15A NCAC 02B .0701 is adopted with changes as published in 33:16 NCR 1671-1717 as follows:

SECTION .0700 – NUTRIENT MANAGEMENT STRATEGY RULES FOR SURFACE WATERS

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:~~ In this Section, the following terms shall mean:

(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" or "BMP" 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",~~ "Delivered" as in delivered allocation, load, or limit, means that portion of the allocation, load, or limit that is ~~measured or predicted~~ estimated 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. ~~Quality and its successors.~~

(15) "DMS" means the N.C. Division of Mitigation Services. ~~Services or its successor.~~ DMS, as administrator of the Riparian Buffer Restoration Fund, is the only in-lieu fee program to which rules of this Section apply.

(16) "Estuarine Nutrient Strategy" means the Neuse Nutrient Strategy as enumerated in Rule .0710 of this Section and the Tar-Pamlico Nutrient Strategy as set forth in Rule .0730 of this Section.

~~(16)~~(17) "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)~~(18) "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~~ 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~~ State permit, they are in place before the effective date established in the applicable ~~state~~ State and federal entities stormwater rule of this Section.

~~(18)~~(19) "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) "Industrial discharge(s)" for the purpose of the nutrient strategy rules of this Section, means the discharge of industrial process treated wastewater or wastewater other than sewage. Stormwater shall not be considered to be an industrial wastewater unless it is contaminated with industrial wastewater. Industrial discharge includes:

(a) Wastewater resulting from any process of industry or manufacture, or from the development of any natural resource; or

(b) Wastewater resulting from processes of trade or business, including wastewater from laundromats and car washes, but not wastewater from restaurants.

~~(20)~~(21) "Land-disturbing activity" means the same as defined in Rule .0202 of this Subchapter.

~~(21)~~(22) "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)~~(23) "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)~~(24) "Local government" means the same as defined in Rule .0202 of this Subchapter.

~~(24)~~(25) "MGD" means million gallons per day.

~~(25)~~(26) "Nitrogen" means total nitrogen unless specified otherwise.

~~(26)~~(27) "Nonpoint source load allocation" is that portion of an approved total maximum daily load (TMDL) ~~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)~~(28) "Nonpoint source pollution" means the same as defined in Rule .0202 of this Subchapter.

~~(28)~~(29) "Non-wasting endowment" is a fund that generates enough interest to cover the cost of perpetual ~~monitoring, maintenance, repair and renovation~~ monitoring and enforcement of a nutrient reduction ~~project.~~by a perpetual steward.

~~(29)~~(30) "NPDES" means National Pollutant Discharge Elimination System, and ~~connotes~~ includes 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~~ 1251, et seq.

~~(30)~~(31) "Nutrients" means the combination of total nitrogen and total phosphorus for the purpose of the nutrient rules of this section.

~~(31)~~(32) "Nutrient Offset Bank" is a site at which a nutrient ~~reduction~~ offset project ~~that~~ is implemented by a provider ~~except DMS~~ and approved ~~by the Division~~ for ~~the purpose of generating~~ nutrient offset ~~credit.~~ credit by the Division through execution of a nutrient offset banking instrument. This term does not include nutrient offset projects associated with an in-lieu fee program.

~~(32)~~(33) "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)~~(34) "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)~~(35) "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)~~(36) "Nutrient Reduction Project" is a site-specific installation and implementation of a nutrient reduction practice or combination of practices.

~~(36)~~(37) "Nutrient Sensitive Waters" means the same as defined or classified in Rule .0223 of this Subchapter.

~~(37)~~(38) "Permanent Nutrient Offset Credit" is a nutrient load reduction credit that ~~is generated in compliance with this rule.~~ does not automatically expire. 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.

(39) "Perpetual Steward" means an entity that provides oversight for a permanent nutrient offset project. "Oversight" for the purposes of this Item includes monitoring and enforcement responsibilities assumed by the steward and approved by the Division as a condition of granting permanent nutrient offset credit.

~~(38)~~(40) "Phosphorus" means total phosphorus unless specified otherwise.

~~(39)~~(41) "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.~~

(42) "Release" of nutrient offset credits means the Division approves and acknowledges the generation of nutrient offset credits. Nutrient offset bank providers may sell, transfer, or use credits upon release. DMS may debit credits upon project institution but credits will still be subject to final approval and release by DWR.

~~(40)~~(43) "Residuals" means the same as defined in Rule .0202 of this Subchapter.

~~(41)~~(44) "Stormwater Collection System" means the same as defined in 15A NCAC 02H .1002.

(45) "Stormwater Control Measure" or ~~"SCM," also known as "Best Management Practice" or "BMP,"~~ "SCM" means the same as defined in 15A NCAC 02H .1002.

~~(43)~~(46) "Surface waters" means all waters of the ~~state~~ State as defined in G.S. ~~143-212~~ 143-212, except underground waters.

~~(44)~~(47) "Term Nutrient Offset Credit" is a nutrient load reduction credit that accounts for annual nutrient load ~~reductions.~~for a finite period of time. Temporary nutrient offset credits are expressed in pounds of total nitrogen or total phosphorus.

~~(45)~~(48) "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)~~(49) "Total nitrogen" means the sum of the organic, nitrate, nitrite, and ammonia forms of nitrogen in a water or wastewater.

~~(47)~~(50) "Total phosphorus" means the sum of the orthophosphate, polyphosphate, and organic forms of phosphorus in a water or wastewater.

~~(48)~~(51) "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)~~(52) "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)~~(53) "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.

History Note: *Authority G.S. 143-214.1; ~~1432-214.3;~~143-214.3; 143-214.5; 143-214.7; 143-215.1; ~~143215.3;~~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);*
Eff. January 1, 2020.

15A NCAC 02B .0240 is readopted with changes as published in 33:16 NCR 1671-1717 as follows:

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 [~~rule.~~] Nutrient accounting includes joint compliance by multiple local governments as authorized in individual nutrient strategy rules. Nutrient offset credits represent a compliance option where allowed by nutrient rules of this Subchapter, including:

(1) the Neuse Nutrient Strategy as set forth in Rule .0710 of this Section;

(2) the Tar-Pamlico Nutrient Strategy as set forth in Rule .0730 of this Section;

(3) the Jordan Lake Nutrient Strategy as set forth in Rule .0262 of this Subchapter; and

(4) the Falls Lake Nutrient Strategy as set forth in Rule .0275 of this Subchapter.

~~(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 Lake 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~~] outside of the Falls Lake watershed only if they were generated by a nutrient reduction project [~~within the same geographic area~~] located outside of the Falls Lake watershed.

(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~~] surface waters identified for restoration under the applicable nutrient-related TMDL or nutrient [~~strategy,~~] strategy; or

(B) [~~an assessment unit~~] surface waters 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~~] implemented, and sustained in a manