See attached table for cross references of rules being amended and transferred from .0200 Section to .0700 Section.

NC OAH – Notice of Text

Form .0300 Block 7 – Cross Reference Table for Rules 15A NCAC 02B .0701, .0703, .0710-.0713, .0730-.0733, .0236, .0237, .0239, .0255, and .0257

CURRENT CITATION		NEW CITATION		Description
Rule Citation	Rule Title	Rule Citation	Rule Title	
N/A	N/A	15A NCAC 02B .0701	Nutrient Strategies Definitions	New Rule
15A NCAC 02B .0240	Nutrient Offset Payments	15A NCAC 02B .0703	Nutrient Offset Credit Trading	Readopt w/ Substantive Changes & Transfer Rule
15A NCAC 02B .0232	Neuse River Basin – Nutrient Sensitive Waters Management Strategy: Basin Reduction Goal	15A NCAC 02B .0710	Neuse Nutrient Strategy: Purpose & Scope	Readopt w/ Substantive Changes & Transfer Rule
15A NCAC 02B .0235	Neuse River Basin – Nutrient Sensitive Waters Management Strategy: Basinwide Stormwater Requirements	15A NCAC 02B .0711	Neuse Nutrient Strategy: Stormwater	Readopt w/ Substantive Changes & Transfer Rule
15A NCAC 02B .0238	Neuse River Basin – Nutrient Sensitive Waters Management Strategy: Agriculture Nitrogen Reduction Strategy	15A NCAC 02B .0712	Neuse Nutrient Strategy: Agriculture	Readopt w/ Substantive Changes & Transfer Rule
15A NCAC 02B .0234	Neuse River Basin – Nutrient Sensitive Waters Management Strategy: Wastewater Discharge Requirements	15A NCAC 02B .0713	Neuse Nutrient Strategy: Wastewater Discharge Requirements	Readopt w/ Substantive Changes & Transfer Rule
N/A	N/A	15A NCAC 02B .0730	Tar-Pamlico Nutrient Strategy: Purpose & Scope	New Rule
15A NCAC 02B .0258	Tar-Pamlico River Basin – Nutrient Sensitive Waters Management Strategy: Basinwide Stormwater Requirements	15A NCAC 02B .0731	Tar-Pamlico Nutrient Strategy: Stormwater	Readopt w/ Substantive Changes & Transfer Rule
15A NCAC 02B .0256	Tar-Pamlico River Basin – Nutrient Sensitive Waters Management Strategy: Agriculture Nutrient Control Strategy	15A NCAC 02B .0732	Tar-Pamlico Nutrient Strategy: Agriculture	Readopt w/ Substantive Changes & Transfer Rule
15A NCAC 02B .0229	Tar-Pamlico River Basin – Nutrient Sensitive Waters Management Strategy: Nutrient Offset Payments For Non-Tar-Pamlico Basin Association Members	15A NCAC 02B .0733	Tar-Pamlico Nutrient Strategy: New And Expanding Wastewater Discharger Requirements	Readopt w/ Substantive Changes & Transfer Rule
15A NCAC 02B .0236	Neuse River Basin – Nutrient Sensitive Waters Management	N/A	N/A	Rule Repealed

PROPOSED RULES

CURRENT CITATION		NEW CITATION		Description
Rule Citation	Rule Title	Rule Citation	Rule Title	
	Strategy: Agriculture Nitrogen Loading Reduction			
15A NCAC 02B .0237	Best Management Practice Cost-Effectiveness Rate	N/A	N/A	Rule Repealed
15A NCAC 02B .0239	Neuse River Basin – Nutrient Sensitive Waters Management Strategy: Nutrient Management	N/A	N/A	Rule Repealed
15A NCAC 02B .0255	Tar-Pamlico River Basin – Nutrient Sensitive Waters Management Strategy: Agriculture Nutrient Loading Goals	N/A	N/A	Rule Repealed
15A NCAC 02B .0257	Tar-Pamlico River Basin – Nutrient Sensitive Waters Management Strategy: Nutrient Management	N/A	N/A	Rule Repealed

Comments may be submitted to: John Huisman, NCDEQ/Division of Water Resources-Nonpoint Source Planning Branch, 1611 Mail Service Center, Raleigh, NC 27699-1611; phone (919) 707-3677; email nps-comments@ncdenr.gov

Comment period ends: April 16, 2019

Procedure for Subjecting a Proposed Rule to Legislative Review: If an objection is not resolved prior to the adoption of the rule, a person may also submit written objections to the Rules Review Commission after the adoption of the Rule. If the Rules Review Commission receives written and signed objections after the adoption of the Rule in accordance with G.S. 150B-21.3(b2) from 10 or more persons clearly requesting review by the legislature and the Rules Review Commission approves the rule, the rule will become effective as provided in G.S. 150B-21.3(b1). The Commission will receive written objections until 5:00 p.m. on the day following the day the Commission approves the rule. The Commission will receive those objections by mail, delivery service, hand delivery, or facsimile transmission. If you have any further questions concerning the submission of objections to the Commission, please call a Commission staff attorney at 919-431-3000.

Fiscal impact (check all that apply).

- ☒ State funds affected
- ☐ Environmental permitting of DOT affected Analysis submitted to Board of Transportation
- ☒ Local funds affected
- ☒ Substantial economic impact (≥\$1,000,000)
- ☒ Approved by OSBM
- ☐ No fiscal note required by G.S. 150B-21.4
- ☐ No fiscal note required by G.S. 150B-21.3A(d)(2)

CHAPTER 02 - ENVIRONMENTAL MANAGEMENT

SUBCHAPTER 02B - SURFACE WATER AND WETLAND STANDARDS

SECTION .0200 - CLASSIFICATIONS AND WATER QUALITY STANDARDS APPLICABLE TO SURFACE WATERS AND WETLANDS OF NORTH CAROLINA

15A NCAC 02B . 0229.0733 TAR-PAMLICO NUTRIENT STRATEGY: NEW AND EXPANDING WASTEWATER DISCHARGER REQUIREMENTS RIVER BASIN – NUTRIENT SENSITIVE WATERS MANAGEMENT STRATEGY: NUTRIENT OFFSET PAYMENTS FOR NON-TAR-PAMLICO BASIN ASSOCIATION MEMBERS

The following is the management strategy for new and expanding wastewater dischargers in the Tar-Pamlico River basin:

- (1) Purpose. The purpose of this Rule is to establish minimum nutrient control requirements for new and expanding point source discharges in the Tar-Pamlico River Basin in order to maintain or restore water quality in the Pamlico Estuary and protect its designated uses.
- (a) ~~All waters of the Tar Pamlico River Basin have been supplementally classified nutrient sensitive waters (NSW) pursuant to 15A NCAC 2B .0223. The following procedures are to be implemented in accordance with 15A NCAC 2B .0223 in all waters of the Tar Pamlico River Basin for those wastewater dischargers who are not members of the Tar Pamlico Basin Association;~~
- (b) ~~Existing wastewater dischargers expanding to greater than 0.5 million gallons per day (MGD), who are not members of the Tar-Pamlico Basin Association, shall be required to offset their additional nutrient loads by funding nonpoint source control programs approved by the Division of Water Quality prior to the issuance of their NPDES permit and at each renewal. Nitrogen and phosphorus loads shall be offset at the rate of 110 percent of the cost to implement BMPs designed to reduce that same load created by expanding the discharge above 0.5 MGD. Equations for calculating the offset costs are:~~

- (2) Applicability. This Rule applies to all discharges from wastewater treatment facilities

- in the Tar-Pamlico River Basin that receive nitrogen- or phosphorus-bearing wastewater and are required to obtain individual NPDES permits.
- (3) Definitions. The terms used in this Rule, in regard to point source dischargers, treatment facilities, wastewater flows or discharges, or like matters shall be as defined in Rule .0701 of this Section and as follows:
- (a) "Existing" means that which obtained an NPDES permit on or before December 8, 1994.
- (b) "Expanding" means that which increases beyond its permitted flow as defined in this Rule.
- (c) "New" means that which had not obtained an NPDES permit on or before December 8, 1994.
- (1) For an existing facility with permitted flow of less than or equal to 0.5 MGD as of December 8, 1994 expanding to greater than 0.5 MGD who is not a member of the Tar Pamlico Basin Association:

$$\text{Payment} = ((PF_e \times (TN + TP) \times 1384) - (0.5 \times (TN + TP) \times 1384)) \times (BMP_e \times 1.1)$$
where:
Payment = the nutrient offset payment (\$);
 PF_e = Permitted Flow including expansion (MGD);
 TN = 6 mg/l total nitrogen for domestic discharges or BAT for industrial discharges;
 TP = 1 mg/l total phosphorus for domestic discharges or BAT for industrial discharges;
1384 = conversion factor;
0.5 = the permitted flow (MGD) above which payment for additional nutrient loading is required;
 BMP_e = Best Management Practice cost-effectiveness rate in \$/kg as set in 15A NCAC 2B .0237 of this Section;
1.1 = 110 percent of the cost for the nonpoint source controls.
- (4) This Item specifies nutrient controls for new facilities.
- (a) Proposed new wastewater dischargers shall evaluate all practical alternatives to surface water discharge and report their findings pursuant to 15A NCAC 02H .0105(c)(2).
- (b) The nitrogen and phosphorus discharge limits for a new facility shall not exceed loads equivalent to its active allocation and offset credit, or the applicable technology-based mass limit, whichever are less, for each nutrient. Technology-based limits are as follows:
- (i) for facilities treating municipal or domestic wastewaters, the mass load
- equivalent to a concentration of 3.0 mg/L TN and 0.5 mg/L TP at the monthly average flow limit in the facility's NPDES permit; and
- (ii) for facilities treating industrial wastewater, the mass load equivalent to the best available technology economically achievable or a discharge concentration of 3.2 mg/L TN and 0.5 mg/L TP at the monthly average flow limit in the facility's NPDES permit, whichever is less.
- (c) Proposed new dischargers submitting an application shall acquire nutrient allocation from existing dischargers or nutrient offset credits pursuant to Rule .0703 of this Section, Nutrient Offset Trading Program, or both, for the mass load dictated by this Item. The allocation and offset credits shall be sufficient for a period of no less than 10 years of discharge at the proposed design flow rate. Payment for no less than 10 years' allocation and credits shall be made in full prior to the ensuing permit issuance, except that the Director may allow up to 20 years for payment if the applicant provides sufficient financial assurance that it can make such payment per G.S. 143-215.1(b)(4)(b).
- (d) No application for a new discharge shall be made or accepted without written documentation demonstrating that the requirements of Sub-Items (b) and (c) of this Item have been met.
- (e) Subsequent applications for permit renewal shall demonstrate that the facility has sufficient nitrogen allocation or offset credits to meet its effluent nutrient limitations for at least 10 years beyond the requested renewal pursuant to 15A NCAC 02H .0112(c).
- (f) The director shall establish more stringent limits for nitrogen or phosphorus upon finding that such limits are necessary to protect water quality standards in localized areas.
- (5) This Item specifies nutrient controls for expanding facilities.
- (a) Facilities proposing expansion shall evaluate all practical alternatives to surface water discharge and report their findings pursuant to 15A NCAC 02H .0105(c)(2).

- (b) The nitrogen and phosphorus discharge limits for an expanded facility shall not exceed loads equivalent to its active allocation and offset credit, or the applicable technology-based mass limit, whichever is less, for each nutrient. Technology-based limits are as follows:
- (i) for facilities treating municipal or domestic wastewaters, the mass equivalent to a concentration of 3.0 mg/L TN and 0.5 mg/L TP at the monthly average flow limit in the NPDES permit; and
- (ii) for facilities treating industrial wastewater, the mass load equivalent to the best available technology economically achievable or a discharge concentration of 3.2 mg/L TN and 0.5 mg/L TP at the monthly average flow limit in the facility's NPDES permit, whichever is less.
- (c) Facilities submitting application for increased discharge or, where an existing permit contains tiered flow limits, for authorization to operate at an increased flow, shall acquire nutrient estuary allocation from existing dischargers or purchase nutrient offset credits pursuant to Rule .0703 of this Section, Nutrient Offset Trading Program, or both, for the proposed discharge above 0.5 million gallons per day (MGD). The allocation and offset credits shall be sufficient for no less than 10 years of discharge at the proposed design flow rate. Payment for no less than 10 years' allocation and credits shall be made in full prior to the ensuing permit issuance, except that the Director may allow up to 20 years for payment if the applicant provides sufficient financial assurance that it can make such payment per G.S. 143-215.1(b)(4)(b).
- (d) No application for an expanding facility shall be made or accepted without written documentation demonstrating that the requirements of Sub-Items (a) through (c) of this Item have been met.
- (e) The director shall not issue a permit authorizing expansion of an existing facility unless the applicant has satisfied the requirements of Sub-Item (d) of this Item. If a facility's permit contains tiered flow limits for expansion, the director shall not issue an authorization to operate at an increased flow unless the applicant has satisfied the requirements of Sub-Item (d) of this Item.
- (f) Subsequent applications for permit renewal shall further demonstrate that the facility has sufficient means to meet its effluent nutrient limitations for at least ten years beyond renewal. See 15A NCAC 02H .0112(c).
- (g) The director shall establish more stringent limits for nitrogen or phosphorus upon finding that such limits are necessary to protect water quality standards in localized areas.
- (h) Existing wastewater dischargers expanding to greater than 0.5 MGD design capacity may petition the Commission or its designee for an exemption from Sub-Items (a) through (g) of this Item upon meeting and maintaining all of the following conditions:
- (i) The facility has reduced its annual average TN and TP loading by 30 percent from its annual average 1991 TN and TP loading. Industrial facilities may alternatively demonstrate that nitrogen and phosphorus are not part of the waste stream above background levels.
- (ii) The expansion does not result in annual average TN or TP loading greater than 70 percent of the 1991 annual average TN or TP load. Permit limits may be established to ensure that the 70 percent load is not exceeded.
- (2) For an expanding facility with a permitted flow of greater than or equal to 0.5 MGD as of December 8, 1994 who is not a member of the Tar-Pamlico Basin Association:

$$\text{Payment} = ((PF_e - x - (TN + TP) \times 1384) - (PF - x - (TN + TP) \times 1384)) \times (BMP_e \times 1.1)$$
where:
Payment = the nutrient offset payment (\$);
PF_e = Permitted Flow including expansion (MGD);
PF = Permitted Flow as of December 8, 1994 (MGD);

~~TN = 6 mg/l total nitrogen for domestic discharges or BAT for industrial discharges;~~
~~TP = 1 mg/l total phosphorus for domestic discharges or BAT for industrial discharges;~~
~~1384 = conversion factor;~~
~~BMP_e = Best Management Practice cost effectiveness rate in \$/kg as set in 15A NCAC 2B .0237 of this Section;~~
~~1.1 = 110 percent of the cost for the nonpoint source controls.~~

(c) ~~New wastewater dischargers with permitted flows greater than or equal to 0.05 MGD, who are not members of the Tar Pamlico Basin Association, shall be required to offset their nutrient loads by funding nonpoint source control programs approved by the Division of Water Quality prior to the issuance of their NPDES permit and at each renewal. Nitrogen and phosphorus loads shall be offset at the rate of 110 percent of the cost to implement BMPs designed to reduce that same loading created by the new discharge above 0.05 MGD. The equation for calculating the offset costs is:~~

~~Payment = PF x (TN+TP) x 1384 x (BMP_e x 1.1) where:~~
~~Payment = the nutrient offset payment (\$);~~
~~PF = Permitted Flow (MGD);~~
~~TN = 6 mg/l total nitrogen for domestic discharges or BAT for industrial discharges;~~
~~TP = 1 mg/l total phosphorus for domestic discharges or BAT for industrial discharges;~~
~~1384 = conversion factor;~~
~~BMP_e = Best Management Practice cost effectiveness rate in \$/kg as set in 15A NCAC 2B .0237 of this Section;~~
~~1.1 = 110 percent of the cost for the nonpoint source controls.~~

(d) ~~Existing wastewater dischargers expanding to greater than 0.5 MGD, who are not members of the Tar Pamlico Basin Association, may petition the Commission or its designee for an exemption from Paragraph (b) of this Rule upon meeting all of the following conditions:~~

- (1) ~~For industrial facilities:~~
 - (A) ~~The facility has reduced its annual average TN loading by 30 percent from its annual average 1991 TN loading or nitrogen is not part of the waste stream above background levels;~~
 - (B) ~~The facility has reduced its annual average TP loading by 30 percent from its annual average 1991 TP loading or phosphorus is not part of the waste stream above background levels;~~
 - (C) ~~The expansion does not result in annual average TN loading greater than 70 percent of the 1991 annual average TN load. Permit limits may be established to insure that the 70 percent load is not exceeded;~~
 - (D) ~~The expansion does not result in annual average TP loading greater than 70 percent of the 1991 annual~~

~~average TP load. Permit limits may be established to insure that the 70 percent load is not exceeded;~~

(E) ~~To maintain its exemption from Paragraph (b) of this Rule, a facility must continue to meet the requirements of Subparagraph (d)(1) Parts (A) through (D) of this Rule.~~

(2) ~~For municipal facilities:~~

(A) ~~The facility has reduced its annual average TN loading by 30 percent from its annual average 1991 TN loading;~~

(B) ~~The facility has reduced its annual average TP loading by 30 percent from its annual average 1991 TP loading;~~

(C) ~~The expansion does not result in annual average TN loading greater than 70 percent of the 1991 annual average TN load. Permit limits may be established to insure that the 70 percent load is not exceeded;~~

(D) ~~The expansion does not result in annual average TP loading greater than 70 percent of the 1991 annual average TP load. Permit limits may be established to insure that the 70 percent load is not exceeded;~~

(E) ~~To maintain its exemption from Paragraph (b) of this Rule, a facility must continue to meet the requirements of Subparagraph (d)(2) Parts (A) through (D) of this Rule.~~

Authority G.S. 143-214.1; 143-215.1; 143-215.3(a)(1); 143B-282(a)-(d); S.L. 1997-458.

15A NCAC 02B .0232.0710 NEUSE NUTRIENT STRATEGY: PURPOSE AND SCOPE NEUSE RIVER BASIN- NUTRIENT SENSITIVE WATERS MANAGEMENT STRATEGY: BASIN NUTRIENT REDUCTION GOAL

(a) PURPOSE. The purpose of this Rule and Rules .0711 through .0715 of this Section is to attain the designated uses of the Neuse River estuary with respect to meeting nutrient-related water quality standards pursuant to the Environmental Management Commission's authority under the Clean Water Responsibility and Environmentally Sound Policy Act enacted by the North Carolina General Assembly in 1997 and other authorities. All waters of the Neuse River Basin are supplementally classified as Nutrient Sensitive Waters (NSW) pursuant to 15A NCAC 02B .0223. The rules enumerated in Paragraph (d) of this Rule together constitute the Neuse nutrient strategy, and shall be implemented in accordance with 15A NCAC 02B .0223. This Rule establishes the framework of the Neuse nutrient strategy. Pursuant to 1995 (Reg. Sess., 1996) N.C. Session Laws, c. 572, the Environmental Management Commission hereby establishes the goal of reducing the average annual load of nitrogen delivered to the Neuse River Estuary from point and nonpoint sources by a minimum of 30

percent of the average annual load for the period 1991 through 1995 by the year 2001. All waters of the Neuse River Basin have been supplementally classified as Nutrient Sensitive Waters (NSW) pursuant to 15A NCAC 2B .0223. The following rules shall be implemented in accordance with 15A NCAC 2B .0223 in all waters of the Neuse River Basin:

(b) SCOPE AND LIMITATION. The Neuse nutrient strategy rules require controls to reduce nitrogen loads from significant sources of this nutrient throughout the Neuse Basin. These Rules do not address sources for which there is insufficient scientific knowledge to base regulation. The Commission may undertake additional rulemaking in the future or make recommendations to other rulemaking bodies as deemed appropriate to more fully address nutrient sources to the Neuse River Estuary.

(c) GOAL. To achieve the purpose of the Neuse nutrient strategy, the Commission established in the initial Neuse nutrient strategy rules, enacted in August 1998, the goal of reducing the average annual load of nitrogen delivered to the Neuse estuary from point and nonpoint sources by a minimum of 30 percent below the average annual load for the period 1991 through 1995 and thereafter maintaining it at or below that level. This amended strategy continues that goal.

(d) RULES ENUMERATED. The rules of the Neuse nutrient strategy, in addition to this one, are titled as follows:

- (1) Rule .0233 for protection and maintenance of riparian areas;
- (2) Rule .0234 for wastewater discharges;
- (3) Rule .0235 for urban stormwater management;
- (4) Rules .0236 and .0238 for agricultural nitrogen reduction;
- (5) Rule .0239 for nutrient management; and
- (6) Rule .0240 for nitrogen offset fees.
- (1) Rule .0711 for stormwater;
- (2) Rule .0712 for agriculture;
- (3) Rule .0713 for wastewater discharges;
- (4) Rule .0714 for riparian buffer protection; and
- (5) Rule .0715 for riparian buffer program delegation

(e) ADAPTIVE MANAGEMENT. Given ongoing impairment of the Neuse estuary more than a decade after full implementation of the above rules, the Division is pursuing fuller evaluation of the basin's nutrient dynamics to inform and guide adaptive management. Evaluation shall seek to utilize all sources of available information, including stakeholder input, and shall consider drivers, character and shifts in the impairment with time, trends and character of loading delivered to the estuary, and distribution and character of loading inputs to the basin and changes to those inputs over time. Evaluation shall address the extent to which the reduction goals identified above have been achieved and shall, based on its findings, provide recommendations on management needs. The Division shall seek to complete an evaluation within three years of the effective date of this rule and shall distribute its findings, which may recommend regulatory and non-regulatory actions, upon completion. The Division shall also report biannually to the Water Quality Committee of the Commission on implementation progress and reductions achieved by sources subject to the Neuse nutrient strategy. The adaptive management approach is based on defined goals, knowledge of resources and impacts to those

resources, appropriate technology and inventory. These inputs are used to plan, act, monitor and evaluate. The process is iterative and the goal is continuous environmental quality improvement.

(f) GEOGRAPHIC APPLICABILITY. The Neuse nutrient strategy shall apply in all areas draining to NSW waters within the Neuse River Basin unless individual Neuse strategy rules describe other boundaries.

~~(b)(g)~~ PENALTIES Failure to meet requirements of the Neuse Nutrient Strategy Rules .0233, .0234, .0235, .0236, .0238, .0239, and .0240 of this Section may result in imposition of enforcement measures as authorized by G.S. 143-215.6A (civil penalties), G.S. 143-215.6B (criminal penalties), and G.S. 143-215.6C (injunctive relief).

Authority G.S. 143-214.1; 143-214.7; 143-215.1; 143-215.3(a)(1); 143-215.6A; 143-215.6B.

15A NCAC 02B .0234.0713 NEUSE RIVER BASIN— NUTRIENT SENSITIVE WATERS MANAGEMENT STRATEGY: WASTEWATER DISCHARGE REQUIREMENTS

The following is the National Pollutant Discharge Elimination System (NPDES) wastewater discharge management strategy for the Neuse River Basin:

- (1) Purpose. The purpose of this Rule is to establish minimum nutrient control requirements for the point source discharges in the Neuse River Basin in order to maintain or restore the water quality in the Neuse River Estuary and protect its designated uses.
- (2) Applicability. This Rule applies to all dischargers from wastewater treatment facilities in the Neuse River Basin that receive nitrogen-bearing wastewater and are required to obtain individual NPDES permits. Dischargers in the Falls Lake watershed are subject to additional nutrient control requirements under the Falls Water Supply Nutrient Strategy, per Rule .0275 of this Subchapter.
- (3) Definitions. For the purposes of this Rule, the following definitions apply:
 - (a) In regard to point source dischargers, treatment facilities, wastewater flows or discharges, or like matters:
 - (i) "Existing" means that which obtained a NPDES permit on or before December 31, 1995.
 - (ii) "Expanding" means that which increases beyond its permitted flow as defined in this Rule.
 - (iii) "New" means that which had not obtained a NPDES permit on or before December 31, 1995.
 - (b) "MGD" means million gallons per day.

- (c) "Nitrogen wasteload allocation" is that portion of the Neuse River nitrogen TMDL assigned to individually permitted wastewater facilities in the basin and represents the maximum allowable load of total nitrogen to the estuary from these point source dischargers.
- (d) "Nitrogen estuary allocation" or "estuary allocation" means the mass loading of total nitrogen at the estuary that is reserved for a discharger or group of dischargers. A discharger's or group's estuary allocation is equivalent to its discharge allocation multiplied by its assigned transport factor.
- (e) "Nitrogen discharge allocation" or "discharge allocation" means the mass loading of total nitrogen at the point(s) of discharge that is reserved for a discharger or group of dischargers. A discharger's or group's discharge allocation is equivalent to its estuary allocation divided by its assigned transport factor.
- (f) "Nitrogen TMDL," or "TMDL," means the total nitrogen load to the Neuse River estuary that is predicted to maintain adequate water quality to support all designated uses in the estuary and is approved by the United States Environmental Protection Agency in accordance with the federal Clean Water Act.
- (g) "Nonpoint source load allocation" is that portion of the Neuse River nitrogen TMDL assigned to all other nitrogen sources in the basin other than individually permitted wastewater facilities and represents the maximum allowable load of total nitrogen to the estuary from these nonpoint sources.
- (h) "Permitted flow" means the maximum monthly average flow authorized in a facility's NPDES permit as of December 31, 1995, with the following exceptions:

<u>Facility Name</u>	<u>NPDES No.</u>	<u>Permitted Flow (MGD)</u>
Benson	NC0020389	3.00
Goldsboro	NC0023949	16.80
Kenly	NC0064891	0.63
Snow Hill	NC0020842	0.50
Wilson	NC0023906	14.00

- (i) "Total nitrogen" means the sum of the organic, nitrate, nitrite, and ammonia forms of nitrogen.
- (j) "Transport factor" is the fraction of the total nitrogen in a discharge that is predicted to reach the estuary.
- (4) This Item specifies the nitrogen wasteload allocation for point sources.
- (a) ~~Beginning In accordance with the calendar year 2003, Nitrogen TMDL for the Neuse River estuary, approved in 2001 by the USEPA, the nitrogen wasteload allocation for point sources shall not exceed 1.64 million pounds per calendar year year. The nitrogen wasteload allowance for point sources shall not exceed the nitrogen wasteload allocation plus any portion of the nonpoint source load allocation purchased in accordance with the provisions in Items (7) and (8) of this Rule and 15A NCAC 02B .0240. nutrient offset credits obtained in accordance with G.S. 143-214.26.~~
- (b) The Commission shall order future revisions in the nitrogen wasteload allocation whenever changes to the TMDL establish reductions in the allocations to point sources are necessary to ensure that water quality in the estuary meets all applicable standards in 15A NCAC 02B .0200 or to conform with applicable state or federal requirements.
- (5) This Item specifies the initial distribution of nitrogen discharge allocations for point sources.
- (a) ~~Upon adoption of this Rule and until~~ Until revised as provided elsewhere in this Rule, the following group and individual discharge allocations for total nitrogen shall apply in order to comply with the nitrogen wasteload allocation for point sources in Item (4) of this Rule:
- (i) Dischargers with permitted flows less than 0.5 MGD shall be assigned collectively an annual discharge

- allocation of 138,000 pounds of total nitrogen.
 - (ii) Dischargers upstream of Falls Lake Dam and with permitted flows greater than or equal to 0.5 MGD shall be assigned collectively an annual discharge allocation of 443,700 pounds of total nitrogen.
 - (iii) Municipal dischargers downstream of Falls Lake Dam and with permitted flows greater than or equal to 0.5 MGD shall be assigned collectively an annual discharge allocation of 2,021,400 pounds of total nitrogen.
 - (iv) Industrial dischargers downstream of Falls Lake Dam and with permitted flows greater than or equal to 0.5 MGD shall be assigned collectively an annual discharge allocation of 396,900 pounds of total nitrogen.
 - (v) Within each group in Sub-Items (i) - (iv) of this Item, each individual discharger shall be assigned an individual discharge allocation and the equivalent estuary allocation. Each discharger's discharge allocation shall be calculated as its permitted flow divided by the total permitted flow of the group, multiplied by the group discharge allocation.
 - (b) In the event that the nitrogen TMDL and its wasteload allocation for point sources is revised, as provided in Item (4) of this Rule, the Commission shall apportion the revised load among the existing facilities and shall revise discharge allocations as needed. The Commission may consider such factors as:
 - (i) fate and transport of nitrogen in the river basin;
 - (ii) technical feasibility and economic reasonableness of source reduction and treatment methods;
 - (iii) economies of scale;
 - (iv) nitrogen control measures already implemented;
 - (v) probable need for growth and expansion;
 - (vi) incentives for responsible planning, utilities management, resource protection, and cooperative efforts among dischargers; and
 - (vii) other factors the Commission deems relevant.
- (6) This Item specifies nutrient controls for existing facilities.
- (a) Beginning with calendar year 2003, each discharger with a permitted flow equal to or greater than 0.5 MGD shall be subject to a total nitrogen permit limit equal to its individual discharge allocation, pursuant to Item (5) of this ~~Rule~~. Rule, adjusted to reflect any subsequent allocation or nutrient offset credits pursuant to the rules of the Neuse River nutrient management strategy.
 - (b) Effective January 1, 2003, dischargers shall be subject to the following limits for total phosphorus: All existing facilities below Falls Lake Dam with permitted flows greater than or equal to 0.5 MGD shall meet a quarterly average total phosphorus limit of 2 mg/L.
 - (i) ~~All existing facilities above Falls Lake Dam with permitted flows greater than or equal to 0.05 MGD shall meet a quarterly average total phosphorus limit of 2 mg/L.~~
 - (ii) ~~All existing facilities below Falls Lake Dam with permitted flows greater than or equal to 0.5 MGD shall meet a quarterly average total phosphorus limit of 2 mg/L.~~
 - (c) The director shall establish more stringent limits for nitrogen or phosphorus upon finding that such limits are necessary to protect water quality standards in localized areas.
- (7) This Item specifies nutrient controls for new facilities.
- (a) New facilities proposing to discharge wastewater shall evaluate all practical alternatives to surface water ~~discharge, discharge and report its findings pursuant to 15A NCAC 02H .0105(e)(2), prior to submitting an application to discharge. .0105(c)(2).~~
 - (b) New facilities submitting an application shall ~~make every~~

- ~~reasonable effort to obtain acquire, or demonstrate contractual agreement to acquire, nitrogen~~ estuary allocation for the proposed wastewater discharge from existing dischargers. If estuary allocation cannot be obtained from the existing facilities, new facilities may purchase a portion of the nonpoint source load allocation dischargers or nitrogen offset credits pursuant to G.S. 143-214.26, or both for the proposed discharge. The allocation and offset credit shall be sufficient for a period of 30 ~~no less than 10~~ years of discharge at the proposed design flow rate, at a rate of 200 percent of the cost as set in 15A NCAC 02B .0240 to implement practices designed to offset the loading created by the new facility. Payment for each 30 year portion of the nonpoint source load ~~No less than 10 years'~~ allocation and credits shall be made in full prior to the ensuing permit issuance, ~~issuance~~, except that the Director may allow up to 20 years for payment if the applicant provides sufficient financial assurance that it can make such payments per G.S. 143-215.1(b)(4)(b). For offset credits used to meet the discharge requirements, the applicant shall provide 10 percent additional credits to address the uncertainty factor for using unmonitored nonpoint source reductions to meet point source discharge limits. For offset credits used to meet the discharge requirements, the applicant shall provide no additional credits to address the uncertainty factor for using monitored nonpoint source reductions to meet point source discharge limits.
- (c) No application for a new discharge shall be made or accepted without written documentation demonstrating that the requirements of Sub-Items (a) and (b) of this Item have been met.
- (d) The nitrogen discharge ~~allocation~~ limit for a new facility ~~treating~~ shall not exceed the nitrogen load equivalent to its active allocation and offset credits, or the applicable technology-based mass limit, whichever is less. Technology-based limits are as follows: ~~municipal or domestic wastewaters shall not exceed the mass equivalent to a concentration of 3.5 mg/L at the maximum monthly~~
- ~~average flow limit in the facility's NPDES permit.~~
- (i) For facilities treating municipal or domestic wastewaters, the mass load equivalent to a concentration of 3.5 mg/L at the monthly average flow limit in the facility's NPDES permit; and
- (ii) For facilities treating industrial wastewaters, the mass load equivalent to either the best available technology economically achievable or a discharge concentration of 3.2 mg/L at the monthly average flow limit in the facility's NPDES permit, whichever is less
- (e) ~~The nitrogen discharge allocation for a new facility treating industrial wastewaters shall not exceed the mass equivalent of either the best available technology economically achievable or a discharge concentration of 3.2 mg/L at the maximum monthly average flow limit in the facility's NPDES permit, whichever is less. Subsequent applications for permit renewal shall demonstrate that the facility has sufficient nitrogen allocation or offset credits to meet its effluent nutrient limitations for at least 10 years beyond the requested renewal, pursuant to 15A NCAC 02H .0112(c).~~
- (f) New dischargers ~~must~~ shall meet a monthly average total phosphorous limit of \pm 1.0 mg/L.
- (g) The director shall establish more stringent limits for nitrogen or phosphorus upon finding that such limits are necessary to protect water quality standards in localized areas.
- (8) This Item specifies nutrient controls for expanding facilities.
- (a) Expanding facilities shall evaluate all practical alternatives to surface water ~~discharge~~, discharge and report its findings pursuant to 15A NCAC 02H .0105(e)(2), prior to submitting an application to discharge. 15A NCAC 02H .0105(c)(2).
- (b) Facilities submitting an application for increased discharge shall make every reasonable effort to minimize increases in their nitrogen discharges, such as by reducing sources of nitrogen to the facility ~~or increasing~~

- ~~the nitrogen treatment capacity of the facility; or to obtain estuary allocation from existing dischargers. facility.~~
- (e) ~~No application for an expanding facility shall be made or accepted without written documentation demonstrating that the requirements of Sub-Items (a) and (b) of this Item have been met.~~
- (d)(c) ~~If these measures do not produce adequate estuary allocation for the expanded flows, facilities Facilities submitting application for increased discharge or, where an existing permit contains tiered limits, for authorization to operate at an increased flow, may purchase a portion of the nonpoint source load allocation shall acquire, or demonstrate contractual agreement to acquire, nitrogen allocation from existing dischargers or purchase nutrient offset credits pursuant to G.S. 143-214.26, or both, for the proposed discharge. The allocation and credits shall be sufficient for a period of 30 10 years of discharge at the proposed design flow rate at a rate of 200 percent of the cost as set in 15A NCAC 02B .0240 to implement practices designed to offset the loading created by the new facility. Payment for each 30 year portion of the nonpoint source load allocation and credits shall be made in full prior to the ensuing permit issuance. issuance, except that the Director may allow up to 20 years for payment if the applicant provides sufficient financial assurance that it can make such payment per G.S. 143-215.1(b)(4)(b). For offset credits used to meet the discharge requirements, the applicant shall provide 10 percent additional credits to address the uncertainty factor for using unmonitored nonpoint source reductions to meet point source discharge limits. For offset credits used to meet the discharge requirements, the applicant shall provide no additional credits to address the uncertainty factor for using monitored nonpoint source reductions to meet point source discharge limits.~~
- (d) ~~No application for an expanding facility shall be made or accepted without written documentation demonstrating that the requirements of~~
- Sub-Items (a) through (c) of this Item have been met.
- (e) The director shall not issue a permit authorizing expansion of an existing facility unless the applicant has satisfied the requirements of Sub-Item (d) of this Item. If a facility's permit contains tiered flow limits for expansion, the director shall not issue an authorization to operate at an increased flow unless the applicant has satisfied the requirements of Sub-Item (d) of this Item.
- (e)(f) The nitrogen discharge allocation limit for an expanded facility shall not exceed the nitrogen load equivalent to its active allocation and offset credits, or the applicable technology-based mass limit, whichever is less. Technology-based limits are as follows: treating municipal or domestic wastewaters shall not exceed the mass equivalent to a concentration of 3.5 mg/L at the maximum monthly average flow limit in the NPDES permit, or its existing allocation, whichever is greater.
- (i) For facilities treating municipal or domestic wastewaters, the mass equivalent to a concentration of 3.5 mg/L at the monthly average flow limit in the NPDES permit; and
- (ii) For facilities of an industrial nature, the mass equivalent to the best available technology economically achievable or a concentration of 3.2 mg/L at the monthly average flow limit in the facility's modified NPDES permit, whichever is less. If the resulting mass value is less than the facility's existing discharge allocation, the existing discharge allocation shall not be reduced.
- (f)(g) The nitrogen discharge allocation for expanding facilities of an industrial nature shall not exceed the mass equivalent to the best available technology economically achievable or a concentration of 3.2 mg/L at the maximum monthly average flow limit in the facility's modified NPDES permit, whichever is less. If the resulting mass is less than the facility's existing discharge allocation, the

- ~~existing discharge allocation shall not be reduced. Subsequent applications for permit renewal shall further demonstrate that the facility has sufficient means to meet its effluent nutrient limitations for at least ten years beyond renewals pursuant to 15A NCAC 2H.0112(c).~~
- (g)(h) Expanding facilities must meet a monthly average total phosphorous limit of ± 1.0 mg/L unless they are a member in good standing of a group compliance association described in Item (9) of this Rule, in which case they must meet a quarterly average total phosphorus limit of ± 2.0 mg/L.
- (h)(i) The director shall establish more stringent limits for nitrogen or phosphorus upon finding that such limits are necessary to protect water quality standards in localized areas.
- (9) This Item describes the option for dischargers to join a group compliance association to collectively meet nutrient load ~~allocations~~ limits.
- (a) Any or all facilities within the basin may form a group compliance association to meet nitrogen ~~estuary allocations~~ limits collectively. Any such association must apply for and shall be subject to an NPDES group permit that establishes the effective total nitrogen ~~allocations~~ limits, expressed as loads delivered to the estuary, for the association and for its members. More than one group compliance association may be established. No facility may belong to more than one association formed pursuant to this Rule at a any given time.
- (b) No later than 180 days prior to coverage under a new NPDES group permit, or expiration of ~~the~~ association an existing NPDES permit, the association and its members shall submit an application for a an NPDES permit for the discharge of total nitrogen to the surface waters of the Neuse River Basin. The NPDES group permit shall be issued to the association and its members as ~~co-permittees~~ ("association NPDES permit"). ~~It shall contain the association's estuary allocation and individual estuary allocations for each of the members, co-permittees.~~
- (c) An association's estuary ~~allocation~~ limit of total nitrogen shall be the sum of its members' individual estuary allocations and nutrient offset credits plus any other estuary allocation and offset credits obtained by the association or its ~~members~~ members pursuant to this strategy.
- (d) An association and its members may reapportion ~~the~~ their individual estuary allocations and nutrient offset credits of its members on an annual basis. The ~~association~~ NPDES group permit shall be modified to reflect the revised individual estuary ~~allocations~~ allocations and limits.
- (e) ~~Beginning in calendar year 2003, if~~ If an association does not meet its estuary ~~allocation~~ limit in any year, it shall ~~make offset payments for nonpoint source controls obtain nutrient offset credits in accordance with G.S. 143-214.26 to offset its mass exceedance no later than May 1 of the following year at the rate set in 15A NCAC 02B-.0240. year.~~
- (f) Association members shall be ~~exempted from deemed compliant with~~ the permit limits for total nitrogen contained in their individually issued NPDES permits ~~so long as while~~ they remain members in an association. Association members shall be ~~exempted from deemed compliant with~~ their individual estuary ~~allocations~~ limits in the ~~association~~ NPDES group permit ~~as long as in any year in which the association is in compliance with its estuary allocation limit. If the association fails to meet its estuary allocation, exceeds its group limit, the association and the any members that have failed to meet exceed their individual estuary allocations limits in the association NPDES group permit will shall be deemed to be out of compliance with the association NPDES group permit.~~
- (10) Regional Facilities. In the event that an existing If an NPDES-permitted discharger or group of dischargers accepts wastewater from another NPDES-permitted treatment facility in the Neuse River Basin and that acceptance results in the elimination of the discharge from the treatment facility, the eliminated facility's total nitrogen estuary allocation shall be transferred and added to the accepting discharger's estuary allocation.

Authority G.S. 143-214.1; 143-215; 143-215.1; 143-215.3(a)(1); S.L. 1995, c. 572.

**15A NCAC 02B .0235.0711 NEUSE RIVER BASIN-
NUTRIENT SENSITIVE WATERS MANAGEMENT
STRATEGY: BASINWIDE STORMWATER
REQUIREMENTS**

The following is the urban stormwater management strategy for the Neuse River Basin:

- (1) PURPOSE. The purpose of this Rule is to achieve and maintain the nitrogen loading reduction goal established for the Neuse River Estuary in Rule .0710 of this Section from an undeveloped condition on lands in the Neuse River Basin on which new development occurs. Nothing in this Rule preempts the requirements of 15A NCAC 02B .0277 for projects subject to the Falls Reservoir Nutrient Strategy or prevents local governments from implementing requirements that are more restrictive than those set forth in this Rule.
- (+)(2) APPLICABILITY. The following local governments are designated, based on population and other factors, as parties responsible for implementing stormwater management requirements as part of the Neuse River Nutrient Sensitive Waters stormwater management strategy: shall implement the stormwater management requirements of this Rule. Municipalities shall implement this Rule throughout their corporate limits and extraterritorial jurisdictions within the basin, while counties shall implement throughout their territorial jurisdictions within the basin. Counties named in this Item may implement this Rule within municipalities not named in this Item in accordance with G.S. 160A-360(d).
 - (a) Local governments designated under the original version of this Rule effective August 1998:
 - (a)(i) Cary,
 - (b)(ii) Durham,
 - (c)(iii) Garner,
 - (d)(iv) Goldsboro,
 - (e)(v) Havelock,
 - (f)(vi) Kinston,
 - (g)(vii) New Bern,
 - (h)(viii) Raleigh,
 - (i)(ix) Smithfield,
 - (j)(x) Wilson,
 - (k)(xi) Durham County,
 - (l)(xii) Johnston County,
 - (m)(xiii) Orange County,
 - (n)(xiv) Wake County, and
 - (o)(xv) Wayne County.
 - (b) The following additional local governments are subject to this Rule:
 - (i) Apex,
 - (ii) Clayton,
 - (iii) Fuquay Varina,
 - (iv) Greenville,
 - (v) Holly Springs,

- (vi) Knightdale,
- (vii) Morrisville,
- (viii) Rolesville,
- (viii) Wake Forest,
- (ix) Wendell,
- (x) Winterville,
- (xi) Craven County,
- (xii) Greene County,
- (xiii) Nash County,
- (xiv) Pitt County, and
- (xv) Wilson County.

- (2) Other incorporated areas and other counties, not listed under Item (1) of this Rule, may seek to implement their own local stormwater management plan by complying with the requirements specified in Items (5) and (6) of this Rule.
- (3) EXEMPTION. A stormwater management plan is not required for new development on an individual single-family lot if the new development meets the following criteria:
 - (a) It is not part of a larger common plan of development or sale; and
 - (b) The project does not result in greater than five percent built upon area on the lot or it is for purposes of a single-family residence on a lot five acres in size or greater.
- (3) The Environmental Management Commission may designate additional local governments by amending this Rule based on their potential to contribute significant nutrient loads to the Neuse River. At a minimum, the Commission shall review the need for additional designations to the stormwater management program as part of the basinwide planning process for the Neuse River Basin. Any local governments that are designated at a later date under the Neuse Nutrient Sensitive Waters Stormwater Program shall meet the requirements under Items (5) and (6) of this Rule.
- (4) LOCAL PROGRAM IMPLEMENTATION REQUIREMENTS. All local governments subject to this rule shall implement stormwater management programs approved by the Commission in March 2001 pursuant to the timeframes set out in Item (6) of this Rule, or any subsequent modifications to those plans approved by the Director, according to the following requirements and the standards contained in Item (5) of this Rule: Local stormwater programs shall address nitrogen reductions for both existing and new development and include the following elements:
 - (a) Review and approval of stormwater management plans for new developments to ensure that: The

requirement for local government approval of a stormwater plan for all proposed new development projects disturbing one acre or more for single family and duplex residential property and recreational facilities, and one-half acre or more for commercial, industrial, institutional, multifamily residential, or local government property. Where proposed new development on an existing developed lot not part of a larger common plan of development results in built-upon area exceeding 24 percent, a stormwater plan addressing the new project area shall be required.

- (b) A plan to ensure maintenance of stormwater control measures (SCMs) implemented to comply with this Rule for the life of the development;
 - (c) A plan to ensure enforcement and compliance with the provisions in Item (5) of this Rule for the life of the development;
 - (d) A public education program to inform citizens how to reduce nutrient pollution and to inform developers about the nutrient requirements set forth in Item (5) of this Rule;
 - (e) A mapping program that includes major components of the municipal separate storm sewer system, waters of the State, land use types, and location of sanitary sewers; and
 - (f) A program to identify and remove illegal discharges.
- (5) DEVELOPMENT PROJECT REQUIREMENTS. A proposed development project shall be approved by a subject local government for the purpose of this Rule when the applicable requirements of Item (4) of this Rule and the following criteria are met. For development projects subject to the requirements of 15A NCAC 02B .0277 the requirements of this Item shall not apply.
- ~~(i)~~(a) The project area, as defined in 15A NCAC 02H .1002, shall meet either a nitrogen loading rate target of 3.6 pounds/acre/year or the definition of runoff volume match found in 15A NCAC 02H .1002. Except as otherwise stated in this Item, the project may meet the loading rate target through use of permanent nutrient offset credit pursuant to Rule .0703 of this Section. Persons who seek nutrient offset credit to these requirements shall provide proof of nutrient offset credit acquisition to the

permitting authority prior to approval of the development plan; the nitrogen load contributed by new development activities is held at 70 percent of the average nitrogen load contributed by the 1995 land uses of the non urban areas of the Neuse River Basin. The local governments shall use a nitrogen export standard of 3.6 pounds/acre/year, determined by the Environmental Management Commission as 70 percent of the average collective nitrogen load for the 1995 non urban land uses in the basin above New Bern. The EMC may periodically update the design standard based on the availability of new scientific information; Developers shall have the option of offsetting part of their nitrogen load by funding offsite management measures by making payment to the NC Ecosystem Enhancement Program or to another seller of offset credits approved by the Division or may implement other offset measures contingent upon approval by the Division. Offset payments shall meet the requirements of Rule .0240 of this Section, which establishes procedural requirements for nutrient offset payments. However, before using offset payments, the development must attain, at a minimum, a nitrogen export that does not exceed 6 pounds/acre/year for residential development and 10 pounds/acre/year for commercial or industrial development;

- (ii) For the following local governments and any additional local governments identified in rule by the Commission, the post construction requirements of 15 NCAC 02B .0277 shall supersede the requirements in this Sub item for areas within their jurisdiction within the watershed of the Falls of the Neuse Reservoir: Durham, Raleigh, Durham County, Orange County, and Wake County; and
- (b) Untreated nutrient loading rates from the project area shall be determined through the use of the tool most recently approved by the Division to have met the following criteria, or through an alternative method that meets the following criteria at least as well, as determined by the Division:

- (i) Provides project site-scale estimates of annual precipitation-driven total nitrogen and total phosphorus load;
- (ii) From all land cover types on a project site at build-out;
- (iii) Based on land-cover-specific nitrogen and phosphorus loading coefficients and annual runoff volume; and
- (iv) Is supported by the weight of evidence from available, current, and applicable research.
- (c) Nutrient loading rate reductions resulting from the use of SCMs shall be determined through the use of the tool most recently approved by the Division to have met the following criteria, or an alternative method that meets the following criteria at least as well, as determined by the Division:
 - (i) Provides project site loading reduction estimates from the installation of DEMLR-approved SCMs;
 - (ii) Reductions apply to the portion of the project area's runoff volume that is directed to the SCMs;
 - (iii) The method partitions the runoff volume processed by the SCM among hydrologic fates and assigns nutrient concentrations to each of those fates; and
 - (iv) The method is supported by the weight of evidence from available, current, and applicable research.
- (d) Projects shall meet the requirements set forth in 15A NCAC 02H .1003. Projects that use SCMs to treat stormwater shall use the required storm depths and meet the SCM and density requirements set forth in the stormwater programs to which they are subject pursuant to 15A NCAC 02H .1017, .1019, and .1021. Projects not subject to any of these Rules shall be considered high-density if they contain twenty four percent or greater built-upon area or have greater than two dwelling units per acre, and shall use a storm depth of one inch for SCM design.
- (e) Proposed new development undertaken by a local government solely as a public road expansion or public sidewalk project or proposed new development subject to the jurisdiction of the Surface Transportation Board shall be exempt from the requirements of Sub-Item (5)(d) of this Rule and may meet the loading rate targets through use of permanent nutrient offset credit pursuant to Rule .0703 of this Section;
- (f) Proposed development projects that would replace or expand existing structures and would result in a net increase in built-upon area shall be responsible for nitrogen loading from the area of disturbance less any preexisting built-upon area located therein. The developer shall have the option to either achieve the percent loading reduction goal established in Rule .0710 of this Section or meet the loading rate target of this Item;
- (g) Proposed new development projects may utilize an offsite SCM that is dedicated to treating an area encompassing the project provided the SCM complies with the applicable requirements of this Item for the area that it treats;
- (h) Where pursuant to G.S. 153A-454 and G.S. 160A-459 a local government program does not review a development project proposed by a state or federal entity for the requirements of this Rule, the entity shall obtain Department review and approval; and
- (i) Proposed development projects shall demonstrate compliance with the riparian buffer protection requirements of Rule .0714 of this Section.
- (iii) there is no net increase in peak flow leaving the site from the predevelopment conditions for the 1 year, 24-hour storm.
- (b) Review of new development plans for compliance with requirements for protecting and maintaining existing riparian areas as specified in 15A NCAC 02B .0233;
- (e) Implementation of public education programs;
- (d) Identification and removal of illegal discharges;
- (e) Identification of suitable locations for potential stormwater retrofits (such as

- riparian areas) that could be funded by various sources; and
- (f) ~~Submittal of an annual report on October 30 to the Division documenting progress on and net changes to nitrogen load from the local government's planning jurisdiction.~~
- (5) ~~Local governments shall implement stormwater management programs according to their plans approved by the Commission as of March 2001. Local governments administering a stormwater management program shall submit annual reports to the Division documenting their progress and net changes to nitrogen load by October 30 of each year.~~
- (6) ~~If a local government fails to properly implement an approved plan, then stormwater management requirements for existing and new urban areas within its jurisdiction shall be administered through the NPDES municipal stormwater permitting program per 15A NCAC 02H .0126:~~
- (a) ~~Subject local governments shall develop and implement comprehensive stormwater management programs, tailored toward nitrogen reduction, for both existing and new development.~~
- (b) ~~These stormwater management programs shall provide all components that are required of local government stormwater programs in Sub items (4)(a) through (f) of this Rule.~~
- (c) ~~Local governments that are subject to an NPDES permit shall be covered by the permit for at least one permitting cycle (five years) before they are eligible to submit a local stormwater management program for consideration and approval by the EMC.~~
- (6) **RULE IMPLEMENTATION**
- (a) Within four months of the effective date of this Rule, the Division shall submit a model local stormwater program embodying the elements in Items (4) and (5) of this Rule to the Commission for approval. The Division shall work in cooperation with subject local governments in developing this model program.
- (b) Local governments designated under the original version of this Rule effective August 1998 and additional local governments designated herein shall submit a local stormwater program for approval by the Commission within six months and 12 months, respectively, of the Commission's approval of the model local program. These local programs shall meet or exceed the requirements in Items (4) and (5) of this Rule.
- (c) The Division shall provide recommendations to the Commission regarding proposed local programs. The Commission shall approve programs or require changes based on the standards set out in Items (4) and (5) of this Rule. Should the Commission require changes, the applicable local government shall have three months to submit revisions, and the Division shall provide follow-up recommendations to the Commission within two months after receiving revisions;
- (d) Within six months after the Commission's approval of a local program, the affected local government shall complete adoption of and implement its local stormwater program.
- (e) Local governments administering a stormwater program shall submit annual reports in electronic format to the Division documenting their progress regarding each implementation requirement in Item (4) of this Rule and net changes to nitrogen load by October 30th of each year. Annual reports shall also include as appendices all data utilized by nutrient calculation tools for each development stormwater plan approved in accordance with this Rule.
- (f) Any significant modifications to a local program subsequent to its approval pursuant to the requirements of this item shall be submitted to the Director for approval.
- (7) **COMPLIANCE.** A local government's authority to approve new development stormwater plans for compliance with this Rule pursuant to Item (5) of this Rule shall be contingent upon maintaining its own compliance with this Rule. A local government that fails to submit an acceptable local stormwater program within the timeframe established in this Rule, fails to implement an approved program, or fails to comply with annual reporting requirements shall be in violation of this Rule.

Authority G.S. 143-214.1; 143-214.7; 143-214.26; 143-215.1; 143-215.3(a)(1); S.L. 1995, c. 572; S.L. 1997-458; S.L. 2006-246.

**15A NCAC 02B .0236 NEUSE RIVER BASIN-
NUTRIENT SENSITIVE WATERS MANAGEMENT
STRATEGY: AGRICULTURAL NITROGEN LOADING
REDUCTION**

Authority G.S. 143.214.1; 143.214.7; 143.215.3(a)(1).

**15A NCAC 02B .0237 BEST MANAGEMENT
PRACTICE COST-EFFECTIVENESS RATE**

Authority G.S. 143-214.1.

**15A NCAC 02B .0238.0712 NEUSE RIVER BASIN-
NUTRIENT SENSITIVE WATERS MANAGEMENT
BASIN NUTRIENT STRATEGY: AGRICULTURAL
NITROGEN REDUCTION STRATEGY AGRICULTURE**

The following requirements apply to all persons in the Neuse River Basin who engage in agricultural operations. Agricultural operations are activities which relate to the production of crops, livestock, and poultry. This Rule sets forth a process by which agricultural operations in the Neuse River Basin will collectively limit their nitrogen loading to the Neuse estuary, as prefaced in Rule .0710 of this Section. Nothing in this rule preempts the requirements of 15A NCAC 02B .0280 for agricultural operations subject to the Falls Reservoir Nutrient Strategy.

- (1) ~~All persons engaging in agricultural operations in the Neuse River Basin shall collectively achieve and maintain a 30 percent net total nitrogen loading reduction from the cumulative average 1991-1995 nitrogen loadings within five years from the effective date of this Rule. Persons subject to this Rule are provided with two options for meeting the requirements of this Rule. The first option is to sign up for and participate in implementing a collective local strategy for agricultural nitrogen reduction as described in Item (7) of this Rule. This option allows site specific plans to be developed for those operations where further nitrogen reduction practices are necessary to achieve the collective reduction goal. The second option requires the implementation of standard Best Management Practices as specified in Item (8) of this Rule. Failure to meet requirements of this Rule may result in imposition of enforcement measures as authorized by G.S. 143-215.6A (civil penalties), G.S. 143-215.6B (criminal penalties), and G.S. 143-215.6C (injunctive relief).~~ **PURPOSE.** The purpose of this Rule is to maintain or exceed the percentage reduction goal defined in Rule .0710 of this Section on the collective loss of nitrogen from all lands used for agricultural production as described in Item (2) of this Rule from its 1991-1995 baseline level, as estimated by best available accounting practices.

- (a) **PROCESS.** This Rule requires farmers in the Basin to implement land management practices that

- (b) collectively, on a county or watershed basis, will achieve the nutrient goals. **LIMITATION.** This Rule may not fully address the agricultural nitrogen reduction goal of the Neuse Nutrient Sensitive Waters Strategy in that it does not address atmospheric sources of nitrogen to the Basin, including atmospheric emissions of ammonia from sources located both within and outside of the Basin. As better information becomes available from ongoing research on atmospheric nitrogen loading to the Basin from these sources, and on measures to control this loading, the Commission may undertake separate rule-making to require such measures it deems necessary from these sources to support the goals of the Neuse Nutrient Sensitive Waters Strategy.

- (2) **APPLICABILITY.** This Rule shall apply to all persons engaging in agricultural operations, including those related to crops, horticulture, livestock, and poultry, in the geographic area subject to the Neuse nutrient strategy as described in Rule .0710 of this Section. This Rule applies to livestock and poultry operations above the size thresholds in this Item in addition to requirements for animal operations set forth in general permits issued pursuant to G.S. 143-215.10C. Nothing in this Rule shall be deemed to allow the violation of any assigned surface water, groundwater, or air quality standard by any agricultural operation, including any livestock or poultry operation below the size thresholds in this Item. For the purposes of this Rule, agricultural operations are activities that relate to any of the following pursuits:

- (a) The commercial production of crops or horticultural products other than trees. As used in this Rule, commercial shall mean activities conducted primarily for financial profit.
- (b) Research activities in support of such commercial production.
- (c) The production or management of any of the following number of livestock or poultry at any time, excluding nursing young:
 - (i) 5 or more horses;
 - (ii) 20 or more cattle;
 - (iii) 20 or more swine not kept in a feedlot, or 150 or more swine kept in a feedlot;
 - (iv) 120 or more sheep;
 - (v) 130 or more goats;
 - (vi) 650 or more turkeys;
 - (vii) 3,500 or more chickens; or

- (viii) Any single species of any other livestock or poultry, or any combination of species of livestock or poultry that exceeds 20,000 pounds of live weight at any time.
- (3) IMPLEMENTATION PROCESS. A Basin Oversight Committee and county-level Local Advisory Committees shall coordinate activities and account for progress. The membership, roles and responsibilities of these committees are set forth in Items (4) and (6) of this Rule. Accounting for nitrogen load-reducing actions on agricultural lands within the basin shall follow requirements set forth in Item (5) of this Rule. Producers may be eligible to obtain cost share and technical assistance from the NC Agriculture Cost Share Program and similar federal programs to contribute to their counties' ongoing nitrogen reductions. Committee activity shall be guided by the following:
- (a) OPTIONS FOR INDIVIDUAL OPERATIONS. Persons subject to this Rule may elect to implement practices meeting the standards identified in Item (7) of this Rule that contribute to maintenance of collective local compliance with the goal identified in Item (1) of this Rule, but are not required to implement any specific practices provided their basin collectively maintains compliance with the goal.
- (b) MAINTENANCE OF GOAL. Accounting shall annually demonstrate maintenance or exceedence of the nitrogen reduction goal on a basin basis. Where three sequential annual reports show that the Basin did not meet its nitrogen reduction goal, the Basin Oversight Committee shall work with the Division of Soil and Water Conservation and Local Advisory Committees to seek reduction actions by operations to bring agriculture collectively back into compliance, and shall report on their efforts in subsequent annual reports. Should subsequent annual reports not reverse the trend of noncompliance, the Commission may seek a more specific implementation plan from the Basin Oversight Committee, which may include an assessment of need for specific action by the Commission.
- (2)(4) BASIN OVERSIGHT COMMITTEE. The Basin Oversight Committee shall have the

following membership, role and responsibilities: Formation and membership of the Basin Oversight Committee. The Environmental Management Commission shall delegate to the Secretary of the Department of Environment and Natural Resources the responsibility of forming a Basin Oversight Committee.

- (a) The Secretary shall solicit one nomination for membership on this Committee from each of the following agencies: MEMBERSHIP. The Director of the Division of Water Resources shall be responsible for maintaining the following membership composition. Until such time as the Commission determines that long-term compliance with this rule is assured, the Director shall solicit one nomination for membership on this Committee from each agency in Sub-Items (4)(a)(i) through (4)(a)(v) of this Rule. The Director may appoint a replacement at any time for an interest in Sub-Items (4)(a)(vi) through (4)(a)(viii) of this Rule upon request of representatives of that interest or by the request of the Commissioner of Agriculture:
- (i) Division of Soil and Water Conservation,
 - (ii) United States Department of Agriculture- Natural Resources Conservation Service, Service (shall serve in an "ex-officio" non-voting capacity and shall function as a technical program advisor to the Committee),
 - (iii) North Carolina Department of Agriculture, Agriculture and Consumer Services,
 - (iv) North Carolina Cooperative Extension Service, and
 - (v) Division of Water Quality- Resources,
 - (vi) Up to two environmental interests,
 - (vii) Up to two general farming interest, and
 - (viii) Scientific community with experience related to water quality problems in the Neuse River Basin.
- (b) The Secretary shall also solicit one nomination that represents environmental interests, one nomination that represents agricultural interests, and one from the scientific

community with experience related to water quality problems in the Neuse River Basin.

- (e) ~~The Secretary, Department of Environment and Natural Resources, shall appoint members of the Basin Oversight Committee from the nominees provided in Sub Items (2)(a) and (2)(b) of this Rule. Members shall be appointed for a term not to exceed five years and shall serve at the pleasure of the Secretary. The United States Department of Agriculture Natural Resources Conservation Service member shall serve in an "ex officio" non voting capacity and shall function as a technical program advisor to the Committee.~~
- (3) ~~Role of the Basin Oversight Committee. The Environmental Management Commission shall delegate the following responsibilities to the Basin Oversight Committee.~~
 - (a) ~~Develop a tracking and accounting methodology, as described below, for evaluating total nitrogen loading from agricultural operations and progress toward reaching the total nitrogen net loading reduction from the implementation BMPs within the Neuse River Basin. The accountability methodology must demonstrate how the nitrogen loading reduction can be met collectively by implementing best management practices approved by the Soil and Water Conservation Commission that include, but are not limited to, water control structures, riparian area establishment, and nutrient management.~~
 - (b) ~~Submit a draft accountability process in accordance with the requirements in Sub Items (3)(a) and (3)(c) of this Rule to the Environmental Management Commission for review within six months after the effective date of the rule and the final accountability process to the Environmental Management Commission for approval within one year after the effective date of the rule. The Environmental Management Commission shall approve the accountability process if it meets requirements in Sub Items (3)(a) and (3)(c) of this Rule. If the Basin Oversight Committee fails to submit an approvable accountability process to the Environmental Management~~

Commission, then the Environmental Management Commission may accept alternative accountability process proposals within 15 months of the effective date of this Rule. If the Environmental Management Commission fails to receive an approvable accountability process, then the Environmental Management Commission may require all agricultural operations to follow the standard Best Management Practices option as specified in Item (8) of this Rule.

- (e) ~~Include in the accountability process a method to accurately track implementation of BMPs, including location and type of BMPs; to estimate nitrogen reductions from BMP implementation; to quantify increases or decreases in nitrogen loading due to changes in land use, modified agricultural activity, or atmospheric nitrogen loading, based on the best available scientific information; to ensure operation and maintenance of BMPs, including year round management for water control structures; to address life expectancy of BMPs; and a method to ensure maintenance of the nitrogen net loading reduction after the initial five years of this Rule, including substitute BMPs to replace expired practices and additional BMPs to offset new sources of nitrogen.~~
- (d) ~~Calculate a separate total nitrogen loading for agricultural lands in the Neuse River Basin above and below New Bern based on the average of 1991 1995 conditions. Based on this loading, calculate a separate 30 percent net reduction. Loading calculations must include atmospheric emissions and deposition of nitrogen from agricultural lands based on the best available scientific information. Allocate to counties or watersheds, as allowed in Sub Item (4)(a) of this Rule, within the Neuse River Basin their portion of the calculated nitrogen loading reduction from agricultural operations, including any division of the reduction between specific categories of agricultural operations. Each county or watershed may not have to reduce individually its nitrogen loading by 30 percent; however, the nitrogen loading~~

- ~~reduction from all counties or watershed above New Bern shall collectively meet their total nitrogen reduction and all counties or watersheds below New Bern shall collectively meet their total nitrogen reduction. If the Basin Oversight Committee fails to allocate the nitrogen loading reductions from agricultural operations to counties or watersheds within the Neuse River Basin, the Environmental Management Commission may assign the agricultural nitrogen reductions based on the approved accountability process as described in Sub Items (3)(a) and (3)(c) of this Rule.~~
- (e) ~~Review, approve and summarize county nitrogen reduction strategies and present these strategies to the Environmental Management Commission for approval within two years from the effective date of this Rule.~~
- (f) ~~Review, approve and summarize local nitrogen reduction annual reports and present these reports to the Environmental Management Commission each October. Information to be included in the Annual Report is described in Item (5)(d) of this Rule.~~
- (b) ROLE. The Basin Oversight Committee shall:
- (i) Continue to review, approve and summarize local nitrogen loss annual reports to ensure ongoing implementation of the accounting method approved by the Commission under the original version of this Rule effective August 1998, as conforming to the requirements of Item (5) of this Rule. Continue to submit these reports as initiated in 2002, to the Director annually;
 - (ii) Take actions called for under Sub-Item (3)(b) of this Rule as needed to address maintenance of the nitrogen reduction goal; and
 - (iii) Identify and implement refinements to the accounting method as needed to reflect advances in scientific understanding, including establishment or refinement
- of nutrient reduction efficiencies for BMPs.
- (5) ACCOUNTING METHODOLOGY. Success in meeting this Rule's purpose will be gauged by estimating percentage changes in nitrogen loss from agricultural lands in the Neuse Basin. The Basin Oversight Committee shall develop, maintain, and update as indicated elsewhere in this Item, accounting methods that meet the following requirements:
- (a) The nitrogen method shall estimate baseline and annual total nitrogen losses from agricultural operations in each county and for the entire Neuse Basin. Baseline losses and relative loss reduction progress shall be adjusted as frequently as can be supported by available data to account for lands permanently removed from agricultural control through development;
 - (b) The nitrogen method shall include a means of tracking implementation of BMPs, including number, type, and area affected;
 - (c) The nitrogen method shall include a means of estimating incremental nitrogen loss reductions from implementation of BMPs that conform to requirements of Item (7) of this Rule and of evaluating progress toward and maintenance of the nutrient goal from changes in BMP implementation, fertilization, and changes in individual crop acres; and
 - (d) The nitrogen method shall be refined as research and technical advances allow.
- (4)(6) ~~Formation and membership of the Local Advisory Committees. LOCAL ADVISORY COMMITTEES. The Environmental Management Commission shall delegate to the Directors of the Division of Water Quality Resources and Division of Soil and Water Conservation the responsibility of forming shall maintain Local Advisory Committees. Committees initially established in February and March, 1999, as follows:~~
- (a) ~~The Directors shall form Local Advisory Committees in~~ MEMBERSHIP. For each county (or or watershed specified by the Basin Oversight Committee) Committee within the Neuse River Basin. The Basin, the Directors shall solicit nominations for jointly maintain membership on the Local Advisory Committee from each of the following local agencies: entities, whose

appointees shall serve at the pleasure of the Directors:

- (i) Soil and Water Conservation District,
- (ii) United States Department of Agriculture- Natural Resources Conservation Service,
- (iii) North Carolina Department of Agriculture,
- (iv) North Carolina Cooperative Extension Service,
- (v) North Carolina Division of Soil and Water Conservation, and
- (vi) The Directors shall also solicit at least two nominations that represents a local farmer in the county watershed. At least two farmers that reside in the county.

The Soil and Water Conservation District may be designated by the Basin Oversight Committee as the lead agency on the Local Advisory Committee.

(b) ROLE. Local Advisory Committees shall:

- (i) Continue to submit annual reports to the Basin Oversight Committee estimating total crop production on agricultural operations for the preceding calendar year, summarizing land use changes in the county and making recommendations to the Basin Oversight Committee on the need for updates to the accounting methodology. Reports shall include documentation on the BMPs implemented, including type and location, that satisfy the requirements identified in Item (6) of this Rule and documentation of any expired contracts for BMPs; and
- (ii) Take actions called for under Sub-Item (3)(b) of this Rule to address maintenance of the nitrogen reduction goal.

(7) PRACTICE STANDARDS. To receive nutrient reduction credit under the accounting methods described elsewhere in this Rule, a BMP shall be included in the accounting

method approved by the Commission under the original version of this Rule effective August 1998, or in a subsequent revision to that method identified in annual reporting, and it shall be implemented according to the applicable nutrient-related standards identified by the BOC and established by the NC Soil and Water Conservation Commission or the USDA-Natural Resources Conservation Service in North Carolina.

(b) The Environmental Management Commission and Soil and Water Conservation Commission shall appoint members of Local Advisory Committee from the nominees provided in Sub Item (4)(a) of this Rule and shall be appointed for a term not to exceed five years and shall serve at the pleasure of the Commissions.

(5) Role of the Local Advisory Committees. The Environmental Management Commission shall delegate the following responsibilities to employees of the Department who are members of the Local Advisory Committees and employees of the Division of Soil and Water Conservation or its designee. These employees shall act with advice from the Local Advisory Committees.

(a) Conduct a sign up process for persons wishing to voluntarily implement the local nitrogen reduction strategy as specified in Item (7) of this Rule. This sign up process shall be completed within one year following the effective date of this Rule.

(b) Develop local nitrogen reduction strategies that meet the nitrogen loading reduction goal for agricultural operations assigned by the Basin Oversight Committee. The local strategies shall be designed to achieve the required nitrogen loading reduction within five years from the effective date of this Rule. A matrix of best management practice options, which account for stream order, floodplain width, and regional variations in soil types and topography, may be used in developing the local nitrogen reduction strategies. Local nitrogen reduction strategies must specify the name and location of participant agricultural farming operations, BMPs which will be required as part of the plan, estimated nitrogen reduction, schedule for BMP implementation, and operation and maintenance requirements. If the Local Advisory

- Committee fails to develop the local nitrogen reduction strategy, the Environmental Management Commission may develop the strategy based on the tracking and accounting method approved by the Environmental Management Commission.
- (e) Submit an annual report to the Basin Oversight Committee each May on net total nitrogen loading reductions from agricultural operations, the implementation of BMPs for nitrogen control, and progress towards the total nitrogen loading reduction requirements in the Neuse River Basin above and below New Bern.
 - (d) Include in the annual report, at a minimum, documentation on the BMPs implemented (including type and location), their costs, documentation of any expired contracts for BMPs, estimated nitrogen net loading reductions achieved as a result of those BMPs, any increases or decreases in nitrogen loading resulting from changes in land use or modified agricultural related activity, discussion of operation and maintenance of BMPs, and a summary of the estimated load from agricultural operations for the previous year, and any modifications to the accounting methodology. Information shall be provided in the annual report on the status of BMP implementation and estimated total nitrogen reduction by all agricultural operations within the Neuse River Basin in each county or watershed. The annual report shall also be summarized separately for cropland, livestock and poultry activities.
- (6) Options for meeting the collective total nitrogen net loading reduction requirement. Each agricultural operation in the Neuse River Basin shall have two options for meeting the requirements of this Rule. The options are to either implement a local nitrogen reduction strategy, specified by Item (7) of this Rule, or implement standard Best Management Practices specified by Item (8) of this Rule.
- (7) Local nitrogen reduction strategy option. All persons subject to this Rule that choose to implement the county nitrogen reduction plan must complete the sign up process that will be conducted per the requirements of Item (5)(a) of this Rule. This sign up process will be completed within one year from the effective date of this Rule. If a person subject to this Rule does not complete the sign up process, he shall be subject to implementation of Best Management Practices as specified in Item (8) of this Rule. Persons who choose to participate in the local nitrogen reduction strategy must commit and implement their portion of the plan within five years of the effective date of this Rule. A person may withdraw from the local nutrient reduction strategy up until the time that the local strategy is finalized by the Local Advisory Committee and the person signs the specific plan for his property, which represents his commitment to implement the plan within five years of the effective date of the rules. After a person has made the commitment to implement the local strategy by signing the plan for his property, then such persons may not withdraw from the local nitrogen reduction strategy during the initial five year period. The local nitrogen reduction strategy is not required to be more stringent than the standard best management practice option provided that the net nitrogen reduction goals are met collectively; however, the Local Advisory Committees may develop strategies that achieve reductions of greater than 30 percent.
- (8) Standard best management practice option. If a person subject to this Rule does not complete the sign up process for implementation of the local nitrogen reduction strategy, then he shall implement the following best management practices within four years following the effective date of this Rule.
- (a) A forested riparian area, as described in Sub Item (8)(a)(i) (ii) of this Rule, is required on all sides of surface waters in the Neuse River Basin (intermittent streams, perennial streams, lakes, ponds and estuaries) as indicated on the most recent versions of U.S.G.S. 1:24,000 scale (7.5 minute quadrangle) topographic maps or other site specific evidence. Design and installation of the forested riparian area shall be such that, to the maximum extent possible, sheet flow of surface water is achieved. Any activities that would result in water quality standard violations or disrupt the structural or functional integrity of the forested riparian area are prohibited. The protected riparian area shall have two zones as follows:
 - (i) Zone 1 shall be undisturbed forest. Zone 1 begins at the top of bank for intermittent streams and perennial streams without tributaries

and extends landward a distance of 30 feet on each side of the waterbody, measured horizontally on a line perpendicular to the waterbody. For all other waterbodies, Zone 1 begins at the top of bank or the mean high water line and extends landward a distance of 30 feet, measured horizontally on a line perpendicular to the waterbody. Forest vegetation of any width that exists in Zone 1 as of July 22, 1997 must be preserved and maintained in accordance with Sub Items (8)(a)(i)(A)-(E) of this Rule. The application of fertilizer in Zone 1 is prohibited. The following practices and activities are allowed in Zone 1:

- (A) Natural regeneration of forest vegetation and planting vegetation to enhance the riparian area if disturbance is minimized, provided that any plantings shall primarily consist of locally native trees and shrubs;
- (B) Selective cutting of individual trees of high value in the outer 20 feet of Zone 1, provided that the basal area of this outer 20 foot wide area remains at or above 75 square feet per acre and is computed according to the following method. Basal area of this outer 20 foot wide area shall be computed every 100 feet along the stream to ensure even distribution of forest vegetation and shall be based on all trees

measured at 4.5 feet from ground level. No tracked or wheeled equipment is allowed in Zone 1 except at stream crossings which are designed, constructed and maintained in accordance with Forest Practice Guidelines Related to Water Quality (15A NCAC 1J .0201-.0209);

- (C) Horticulture or silvicultural practices to maintain the health of individual trees;
- (D) Removal of individual trees which are in danger of causing damage to dwellings, other structures, or the stream channel; and
- (E) Removal of dead trees and other timber cutting techniques necessary to prevent extensive pest or disease infestation if recommended by the Director, Division of Forest Resources and approved by the Director, Division of Water Quality.

- (ii) Zone 2: begins at the outer edge of Zone 1 and extends landward a minimum of 20 feet as measured horizontally on a line perpendicular to the waterbody. The combined minimum width of Zones 1 and 2 shall be 50 feet on all sides of the waterbody. Vegetation in Zone 2 shall consist of a dense ground cover composed of herbaceous or woody species which provides for diffusion and infiltration of runoff and filtering of pollutants. The following practices and

- activities are allowed in Zone 2 in addition to those allowed in Zone 1: Periodic mowing and removal of plant products such as timber, nuts, and fruit is allowed on a periodic basis provided the intended purpose of the riparian area is not compromised by harvesting, disturbance, or loss of forest or herbaceous ground cover. Forest vegetation in Zone 2 may be managed to minimize shading on adjacent land outside the riparian area if the water quality function of the riparian area is not compromised.
- (iii) The following practices and activities are not allowed in Zone 1 and Zone 2:
- (A) Land disturbing activities and placement of fill and other materials, other than those allowed in Items (8)(a)(i) and (8)(b) of this Rule;
 - (B) New development;
 - (C) New on-site sanitary sewage systems which use ground absorptions;
 - (D) Any activity that threatens the health and function of the vegetation including, but not limited to, application of fertilizer or chemicals in amounts exceeding the manufacturer's recommended rate, uncontrolled sediment sources on adjacent lands, and the creation of any areas with bare soil.
- (iv) Timber removal and skidding of trees in the riparian area shall be directed away from the water course or water body. Skidding shall be done in a manner to prevent creation of ephemeral channels perpendicular to the water body. Any tree removal must be performed in a manner that does not compromise the intended purpose of the riparian area and is in accordance with the Forest Practices Guidelines Related to Water Quality (15A NCAC 1J .0201-.0209).
- (b) The following waterbodies and land uses are exempt from the riparian area requirement:
- (i) Ditches and manmade conveyances, other than modified natural streams, which under normal conditions do not receive drainage waters from any tributary ditches, canals, or streams, unless the ditch or manmade conveyance delivers runoff directly to waters classified in accordance with 15A NCAC 2B .0100;
 - (ii) Ditches and manmade conveyances other than modified natural streams which are used exclusively for drainage of silvicultural land or naturally forested areas. All forest harvesting operations shall be in compliance with North Carolina's Forest Practices Guidelines Related to Water Quality;
 - (iii) Areas mapped as perennial streams, intermittent streams, lakes, ponds or estuaries on the most recent versions of United States Geological Survey 1:24,000 scale (7.5 minute quadrangle) topographic maps where no perennial, intermittent waterbody, or lakes, ponds or estuaries exists on the ground;
 - (iv) Ponds and lakes created for animal watering, irrigation, or other agricultural uses that are not part of a natural drainage way that is classified in accordance with 15A NCAC 2B .0100;

- (v) ~~Water dependent structures as defined in 15A NCAC 2B .0202 provided that they are located, _____ designed, constructed and maintained to provide maximum nutrient removal, to have the least adverse effects on aquatic life habitat and to protect water quality;~~
- (vi) ~~The following uses may be allowed where no practical alternative exists. A lack of practical alternatives may be shown by demonstrating that, considering the potential for a _____ reduction _____ in _____ size, configuration or density of the proposed activity and all alternative designs, the basic project purpose cannot be practically accomplished in a manner which would avoid or result in less adverse impact to surface waters. Also, these structures shall be located, _____ designed, constructed, and maintained to have minimal disturbance, to provide maximum nutrient removal _____ and _____ erosion protection, to have the least adverse effects on aquatic life and habitat, and to protect water _____ quality _____ to _____ the maximum extent practical through the use of best management practices:~~
- (A) ~~Road _____ crossings, railroad _____ crossings, bridges, _____ airport facilities, and utility crossings may be allowed _____ if conditions specified in _____ Sub Item (8)(b)(vi) _____ of this Rule are met;~~
- (B) ~~Stormwater management facilities and ponds, and _____ utility construction _____ and maintenance corridors _____ for utilities _____ such _____ as water, sewer or gas, may be allowed in Zone 2 _____ of the~~
- ~~riparian area as long as the conditions specified in Sub Item (8)(b)(vi) _____ of this Rule are met and they are located at least 30 feet from the top of bank or mean high water line. _____ Additional requirements _____ for utility construction and _____ maintenance corridors are listed in _____ Sub Item (8)(b)(vi) _____ of this Rule.~~
- (vii) ~~A _____ corridor _____ for _____ the construction _____ and maintenance of utility lines, such as water, sewer or gas, (including access roads and stockpiling of materials) may run parallel to the stream and may be located within Zone 2 of the riparian area, as long as no practical alternative exists and they are located at least 30 feet from the top of bank or mean high water line and best management practices are installed to minimize runoff and maximize water quality protection to the maximum extent practicable. Permanent, _____ maintained access corridors shall be restricted to the minimum width practicable and shall not exceed 10 feet in width except at manhole locations. A 10 feet by 10 feet perpendicular _____ vehicle turnaround _____ is _____ allowed provided they are spaced at least 500 feet apart along the riparian area;~~
- (viii) ~~Stream restoration projects, scientific studies, stream gauging, water wells, passive recreation facilities such as boardwalks, trails, pathways, historic preservation and archaeological activities are allowed; provided that they are located in Zone 2 and are at least 30 feet from the top of bank or mean high water line and are designed, constructed~~

- and maintained to provide the maximum nutrient removal and erosion protection, to have the least adverse effects on aquatic life and habitat, and to protect water quality to maximum extent practical through the use of best management practices. Activities that must cross the stream or be located within Zone 1 are allowed as long as all other requirements of this Item are met;
- (ix) Stream crossings associated with timber harvesting are allowed if performed in accordance with the Forest Practices Guidelines Related to Water Quality (15A NCAC 1J.0201 .0209); and
- (x) In addition to exceptions included in Sub Item (8)(b)(i) (ix), canals, ditches, and other drainage conveyances are exempt from the riparian area requirement if both water control structures with a water control structure management plan and a nutrient management plan, are implemented on the adjacent agricultural land according to the standards and specifications of the USDA Natural Resources Conservation Service or the standards and specifications adopted by the NC Soil and Water Conservation Commission. The water control structures and nutrient management practices must provide equivalent protection and directly affect the land and waterbodies draining into the waterbody exempted from the riparian area requirement. To the maximum extent practical, water control structures shall be managed to maximize nitrogen removal throughout the year. A technical specialist designated pursuant to rules adopted by the Soil and Water Conservation Commission must provide written approval that the nutrient management and water management plans meet the standards and specifications of the USDA Natural Resources Conservation Service or the standards and specifications adopted by the NC Soil and Water Conservation Commission. If the nutrient management plans and water management plans are not implemented, then a riparian area pursuant to this Section is required.
- (c) The following are modifications to the riparian area requirements:
- (i) On agricultural land where either water control structures with a water control structure management plan, or a nutrient management plan is implemented according to the standards and specifications of the USDA Natural Resources Conservation Service or the standards and specifications adopted by the NC Soil and Water Conservation Commission, then a 20 ft forested or a 30 ft vegetated buffer is required. The water control structures or nutrient management practices must provide equivalent protection and directly affect the land and waterbodies draining into the waterbody with a modified buffer requirement. To the maximum extent practical, water control structures shall be managed to maximize nitrogen removal throughout the year. A technical specialist designated pursuant to rules adopted by the Soil and Water Conservation Commission must provide written approval that the nutrient management plan meets the standards and specifications of the USDA Natural Resources Conservation Service or the

- ~~standards and specifications adopted by the NC Soil and Water Conservation Commission.~~
- (ii) ~~A vegetated riparian area may be substituted for an equivalent width of forested riparian area within 100 feet of tile drainage.~~
 - (iii) ~~Where the riparian area requirements would result in an unavoidable loss of tobacco allotments [(7 CFR 723.220(c)) and the BMPs of controlled drainage or nutrient management are not in place, forest cover is required only in the first 20 feet of the riparian area.~~
 - (d) ~~Maintenance of Zones 1 and 2 is required in accordance with this Rule.~~
 - (i) ~~Sheet flow must be maintained to the maximum extent practical through dispersing concentrated flow and re-establishment of vegetation to maintain the effectiveness of the riparian area.~~
 - (ii) ~~Concentrated runoff from new ditches or manmade conveyances must be dispersed into sheetflow before the runoff enters Zone 2 of the riparian area. Existing ditches and manmade conveyances, as specified in Sub Item (8)(b)(ii) of this Rule, are exempt from this requirement; however, care shall be taken to minimize pollutant loading through these existing ditches and manmade conveyances from fertilizer application or erosion.~~
 - (iii) ~~Periodic corrective action to restore sheet flow shall be taken by the landowner if necessary to impede the formation of erosion gullies which allow concentrated flow to bypass treatment in the riparian area.~~
 - (e) ~~Periodic maintenance of modified natural streams such as canals is allowed provided that disturbance is minimized and the structure and~~
- ~~function of the riparian area is not compromised. A grassed travelway is allowed on one side of the waterbody when alternative forms of maintenance access are not practical. The width and specifications of the travelway shall be only that needed for equipment access and operation. The travelway shall be located to maximize stream shading.~~
- (f) ~~Where the standards and management requirements for riparian areas are in conflict with other laws, regulations, and permits regarding streams, steep slopes, erodible soils, wetlands, floodplains, forest harvesting, surface mining, land disturbance activities, development in Coastal Area Management Act Areas of Environmental Concern, or other environmental protection areas, the more protective shall apply.~~
 - (g) ~~The Environmental Management Commission acknowledges that best management practices under the standard management practice option of this Rule do not fully address nitrogen loading, including atmospheric emissions and deposition, from animal operations. As information becomes available on nitrogen loadings from animal operations and best management practices to control these loadings, other best management practices from animal operations may be required by the Commission as necessary to achieve equivalent reduction in nitrogen loadings therefrom. These additional best management practices shall be required if deemed necessary to achieve a net total nitrogen loading reduction from the animal operations based on average 1991-1995 conditions.~~
- Authority G.S. 143-214.1; 143-214.7; 143-215.3(a)(1); S.L. 1997-458.*
- 15A NCAC 02B .0239 NEUSE RIVER BASIN: NUTRIENT SENSITIVE WATERS MANAGEMENT STRATEGY: NUTRIENT MANAGEMENT**
- Authority G.S. 143-214.1; 143-214.7; 143-215.3(a)(1).*
- 15A NCAC 02B .0240.0703 NUTRIENT OFFSET PAYMENTS CREDIT TRADING**
- (a) ~~The purpose of this Rule is to establish procedures for the optional payment of nutrient offset fees to the NC Ecosystem~~

Enhancement Program, subsequently referred to as the Program, or to other public or private parties where the Program or such parties implement projects for nutrient offset purposes and accept payments for those purposes, and where either of the following applies:

- (1) ~~The following rules of this Section allow offsite options or nutrient offset payments toward fulfillment or maintenance of nutrient reduction requirements:~~
 - (A) ~~.0234 and .0235 of the Neuse nutrient strategy;~~
 - (B) ~~.0258 of the Tar Pamlico nutrient strategy; and~~
 - (C) ~~applicable rules of the Jordan nutrient strategy, which is described in Rule .0262; and~~
- (2) ~~Other rules adopted by the Commission allow this option toward fulfillment of nutrient load reduction requirements.~~

(a) PURPOSE. The purpose of this Rule is to establish standards and procedures applicable to providers for approval of nutrient reduction projects and associated nutrient offset credits that will be transferred to persons or entities subject to nutrient rules of this Subchapter. Nutrient offset credits represent a compliance option where allowed by nutrient rules of this Subchapter. Nutrient offset credit is distinct from nutrient accounting for direct compliance with individual nutrient strategy rules, which is not governed by this rule. Nutrient accounting includes joint compliance by multiple local governments as authorized in individual nutrient strategy rules.

(b) Offset fees paid pursuant to this Rule shall be used to achieve nutrient load reductions subject to the following geographic restrictions:

- (1) ~~Load reductions shall be located within the same 8 digit cataloguing unit, as designated by the US Geological Survey, as the loading activity that is being offset;~~
- (2) ~~The Division shall track impacts by 10 digit watershed, as designated by the US Geological Survey and providers shall locate projects proportional to the location of impacts to the extent that the projects would meet the least cost alternative criterion per S.L. 2007 438. The location of load reduction projects shall be reviewed during the approval process described in Paragraph (c) of this Rule;~~
- (3) ~~Impacts that occur in the watershed of Falls Lake in the upper Neuse River Basin may be offset only by load reductions in the same watershed; Impacts in the Neuse 01 8 digit cataloguing unit below the Falls watershed, as designated by the US Geological Survey, may be offset only by load reductions in that same lower watershed;~~
- (4) ~~Restrictions established in the Jordan nutrient strategy, which is described in Rule 15A NCAC 02B .0262; and~~
- (5) ~~Any further restrictions established by the Commission through rulemaking.~~

(b) GEOGRAPHIC RESTRICTIONS. Nutrient offset credits may be used to satisfy regulatory obligations only when generated by a nutrient reduction project within an allowable geographic area identified in G.S. 143-214.26, as designated by the U.S. Geological Survey, with the following additional restrictions:

- (1) Nutrient offset credits may be used to satisfy regulatory obligations incurred in the upper Falls watershed only if they were generated by a nutrient reduction project located within the upper Falls watershed, as this geographic area is described in 15A NCAC 02B .0276.
- (2) Nutrient offset credits may be used to satisfy regulatory obligations incurred in the lower Falls watershed only if they were generated by a nutrient reduction project located within the Falls Lake watershed, as these geographic areas are described in 15A NCAC 02B .0276.
- (3) Nutrient offset credits may be used to satisfy regulatory obligations incurred in the Jordan Lake watershed only if they were generated by a nutrient reduction project in the same subwatershed of the Jordan watershed, as these geographic areas are described in 15A NCAC 02B .0262.
- (4) Nutrient offset credits may be used to satisfy regulatory obligations incurred in the Neuse 01 8-digit cataloguing unit, as designated by the U.S. Geological Survey, below the Falls Lake watershed only if they were generated by a nutrient reduction project within that same geographic area.
- (5) Nutrient offset credits generated by nutrient reduction projects for compliance with an estuarine nutrient strategy shall be generated in an area that is within or drains to:
 - (A) an assessment unit identified for restoration under the applicable nutrient-related TMDL or nutrient strategy, or
 - (B) an assessment unit classified as SA, SB, or SC that fails to meet the chlorophyll-a water quality standard in a subsequent integrated report.

(c) The Program and other parties shall obtain Division approval of proposed nutrient offset projects prior to construction. Other parties shall sell credits in compliance with approved credit release schedules and with the requirements of this Rule. Project approval shall be based on the following standards:

- (1) ~~Load reductions eligible for credit shall not include reductions used to satisfy other requirements under the same nutrient strategy;~~
- (2) ~~The Program and other parties shall agree to provide adequate financial assurance to protect and maintain load reductions for the stated duration, including for maintenance, repair and renovation of the proposed measure;~~
- (3) ~~The Program and other parties shall agree that once credits are established for a measure and until they are exhausted, they shall provide a~~

- credit/debit ledger to the Division at regular intervals;
- (4) The Program and other parties shall agree that the party responsible for a measure shall allow the Division access to it throughout its lifetime for compliance inspection purposes;
- (5) The Program or other party seeking approval shall obtain a site review from Division staff prior to Division approval to verify site conditions suitable to achieve the proposed load reductions through the proposed measure; and
- (6) The Program shall submit a proposal, and other parties shall submit a proposal or a draft banking instrument, addressing the following items regarding a proposed load reducing measure:
- (A) Identify the location and site boundaries of the proposed measure, the geographic area to be served by credits in compliance with the requirements of Paragraph (b) of this Rule, existing conditions in the contributing drainage area and location of the measure, and the nature of the proposed measure with sufficient detail to support estimates of load reduction required in this Paragraph;
- (B) Provide calculations of the annual magnitudes of load reductions and identify final credit values incorporating any delivery factors or other adjustments required under rules identified in Paragraph (a) of this Rule;
- (C) Define the duration of load reductions, and provide a conservation easement or similar legal mechanism to be recorded with the County Register of Deeds and that is sufficient to ensure protection and maintenance of load reductions for the stated duration;
- (D) Identify the property owner and parties responsible for obtaining all permits and other authorizations needed to establish the proposed measure, for constructing and ensuring initial performance of the proposed measure, for reporting on and successfully completing the measure, for holding and enforcing the conservation easement, and for ensuring protection and maintenance of functions for its stated duration;
- (E) Provide a plan for implementing the proposed measure, including a timeline, a commitment to provide an

as built plan and report upon establishment of the measure, elements to be included in the as built plan and report, a commitment to provide a bond or other financial assurance sufficient to cover all aspects of establishment and initial performance prior to the release of any credits, and criteria for successful completion; and

- (F) Provide a monitoring and maintenance plan designed to achieve successful completion, that commits to annual reporting to the Division until success is achieved, that recognizes the Division's authority to require extension or re initiation of monitoring depending on progress toward success, and that commits to a final report upon completion. The final report shall reaffirm the party that shall hold and enforce the conservation easement or other legal instrument.

(c) NUTRIENT OFFSET CREDIT APPROVAL STANDARD. Providers shall demonstrate that a nutrient reduction project is designed, constructed, implemented and sustained in a manner that, according to the best available scientific evidence, studies and principles, will generate the estimated nutrient load reduction for the duration of time for which credits are approved. Nutrient offset credits shall be generated and transferred in accordance with G.S. 143-214.26.

(d) The Program shall establish and revise nutrient offset rates as set out in Rule .0274 of this Section. Offset payments accepted by the Program shall be placed into the Riparian Buffer Restoration Fund administered by the Department pursuant to G.S. 143-214.21

(d) QUANTIFYING NUTRIENT OFFSET CREDITS. The quantity of nutrient offset credits eligible to be generated by a nutrient reduction project shall be determined according to the following provisions:

- (1) Nutrient reduction credit sought on developed lands shall be calculated in relation to load reductions achieved relative to the project site's current loading condition, as determined by the provider and verified by the Division;
- (2) Nutrient load reductions shall be site-specific estimates of decreases in annual mass load of nitrogen and/or phosphorus to the nearest receiving surface water feature. Such estimates shall be supported by the weight of evidence from available, current and applicable research, may involve water quality modeling or engineering formulas and calculations, and shall reflect as closely as possible project design specifications.

Note: The Commission seeks public comment on the following options regarding the generation of nutrient offset credits stream mitigation credits in spatially overlapping areas.

(3) OPTION 1: Reductions shall not include those already implemented to satisfy other requirements under the same nutrient strategy; other local, state or federal requirements; or those resulting from state or federal compensatory mitigation requirements. Specifically, a nutrient reduction project shall not generate nutrient offset credits and stream, buffer or wetland mitigation credits in spatially overlapping areas.

OPTION 2: Unless specifically excepted in Rule, reductions shall not include those already implemented to satisfy other requirements under the same nutrient strategy; other local, state or federal requirements; or those resulting from state or federal compensatory mitigation requirements. Specifically, a nutrient reduction project shall not generate nutrient offset credits and buffer or wetland mitigation credits in spatially overlapping areas. However, restored forest buffer areas associated with stream mitigation projects may generate both stream and nutrient offset credits in spatially overlapping areas within 50 feet from the top of the stream bank.

(4) Stream, buffer, or wetland mitigation credit that has not been used to satisfy a mitigation requirement may be converted into nutrient offset credit if the credit-generating project or portion thereof complies with this Rule.

(5) A nutrient reduction project may generate both nitrogen and phosphorus offset credits in the same area.

(6) A nutrient reduction project may be designed to generate permanent nutrient offset credit and/or term nutrient offset credit and shall specify which in the project plan. Permanent nutrient reduction credits and term nutrient reduction credits shall be maintained on separate ledgers, even if associated with the same nutrient offset bank or project.

(7) Permanent nutrient offset credits may be utilized for temporary compliance purposes. For each pound of annual term compliance credit received, 1/30th of one pound of permanent nutrient offset credit shall be utilized and retired by removal from the applicable ledger. This conversion shall also be subject to other applicable trading ratios.

(8) Nutrient offset credits that were approved prior to the adoption of this Rule may make application to be reclassified. The Division shall approve the application of any bank to reclassify credits as permanent which meet the requirements for permanent credits at the time of the application to be reclassified. Other nutrient offset credits that were approved prior to the adoption of this Rule or that were conditionally approved pursuant to a mitigation banking instrument or other agreement with DEQ prior to the adoption of this rule, are considered term credits and may be transferred between term and permanent ledgers at a ratio of 30 years of term nutrient offset credit to one permanent nutrient offset credit.

(9) Term nutrient offset credits shall be associated with the calendar year or years in which the associated nutrient load reductions are generated.

~~(e) Persons who seek to pay nutrient offset fees under rules of this Section shall do so in compliance with such rules, the requirements of Paragraph (b) of this Rule, and the following:~~

~~(1) A non governmental entity shall purchase nutrient offset credit from a party other than the Program if such credit is available in compliance with the criteria of this Rule at the time credit is sought, and shall otherwise demonstrate to the permitting authority that such credit is not available before seeking to make payment to the Program;~~

~~(2) Offset payments made to the Program shall be contingent upon acceptance of the payment by the Program. The financial, temporal and technical ability of the Program to satisfy the mitigation request will be considered to determine whether the Program will accept or deny the request;~~

~~(3) Where persons seek to offset more than one nutrient type, they shall make payment to address each type;~~

~~(4) The offset payment shall be an amount sufficient to fund 30 years of nutrient reduction.~~

~~(5) Persons who seek offsets to meet new development stormwater permitting requirements shall provide proof of offset credit purchase to the permitting authority prior to approval of the development plan; and~~

~~(6) A wastewater discharger that elects to purchase offset credits for the purpose of fulfilling or maintaining nutrient reduction requirements shall submit proof of offset credit acquisition or a letter of commitment from the Program or third party provider with its request for permit modification. Issuance of a permit that applies credits to nutrient limits shall be contingent on receipt of proof of offset credit acquisition. A discharger may propose to make incremental payments for additional nutrient allocations, contingent upon receiving a letter of commitment from the Program or third party provider to provide the offset credit needed for permit issuance. In that event the Division may issue or modify that permit accordingly, and shall condition any flow increase associated~~

~~with that incremental purchase on payment in full for the additional allocation. Offset responsibility for nutrient increases covered under this Paragraph shall be transferred to the Program or third party provider when it has received the entire payment.~~

(e) PROJECT APPROVAL STANDARDS. Providers shall comply with the following requirements to request approval from the Division to implement a nutrient reduction project for the purpose of generating nutrient offset credits.

(1) NUTRIENT OFFSET BANKING INSTRUMENT. Providers except DMS seeking approval of a nutrient offset bank shall submit their draft nutrient offset banking instrument to the Division prior to seeking approval of project plans. A nutrient offset banking instrument shall provide legal and financial assurances that a provider will implement, maintain, and sustain nutrient reduction projects as proposed in subsequent project plans and associated nutrient reduction practice design specifications.

(2) PROJECT PLAN REQUIREMENTS. Prior to initiating a nutrient reduction project, providers shall submit a project plan proposal to the Division for review and approval that includes the following elements:

(A) Site location and site boundaries of the proposed project.

(B) The geographic area eligible to be served by nutrient offset credits in accordance with Paragraph (b) of this Rule and in compliance with applicable mitigation permit requirements.

(C) Documentation of the conditions of the site at the time of the submittal of the project plan.

(D) Documentation of the condition of the site during the baseline period of the applicable nutrient strategy.

(E) Description of the proposed project with sufficient detail to support compliance with the standard in Paragraph (c) of this Rule. Projects conforming to minimum design criteria for stormwater control measures in 15A NCAC 02H .1050 through .1062 meet this requirement. Design criteria for stormwater control measure variants and additional nutrient reduction practices established in the Division's Catalog of Nutrient Reduction Practices also meet this requirement.

(F) Nutrient credit calculations in conformance with Paragraph (d) of this Rule.

(G) Identification of the property owner and parties responsible for obtaining all permits and other authorizations needed to:

(i) establish the proposed project.

(ii) construct and ensure initial performance of the project.

(iii) report on and successfully complete the project.

(iv) hold and enforce all easement or other protection mechanisms, and

(v) ensure maintenance of the project for its credited duration.

(H) Description of how the project will be implemented, which shall include a timeline and a commitment to provide an as-built report upon the full project construction or installation.

(I) Description of how the project will be maintained and monitored after it has been installed and for its duration.

(J) Description of how the project will be sustained for its credited life, including a commitment to repair and renovate it as needed to maintain its performance, to keep records of all such operation, maintenance, monitoring, repair and renovation, and to notify the Division of any significant performance remediation needs and plans.

(K) Identification of federal or state grant funding contributing to project implementation.

(3) FINANCIAL ASSURANCES. Providers except DMS shall provide the financial assurance that a project plan will be completed as proposed. The financial assurance shall be in the form of a completion bond, credit insurance, letter of credit, escrow, or other vehicle acceptable to the Division, payable to, or for the benefit of, the Division, to ensure the involved property is secured in fee title or by easement and that planting or construction, monitoring and/or maintenance are completed as necessary to meet the requirements of the project plan.

(4) PROJECT PLAN APPROVAL. The Division shall approve the provider's project plan proposal after verifying the provider's compliance with Subparagraphs (e)(1), (2) and (3) of this Rule and completing an onsite review to verify that preconstruction site conditions are suitable to generate the credits proposed by the project plan. However, the Division may partially or fully waive these requirements for term practices or projects if it determines that

the burden of compliance is disproportionate to the value of the credits being generated and alternative means are used to satisfy the basic credit approval standard set forth in Paragraph (c) of this Rule.

(f) Credits associated with load reducing activities funded under this Rule shall be awarded exclusively to the person, municipality, discharger, or group of dischargers who paid the offset fee.

(f) RELEASE AND ACCOUNTING FOR NUTRIENT OFFSET CREDITS. The Division shall release nutrient offset credits from an approved project in the following manner:

(1) The Division shall release credits to providers upon confirmation that project-specific milestones reflected in the project plan's credit release schedule have been met. Project-specific milestones for permanent nutrient offset credits shall conform to the following requirements:

(A) Credits shall not be released until the property is secured in fee title or by easement and financial assurance is posted for planting or construction of the project.

(B) No more than 50 percent of the credits shall be released for a project until financial assurance is provided for monitoring and maintenance activities lasting until project completion.

(C) No more than 80 percent of the credits shall be released for a project until the provider complies with the requirements of Paragraph (g).

(2) Once credits are released for a project and until they are exhausted, providers except for DMS shall provide a credit/debit ledger to the Division at regular intervals no less frequently than quarterly.

(3) The Division shall not release any credits for a project if that project is financed in whole or in part by state or federal grant funding.

(g) MAINTAINING PERMANENT NUTRIENT OFFSET CREDITS. A provider shall transfer responsibility for oversight of a completed permanent project to a perpetual steward in accordance with this Paragraph and the approved project plan. A perpetual steward may also transfer responsibility to another perpetual steward in accordance with the terms of this Paragraph, subject to DWR approval. The provider shall ensure that the following mechanisms are in place to ensure that load reductions are sustained in perpetuity:

(1) The provider shall create and transfer to the perpetual steward a non-wasting endowment or other dedicated financial surety to provide for the oversight of the project's load reductions.

(2) For projects utilizing conservation easements, the provider shall acquire and then transfer a conservation easement to a perpetual steward in accordance with 16 U.S.C. 170(h) and the Conservation and Historic Preservation Agreements Act, G.S. 121-34 et seq. The terms

of the conservation easement shall be consistent with a Division-approved template or be approved by the Division. Non-governmental perpetual stewards shall be accredited by the Land Trust Accreditation Commission.

(3) For projects utilizing stormwater control measures (SCMs), SCMs shall be placed in recorded drainage easements with recorded access easements to the nearest public right-of-way for purposes of operation and maintenance. These easements shall be granted in favor of the person or entity responsible for operating and maintaining the structures, with a note as to the responsible person or entity. Structure operation and maintenance shall be the responsibility of the landowner or easement holder unless the Division gives written approval for another person or entity. Easements shall be of sufficient width for inspection and maintenance of the project.

(4) The Division may temporarily or permanently invalidate permanent credits if it determines that the bank or project has been impacted due to failure to comply with the terms of an associated project plan, nutrient offset banking instrument, easement, maintenance agreement, or other protective agreement.

(5) Notwithstanding the other requirements of this Paragraph, a permanent project may be passively restored exclusively through natural ecological processes after project completion if:

(A) it is damaged by natural causes that could not have been prevented by the exercise of foresight or caution, and

(B) the practice employed is designed to restore a natural ecological community at the project site.

(h) RENEWING TERM NUTRIENT OFFSET CREDITS. Expiring term nutrient offset credits may be renewed by the provider upon providing documentation to the Division that the project meets the basic credit approval standard set forth in Paragraph (c) of this Rule for the duration of the renewal period.

(i) ADDITIONAL PROVISIONS REGARDING THE DIVISION OF MITIGATION SERVICES.

(1) DMS shall establish and revise nutrient offset rates as set out in 15A NCAC 02R .0602. Offset payments accepted by DMS shall be placed into the Riparian Buffer Restoration Fund administered by the Department pursuant to G.S. 143-214.21.

(2) On or before November 30 of each year, DMS shall provide an annual report to the Division concerning the nutrient in-lieu fee program that includes a requirement ledger. The requirement ledger shall include all nutrient offset credit requirements paid by 8-digit service area or for each geographic area identified in Paragraph (b), the date by which the requirement shall be satisfied by a project, the requirement due date,

and the projects and credits that have been applied to all requirements.

- (3) Subject to the geographic restrictions in Paragraph (b), DMS may accept payments for nutrient offset credits prior to initiating projects. After accepting payment, DMS shall construct projects that, upon completion as described in the approved project plan, will generate nutrient offset credits sufficient to fulfill all new requirements generated by these payments. Such projects shall be instituted before the end of the first full state fiscal year after DMS receives payment and constructed before the end of the third full state fiscal year after DMS receives payment. DMS may also acquire credits from another provider to apply toward its requirements.

- (4) If DMS fails to meet deadlines associated with project institution or construction as specified in Subparagraph (i)(3) of this Rule, then DMS shall develop an action strategy to include in the annual report specified in Subparagraph (i)(2) of this Rule. Action strategies shall include all of the following:

- (A) a list of factors resulting in delays or deficiencies in procurement, project implementation and/or construction,
- (B) specific actions and a timeline planned by DMS to satisfy outstanding credit requirements such that a project will be instituted before the end of the first full state fiscal year after the action strategy is submitted to the Division in the annual report and constructed before the end of the third full state fiscal year after the action strategy is submitted to the Division in the annual report, unless otherwise specified in the action strategy,
- (C) the anticipated date by which all outstanding nutrient offset credit requirements will be satisfied, and
- (D) an evaluation of current progress in relation to prior action strategies if applicable.

(j) NUTRIENT OFFSET CREDIT TRANSACTIONS. Parties who seek to acquire nutrient offset credits under rules of this Subchapter shall do so in compliance with such rules, the requirements of Paragraph (b) of this rule, G.S. 143-214.26, and the following:

- (1) Offset payments made to DMS shall be contingent upon acceptance of the payment by DMS. DMS shall consider its financial, temporal and technical ability to satisfy the request to make its determination.
- (2) Where persons seek to satisfy regulatory obligations for more than one nutrient type, they shall acquire nutrient reduction credits to address each type.

- (3) Projects shall be approved and the associated offset credits released by the Division before they may be utilized for NPDES wastewater permit compliance purposes.

- (4) For offset credits used to meet the discharge requirements, the applicant shall provide 10 percent additional credits to address the uncertainty factor for using unmonitored nonpoint source reductions to meet point source discharge limits. For offset credits used to meet the discharge requirements, the applicant shall provide no additional credits to address the uncertainty factor for using monitored nonpoint source reductions to meet point source discharge limits. Application of this ratio is in addition to other ratios that may be applied, including delivery or transport factors where applicable.

- (5) Delivery factors shall be applied to estimate nutrient reductions to an impaired water body subject to a nutrient strategy if required under rules of this Subchapter for that strategy.

- (6) Term credits may be utilized for compliance only during the year in which they are generated as described in Subparagraph (d)(2) of this Rule. They may not be cumulatively banked for future years.

(k) DEVELOPER-RESPONSIBLE NUTRIENT OFFSET PROJECTS. A developer subject to new development stormwater requirements of this Subchapter may satisfy its nutrient reduction obligations by generating its own offsite credits. It may do so by establishing a nutrient offset bank and generating credits in accordance with this rule. Alternatively, the developer shall comply with all provisions of this rule governing the generation of nutrient offset credits by a provider with the following modifications:

- (1) Instead of a credit release schedule, credit for the project may be assigned upon construction of the project and submission of the as-built report as described in the project plan;
- (2) Credit shall be assigned at a 50 percent rate based on the design specifications of the fully completed project(s); and
- (3) Liability for the generation of credits as described in the project plan remains with the developer until the completion of all milestones associated with the project.

(l) NPDES WASTEWATER PERMITTEE-RESPONSIBLE NUTRIENT OFFSET PROJECTS. A locality, authority, utility, or sanitation district operating a permitted wastewater facility subject to wastewater rules of this Subchapter may generate nutrient offset credits by installing projects in accordance with this rule. Any credits generated may then be utilized for compliance purposes as if acquired from another provider.

Authority G.S. 143-214.1; 143-214.20; 143-214.21; 143-214.26; S.L. 1995, c. 572; S.L. 2007, c. 438; S.L. 2009, c. 337; S.L. 2009, c. 484; S.L. 2009, c. 486.

15A NCAC 02B .0255 TAR-PAMLICO RIVER BASIN - NUTRIENT SENSITIVE WATERS MANAGEMENT STRATEGY: AGRICULTURAL NUTRIENT LOADING GOALS

Authority G.S. 143-214.1; 143-214.7; 143-215.3(a)(1); 143-215.6A; 143-215.6B; 143-215.6C.

15A NCAC 02B .0256.0732 TAR-PAMLICO RIVER BASIN NUTRIENT SENSITIVE WATERS MANAGEMENT NUTRIENT STRATEGY: AGRICULTURAL NUTRIENT CONTROL STRATEGY AGRICULTURE

(a) **PURPOSE.** ~~The purpose of this Rule is to set forth a process by which agricultural operations in the Tar Pamlico River Basin will collectively limit their nitrogen and phosphorus loading to the Pamlico estuary. The purpose is to achieve and maintain a 30 percent reduction in collective nitrogen loading from 1991 levels within five to eight years and to hold phosphorus loading at or below 1991 levels within four years of Commission approval of a phosphorus accounting methodology. The purpose of this Rule is to maintain or exceed the percentage reduction goals defined in Rule .0730 of this Section for the collective agricultural loading of nitrogen and phosphorus from the 1991 baseline levels, to the extent that best available accounting practices will allow, on all lands used for agricultural production as described in Paragraph (b) of this Rule. This Rule requires persons engaging in agricultural operations in the Basin to implement land management practices that will collectively, on a basin basis, achieve and maintain strategy nutrient reduction goals of a 30 percent reduction in nitrogen loading from 1991 levels and no increase in phosphorus loading from 1991 levels. Local committees and a Basin committee will coordinate activities and account for progress.~~

- (1) **PROCESS.** This Rule requires farmers in the Basin to implement land management practices that collectively, on a county or watershed basis, will achieve the nutrient goals. ~~Local committees and a Basin committee will develop strategies, coordinate activities and account for progress.~~
- (2) **LIMITATION.** This Rule may not fully address the agricultural nitrogen reduction goal of the Tar-Pamlico Nutrient Sensitive Waters Strategy in that it does not address atmospheric sources of nitrogen to the Basin, including atmospheric emissions of ammonia from sources located both within and outside of the Basin. As better information becomes available from ongoing research on atmospheric nitrogen loading to the Basin from these sources, and on measures to control this loading, the Commission may undertake separate rule-making to require such measures it deems necessary from these sources to support the goals of the Tar-Pamlico Nutrient Sensitive Waters Strategy.

(b) **APPLICABILITY.** ~~This Rule shall apply to all persons engaging in agricultural operations in the Tar Pamlico River~~

~~Basin except certain persons engaged in such operations for educational purposes. Persons engaged for educational purposes shall be those persons involved in secondary school or lesser grade level activities that are a structured part of an organized program conducted by a public or private educational institution or by an agricultural organization. Educational activities shall not include research activities in support of commercial production. This Rule shall apply to all persons engaging in agricultural operations, generally including those related to crops, horticulture, livestock, and poultry, in the geographic area subject to the Tar-Pamlico nutrient strategy as described in Rule .0730 of this Section. This Rule applies to livestock and poultry operations above the size thresholds in this Item in addition to requirements for animal operations set forth in general permits issued pursuant to G.S. 143-215.10C. Nothing in this Rule shall be deemed to allow the violation of any assigned surface water, groundwater, or air quality standard by any agricultural operation, including any livestock or poultry operation below the size thresholds in this Paragraph. Nothing in this Rule shall be deemed to allow the violation of any assigned surface water, groundwater, or air quality standard by any agricultural operation, including any livestock or poultry operation below the size thresholds in this Paragraph. For the purposes of this Rule, agricultural operations are activities that relate to any of the following pursuits:~~

- (1) The commercial production of crops or horticultural products other than trees. As used in this Rule, commercial shall mean activities conducted primarily for financial profit.
- (2) Research activities in support of such commercial production.
- (3) The production or management of any of the following number of livestock or poultry at any time, excluding nursing young:
 - (A) 20 or more horses;
 - (B) 20 or more cattle;
 - (C) 150 or more swine;
 - (D) 120 or more sheep;
 - (E) 130 or more goats;
 - (F) 650 or more turkeys;
 - (G) 3,500 or more chickens; or
 - (H) ~~A number of any~~ Any single species of any other livestock or poultry, or any combination of species of livestock or poultry that exceeds 20,000 pounds of live weight at any time.
- (4) Certain tree-harvesting activities described and defined as follows.
 - (A) The one-time harvest of trees on land within a riparian buffer described in ~~15A NCAC 02B Rule .0259 .0734 of this Section~~ that was open farmland on September 1, 2001. This one-time harvest of trees may be conducted within one tree cropping interval only under a verifiable farm plan that received final approval from a local agricultural agency on or after September 1, 2001 and that expressly allowed the harvest of trees no earlier

- than 10 years after the trees are established and the return of the land to another agricultural pursuit.
- (B) The one-time harvest of trees on land within a riparian buffer described in 15A NCAC 02B ~~0259~~ .0734 that had trees established under an agricultural incentive program as of September 1, 2001.
- (C) All tree harvesting described in ~~Subparagraphs~~ Parts (b)(4)(A) and (b)(4)(B) of this Rule shall comply with Forest Practices Guidelines Related to Water Quality codified at ~~15A NCAC 01H. 02 NCAC 60C~~. The nutrient removal functions that were provided by trees prior to their harvest shall be replaced by other measures that are implemented by the owner of the land from which the trees are harvested.
- (D) The following definitions shall apply to terms used in ~~Subparagraphs~~ Parts (b)(4)(A) through (b)(4)(C) of this Rule.
- (i) "Agricultural incentive program" means any of the following programs and any predecessor program to any of the following programs:
 - (I) Agriculture Cost Share Program for Nonpoint Source Pollution Control established by G.S. 143-215.74.
 - (II) Conservation Reserve Enhancement Program established by 7 C.F.R. Part 1410 (January 1, 2001 Edition) and 15A NCAC 06G .0101 through 15A NCAC 06G .0106.
 - (III) Conservation Reserve Program established by 7 C.F.R. Part 1410 (January 1, 2001 Edition).
 - (IV) Environmental Quality Incentives Program established by 7 C.F.R. Part 1466 (January 1, 2001 Edition).
 - (V) Wetlands Reserve Program established by 7 C.F.R. Part 1467 (January 1, 2001 Edition).
 - (VI) Wildlife Habitat Incentives Program established by 7 C.F.R. Part 636 (January 1, 2001 Edition).
 - (ii) "Local agricultural agency" means the North Carolina Cooperative Extension Service, the Farm Services Agency of the United States Department of Agriculture, the Natural Resources Conservation Service of the United States Department of Agriculture, a Soil and Water Conservation District created pursuant to G.S. 139-5, or their successor agencies.
 - (iii) "Open farmland" means the footprint of land used for pasture or for crops or horticultural products other than trees. Open farmland may contain scattered trees if an open canopy existed on September 1, 2001 as determined from the most recent aerial photographs taken prior to September 1, 2001 for the Farm Services Agency of the United States Department of Agriculture.
 - (iv) "Tree" means a woody plant with a diameter equal to or greater than five inches when measured at a height of four and one-half feet above the ground.
 - (v) "Tree cropping interval" means the time required to establish and grow trees that are suitable for harvesting. The tree-cropping interval shall be set out in the farm plan and shall be no less than 10 years after the trees are established.
- (c) ~~IMPLEMENTATION PROCESS. This Rule shall be implemented through a cooperative effort between a Basin Oversight Committee and Local Advisory Committees in each county or watershed. A Basin Oversight Committee and county-level Local Advisory Committees shall coordinate activities and account for progress.~~ The membership, roles and responsibilities

of these committees are set forth in Paragraphs (f)(d) and (g)(e) of this Rule. ~~Committees' activities shall be guided by the following constraints:~~ Accounting for nutrient-reducing actions on agricultural lands within the basin shall follow requirements set forth in Subparagraph (d)(3) of this Rule. Producers may be eligible to obtain cost share and technical assistance from the NC Agriculture Cost Share Program and similar federal programs to contribute to their counties' ongoing nutrient reductions. Committee activity shall be guided by the following:

- (1) ~~The Commission shall determine whether each Local Advisory Committee has achieved its nitrogen reduction goal within five years of the effective date of this Rule, and its phosphorus loading goal within four years of the date that a phosphorus accounting method is approved by the Commission, both based on the accounting process described in Paragraphs (f) and (g) of this Rule. Should the Commission determine that a Local Advisory Committee has not achieved its nitrogen goal within five years, then the Commission shall require additional BMP implementation as needed to ensure that the goal is met within eight years of the effective date of this Rule. The Commission shall similarly review compliance with the phosphorus goal four years after it approves a phosphorus accounting method, and shall require additional BMP implementation as needed to meet that goal within an additional three years from that date. All persons subject to this Rule who have not implemented BMPs in accordance with an option provided in Subparagraphs (d)(1) or (d)(2) of this Rule shall be subject to such further requirements deemed necessary by the Commission for any Local Advisory Committee that has not achieved a nutrient goal.~~
- (2) ~~Should a committee not form or not follow through on its responsibilities such that a local strategy is not implemented in keeping with Paragraph (g) of this Rule, the Commission may require all persons subject to this Rule in the affected area to implement BMPs as set forth in Paragraph (e) of this Rule.~~
- (1) OPTIONS FOR INDIVIDUAL OPERATIONS. Persons subject to this Rule may elect to implement practices meeting the standards identified in Paragraph (f) of this Rule that contribute to maintenance of collective local compliance with the goal identified in Paragraph (a) of this Rule, but are not required to implement any specific practices provided their basin collectively maintains compliance with the goal.
- (2) MAINTENANCE OF GOAL. Accounting shall annually demonstrate maintenance or exceedence of the nitrogen reduction goal for the basin. Where three sequential annual reports show that the Basin did not meet its nitrogen

and phosphorus reduction goals, the Basin Oversight Committee shall work with the Division of Soil and Water Conservation and Local Advisory Committees, particularly those representing counties not meeting the goals, to seek reduction actions by operations to bring agriculture collectively back into compliance, and shall report on their efforts in subsequent annual reports. Should subsequent annual reports not reverse the trend of non-compliance, the Commission may seek a more specific implementation plan from the Basin Oversight Committee, which may include an assessment of need for specific action by the Commission.

~~(d) — OPTIONS FOR MEETING RULE REQUIREMENTS.~~ ~~Persons subject to this Rule shall register their operations with their Local Advisory Committee according to the requirements of Paragraph (g) of this Rule within one year of the effective date of this Rule. Such persons may elect to implement any BMPs they choose that are recognized by the Basin Oversight Committee as nitrogen-reducing BMPs within five years of the effective date of this Rule. Persons who implement one of the following two options within five years of the effective date of this Rule for nitrogen-reducing BMPs and within four years of the date that a phosphorus accounting method is approved by the Commission shall not be subject to any additional requirements that may be placed on persons under Paragraph (e) of this Rule. Persons subject to this Rule shall be responsible for implementing and maintaining the BMPs used to meet the requirements of this Rule for as long as they continue their agricultural operation. If a person ceases an operation and another person assumes that operation, the new operator shall be responsible for implementing BMPs that meet the requirements of this Paragraph.~~

~~(1) Option 1 is to implement site specific BMPs that are accepted by the Local Advisory Committee as fully satisfying a person's obligations under this Rule based on BMP implementation needs identified in the local nutrient control strategy required under Subparagraph (g)(3) of this Rule and on nutrient reduction efficiencies established by the Basin Oversight Committee as called for under Subparagraphs (f)(2) and (f)(3) of this Rule.~~

~~(2) Option 2 is to implement standard BMPs that persons subject to this Rule choose from the alternatives established pursuant to Paragraph (e) of this Rule.~~

~~(e) — STANDARD BEST MANAGEMENT PRACTICES (BMPs).~~ ~~Standard BMPs shall be individual BMPs or combinations of BMPs that achieve at least a 30 percent reduction in nitrogen loading and no increase in phosphorus loading relative to conditions that lack such BMPs. Standard BMPs shall be established for the purposes of this Rule by one of the following processes:~~

~~(1) The Soil and Water Conservation Commission may elect to approve, under its own authorities, standard BMP options for the Tar-Pamlico River Basin based on nutrient reduction efficiencies established by the Basin Oversight~~

~~Committee pursuant to Subparagraph (f)(3) of this Rule and using criteria for nitrogen and phosphorus reducing BMPs as described in rules adopted by the Soil and Water Conservation Commission, including 15A NCAC 06E .0104 and 15A NCAC 06F .0104. One purpose of this process is to provide persons subject to this Rule the opportunity to work with the Soil and Water Conservation Commission in its development of standard BMP options; or~~

(2) ~~In the unlikely event that the Soil and Water Conservation Commission does not approve an initial set of standard BMP options for the Tar-Pamlico River Basin within one year of the effective date of this Rule, then the Environmental Management Commission may approve standard BMP options within eighteen months of the effective date of this Rule. In that event, the standard BMP options approved by the Commission shall be designed to reduce nitrogen and phosphorus loading, as specified at the beginning of Paragraph (e) of this Rule, from agricultural sources through structural, management, or buffering farming BMPs or animal waste management plan components.~~

~~(f)(d)~~ **BASIN OVERSIGHT COMMITTEE.** The Basin Oversight Committee shall have the following membership, role and responsibilities:

(1) **MEMBERSHIP.** ~~The Commission shall delegate to the Secretary the responsibility of forming a Basin Oversight Committee within two months of the effective date of this Rule. Members shall be appointed for five year terms and shall serve at the pleasure of the Secretary. Until such time as the Commission determines that long term maintenance of the nutrient loads is assured, the Secretary shall either reappoint members or replace members every five years. The Secretary shall solicit nominations for membership on this Committee to represent each of the following interests, and shall appoint one nominee to represent each interest. The Secretary may appoint a replacement at any time for an interest in Parts (f)(1)(F) through (f)(1)(J) of this Rule upon request of representatives of that interest. The Director of the Division of Water Resources shall be responsible for maintaining the following membership composition. Until such time as the Commission determines that long-term compliance with this Rule is assured, the Director shall solicit one nomination for membership on this Committee from each agency in Parts (A) through (E) of this Subparagraph. The Director may appoint a replacement at any time for an interest in Parts (F) through (I) of this Subparagraph upon~~

request of representatives of that interest or by the request of the Commissioner of Agriculture:

- (A) Division of Soil and Water Conservation;
- (B) United States Department of Agriculture-Natural Resources Conservation Service (shall serve in an "ex-officio" non-voting capacity and shall function as a technical program advisor to the Committee);
- (C) North Carolina Department of Agriculture and Consumer Services;
- (D) North Carolina Cooperative Extension Service;
- (E) Division of Water Quality; Resources,
- (F) Up to two Environmental environmental interests;
- (G) Basinwide farming interests;
- (H) Pasture-based livestock interests; and
- (I) Cropland farming interests; and General farming interests; and
- (J) The scientific community with experience related to water quality problems in the Tar-Pamlico River Basin.

(2) **ROLE.** The Basin Oversight Committee shall:

~~(A) Develop a tracking and accounting methodology pursuant to Subparagraph (f)(3) of this Rule. A final nitrogen methodology shall be submitted to the Commission for approval within one year after the effective date of this Rule. A final methodology for phosphorus shall be submitted at the earliest date possible as determined by the Basin Oversight Committee with input from the technical advisory committee described in Part (f)(2)(D) of this Rule.~~

(A) Continue to review, approve and summarize local nitrogen and phosphorus reduction annual reports to ensure ongoing implementation of the accounting methods approved by the Commission under the original version of this Rule in October 2002 for nitrogen and November 2005 for phosphorus as conforming to the requirements of Subparagraph (d)(3) of this Rule. Continue to present these reports as initiated in 2002, to the Director annually;

(B) Take actions called for under Subparagraphs (c)(2) of this Rule as needed to address maintenance of the nitrogen and phosphorus reductions goals;

- (C) Identify and implement future refinements to the accounting methodology as needed to reflect advances in scientific understanding, including establishment of nutrient reduction efficiencies for BMPs.
 - (D) Appoint a Reassemble as needed a phosphorus technical advisory committee within 6 months of the effective date of this Rule to update the qualitative phosphorus method approved by the Commission in October 2005, titled Accounting Method for Tracking Relative Changes in Agricultural Phosphorus Loading to the Tar-Pamlico River, in order to revise phosphorus baseline values and annual changes in factors affecting agricultural phosphorus loss, to inform the Basin Oversight Committee on rule related issues. The Basin Oversight Committee shall direct the committee to take the following actions at a minimum: monitor advances in scientific understanding related to phosphorus loading, evaluate the need for additional management action to meet the phosphorus loading goal, and report its findings to the Basin Oversight Committee on an annual basis. The Basin Oversight Committee shall in turn report these findings and its recommendations to the Commission on an annual basis following the effective date of this Rule, until such time as the Commission, with input from the Basin Oversight Committee, determines that the technical advisory committee has fulfilled its purpose. The Basin Oversight Committee shall solicit nominations for this committee from the Division of Soil and Water Conservation, United States Department of Agriculture Natural Resources Conservation Service, North Carolina Department of Agriculture and Consumer Services, North Carolina Cooperative Extension Service, Division of Water Quality, environmental interests, agricultural interests, and the scientific community with experience related to the committee's charge.
 - (D) Review, approve and summarize county or watershed local strategies and present these strategies to the Commission for approval within two
- ~~years after the effective date of this Rule.~~
 - (E) ~~Establish minimum requirements for, review, approve and summarize local nitrogen and phosphorus loading annual reports as described under Subparagraph (g)(5) of this Rule, and present these reports to the Commission each October, until such time as the Commission determines that annual reports are no longer needed to assure long term maintenance of the nutrient goals.~~
- (3) **ACCOUNTING METHODOLOGY.** ~~The Basin Oversight Committee shall develop an accounting methodology that meets the following requirements:~~
- (A) ~~The methodology shall quantify baseline total nitrogen and phosphorus loadings from agricultural operations in each county and for the entire basin.~~
 - (B) ~~The methodology shall include a means of tracking implementation of BMPs, including number, type, and area affected.~~
 - (C) ~~The methodology shall include a means of estimating incremental nitrogen and phosphorus reductions from actual BMP implementation and of evaluating progress toward the nutrient goals from BMP implementation. The methodology shall include nutrient reduction efficiencies for individual BMPs and combinations of BMPs that can be implemented toward the nitrogen and phosphorus goals.~~
 - (D) ~~The methodology shall allow for future refinements to the nutrient baseline loading determinations, and to the load reduction accounting methodology.~~
 - (E) ~~The methodology shall provide for quantification of changes in nutrient loading due to changes in agricultural land use, modifications in agricultural activity, or changes in atmospheric nitrogen loading to the extent allowed by advances in technical understanding.~~
 - (F) ~~The methodology shall include a method to track maintenance of the nutrient net loads after the initial eight years of this Rule, including tracking of changes in BMPs and additional BMPs to offset new or increased sources of nutrients from agricultural operations.~~

Success in meeting this Rule's purpose will be gauged by estimating percentage changes in nitrogen loss from agricultural lands in the Tar-Pamlico Basin and by evaluating broader trends in indicators of phosphorus loss from agricultural lands in the Tar-Pamlico Basin. The Basin Oversight Committee shall develop, maintain, and update as indicated elsewhere in this Paragraph, accounting methods that meet the following requirements:

- (A) The nitrogen method shall estimate baseline and annual total nitrogen losses from agricultural operations in each county and for the entire Tar-Pamlico Basin. Baseline losses and relative loss reduction progress shall be adjusted as frequently as can be supported by available data to account for lands permanently removed from agricultural control through development;
- (B) The nitrogen and phosphorus methods shall include a means of tracking implementation of BMPs, including number, type, and area affected;
- (C) The nitrogen method shall include a means of estimating incremental nitrogen loss reductions from implementation of BMPs that conform to requirements of Paragraph (g) of this Rule and of evaluating progress toward and maintenance of the nutrient objectives from changes in BMP implementation, fertilization, and changes in individual crop acres;
- (D) The nitrogen and phosphorus methods shall be refined as research and technical advances allow; and
- (E) The phosphorus method shall quantify baseline values for and annual changes in factors affecting agricultural phosphorus loss as identified in the report by the phosphorus technical advisory committee described elsewhere in this Paragraph.

~~(g)~~(e) **LOCAL ADVISORY COMMITTEES.** The Local Advisory Committees shall have the following membership, roles, and responsibilities:

- (1) **MEMBERSHIP.** ~~A~~ Per S.L. 2001, c. 355, a Local Advisory Committee shall be ~~appointed~~ maintained as provided in this Paragraph in each county ~~(or~~ or watershed as specified by the Basin Oversight ~~Committee)~~ Committee, within the Tar-Pamlico River Basin. ~~As directed by S.L. 2001, c. 355, the Local Advisory Committees shall be appointed on or before November 1, 2001. They shall terminate upon a finding by the Environmental Management Commission that the long-term~~

maintenance of nutrient loads in the Tar-Pamlico River Basin is assured. Each Local Advisory Committee shall consist of:

- (A) One representative of the local Soil and Water Conservation District;
 - (B) One local representative of the United States Department of Agriculture-Natural Resources Conservation Service;
 - (C) One local representative of the North Carolina Department of Agriculture and Consumer Services;
 - (D) One local representative of the North Carolina Cooperative Extension Service;
 - (E) One local representative of the North Carolina Division of Soil and Water Conservation; and
 - (F) ~~At least five, but not more than 10 farmers who reside in the county or watershed. At least two farmers that reside in the county.~~
- (2) **APPOINTMENT OF MEMBERS.** ~~The~~ Per S.L. 2001, c. 355, the Director of the Division of Water ~~Quality~~ Resources and the Director of the Division of Soil and Water Conservation of the Department of ~~Environment and Natural Resources~~ Agriculture and Consumer Services shall jointly appoint members described in ~~Subparagraphs~~ Parts (e)(1)(A), (e)(1)(B), (e)(1)(D), and (e)(1)(E) of this Rule. As directed by S.L. 2001, c. 355, the Commissioner of Agriculture shall appoint the members described in ~~Subparagraphs~~ Parts (e)(1)(C) and (e)(1)(F) of this Rule from persons nominated by nongovernmental organizations whose members produce or manage significant agricultural commodities in each county or watershed. Members of the Local Advisory Committees shall serve at the pleasure of their appointing authority.
- (3) **ROLE.** The Local Advisory Committees shall:

- (A) Continue to submit annual reports to the Basin Oversight Committee estimating total crop production on agricultural operations for the preceding calendar year, summarizing land use changes in the county and making recommendations to the Basin Oversight Committee on the need for updates to the accounting methodology. Reports shall include documentation on the BMPs implemented, including type and location, that satisfy the requirements identified in Paragraph (f) of this Rule and documentation of any expired contracts for BMPs; and

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| <p>(B) <u>Take actions called for under Subparagraph (c)(2) of this Rule as needed to address maintenance of the nitrogen and phosphorus reduction goals.</u></p> <p>(A) <u>Conduct a registration process for persons subject to this Rule. This registration process shall be completed within one year after the effective date of this Rule. It shall obtain information that shall allow Local Advisory Committees to develop local strategies in accordance with Subparagraph (g)(4) of this Rule. At minimum, the registration process shall request the type and acreage of agricultural operations, nutrient-reducing BMPs implemented since January 1, 1992 and their operational status, and the acres affected by those BMPs. It shall provide persons with information on requirements and options under this Rule, and on available technical assistance and cost share options;</u></p> <p>(B) <u>Designate a member agency to compile and retain copies of all individual plans produced to comply with this Rule;</u></p> <p>(C) <u>Develop local nutrient control strategies for agricultural operations, pursuant to Subparagraph (g)(4) of this Rule, to meet the nitrogen and phosphorus goals assigned by the Basin Oversight Committee. The nitrogen component of the control strategy shall be submitted to the Basin Oversight Committee no later than twenty three months from the effective date of this Rule. The phosphorus component of the control strategy shall be submitted within one year of the date that the Commission approves a phosphorus accounting methodology as described in Part (f)(2)(A) of this Rule;</u></p> <p>(D) <u>Ensure that any changes to the design of the local strategy will continue to meet the nutrient goals of this Rule; and</u></p> <p>(E) <u>Submit annual reports to the Basin Oversight Committee, pursuant to Subparagraph (g)(5) of this Rule, each May until such time as the Commission determines that annual reports are no longer needed to assure long term maintenance of the nutrient goals.</u></p> | <p>(4) LOCAL NUTRIENT CONTROL STRATEGIES. The Local Advisory Committees shall be responsible for developing county or watershed nutrient control strategies that meet the following requirements. If a Local Advisory Committee fails to submit a nutrient control strategy as required in Part (g)(3)(C) of this Rule, the Commission may develop one based on the accounting methodology that it approves pursuant to Part (f)(2)(A) of this Rule.</p> <p>(A) Local nutrient control strategies shall be designed to achieve the required nitrogen reduction goals within five years after the effective date of this Rule, and to maintain those reductions in perpetuity or until such time as this Rule is revised to modify this requirement. Strategies shall be designed to meet the phosphorus loading goals within four years of the date that the Commission approves a phosphorus accounting methodology as described in Part (f)(2)(A) of this Rule.</p> <p>(B) Local nutrient control strategies shall specify the numbers and types of all agricultural operations within their areas, numbers of BMPs that will be implemented by enrolled operations and acres to be affected by those BMPs, estimated nitrogen and phosphorus reductions, schedule for BMP implementation, and operation and maintenance requirements.</p> <p>(C) Local nutrient control strategies may prioritize BMP implementation to establish the most efficient and effective means of achieving the nutrient goals.</p> <p>(5) ANNUAL REPORTS. The Local Advisory Committees be responsible for submitting annual reports for their counties or watersheds. Annual reports shall be submitted to the Basin Oversight Committee each May until such time as the Commission determines that annual reports are no longer needed to assure long-term maintenance of the nutrient goals. Annual reports shall quantify progress toward the nutrient goals with sufficient detail to allow for compliance monitoring at the farm level. The Basin Oversight Committee shall determine reporting requirements to meet these objectives. Those requirements may include information on BMPs implemented by individual farms, proper BMP operation and maintenance, BMPs discontinued, changes in agricultural land use or activity, and resultant net nutrient loss changes.</p> |
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(f) PRACTICE STANDARDS. To receive nutrient reduction credit under the accounting methods described elsewhere in this Rule, a BMP shall be included in the accounting method approved by the Commission under the original version of this Rule effective September 2001, or in a subsequent revision to that method identified in annual reporting, and it shall be implemented according to applicable nutrient-related standards identified by the BOC and established by the NC Soil and Water Conservation Commission or the USDA-Natural Resources Conservation Service in North Carolina.

Authority G.S. 143-214.1; 143-214.7; 143-215.3(a)(1); 143-215.6A; 143-215.6B; 143-215.6C; S.L. 2001-355; S.L. 1997-458.

15A NCAC 02B .0257 TAR-PAMLICO RIVER BASIN - NUTRIENT SENSITIVE WATERS MANAGEMENT STRATEGY: NUTRIENT MANAGEMENT

Authority G. S. 143-214.1; 143-214.7; 143-215.3(a)(1); 143-215.6A; 143-215.6B; 143-215.6C; 143B-282(d).

15A NCAC 02B .0258.0731 TAR-PAMLICO RIVER BASIN- NUTRIENT SENSITIVE WATERS MANAGEMENT STRATEGY: BASINWIDE STORMWATER REQUIREMENTS

(a) PURPOSE. The purpose of this Rule are as follows: is to achieve and maintain the nitrogen and phosphorus loading reduction goals for the Tar-Pamlico River Estuary set out in Rule .0730 of this Section from an undeveloped condition on lands in the Tar-Pamlico River Basin on which new development occurs. Nothing in this Rule preempts local governments from implementing requirements that are more restrictive than those set forth in this Rule.

- (1) To achieve and maintain a reduction in nitrogen loading to the Pamlico estuary from lands in the Tar Pamlico River Basin on which new development occurs. The goal of this Rule is to achieve a 30 percent reduction relative to pre-development levels;
- (2) To limit phosphorus loading from these lands to the estuary. The goal of this Rule is to limit phosphorus loading to pre development levels;
- (3) To provide control for peak stormwater flows from new development lands to ensure that the nutrient processing functions of existing riparian buffers and streams are not compromised by channel erosion; and
- (4) To minimize, to the greatest extent practicable, nitrogen and phosphorus loading to the estuary from existing developed areas in the basin.

(b) APPLICABILITY. The following local governments shall implement the stormwater management requirements of this Rule. Municipalities shall implement this Rule throughout their corporate limits and extraterritorial jurisdictions within the basin, while counties shall implement throughout their territorial jurisdictions within the basin. Counties named in this Paragraph may implement this Rule within municipalities not named in accordance with G.S. 160A-360(d). This Rule shall apply to local

governments in the Tar Pamlico basin according to the following criteria:

- (1) Local governments designated under the original version of this Rule effective April 2001: This Rule shall apply to the following municipal areas:
 - (A) Greenville
 - (B) Henderson
 - (C) Oxford
 - (D) Rocky Mount
 - (E) Tarboro
 - (F) Washington
 - (G) Beaufort County
 - (H) Edgecombe County
 - (I) Franklin County
 - (J) Nash County
 - (K) Pitt County
- (2) The Following additional local governments are subject to this Rule: This Rule shall apply to the following counties:
 - (A) Granville County Beaufort
 - (B) Vance County Edgecombe
 - (C) Wilson County Franklin
 - (D) Nash
 - (E) Pitt
- (3) The Environmental Management Commission may designate additional local governments as subject to this Rule by amending this Rule based on the potential of those jurisdictions to contribute significant nutrient loads to the Tar-Pamlico River. At a minimum, the Commission shall review the need for additional designations as part of the Basinwide process for the Tar Pamlico River Basin. The Commission shall consider, at a minimum, the following criteria related to local governments: population within the basin, population density, past and projected growth rates, proximity to the estuary, and the designation status of municipalities within candidate counties.
- (3) EXEMPTION. A stormwater management plan is not required for new development on an individual single-family lot if the development meets the following criteria:
 - (A) It is not part of a larger common plan of development or sale; and
 - (B) The project does not result in greater than five percent built upon area on the lot or it is for purposes of a single-family residence on a lot five acres in size or greater.
- (c) LOCAL PROGRAM IMPLEMENTATION REQUIREMENTS. All local governments subject to this Rule shall develop stormwater management programs for submission to and approval by the Commission according to the following minimum standards: implement stormwater management programs approved by the Commission pursuant to the timeframes set out in Paragraph (e) of this Rule, or any subsequent modification to those plans approved by the Director, according

to the following requirements and the standards contained in Paragraph (d) of this Rule:

- (1) A ~~The~~ requirement that a stormwater management plan for local government approval of a stormwater plan for all proposed new developments proposed within their jurisdictions, new development projects disturbing one acre or more for single family and duplex residential property and recreational facilities, and one-half acre or more for commercial, industrial, institutional, multifamily residential, or local government property. Where proposed new development on an existing developed lot not part of a larger common plan of development results in built-upon area exceeding 24 percent, a stormwater plan addressing the new project area shall be required. These stormwater plans shall not be approved by the subject local governments unless the following criteria are met:
- (2) A plan to ensure maintenance of stormwater control measures (SCMs) implemented to comply with this rule for the life of the development;
- (3) A plan to ensure enforcement and compliance with the provisions in Paragraph (d) of this Rule for the life of the development;
- (4) A public education program to inform citizens how to reduce nutrient pollution and to inform developers about the nutrient requirements set forth in Paragraph (d) of this Rule;
- (5) A mapping program that includes major components of the municipal separate storm sewer system, waters of the State, land use types, and location of sanitary sewers; and
- (6) A program to identify and remove illegal discharges.

(d) DEVELOPMENT PROJECT REQUIREMENTS. A proposed development project shall be approved by a subject local government for the purpose of this Rule when the applicable requirements of Paragraph (c) and the following criteria are met:

- (A) The nitrogen load contributed by the proposed new development activity shall not exceed 70 percent of the average nitrogen load contributed by the non-urban areas in the Tar-Pamlico River basin based on land use data and nitrogen export research data. Based on 1995 land use data and available research, the nitrogen load value shall be 4.0 pounds per acre per year;
- (B) The phosphorus load contributed by the proposed new development activity shall not exceed the average phosphorus load contributed by the non-urban areas in the Tar-Pamlico River basin based on land use data and phosphorus export research data.

~~Based on 1995 land use data and available research, the phosphorus load value shall be 0.4 pounds per acre per year;~~

- (C) The new development shall not cause erosion of surface water conveyances. At a minimum, the new development shall not result in a net increase in peak flow leaving the site from pre-development conditions for the 1 year, 24 hour storm event; and

- (1) The project area, as defined in 15A NCAC 02H .1002, shall meet either a nitrogen loading rate target of 4.0 pounds/acre/year and a phosphorus loading rate target of 0.8 pounds/acre/year, or the definition of runoff volume match found in 15A NCAC 02H .1002. Except as otherwise stated in this paragraph, the project may meet the loading rate target through use of permanent nutrient offset credit pursuant to Rule .0703 of this Section. Persons who seek nutrient offset credit to meet these requirements shall provide proof of nutrient offset credit acquisition to the permitting authority prior to approval of the development plan;

- (2) Untreated nutrient loading rates from the project area shall be determined through the use of the tool most recently approved by the Division to have met the following criteria, or through an alternative method that meets the following criteria at least as well, as determined by the Division:

- (A) Provides project site-scale estimates of annual precipitation-driven total nitrogen and total phosphorus load;
- (B) From all land cover types on a project site at build-out;
- (C) Based on land-cover-specific nitrogen and phosphorus loading coefficients and annual runoff volume; and
- (D) Is supported by the weight of evidence from available, current, and applicable research.

- (3) Nutrient loading rate reductions resulting from the use of SCMs shall be determined through the use of the tool most recently approved by the Division to have met the following criteria, or through an alternative method that meets the following criteria at least as well, as determined by the Division:

- (A) Provides project site loading reduction estimates from the installation of DEMLR-approved SCMs;
- (B) Reductions apply to the portion of the project area's runoff volume that is directed to the SCMs;
- (C) The method partitions the runoff volume processed by the SCM among hydrologic fates and assigns nutrient

- concentrations to each of those fates;
and
- (D) The method is supported by the weight of evidence from available, current, and applicable research.
- (4) Projects shall meet the requirements set forth in 15A NCAC 02H .1003. Projects that use SCMs to treat stormwater shall use the required storm depths and meet the SCM and density requirements set forth in the stormwater programs to which they are subject pursuant to Rules 15A NCAC 02H .1017, .1019, and .1021. Projects not subject to any of these rules shall be considered high-density if they contain twenty four percent or greater built-upon area or have greater than two dwelling units per acre and shall use a storm depth of one inch for SCM design.
- (5) Proposed new development undertaken by a local government solely as a public road expansion or public sidewalk project or proposed new development subject to the jurisdiction of the Surface Transportation Board shall be exempt from the requirements of Subparagraph (d)(4) of this Rule and may meet the loading rate targets through use of permanent nutrient offset credit pursuant to Rule .0703 of this Section;
- (6) Proposed development projects that would replace or expand existing structures and would result in a net increase in built-upon area shall be responsible for nutrient loading from the area of disturbance less any preexisting built-upon area located in the disturbance area. The developer shall have the option to either achieve the percent loading reduction goals established in Rule .0730 of this Section or meet the loading rate targets of this Paragraph;
- (7) Proposed new development projects may utilize an offsite SCM that is dedicated to treating an area encompassing the project provided the SCM complies with the applicable requirements of this Paragraph for the area that it treats;
- (D) Developers shall have the option of partially offsetting their nitrogen and phosphorus loads by providing treatment of off site developed areas. The off site area must drain to the same classified surface water, as defined in the Schedule of Classifications, 15A NCAC 2B .0316, that the development site drains to most directly. The developer must provide legal assurance of the dedicated use of the off site area for the purposes described here, including achievement of specified nutrient load reductions and provision for regular operation and maintenance activities, in perpetuity. The legal assurance shall include an instrument, such as a conservation easement, that maintains this restriction upon change of ownership or modification of the off-site property. Before using off site treatment, the new development must attain a maximum nitrogen export of six pounds/acre/year for residential development and 10 pounds/acre/year for commercial or industrial development.
- (8) Where pursuant to G.S. 153A-454 and G.S. 160A-459 a local government program does not review a development project proposed by a state or federal entity for the requirements of this Rule, the entity shall obtain Department review and approval; and
- (9) Proposed new development shall demonstrate compliance with the riparian buffer protection requirements of Rule .0734 of this Section or subsequent amendments or replacement to those requirements.
- (2) A public education program to inform citizens of how to reduce nutrient pollution and to inform developers about the nutrient and flow control requirements set forth in Part (c)(1);
- (3) A mapping program that includes major components of the municipal separate storm sewer system, waters of the State, land use types, and location of sanitary sewers.
- (4) A program to identify and remove illegal discharges.
- (5) A program to identify and prioritize opportunities to achieve nutrient reductions from existing developed areas.
- (6) A program to ensure maintenance of BMPs implemented as a result of the provisions in Subparagraphs (c)(1) and (c)(5);
- (7) A program to ensure enforcement and compliance with the provisions in Subparagraph (c)(1);
- (8) Local governments may include regional or jurisdiction wide strategies within their stormwater programs as alternative means of achieving partial nutrient removal or flow control. At a minimum, such strategies shall include demonstration that any proposed measures will not contribute to degradation of surface water quality, degradation of aquatic or wetland habitat or biota, or destabilization of conveyance structure of involved surface waters. Such local governments shall also be responsible for including appropriate supporting information to quantify nutrient and flow reductions provided by these measures and describing the administrative process for implementing such strategies.

(e) RULE IMPLEMENTATION

- (1) Within four months of the effective date of this Rule, the Division shall submit a model local stormwater program embodying the elements in Paragraphs (c) and (d) of this Rule to the Commission for approval. The Division shall work in cooperation with subject local governments in developing this model program.
- (2) Local governments designated under the original version of this Rule effective April 2001 and additional local governments designated herein shall submit a local stormwater program for approval by the Commission within six months and 12 months, respectively, of the Commission's approval of the model local program. These local programs shall meet or exceed the requirements in Paragraphs (c) and (d) of this Rule.
- (3) The Division shall provide recommendations to the Commission regarding proposed local programs. The Commission shall approve programs or require changes based on the standards set out in Paragraphs (c) and (d) of this Rule. Should the Commission require changes, the applicable local government shall have three months to submit revisions, and the Division shall provide follow-up recommendations to the Commission within two months after receiving revisions;
- (4) Within six months after the Commission's approval of a local program, the affected local government shall complete adoption of and implement its local stormwater program.
- (5) Local governments administering a stormwater program shall submit annual reports in electronic format to the Division documenting their progress regarding each implementation requirement in Paragraph (c) of this Rule and net changes to nitrogen load by October 30 of each year. Annual reports shall also include as appendices all data utilized by nutrient calculation tools for each development stormwater plan approved in accordance with this Rule.
- (6) Any significant modifications to a local government's program shall be submitted to the Director for approval.

~~(d) TIMEFRAME FOR IMPLEMENTATION. The timeframe for implementing the stormwater management program shall be as follows:~~

- ~~(1) Within 12 months of the effective date of this Rule, the Division shall submit a model local stormwater program that embodies the minimum criteria described in Paragraph (c) of this Rule to the Commission for approval. The Division shall work in cooperation with subject local governments in developing this model program.~~

- ~~(2) Within 12 months of the Commission's approval of the model local stormwater program or within 12 months of a local government's later designation pursuant to Subparagraph (b)(3), subject local governments shall submit their local stormwater management programs to the Commission for review and approval. These local programs shall meet or exceed the requirements in Paragraph (c) of this Rule.~~
 - ~~(3) Within 18 months of the Commission's approval of the model local stormwater program or within 18 months of a local government's later designation pursuant to Subparagraph (b)(3), subject local governments shall adopt and implement their approved local stormwater management program.~~
 - ~~(4) Local governments administering a stormwater management program shall submit annual reports to the Division documenting their progress and net changes to nitrogen load by October 30 of each year.~~
- ~~(f) COMPLIANCE. A local government's authority to approve new development stormwater plans for compliance with this Rule pursuant to Paragraph (d) of this Rule shall be contingent upon maintaining its own compliance with this Rule. A local government that fails to submit an acceptable local stormwater management program within the timeframe established in this Rule, or fails to implement an approved program, or fails to comply with annual reporting requirements shall be in violation of this Rule. In this case, the stormwater management requirements for its jurisdiction shall be administered through the NPDES municipal stormwater permitting program per 15A NCAC 2H .0126. Any local government that is subject to an NPDES municipal stormwater permit pursuant to this Rule shall:~~
- ~~(1) Develop and implement comprehensive stormwater management program to reduce nutrients from both existing and new development. This stormwater management program shall meet the requirements of Paragraph (c) of this Rule for new and existing development.~~
 - ~~(2) Be subject to the NPDES permit for at least one permitting cycle (five years) before it is eligible to submit a local stormwater management program to the Commission for consideration and approval.~~

Authority G.S. 143-214.1; 143-214.7; 143-214.26; 143-215.1; 143-215.3(a)(1); 143-215.6A; 143-215.6B; 143-215.6C; 143 B - 282(d); S.L. 1997-458; S.L. 2006-246.

SECTION .0700 – NUTRIENT MANAGEMENT STRATEGIES

15A NCAC 02B .0701 NUTRIENT STRATEGIES

DEFINITIONS

Unless the context indicates otherwise, the following words and phrases shall be interpreted as follows for the purposes of this Section:

- (1) "Agricultural uses" include the use of waters for stock watering, irrigation, and other farm purposes.
- (2) "Allocation" means the mass quantity, as of nitrogen or phosphorus that a discharger, group of dischargers, or other source is potentially allowed to release into surface waters. Allocations may be expressed as delivered or discharge quantities. Possession of allocation does not authorize the discharge of nutrients but is prerequisite to such authorization in an NPDES permit.
- (3) "Best Management Practice" means the same as defined in Rule .0202 of this Subchapter.
- (4) "Buffer" means the same as defined in Rule .0202 of this Subchapter.
- (5) "Built-upon area" means the same as defined in G.S. 143-214.7(b2).
- (6) "Concentration(s)" means the same as defined in Rule .0202 of this Subchapter.
- (7) "Contiguous" means the same as defined in Rule .0202 of this Subchapter.
- (8) "Critical area" means the same as defined in Rule .0202 of this Subchapter.
- (9) "Cropland" means agricultural land that is used for growing corn, grains, oilseed crops, cotton, forages, tobacco, beans, or other vegetables or fruits.
- (10) "Delivered", as in delivered allocation, load, or limit, means that portion of the allocation, load, or limit that is measured or predicted to be transported from a nutrient source or discharge to a waterbody. A delivered value equals the corresponding discharge value multiplied by its assigned transport or delivery factor.
- (11) "Development" means the same as defined in G.S. 143-214.7.
- (12) "Director" means the Director of the Division.
- (13) "Discharge" as in discharge allocation, load, or limit means the allocation, load, or limit that is measured at the point of discharge into surface waters. A discharge value is equivalent to a delivered value divided by the transport factor for that discharge location.
- (14) "Division" means the Division of Water Resources of the North Carolina Department of Environmental Quality and its successors.
- (15) "DMS" means the N.C. Division of Mitigation Services or its successor.
- (16) "Estuary allocation" means the mass loading of total nitrogen or total phosphorus at the estuary that is reserved for a discharger or group of dischargers. A discharger's or group's estuary allocation is equivalent to its discharge

allocation multiplied by its assigned transport factor.

- (17) "Existing development" means structures and other land modifications resulting from development activities, other than those associated with agricultural or forest management activities, that meet the following criteria:
 - (a) For projects that do not require a state permit, they are in place or have established a vested right to construct relative to the effective date of the applicable local stormwater ordinance implemented pursuant to a new development stormwater rule of this Section; and
 - (b) For projects that require a state permit, they are in place before the effective date established in the applicable state and federal entities stormwater rule of this Section.
- (18) "Fertilizer" means the same as defined in Rule .0202 of this Subchapter.
- (19) "Industrial discharge(s)" means the same as defined in Rule .0202 of this Subchapter.
- (20) "Land-disturbing activity" means the same as defined in Rule .0202 of this Subchapter.
- (21) "Load" means the mass quantity of a nutrient or pollutant released into surface waters over a given time period. Loads may be expressed in terms of pounds per year and may be expressed as "delivered load" or an equivalent "discharge load."
- (22) "Load allocation" means the same as set forth in federal regulations 40 CFR 130.2(g), which is incorporated herein by reference, including subsequent amendments and editions. A copy of the most current version of the regulations is available free of charge on the internet at <http://www.gpo.gov/fdsys/>.
- (23) "Local government" means the same as defined in Rule .0202 of this Subchapter.
- (24) "MGD" means million gallons per day.
- (25) "Nitrogen" means total nitrogen unless specified otherwise.
- (26) "Nonpoint source load allocation" is that portion of an approved TMDL or calibrated nutrient response model assigned to all other nitrogen sources in the basin other than individually permitted wastewater facilities and represents the maximum allowable load of total nitrogen or total phosphorus to a waterbody from these nonpoint sources.
- (27) "Nonpoint source pollution" means the same as defined in Rule .0202 of this Subchapter.
- (28) "Non-wasting endowment" is a fund that generates enough interest to cover the cost of perpetual monitoring, maintenance, repair and renovation of a nutrient reduction project.

- (29) "NPDES" means National Pollutant Discharge Elimination System, and connotes the permitting process required for the operation of point source discharges in accordance with the requirements of Section 402 of the Federal Water Pollution Control Act, 33 U.S.C. Section 1251 et seq.
- (30) "Nutrients" means the combination of total nitrogen and total phosphorus for the purpose of the nutrient rules of this section.
- (31) "Nutrient Offset Bank" is a nutrient reduction project that is implemented by a provider except DMS and approved by the Division for the purpose of generating nutrient offset credit.
- (32) "Nutrient Offset Banking Instrument" is a written legal agreement between the Division and the provider that governs the establishment, operation, and use of a nutrient offset bank.
- (33) "Nutrient Offset Project" is a nutrient reduction project that is implemented by DMS and approved by the Division for the purpose of generating nutrient offset credit.
- (34) "Nutrient Reduction Practice" is any project type or type of programmatic effort that generates a quantifiable or estimated decrease in nutrient loading, and for which practice design standards and load reduction estimation methods have been approved in rule or by the Division.
- (35) "Nutrient Reduction Project" is a site-specific installation and implementation of a nutrient reduction practice or combination of practices.
- (36) "Nutrient Sensitive Waters" means the same as defined or classified in Rule .0223 of this Subchapter.
- (37) "Permanent Nutrient Offset Credit" is a nutrient load reduction credit that is generated in compliance with this rule. Permanent nutrient offset credits account for permanent nutrient load reductions resulting from permanently installed and maintained nutrient reduction practices. Permanent nutrient offset credits may be used for compliance with new development stormwater rules of this Subchapter and may also satisfy other nutrient load reduction requirements as described in this Subchapter. Nutrient offset credits are expressed in pounds of total nitrogen or total phosphorus per year.
- (38) "Phosphorus" means total phosphorus unless specified otherwise.
- (39) "Provider" means any public or private person or entity that implements a nutrient reduction project and seeks nutrient offset credit for sale, lease, or conveyance in exchange for remuneration, including DMS. Persons or entities other than DMS that seek to become a provider of nutrient offset credits become so upon approval of a nutrient offset banking instrument by the Division.
- (40) "Residuals" means the same as defined in Rule .0202 of this Subchapter.
- (41) "Stormwater Collection System" means the same as defined in 15A NCAC 02H .1002.
- (42) "Stormwater Control Measure" or "SCM," also known as "Best Management Practice" or "BMP," means the same as defined in 15A NCAC 02H .1002.
- (43) "Surface waters" means all waters of the state as defined in G.S. 143-212 except underground waters.
- (44) "Term Nutrient Offset Credit" is a nutrient load reduction credit that accounts for annual nutrient load reductions. Temporary nutrient offset credits are expressed in pounds of total nitrogen or total phosphorus.
- (45) "Total Maximum Daily Load," or "TMDL," means the same as set forth in federal regulations 40 CFR 130.2(i) and 130.7(c)(1), which are incorporated herein by reference, including subsequent amendments and editions. A copy of the most current version of the regulations is available free of charge on the internet at <http://www.gpo.gov/fdsys/>.
- (46) "Total nitrogen" means the sum of the organic, nitrate, nitrite, and ammonia forms of nitrogen in a water or wastewater.
- (47) "Total phosphorus" means the sum of the orthophosphate, polyphosphate, and organic forms of phosphorus in a water or wastewater.
- (48) "Transportation facility" means the existing road surface, road shoulders, fill slopes, ferry terminal fill areas, and constructed stormwater conveyances or drainage canals adjacent to and directly associated with the road.
- (49) "Transport factor" means the fraction of a discharged nitrogen or phosphorus load that is delivered from the discharge point to a waterbody as established in an approved TMDL or other Division publication.
- (50) "Wasteload allocation" is that portion of a nitrogen or phosphorus TMDL assigned to individually permitted wastewater facilities and represents the maximum allowable load of total nitrogen or total phosphorus to the estuary from these point source dischargers.

Authority G.S. 143-214.1; 143-214.3; 143-214.5; 143-214.7; 143-215.1; 143-215.3; 143-215.3(a)(1); 143-215.6A; 143-215.6B; 143-215.6C; 143-215.8B; 143B-282(c); 143B-282(d).

15A NCAC 02B .0730 TAR-PAMLICO NUTRIENT STRATEGY: PURPOSE & SCOPE

PURPOSE. The purpose of this Rule and Rules 15A NCAC 02B .0731 through .0736 of this Section is to attain the designated uses of the Pamlico River estuary with respect to meeting nutrient-related water quality standards pursuant to the Environmental Management Commission's authority under the Clean Water Responsibility and Environmentally Sound Policy Act enacted by

the North Carolina General Assembly in 1997 and other authorities. The estuary and waters of the Tar-Pamlico River Basin are classified as Nutrient Sensitive Waters (NSW) pursuant to 15A NCAC 02B .0101(e)(3) and 15A NCAC 02B .0223. The rules enumerated in Item (3) of this Rule together constitute the Tar-Pamlico nutrient strategy, and shall be implemented in accordance with 15A NCAC 02B .0223. This rule establishes the framework of the Tar-Pamlico nutrient strategy:

- (1) **SCOPE AND LIMITATION.** The Tar-Pamlico nutrient strategy rules require controls to reduce nitrogen and phosphorus loads from significant sources of these nutrients throughout the Tar-Pamlico Basin. These Rules do not address sources for which there is insufficient scientific knowledge to base regulation. The Commission may undertake additional rulemaking in the future or make recommendations to other rulemaking bodies as deemed appropriate to more fully address nutrient sources to the Pamlico River Estuary.
- (2) **GOALS.** To achieve the purpose of the Tar-Pamlico nutrient strategy, the Commission established in the initial Tar-Pamlico nutrient rules, enacted in 2000 and 2001, goals of reducing the average annual load of nitrogen delivered to the Pamlico River Estuary from nutrient sources to a level 30 percent below a 1991 baseline, and thereafter maintaining it at or below that level, and of reducing average annual phosphorus load to 1991 baseline level and thereafter maintaining it at or below that level. This Tar-Pamlico nutrient strategy continues these goals.
- (3) **RULES ENUMERATED.** The rules of the Tar-Pamlico nutrient strategy are titled as follows:
 - (a) Rule .0730 Purpose and Scope;
 - (b) Rule .0731 Stormwater Management for New Development;
 - (c) Rule .0732 Agriculture;
 - (d) Rule .0733 Non-Association Dischargers;
 - (e) Rule .0734 Riparian Buffer Protection; and
 - (f) Rule .0735 Buffer Program Delegation.
- (4) **ADAPTIVE MANAGEMENT.** Given ongoing impairment of the Pamlico estuary more than a decade following full implementation of the above rules, the Division is pursuing fuller evaluation of the basin's nutrient dynamics to inform and guide adaptive management. Evaluation shall seek to utilize all sources of available information, including stakeholder input, and shall consider drivers, character and shifts in the impairment with time, trends and character of loading delivered to the estuary, and distribution and character of loading inputs to the basin and changes to those inputs over time. Evaluation shall address the extent to

which the reduction goals identified in Item (2) of this Rule have been achieved and shall, based on its findings, provide recommendations on management needs. The Division shall seek to complete an evaluation within three years of the effective date of this Rule and shall distribute its findings, which may recommend regulatory and non-regulatory actions, upon completion. The Division shall also report biannually to the Water Quality Committee of the Commission on implementation progress and reductions achieved by sources subject to the Tar-Pamlico nutrient strategy. The adaptive management approach is based on defined goals, knowledge of resources and impacts to those resources, appropriate technology and inventory. These inputs are used to plan, act, monitor and evaluate. The process is iterative and the goal is continuous environmental quality improvement.

- (5) **GEOGRAPHIC APPLICABILITY.** The Tar-Pamlico nutrient strategy shall apply in all areas draining to waters within hydrologic units 03020101, 03020102, 03020103, 03020104, and portions of 03020105 located on the Albemarle-Pamlico peninsula unless individual Tar-Pamlico strategy rules describe other boundaries.
- (6) **PENALTIES.** Failure to meet requirements of Rules the Tar-Pamlico nutrient strategy may result in imposition of enforcement measures as authorized by G.S. 143-215.6A, G.S. 143-215.6B, and G.S. 143-215.6C.

Authority G.S. 143-214.1; 143-214.7; 143-215.3(a)(1); 143-215.6A; 143-215.6B; 143-215.6C; 143-282(d); S.L. 1997-458.

TITLE 19A – DEPARTMENT OF TRANSPORTATION

Notice is hereby given in accordance with G.S. 150B-21.3A(c)(2)g. that the Department of Transportation intends to readopt with substantive changes the rules cited as 19A NCAC 02B .0152, .0153, 02D .0405, .0425 and readopt without substantive changes the rules cited as 19A NCAC 02B .0150, .0154-.0158, .0315; 02D .0402-.0404, .0406, .0410, .0414, .0421, .0535, .0538, .0539; 02E .0301 and .0303.

Pursuant to G.S. 150B-21.2(c)(1), the text of rules to be readopted without substantive changes are not required to be published. The text of the rules is available on the OAH website: <http://reports.oah.nc.us/ncac.asp>.

Pursuant to G.S. 150B-21.17, the Codifier has determined that publication of the complete text of the rules proposed for repeal is impractical. The text of the repealed rules is accessible on the OAH Website: <http://www.ncoah.com>.

Link to agency website pursuant to G.S. 150B-19.1(c):
<https://www.ncdot.gov/about-us/how-we-operate/policy-process/rules/Pages/default.aspx>

Proposed Effective Date: June 1, 2019

Public Hearing:

Date: Tuesday, April 2, 2019

Time: 3:00 p.m.

Location: Transportation Mobility and Safety Conference Room
 161, 750 Greenfield Parkway, Garner, NC 27529

Reason for Proposed Action: Pursuant to G.S. 150B-21.3A, Periodic Review and Expiration of Existing Rules, all rules are reviewed at least every 10 years or they shall expire. As a result of the periodic review of Subchapter 19A NCAC 02B, 02D and 02E, these proposed rules were determined as "Necessary With Substantive Public Interest" thus necessitating readoption.

Upon review for the readoption process, the agency deemed the following rules to be necessary without substantive changes and are recommended for readoption: 19A NCAC 02B .0150, .0154-.0158, and .0315; 19A NCAC 02D .0402-.0404, .0406, .0410, .0414, .0421, .0535, .0538 and .0539; and 19A NCAC 02E .0301 and .0303. In addition, upon review for the readoption process, the agency deemed the following rule to be necessary with substantive changes and is recommended for readoption: 19A NCAC 02B .0153.

Upon review for the readoption process, the agency deemed the following rules to be unnecessary and is recommending repeal: 19A NCAC 02B .0152; 02D .0405 and .0425.

Comments may be submitted to: Hannah D. Jernigan, 1501 Mail Service Center, Raleigh, NC 27699-1501, phone (919)707-2821, email Rulemaking@ncdot.gov

Comment period ends: April 18, 2019

Procedure for Subjecting a Proposed Rule to Legislative Review:

If an objection is not resolved prior to the adoption of the rule, a person may also submit written objections to the Rules Review Commission after the adoption of the Rule. If the Rules Review Commission receives written and signed objections after the adoption of the Rule in accordance with G.S. 150B-21.3(b2) from 10 or more persons clearly requesting review by the legislature and the Rules Review Commission approves the rule, the rule will become effective as provided in G.S. 150B-21.3(b1). The Commission will receive written objections until 5:00 p.m. on the day following the day the Commission approves the rule. The Commission will receive those objections by mail, delivery service, hand delivery, or facsimile transmission. If you have any further questions concerning the submission of objections to the Commission, please call a Commission staff attorney at 919-431-3000.

Fiscal impact (check all that apply).

- ☐ State funds affected
- ☐ Environmental permitting of DOT affected
- ☐ Analysis submitted to Board of Transportation
- ☒ Local funds affected (19A NCAC 02B .0153)

- ☐ Substantial economic impact (≥\$1,000,000)
- ☒ Approved by OSBM
- ☐ No fiscal note required by G.S. 150B-21.4
- ☒ No fiscal note required by G.S. 150B-21.3A(d)(2) (For the remainder of rules, no fiscal note is required)

CHAPTER 02 - DIVISION OF HIGHWAYS

SUBCHAPTER 02B - HIGHWAY PLANNING

SECTION .0100 - RIGHT OF WAY

19A NCAC 02B .0150 CONSTRUCTION OF RAILROAD TRACKS ACROSS RIGHT OF WAY (READOPTION WITHOUT SUBSTANTIVE CHANGES)

19A NCAC 02B .0152 SIGNALIZATION OF EXISTING GRADE CROSSING

Authority G.S. 136-18(5); 136-18(11); 136-20; 150B-21.3A.

19A NCAC 02B .0153 SIGNALIZATION OF NEW GRADE AT-GRADE CROSSING

(a) ~~For purposes of this Rule, the term "crossing agreement" is a formal written agreement between the N.C. Department of Transportation and a railroad company. The railroad company permits the Department of Transportation to build a road across the railroad company's tracks. The agreement also lists responsibilities of each party with regard to the construction, maintenance, and funding of the new crossing.~~

(b) ~~Where the construction of a new road or the relocation of an existing road involves an additional or a new crossing and does not involve the elimination of an existing crossing, the railroad will not be required to bear any costs of signalization or separation, either at the time of the initial construction or within a 20-year period from the execution of the crossing agreement if the Department of Transportation determines during said 20-year period that a signalization or a separation structure is required. If a crossing in existence prior to December 3, 1966 is eliminated by the relocation of an existing road, the policy stated in Rule .0152 of this Section shall apply.~~

(a) It shall be unlawful to construct a railroad track across any portion of the State highway system without the Secretary of Transportation or the Secretary's designee providing a written statement of approval.

(b) A crossing agreement shall be required for any construction or relocation of railroad track across the State highway system, and any construction or relocation of the State highway system across already existing railroad track. The crossing agreement lists the construction, maintenance, safety device installation, and funding responsibilities of each party.

(c) Where the construction of a new road or the relocation of an existing road involves an additional or a new crossing and does not involve the elimination of an existing crossing, the railroad shall not be required to bear any costs of signalization or separation, either at the time of the initial construction or within a 20-year period from the execution of the Crossing Agreement if the Department determines during that 20-year period that a signalization or a separation structure shall be required.

(d) If a crossing in existence prior to December 3, 1966, shall be eliminated by the relocation of an existing road, Rule .0155 of this Section shall apply.

(e) The following shall be required for the construction of a new municipal street across an already existing railroad track, or railroad tracks across the municipal street system.

(1) If a municipality and railroad seek to enter into an agreement for the construction of a new municipal street, meaning a street forming a part of the municipal street system consisting of those streets or highways that are not a part of the State highway system, across a railroad track, at-grade, the municipality or public authority responsible for the maintenance, construction, reconstruction, and right-of-way acquisition for the municipal street system shall provide the Rail Division Director with 60-days' notice prior to the execution of the agreement. If the municipality anticipates there to be less than 60 days between the negotiations and execution of the agreement, notification shall be immediate.

(2) If a municipality and railroad seek to enter into an agreement for the construction of a new railroad track across the municipal street system, at-grade, the municipality or public authority responsible for the maintenance, construction, reconstruction, and right-of-way acquisition for the municipal street system shall provide the Rail Division Director with 60-days' notice prior to the execution of the agreement. If the municipality anticipates there to be less than 60 days between the negotiations and execution of the agreement, notification shall be immediate.

(3) If a private developer and a railroad seek to enter into an agreement for the construction of a railroad track across the municipal street system, at-grade, or a new municipal street across a railroad track, at-grade, the private developer shall provide the Rail Division Director with 60-days' notice prior to the execution of the agreement. If the private developer anticipates there to be less than 60 days between the negotiations and execution of the agreement, notification shall be immediate.

(4) Notice shall be in writing and shall be effective upon receipt if delivered personally or by email, or sent by overnight courier if signature for the receiving party is obtained, or sent by certified or registered mail, postage prepaid, to the Rail Division Director at 1553 Mail Service Center, Raleigh, NC 27699-1553. The Rail Division Director's email address may be found, free of charge, at <https://apps.ncdot.gov/dot/directory/authenticated/UnitPage.aspx?id=3393>.

(5) Notice shall include the following information:

(A) the name, address, telephone number, and email address of the entity submitting the notice;

(B) a description of the anticipated crossing, including whether the agreement is for the construction of a railroad track across the municipal street system, or the construction of a municipal street across an already existing railroad track;

(C) the county, city, or political subdivision where the crossing will be located;

(D) the railroad milepost number, if an already existing railroad track; and

(E) the State maintained road number and/or name, if an already existing road.

Authority G.S. 136-18(5); 136-18(11); 136-20; 136-20.1; 136-66.1; 136-195.

19A NCAC 02B .0154 COST OF RAILROAD SEPARATION STRUCTURES (READOPTION WITHOUT SUBSTANTIVE CHANGES)

19A NCAC 02B .0155 CONSTRUCTION AND MAINTENANCE OF RAILROAD CROSSINGS (READOPTION WITHOUT SUBSTANTIVE CHANGES)

19A NCAC 02B .0156 PAVING OF ROADWAY SURFACE CROSSING RAILROAD TRACKS (READOPTION WITHOUT SUBSTANTIVE CHANGES)

19A NCAC 02B .0157 COST OF CHANGING ELEVATION OF RAILROAD FACILITIES (READOPTION WITHOUT SUBSTANTIVE CHANGES)

19A NCAC 02B .0158 CHANGING GRADE OF ROAD WHEN GRADE OF RR TRACKS IS CHANGED (READOPTION WITHOUT SUBSTANTIVE CHANGES)

19A NCAC 02B .0315 NEGOTIATION WITH MUNICIPALITIES AND MUNICIPAL AGREEMENTS (READOPTION WITHOUT SUBSTANTIVE CHANGES)

SUBCHAPTER 02D - HIGHWAY OPERATIONS

SECTION .0400 - FIELD OPERATIONS - MAINTENANCE AND EQUIPMENT

19A NCAC 02D .0402 CURB AND GUTTER AND UNDERGROUND DRAINAGE ON HIGHWAYS (READOPTION WITHOUT SUBSTANTIVE CHANGES)

19A NCAC 02D .0403 USE OF DUST ALLAYING MATERIALS (READOPTION WITHOUT SUBSTANTIVE CHANGES)

19A NCAC 02D .0404 MAINTENANCE WITHIN MUNICIPALITIES (READOPTION WITHOUT SUBSTANTIVE CHANGES)

19A NCAC 02D .0405 EXAMPLES OF CONSTRUCTION AND MAINTENANCE ACTIVITIES

Authority G.S. 136-66.1; 143B-346; 143B-350(f); 143B-350(g); 150B-21.3A.

19A NCAC 02D .0406 CONSTRUCTION AND MAINTENANCE OF SIDEWALKS (READOPTION WITHOUT SUBSTANTIVE CHANGES)

19A NCAC 02D .0410 RENTAL OF SUPPLEMENTAL EQUIPMENT (READOPTION WITHOUT SUBSTANTIVE CHANGES)

19A NCAC 02D .0414 LOCATION OF GARBAGE COLLECTION CONTAINERS (READOPTION WITHOUT SUBSTANTIVE CHANGES)

19A NCAC 02D .0421 INSTALLATION OF DRIVEWAY PIPE (READOPTION WITHOUT SUBSTANTIVE CHANGES)

19A NCAC 02D .0425 FEDERAL DISASTER ASSISTANCE (READOPTION WITHOUT SUBSTANTIVE CHANGES)

19A NCAC 02D .0535 FERRY RESERVATIONS (READOPTION WITHOUT SUBSTANTIVE CHANGES)

19A NCAC 02D .0538 VEHICLE WEIGHT LIMITATIONS (READOPTION WITHOUT SUBSTANTIVE CHANGES)

19A NCAC 02D .0539 VEHICLE PHYSICAL DIMENSION LIMITATIONS (READOPTION WITHOUT SUBSTANTIVE CHANGES)

SUBCHAPTER 02E - MISCELLANEOUS OPERATIONS

SECTION .0300 - JUNKYARD CONTROL

19A NCAC 02E .0301 UNZONED INDUSTRIAL AREA (READOPTION WITHOUT SUBSTANTIVE CHANGES)

19A NCAC 02E .0303 FEES (READOPTION WITHOUT SUBSTANTIVE CHANGES)

Note from the Codifier: The rules published in this Section of the NC Register are temporary rules reviewed and approved by the Rules Review Commission (RRC) and have been delivered to the Codifier of Rules for entry into the North Carolina Administrative Code. A temporary rule expires on the 270th day from publication in the Register unless the agency submits the permanent rule to the Rules Review Commission by the 270th day.
This section of the Register may also include, from time to time, a listing of temporary rules that have expired. See G.S. 150B-21.1 and 26 NCAC 02C .0500 for adoption and filing requirements.

TITLE 01 – DEPARTMENT OF ADMINISTRATION

Rule-making Agency: Department of Administration

Rule Citation: 01 NCAC 06F .0101 and .0102

Effective Date: January 28, 2019

Date Approved by the Rules Review Commission: January 17, 2019

Reason for Action: The effective date of a recent act of the General Assembly or of the U.S. Congress. Cite: S.L. 2018-5, Section 37.1(a)-(i) Effective date: July 1, 2018.
S.L. 2018-5, Section 37.1(i) states " The Department of Administration shall adopt temporary rules consistent with this section no later than January 1, 2019, and shall adopt permanent rules no later than July 1, 2019.

**CHAPTER 06 – STATE PROPERTY AND
CONSTRUCTION**

**SUBCHAPTER 06F – TELECOMMUNICATIONS
FACILITIES FOR BROADBAND PROVIDERS**

01 NCAC 06F .0101 PROCEDURES

(a) For purposes of this Subchapter, an "Agency" is defined as that body to which State owned or leased property is allocated.

(b) Upon referral from the NC Department of Information Technology (DIT), an Agency requesting the construction and placement of broadband components on state property will shall submit to the State Property Office (SPO) a completed PO-2, Disposition of Real Property form, as set forth in 01 NCAC 06B .0300, and an applicant's BB-2, WISP Application form, that shall include the following information :

- (1) description of the state property;
- (2) information pertaining to the lessee; and
- (3) together with a list and description of the equipment to be used and scope of work.

(c) SPO will shall evaluate the proposal and determine fair market value of the lease pursuant to G.S. 146-29.1 and notify the Agency of relevant costs.

(b)(d) SPO will shall generate the necessary lease, license, or easement needed for approval and provide to the Agency for review and distribution to the broadband applicant.

(e)(e) The Applicant Prior to the construction or placement of broadband components, the broadband provider and SPO will shall execute duplicate original agreements.

(d)(f) The Agency will be responsible for ensuring shall ensure all equipment is installed properly and in accordance with the guidelines set out by DIT, SPO and other state agencies involved terms set out in the lease, license or easement.

Authority G.S. 146-29.1; 146-29.2; 146-30; S.L. 2018-5, s. 37.1(a)-(i).

01 NCAC 06F .0102 TERMS AND CONDITIONS

The following terms and conditions ~~will~~ shall apply to the location and installation of equipment by a broadband provider on state owned or leased property:

- (1) ~~All leases and/or easements will be done on state forms.~~
- (2)(1) ~~All lease and license agreements will include shall be a an initial five year term with two optional five year renewal periods.~~
- (3)(2) ~~All lease and license agreements will shall include an access agreement and a non-exclusive right to install backhaul and fronthaul cabling or fiber, either overhead or buried, which will require a utility easement.~~
- (4)(3) ~~All lease/license agreements will include an annual rate adjustment provision. The fair market value of the state owned or leased property is subject to an annual rate adjustment as set forth in the lease.~~
- (5)(4) ~~Rent shall be paid annually.~~
- (6) ~~Appropriate insurance coverages will be kept in force at all times.~~
- (7) ~~The applicant will maintain all required Federal, State, and local licenses and permits.~~
- (8)(5) ~~An Agency will shall require an escrow fund as part of the broadband provider's lease or license agreement.~~
- (9)(6) ~~Site specific protocols as set out in the lease and license agreement for construction and maintenance procedures shall be strictly adhered to by the Applicant during installation and during the any continued maintenance.~~
- (10)(7) ~~Upgrades or changes to equipment, other than replacement of defective units, equipment shall require prior approval from SPO. be reviewed by SPO for compliance with the existing lease prior to any changes to equipment.~~
- (11)(8) ~~The Agency will shall not be responsible for supplying supply space in any existing equipment buildings, nor responsible for supplying electricity.~~
- (12)(9) ~~Upon termination of the agreement, at the Agency's request, the applicant shall remove all equipment and cabling from the tower, ice-bridge, and fenced property. Upon removal, the escrow funds shall be returned by the Agency within 60 days of satisfactory inspection. The agency shall then inspect the property to ensure compliance with this Paragraph. Upon a finding~~

that all equipment and cabling is removed and the property has been returned to preleased conditions, the escrow funds shall be returned to the Broadband provider within 60 days.

Authority G.S. 146-29.1; 146-29.2; 146-30; S.L. 2018-5, s. 37.1(a)-(i).

This Section contains information for the meeting of the Rules Review Commission January 17, 2019 at 1711 New Hope Church Road, RRC Commission Room, Raleigh, NC. Anyone wishing to submit written comment on any rule before the Commission should submit those comments to the RRC staff, the agency, and the individual Commissioners. Specific instructions and addresses may be obtained from the Rules Review Commission at 919-431-3000. Anyone wishing to address the Commission should notify the RRC staff and the agency no later than 5:00 p.m. of the 2nd business day before the meeting. Please refer to RRC rules codified in 26 NCAC 05.

RULES REVIEW COMMISSION MEMBERS**Appointed by Senate**

Jeff Hyde (1st Vice Chair)
Robert A. Bryan, Jr.
Margaret Currin
Jeffrey A. Poley
Brian P. LiVecchi

Appointed by House

Garth Dunklin (Chair)
Andrew P. Atkins
Anna Baird Choi
Paul Powell
Jeanette Doran (2nd Vice Chair)

COMMISSION COUNSEL

Amber Cronk May (919)431-3074
Amanda Reeder (919)431-3079
Jason Thomas (919)431-3081

RULES REVIEW COMMISSION MEETING DATES

March 21, 2019 April 18, 2019
May 16, 2019 June 20, 2019

RULES REVIEW COMMISSION MEETING**MINUTES****January 17, 2019**

The Rules Review Commission met on Thursday, January 17, 2019, in the Commission Room at 1711 New Hope Church Road, Raleigh, North Carolina. Commissioners present were: Andrew Atkins, Bobby Bryan, Anna Baird Choi, Margaret Currin, Jeanette Doran, Garth Dunklin, Jeff Hyde, Brian LiVecchi, Jeff Poley, and Paul Powell.

Staff members present were Commission Counsels Amber Cronk May, Amanda Reeder, and Jason Thomas; and Julie Brincefield, Alex Burgos, and Dana McGhee.

The meeting was called to order at 9:01 a.m. with Chairman Dunklin presiding.

Chairman Dunklin read the notice required by G.S. 163A-159 and reminded the Commission members that they have a duty to avoid conflicts of interest and the appearances of conflicts of interest.

Chairman Dunklin read into the record the following statement of economic interest for:

Jeanette Doran, which stated there was no actual or likely conflict of interest.

Garth Dunklin, which stated there was no actual conflict of interest, but found the potential for a conflict of interest. The potential conflict identified does not prohibit service on this entity.

Mr. Dunklin fills the role of a public member on the Commission and he is the current Chair of the Commission. He is an Attorney/Manager with the law firm of Bass, Dunklin, McCullough & Smith, PLLC. He has disclosed that he has been an Adjunct Professor at the University of North Carolina at Charlotte. As such, Mr. Dunklin has the potential for a conflict of interest and should exercise appropriate caution in the performance of his public duties should issues regarding the University of North Carolina at Charlotte and/or the attorneys and the clients of the law firm come before the Commission for official action.

The Chairman notified the Commissioners that the following item on the agenda would be taken up out of order at the end of the agenda: the follow-up matter rules for the Commission for the Blind.

APPROVAL OF MINUTES

Chairman Dunklin asked for any discussion, comments, or corrections concerning the minutes of the December 13, 2018 meeting. There were none and the minutes were approved as distributed.

FOLLOW UP MATTERS

Board of Elections and Ethics Enforcement

The agency is addressing the objections for 08 NCAC 02 .0112, .0113; 03 .0101, .0102, .0103, .0104, .0105, .0106, .0201, .0202, .0301, .0302; 04 .0302, .0304, .0305, .0306, .0307; 06B .0103, .0104, .0105; 08 .0104; 09 .0106, .0107, .0108, .0109; 10B .0101, .0102, .0103, .0104, .0105, .0106, .0107 -No action was required by the Commission.

Prior to the review of the rules from the Board of Elections and Ethics Enforcement, Commissioner Doran recused herself and did not participate in any discussion concerning the rules because she has a matter pending before the Board.

Commissioner LiVecchi was not present for the discussion on these Rules.

DHHS/Division of Medical Assistance

10A NCAC 22F .0301 - No action was required by the Commission, as the rewritten rule was approved at the November 15, 2018 meeting, but the changes were determined to be substantial pursuant to G.S. 150B-21.12(c). The agency is required to republish the rule in accordance with the procedure set forth in G.S. 150B-21.1(a3) and (b).

Commissioner LiVecchi was not present for the discussion on these Rules.

Commission for the Blind

10A NCAC 63C .0203, .0204, .0403, and .0601 – The Commission continued its objection to the rules in accordance with G.S. 150B-21.12.

The Commission continued its objection to 10A NCAC 63C .0601, Paragraphs (a)(8) (“business consultation”), and (a)(9) (“consultation to support operations”), because the indicated terms are unclear and ambiguous.

The Commission continued its objection to 10A NCAC 63C .0203, Paragraph (d)(6), because it effectively incorporates the ambiguous terms in Rule .0601 that are identified above.

The Commission waived 26 NCAC 05 .0103(a) and allowed Dixon Snukals to submit documents after the deadline. Dixon Snukals, representing the Elected Committee of Blind Vendors, addressed the Commission.

Cynthia Speight, the Director with the Division of Services for the Blind, addressed the Commission.

Environmental Management Commission

15A NCAC 13B .0830, .0831, .0832, .0833, .0834, .0835, .0836, .0837, .0838, .0839, .0840, .0841, .0842, .0843, .0844, .0845, and .0846 – All rewritten rules were unanimously approved.

Commissioner LiVecchi was not present for the discussion or vote on these Rules.

LOG OF FILINGS (PERMANENT RULES)

Pre-Reviewed Rules

Board of Agriculture 02 NCAC 09B

All rules were unanimously approved.

Commissioner LiVecchi was not present for the discussion or vote on these Rules.

Soil and Water Conservation Commission

The Commission extended the period of review for the rules in accordance with G.S. 150B-21.10. They did so in response to a request from the Soil and Water Conservation Commission to extend the period in order to allow the agency to address the requested technical changes and submit the rewritten rules at a later meeting.

Commissioner LiVecchi was not present for the discussion or vote on these Rules.

Board of Barber Examiners

21 NCAC 06N .0101 was unanimously approved.

Prior to the review of the rule from the Board of Barber Examiners, Commissioner Choi recused herself and did not participate in any discussion concerning the rule because her law firm provides legal representation to the Board.

Commissioner LiVecchi was not present for the discussion or vote on this Rule.

Board of Dental Examiners

All rules were unanimously approved.

Commissioner LiVecchi was not present for the discussion or vote on these Rules.

Substance Abuse Professional Practice Board

All rules were unanimously approved with the following exceptions:

The Commission objected to 21 NCAC 68 .0203 based upon lack of statutory authority and failure to comply with the APA. Specifically, in Subparagraph (a)(4) of this Rule, the Board proposed to charge a \$200 registration fee. However, G.S. 90-113.38(b1) limits the registration fee to \$150. The Commission found that the Board does not have authority to exceed the amount set by statute. In addition, when the Board noticed this Rule in the October 15, 2018 Register, it proposed that the fee be \$150. The agency raised the amount of the registration fee by \$50 after publication. The Commission found that this change after publication constituted a substantial change as defined in G.S. 150B-21.2(g), and therefore, the agency failed to comply with the APA.

The Commission objected to 21 NCAC 68 .0205, .0211, .0212, and .0305 based upon lack of statutory authority to charge a higher registration fee than allowed by statute.

The Commission objected to 21 NCAC 68 .0208 for lack of statutory authority. Specifically, the Commission objected to Subparagraphs (c)(2) and (c)(3) of the Rule, in which the Board set the ratio of supervision at one hour of supervision for every 80 to 160 hours of practice, with the amount of supervision decreasing the longer the individual has been practicing. G.S. 90-113.37A(b) sets the ratio of supervision to work at 40 hours. The Commission found that the Board does not have the authority to alter the statutory requirement.

Commissioner LiVecchi was not present for the discussion or vote on these Rules.

*Non Pre-Reviewed Rules***Board of Agriculture 02 NCAC 37**

02 NCAC 37 .0203 was unanimously approved.

Commissioner LiVecchi was not present for the discussion or vote on this Rule.

Commissioner of Agriculture

All rules were unanimously approved.

Commissioner LiVecchi was not present for the discussion or vote on these Rules.

Board of Agriculture 02 NCAC 60B

02 NCAC 60B .0701 was unanimously approved.

Commissioner LiVecchi was not present for the discussion or vote on this Rule.

Department of Insurance

11 NCAC 20 .0101 was unanimously approved.

Commissioner LiVecchi was not present for the discussion or vote on this Rule.

Alcoholic Beverage Control Commission

14B NCAC 15A .0102 was unanimously approved.

Marine Fisheries Commission

All rules were unanimously approved.

Coastal Resources Commission

All rules were unanimously approved with the following exceptions:

The Commission extended the period of review for 15A NCAC 07H .0209, .0308, .1704, and .1705 in accordance with G.S. 150B-21.10. They did so in response to a request from the Coastal Resources Commission to extend the period in order to allow the agency to address the requested technical changes and submit the rewritten rules at a later meeting.

Department of Transportation

All rules were unanimously approved with the following exceptions:

The Commission extended the period of review for 19A NCAC 02D .0408, 02E .0412, .0418, .0419, .0420, .0421, and .1006 in accordance with G.S. 150B-21.10. They did so in response to a request from the Department of Transportation to extend the period in order to allow the agency to address the requested technical changes and submit the rewritten rules at a later meeting.

Board of Examiners of Electrical Contractors

21 NCAC 18B .0201 was unanimously approved.

LOG OF FILINGS (TEMPORARY RULES)**Department of Administration**

All rules were unanimously approved.

EXISTING RULES REVIEW**Board of Agriculture**

02 NCAC 46 - The Commission unanimously approved the report as submitted by the agency.
02 NCAC 48A - The Commission unanimously approved the report as submitted by the agency.
02 NCAC 48B - The Commission unanimously approved the report as submitted by the agency.
02 NCAC 52J - The Commission unanimously approved the report as submitted by the agency.
02 NCAC 61- The Commission unanimously approved the report as submitted by the agency.

Department of Insurance

11 NCAC 01- The Commission deferred review pursuant to Rule 26 NCAC 05 .0210 because it had a question regarding an apparent discrepancy in the report.
11 NCAC 04 - The Commission unanimously approved the report as submitted by the agency.
11 NCAC 17- The Commission unanimously approved the report as submitted by the agency.

Marine Fisheries Commission

15A NCAC 18A .0100, .0300-.0900, .3400 - The Commission unanimously approved the report as submitted by the agency.

Medical Care Commission

10A NCAC 13K - As reflected in the attached letter, the Commission voted to schedule readoption of the rules no later than November 30, 2021 pursuant to G.S. 150B-21.3A(d)(2).

Prior to the review of the proposed readoption date from the Medical Care Commission, Commissioner Poley recused himself and did not participate in any discussion concerning the proposed readoptions because his law firm may have conflicts.

Victims Compensation Commission

14B NCAC 09 – As reflected in the attached letter, the Commission voted to schedule readoption of the rules no later than May 31, 2020 pursuant to G.S. 150B-21.3A(d)(2).

Coastal Resources Commission

15A NCAC 07 H, I, J, K, L, M - As reflected in the attached letter, the Commission voted to schedule readoption of the rules no later than July 31, 2020 pursuant to G.S. 150B-21.3A(d)(2).

2019 STATE MEDICAL FACILITIES PLAN

The Commission found that the Department of Health and Human Services and the State Health Coordinating Council complied with G.S. 131E-176(25) in the adoption of the 2019 Plan.

Prior to the review of the 2019 State Medical Facilities Plan, Commissioner Poley recused himself and did not participate in any discussion concerning the 2019 State Medical Facilities Plan because his law firm may have conflicts.

Commissioner Doran was not present for the discussion or vote on the 2019 State Medical Facilities Plan.

COMMISSION BUSINESS

The Chair gave an update on the consent order in the matter of DHHS/CPH v. RRC.

The Commission amended Rule 26 NCAC 05 .0211 to reflect a change in the periodic review schedule.

The Commission reviewed and approved the 2019 Rules Review Commission meeting dates.

The meeting adjourned at 10:35 a.m.

The next regularly scheduled meeting of the Commission is Thursday, February 21, 2019 at 9:00 a.m.

Alexander Burgos, Paralegal

Minutes approved by the Rules Review Commission:
Garth Dunklin, Chair

January 17, 2019

Rules Review Commission
Meeting
Please Print Legibly

Name	Agency
CATHERINE BLUM	DEQ-DIVISION OF MARINE FISHERIES
Hannah Jennigan	NCDOT
Cynthia Speight	WSB
Elaine Kniv	DHHS
Jennifer Everett	DEQ
Dennis Seavers	BBE
Tien Cheng	NCDA&CS
Kellie Wade	NCDOT
JOHN F. MADDREY	DEPT. OF ADMINISTRATION
Nadine Pfeiffer	NC DHHS-DHSR
Charles Case	McGuire Woods for ECBV
Sean Brogan	NC FOREST SERVICE
Shannon Gerger	NC Dept of Admin
Jessica Montie	NC DEQ
Anita Mac Mullan	NCDA + CS
Kathie Trotter	NCDSB
Christy Goebel	NC DEQ
William Wilton	NCDOJ
BOBBY WHITE	NC DENTAL BOARD
Dan Brack	for NC Dental Board
Dixon Smukals	McGuire Woods LLP

RULES REVIEW COMMISSION

January 17, 2019

Rules Review Commission
Meeting
Please Print Legibly

[illegible]



**STATE OF NORTH CAROLINA
OFFICE OF ADMINISTRATIVE HEARINGS**

Mailing address:
6714 Mail Service Center
Raleigh, NC 27699-6714

Street address:
1711 New Hope Church Rd
Raleigh, NC 27609-6285

January 17, 2019

Nadine Pfeiffer, Rulemaking Coordinator
Department of Health and Human Services
Medical Care Commission
2701 Mail Service Center
Raleigh, North Carolina 27699-2701

Re: Readoption pursuant to G.S. 150B-21.3A(c)(2)g of **10A NCAC 13K**

Dear Ms. Pfeiffer:

Attached to this letter are the rules subject to readoption pursuant to the periodic review and expiration of existing rules as set forth in G.S. 150B-21.3A(c)(2)g. After consultation with your agency, this set of rules was discussed at the January 17, 2019 Rules Review Commission meeting regarding the scheduling of these rules for readoption. Pursuant to G.S. 150B-21.3A(d)(2), the rules identified on the attached printout shall be readopted by the agency no later than November 30, 2021.

If you have any questions regarding the Commission's action, please let me know.

Sincerely,

Amber May
Commission Counsel

Administration
919/431-3000
fax: 919/431-3100

Rules Division
919/431-3000
fax: 919/431-3104

Judges and
Assistants
919/431-3000
fax: 919/431-3100

Clerk's Office
919/431-3000
fax: 919/431-3100

Rules Review
Commission
919/431-3000
fax: 919/431-3104

Civil Rights
Division
919/431-3036
fax: 919/431-3103

An Equal Employment Opportunity Employer

**RRC DETERMINATION
PERIODIC RULE REVIEW
October 18, 2018
APO Review: December 22, 2018
Medical Care Commission
Total: 18**

RRC Determination: Necessary with substantive public interest

Rule	Determination
<u>10A NCAC 13K .0102</u>	Necessary with substantive public interest
<u>10A NCAC 13K .0401</u>	Necessary with substantive public interest
<u>10A NCAC 13K .0604</u>	Necessary with substantive public interest
<u>10A NCAC 13K .0701</u>	Necessary with substantive public interest
<u>10A NCAC 13K .1104</u>	Necessary with substantive public interest
<u>10A NCAC 13K .1109</u>	Necessary with substantive public interest
<u>10A NCAC 13K .1113</u>	Necessary with substantive public interest
<u>10A NCAC 13K .1114</u>	Necessary with substantive public interest
<u>10A NCAC 13K .1115</u>	Necessary with substantive public interest
<u>10A NCAC 13K .1116</u>	Necessary with substantive public interest
<u>10A NCAC 13K .1201</u>	Necessary with substantive public interest
<u>10A NCAC 13K .1204</u>	Necessary with substantive public interest
<u>10A NCAC 13K .1205</u>	Necessary with substantive public interest
<u>10A NCAC 13K .1206</u>	Necessary with substantive public interest
<u>10A NCAC 13K .1207</u>	Necessary with substantive public interest
<u>10A NCAC 13K .1208</u>	Necessary with substantive public interest
<u>10A NCAC 13K .1211</u>	Necessary with substantive public interest
<u>10A NCAC 13K .1212</u>	Necessary with substantive public interest



STATE OF NORTH CAROLINA
OFFICE OF ADMINISTRATIVE HEARINGS

Mailing address:
6714 Mail Service Center
Raleigh, NC 27699-6700

Street address:
1711 New Hope Church Rd
Raleigh, NC 27609-6285

January 17, 2019

Will Polk, Rulemaking Coordinator
Victims Compensation Commission
4201 Mail Service Center
Raleigh, North Carolina 27699-1001

Re: Readoption pursuant to G.S. 150B-21.3A(c)(2)g of **14B NCAC 09**

Dear Mr. Polk:

Attached to this letter are the rules subject to readoption pursuant to the periodic review and expiration of existing rules as set forth in G.S. 150B-21.3A(c)(2)g. After consultation with your agency, this set of rules was discussed at the January 17, 2019 Rules Review Commission meeting regarding the scheduling of these rules for readoption. Pursuant to G.S. 150B-21.3A(d)(2), the rules identified on the attached printout shall be readopted by the agency no later than May 31, 2020.

If you have any questions regarding the Commission's action, please let me know.

Sincerely,

Amber May
Commission Counsel

Administration
919/431-3000
fax: 919/431-3100

Rules Division
919/431-3000
fax: 919/431-3104

Judges and
Assistants
919/431-3000
fax: 919/431-3100

Clerk's Office
919/431-3000
fax: 919/431-3100

Rules Review
Commission
919/431-3000
fax: 919/431-3104

Civil Rights
Division
919/431-3036
fax: 919/431-3103

An Equal Employment Opportunity Employer

**RRC DETERMINATION
PERIODIC RULE REVIEW
November 16, 2017
APO Review: January 09, 2018
Victims Compensation Commission
Total: 5**

RRC Determination: Necessary with substantive public interest

Rule		Determination
<u>14B NCAC 09</u>	<u>.0301</u>	Necessary with substantive public interest
<u>14B NCAC 09</u>	<u>.0302</u>	Necessary with substantive public interest
<u>14B NCAC 09</u>	<u>.0303</u>	Necessary with substantive public interest
<u>14B NCAC 09</u>	<u>.0304</u>	Necessary with substantive public interest
<u>14B NCAC 09</u>	<u>.0305</u>	Necessary with substantive public interest



**STATE OF NORTH CAROLINA
OFFICE OF ADMINISTRATIVE HEARINGS**

Mailing address:
6714 Mail Service Center
Raleigh, NC 27699-6714

Street address:
1711 New Hope Church Rd
Raleigh, NC 27609-6285

January 17, 2019

Jennifer Everett
Coastal Resources Commission
1601 Mail Service Center
Raleigh, North Carolina 27699-1601

Re: Readoption pursuant to G.S. 150B-21.3A(c)(2)g of **15A NCAC 07 H, I, J, K, L, and M**

Dear Ms. Everett:

Attached to this letter are the rules subject to readoption pursuant to the periodic review and expiration of existing rules as set forth in G.S. 150B-21.3A(c)(2)g. After consultation with your agency, this set of rules was discussed at the January 17, 2018 Rules Review Commission meeting regarding the scheduling of these rules for readoption. Pursuant to G.S. 150B-21.3A(d)(2), the rules identified on the attached printout shall be readopted by the agency no later than July 31, 2020.

If you have any questions regarding the Commission's action, please let me know.

Sincerely,

Amber May
Commission Counsel

Administration
919/431-3000
fax: 919/431-3100

Rules Division
919/431-3000
fax: 919/431-3104

Judges and
Assistants
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Rules Review
Commission
919/431-3000
fax: 919/431-3104

Civil Rights
Division
919/431-3036
fax: 919/431-3103

An Equal Employment Opportunity Employer

**RRC DETERMINATION
PERIODIC RULE REVIEW
January 25, 2018
APO Review: March 06, 2018
Coastal Resources Commission
Total: 226**

RRC Determination: Necessary with substantive public interest

Rule	Determination
<u>15A NCAC 07H .0104</u>	Necessary with substantive public interest
<u>15A NCAC 07H .0105</u>	Necessary with substantive public interest
<u>15A NCAC 07H .0106</u>	Necessary with substantive public interest
<u>15A NCAC 07H .0201</u>	Necessary with substantive public interest
<u>15A NCAC 07H .0203</u>	Necessary with substantive public interest
<u>15A NCAC 07H .0205</u>	Necessary with substantive public interest
<u>15A NCAC 07H .0206</u>	Necessary with substantive public interest
<u>15A NCAC 07H .0207</u>	Necessary with substantive public interest
<u>15A NCAC 07H .0208</u>	Necessary with substantive public interest
<u>15A NCAC 07H .0209</u>	Necessary with substantive public interest
<u>15A NCAC 07H .0301</u>	Necessary with substantive public interest
<u>15A NCAC 07H .0302</u>	Necessary with substantive public interest
<u>15A NCAC 07H .0303</u>	Necessary with substantive public interest
<u>15A NCAC 07H .0304</u>	Necessary with substantive public interest
<u>15A NCAC 07H .0305</u>	Necessary with substantive public interest
<u>15A NCAC 07H .0306</u>	Necessary with substantive public interest
<u>15A NCAC 07H .0308</u>	Necessary with substantive public interest
<u>15A NCAC 07H .0309</u>	Necessary with substantive public interest
<u>15A NCAC 07H .0310</u>	Necessary with substantive public interest
<u>15A NCAC 07H .0311</u>	Necessary with substantive public interest
<u>15A NCAC 07H .0312</u>	Necessary with substantive public interest
<u>15A NCAC 07H .0401</u>	Necessary with substantive public interest
<u>15A NCAC 07H .0404</u>	Necessary with substantive public interest
<u>15A NCAC 07H .0405</u>	Necessary with substantive public interest
<u>15A NCAC 07H .0406</u>	Necessary with substantive public interest
<u>15A NCAC 07H .0501</u>	Necessary with substantive public interest
<u>15A NCAC 07H .0502</u>	Necessary with substantive public interest
<u>15A NCAC 07H .0503</u>	Necessary with substantive public interest
<u>15A NCAC 07H .0504</u>	Necessary with substantive public interest
<u>15A NCAC 07H .0505</u>	Necessary with substantive public interest
<u>15A NCAC 07H .0506</u>	Necessary with substantive public interest
<u>15A NCAC 07H .0507</u>	Necessary with substantive public interest
<u>15A NCAC 07H .0508</u>	Necessary with substantive public interest

15A	NCAC	07H	.2703	Necessary with substantive public interest
15A	NCAC	07H	.2704	Necessary with substantive public interest
15A	NCAC	07H	.2705	Necessary with substantive public interest
15A	NCAC	07I	.0204	Necessary with substantive public interest
15A	NCAC	07I	.0302	Necessary with substantive public interest
15A	NCAC	07I	.0305	Necessary with substantive public interest
15A	NCAC	07I	.0306	Necessary with substantive public interest
15A	NCAC	07I	.0401	Necessary with substantive public interest
15A	NCAC	07I	.0402	Necessary with substantive public interest
15A	NCAC	07I	.0406	Necessary with substantive public interest
15A	NCAC	07I	.0504	Necessary with substantive public interest
15A	NCAC	07I	.0505	Necessary with substantive public interest
15A	NCAC	07I	.0506	Necessary with substantive public interest
15A	NCAC	07I	.0507	Necessary with substantive public interest
15A	NCAC	07I	.0508	Necessary with substantive public interest
15A	NCAC	07I	.0509	Necessary with substantive public interest
15A	NCAC	07I	.0510	Necessary with substantive public interest
15A	NCAC	07I	.0511	Necessary with substantive public interest
15A	NCAC	07I	.0601	Necessary with substantive public interest
15A	NCAC	07I	.0602	Necessary with substantive public interest
15A	NCAC	07I	.0701	Necessary with substantive public interest
15A	NCAC	07I	.0702	Necessary with substantive public interest
15A	NCAC	07J	.0102	Necessary with substantive public interest
15A	NCAC	07J	.0201	Necessary with substantive public interest
15A	NCAC	07J	.0203	Necessary with substantive public interest
15A	NCAC	07J	.0204	Necessary with substantive public interest
15A	NCAC	07J	.0206	Necessary with substantive public interest
15A	NCAC	07J	.0207	Necessary with substantive public interest
15A	NCAC	07J	.0208	Necessary with substantive public interest
15A	NCAC	07J	.0209	Necessary with substantive public interest
15A	NCAC	07J	.0210	Necessary with substantive public interest
15A	NCAC	07J	.0211	Necessary with substantive public interest
15A	NCAC	07J	.0301	Necessary with substantive public interest
15A	NCAC	07J	.0302	Necessary with substantive public interest
15A	NCAC	07J	.0312	Necessary with substantive public interest
15A	NCAC	07J	.0403	Necessary with substantive public interest
15A	NCAC	07J	.0404	Necessary with substantive public interest
15A	NCAC	07J	.0405	Necessary with substantive public interest
15A	NCAC	07J	.0406	Necessary with substantive public interest
15A	NCAC	07J	.0407	Necessary with substantive public interest
15A	NCAC	07J	.0409	Necessary with substantive public interest
15A	NCAC	07J	.0410	Necessary with substantive public interest
15A	NCAC	07J	.0602	Necessary with substantive public interest
15A	NCAC	07J	.0603	Necessary with substantive public interest

15A	NCAC 07J	.0604	Necessary with substantive public interest
15A	NCAC 07J	.0605	Necessary with substantive public interest
15A	NCAC 07J	.0701	Necessary with substantive public interest
15A	NCAC 07J	.0702	Necessary with substantive public interest
15A	NCAC 07J	.0703	Necessary with substantive public interest
15A	NCAC 07J	.1105	Necessary with substantive public interest
15A	NCAC 07J	.1106	Necessary with substantive public interest
15A	NCAC 07J	.1107	Necessary with substantive public interest
15A	NCAC 07J	.1201	Necessary with substantive public interest
15A	NCAC 07J	.1202	Necessary with substantive public interest
15A	NCAC 07J	.1203	Necessary with substantive public interest
15A	NCAC 07J	.1204	Necessary with substantive public interest
15A	NCAC 07J	.1205	Necessary with substantive public interest
15A	NCAC 07J	.1206	Necessary with substantive public interest
15A	NCAC 07J	.1301	Necessary with substantive public interest
15A	NCAC 07J	.1302	Necessary with substantive public interest
15A	NCAC 07J	.1303	Necessary with substantive public interest
15A	NCAC 07K	.0101	Necessary with substantive public interest
15A	NCAC 07K	.0103	Necessary with substantive public interest
15A	NCAC 07K	.0202	Necessary with substantive public interest
15A	NCAC 07K	.0204	Necessary with substantive public interest
15A	NCAC 07K	.0205	Necessary with substantive public interest
15A	NCAC 07K	.0206	Necessary with substantive public interest
15A	NCAC 07K	.0207	Necessary with substantive public interest
15A	NCAC 07K	.0208	Necessary with substantive public interest
15A	NCAC 07K	.0209	Necessary with substantive public interest
15A	NCAC 07K	.0210	Necessary with substantive public interest
15A	NCAC 07K	.0211	Necessary with substantive public interest
15A	NCAC 07K	.0212	Necessary with substantive public interest
15A	NCAC 07K	.0401	Necessary with substantive public interest
15A	NCAC 07K	.0402	Necessary with substantive public interest
15A	NCAC 07L	.0503	Necessary with substantive public interest
15A	NCAC 07M	.0201	Necessary with substantive public interest
15A	NCAC 07M	.0202	Necessary with substantive public interest
15A	NCAC 07M	.0301	Necessary with substantive public interest
15A	NCAC 07M	.0302	Necessary with substantive public interest
15A	NCAC 07M	.0303	Necessary with substantive public interest
15A	NCAC 07M	.0306	Necessary with substantive public interest
15A	NCAC 07M	.0307	Necessary with substantive public interest
15A	NCAC 07M	.0308	Necessary with substantive public interest
15A	NCAC 07M	.0401	Necessary with substantive public interest
15A	NCAC 07M	.0402	Necessary with substantive public interest
15A	NCAC 07M	.0403	Necessary with substantive public interest
15A	NCAC 07M	.0503	Necessary with substantive public interest

<u>15A NCAC 07M .0601</u>	Necessary with substantive public interest
<u>15A NCAC 07M .0602</u>	Necessary with substantive public interest
<u>15A NCAC 07M .0603</u>	Necessary with substantive public interest
<u>15A NCAC 07M .0701</u>	Necessary with substantive public interest
<u>15A NCAC 07M .0702</u>	Necessary with substantive public interest
<u>15A NCAC 07M .0703</u>	Necessary with substantive public interest
<u>15A NCAC 07M .0704</u>	Necessary with substantive public interest
<u>15A NCAC 07M .0705</u>	Necessary with substantive public interest
<u>15A NCAC 07M .0801</u>	Necessary with substantive public interest
<u>15A NCAC 07M .0802</u>	Necessary with substantive public interest
<u>15A NCAC 07M .0902</u>	Necessary with substantive public interest
<u>15A NCAC 07M .1001</u>	Necessary with substantive public interest
<u>15A NCAC 07M .1002</u>	Necessary with substantive public interest
<u>15A NCAC 07M .1101</u>	Necessary with substantive public interest
<u>15A NCAC 07M .1102</u>	Necessary with substantive public interest
<u>15A NCAC 07M .1201</u>	Necessary with substantive public interest
<u>15A NCAC 07M .1202</u>	Necessary with substantive public interest

LIST OF APPROVED PERMANENT RULES

January 17, 2019 Meeting

AGRICULTURE, BOARD OF

<u>Adoptions by Reference</u>	02 NCAC 09B .0116
<u>Current Good Manufacturing Practices for Retail Food Estab...</u>	02 NCAC 09B .0135
<u>Nematode Advisory Service</u>	02 NCAC 37 .0203

AGRICULTURE, COMMISSIONER OF

<u>Evaluation of Applications</u>	02 NCAC 58 .0105
<u>Grant Agreement</u>	02 NCAC 58 .0106
<u>Reporting</u>	02 NCAC 58 .0107
<u>Records</u>	02 NCAC 58 .0108

AGRICULTURE, BOARD OF

<u>Administration of Program</u>	02 NCAC 60B .0701
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INSURANCE, DEPARTMENT OF

<u>Scope and Definitions</u>	11 NCAC 20 .0101
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ALCOHOLIC BEVERAGE CONTROL COMMISSION

<u>Location and Address</u>	14B NCAC 15A .0102
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MARINE FISHERIES COMMISSION

<u>Possession or Transportation Limits Through State Waters;...</u>	15A NCAC 03I .0120
<u>Nets or Net Stakes</u>	15A NCAC 03J .0102
<u>Nets Pulled by More than One Vessel</u>	15A NCAC 03J .0108
<u>Chowan River and Meherrin River</u>	15A NCAC 03J .0203
<u>Currituck Sound and Its Tributaries</u>	15A NCAC 03J .0204
<u>Southport Boat Harbor</u>	15A NCAC 03J .0206
<u>Nuclear Plant Intake Canal</u>	15A NCAC 03J .0207
<u>Albemarle Sound and Chowan River River Herring Management...</u>	15A NCAC 03J .0209
<u>Dredges and Mechanical Methods Prohibited</u>	15A NCAC 03J .0303
<u>Electrical Fishing Device in Cape Fear River</u>	15A NCAC 03J .0304
<u>Hook and Line</u>	15A NCAC 03J .0306
<u>Size and Harvest Limits</u>	15A NCAC 03K .0402
<u>Disposition of Meats</u>	15A NCAC 03K .0403
<u>Dredges and Mechanical Methods Prohibited and Open Season</u>	15A NCAC 03K .0404
<u>Oysters, Hard Clams, or Mussels Prohibited</u>	15A NCAC 03K .0405
<u>Bay Scallop Harvest Management</u>	15A NCAC 03K .0501
<u>Taking Bay Scallops at Night and on Weekends</u>	15A NCAC 03K .0502
<u>Bay Scallop Dredge Prohibited</u>	15A NCAC 03K .0503
<u>Calico Scallop Harvest</u>	15A NCAC 03K .0504
<u>Marketing Scallops Taken from Shellfish Leases or Franchises</u>	15A NCAC 03K .0507
<u>Scallop Aquaculture Harvest Exemptions</u>	15A NCAC 03K .0508
<u>Stone Crabs</u>	15A NCAC 03L .0208
<u>Mutilated Finfish</u>	15A NCAC 03M .0101
<u>Unmarketable Finfish</u>	15A NCAC 03M .0102

<u>Minimum Size Limits</u>	15A NCAC 03M .0103
<u>Red Drum</u>	15A NCAC 03M .0501
<u>Mullet</u>	15A NCAC 03M .0502
<u>Snapper Grouper Complex</u>	15A NCAC 03M .0506
<u>Billfish</u>	15A NCAC 03M .0507
<u>American Eel</u>	15A NCAC 03M .0510
<u>River Herring</u>	15A NCAC 03M .0513
<u>Dolphin</u>	15A NCAC 03M .0515
<u>Wahoo</u>	15A NCAC 03M .0517
<u>Kingfishes (Sea Mullet)</u>	15A NCAC 03M .0518
<u>Tuna</u>	15A NCAC 03M .0520
<u>Sheepshead</u>	15A NCAC 03M .0521
<u>Display of Licenses and Registrations</u>	15A NCAC 03O .0106
<u>For-Hire License Requirements</u>	15A NCAC 03O .0112
<u>Procedures and Requirements to Obtain Permits</u>	15A NCAC 03O .0501
<u>Permit Conditions; Specific</u>	15A NCAC 03O .0503
<u>Attended Gill Net Areas</u>	15A NCAC 03R .0112

COASTAL RESOURCES COMMISSION

<u>Public Hearing and Local Adoption Requirements</u>	15A NCAC 07B .0802
<u>Certification and Use of the Plan</u>	15A NCAC 07B .0803
<u>Maintenance and Repair</u>	15A NCAC 07K .0103
<u>Single Family Residences Exempted</u>	15A NCAC 07K .0208

ENVIRONMENTAL MANAGEMENT COMMISSION

<u>Incorporation by Reference</u>	15A NCAC 13B .0830
<u>Definitions</u>	15A NCAC 13B .0831
<u>General Provisions</u>	15A NCAC 13B .0832
<u>Septage Management Firm Permits</u>	15A NCAC 13B .0833
<u>Permit Fees</u>	15A NCAC 13B .0834
<u>Septage Land Application Site Permits</u>	15A NCAC 13B .0835
<u>Septage Detention and Treatment Facility Permits</u>	15A NCAC 13B .0836
<u>Location of Septage Land Application Sites</u>	15A NCAC 13B .0837
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<u>Innovative or Alternative Treatment or Storage Methods</u>	15A NCAC 13B .0842
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<u>Copies Of Forms</u>	19A NCAC 02B .0145
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<u>General Regulations for Drawbridges</u>	19A NCAC 02D .0415
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<u>Commercial Entrances Intersecting with Right of Way</u>	19A NCAC 02E .0417
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<u>Fees, Access to Forms, and Renewals</u>	21 NCAC 06N .0101
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January 17, 2019 Meeting**ADMINISTRATION, DEPARTMENT OF**

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**RRC Determination
Periodic Rule Review
January 17, 2019
Necessary with substantive public interest**

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02 NCAC 48A .0402
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Marine Fisheries Commission

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RRC Determination
Periodic Rule Review
January 17, 2019
Necessary without substantive public interest

Agriculture, Board of
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11 NCAC 17 .0105
11 NCAC 17 .0106

**RRC Determination
Periodic Rule Review
January 17, 2019
Unnecessary**

Agriculture, Board of

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02 NCAC 52J .0604
02 NCAC 52J .0605

02 NCAC 52J .0606
02 NCAC 52J .0607
02 NCAC 52J .0608
02 NCAC 52J .0609

CONTESTED CASE DECISIONS

This Section contains a listing of recently issued Administrative Law Judge decisions for contested cases that are non-confidential. Published decisions are available for viewing on the OAH website at <http://www.ncoah.com/hearings/decisions/>. If you are having problems accessing the text of the decisions online or for other questions regarding contested cases or case decisions, please contact the Clerk's office by email: oah.clerks@oah.nc.gov or phone 919-431-3000.

OFFICE OF ADMINISTRATIVE HEARINGS**Chief Administrative Law Judge****JULIAN MANN, III****Senior Administrative Law Judge****FRED G. MORRISON JR.****ADMINISTRATIVE LAW JUDGES**

Melissa Owens Lassiter
Don Overby
J. Randall May
David Sutton
Tenisha Jacobs

A. B. Elkins II
Selina Malherbe
J. Randolph Ward
Stacey Bawtinheimer

Year	Code	Number	Date Decision Filed	Petitioner		Respondent	ALJ
				<u>PUBLISHED</u>			
18	ABC	03865	11/15/2018	NC Alcoholic Beverage Control Commission	v.	Davidson Ventures LLC T/A Wine and Canvas	Malherbe
18	DHR	02700	11/2/2018	Myronette Alspaugh	v.	NC Department of Health and Human Services Medicaid/ NC Health Choice Program	May
18	DHR	03934	11/8/2018	Erica Fennell	v.	NC Department of Health and Human Services, Division of Health Service Regulation	Malherbe
18	DOJ	02094	11/5/2018	Erica Nicole Selby	v.	NC Criminal Justice Education and Training Standards Commission	Ward
18	DOJ	02763	11/30/2018	Brice K Marshall	v.	NC Sheriffs Education and Training Standards Commission	Overby
18	DOJ	02967	11/29/2018	Scott D Helton Sr	v.	NC Sheriffs Education and Training Standards Commission	Overby
18	DOJ	03216	11/27/2018	Alfred Wortham	v.	NC Sheriffs Education and Training Standards Commission	Overby
18	DOJ	03842	11/27/2018	Joshua M Bunton	v.	NC Sheriffs Education and Training Standards Commission	Overby
18	DOJ	04489	11/27/2018	Emily Greer Bell	v.	NC Sheriffs Education and Training Standards Commission	Overby

CONTESTED CASE DECISIONS

18	EDC	02121	11/5/2018	Renita Harvey	v.	North Carolina State Board of Education	Ward
				<u>UNPUBLISHED</u>			
18	ABC	05383	11/2/2018	NC Alcoholic Beverage Control Commission	v.	Ambience Special Event Center LLC T/A Ambience Special Event Center	Jacobs
18	ABC	05594	11/28/2018	NC Alcoholic Beverage Control Commission	v.	Crazy Iguana Bar and Grill LLC T/A Crazy Iguana Bar and Grill	Jacobs
17	CSE	07635	11/9/2018	John G Currall	v.	NC Department of Health and Human Services, Division of Social Services, Child Support Enforcement	Elkins
18	CSE	03833	11/14/2018	Timothy F Bourque	v.	NC Department of Health and Human Services, Division of Social Services, Child Support Enforcement	Ward
18	CSE	05358	11/15/2018	Johnathan Lee Antinori	v.	NC Department of Health and Human Services, Division of Social Services, Child Support Enforcement	May
18	DHR	03955	11/15/2018	Lucia M Gonzalez	v.	NC Department of Health and Human Services	Malherbe
18	DHR	04726	11/14/2018	Patrice Michelle Harris Powell	v.	NC Healthcare Registry Department of Health & Human Svcs	Ward
18	DHR	04798	11/28/2018	Living Waters Home Care LLC	v.	NCDHHS NCDHHS Legal Counsel	Sutton
18	DHR	05158	11/27/2018	Dwayne S Williams	v.	NC Department of Health and Human Services, Division of Health Service Regulation	Lassiter
18	DHR	05271	11/5/2018	Moyer Ideas LLC Brandon Moyer	v.	Buncombe County Health Department	Sutton
18	DHR	05522	11/8/2018	Margaret Newman	v.	Department of Health and Human Services	Malherbe
18	DHR	05716	11/21/2018	LSM Enterprizes Inc Marshall Elmore	v.	Cardinal Innovations Healthcare	May
18	DHR	05810	11/16/2018	Love and Learn Academy Regina Ross	v.	Department of Health and Human Services	Malherbe
18	DHR	05878	11/27/2018	Deborah P Reyes	v.	Department of Health and Human Services, Division of Health Service Regulation	Sutton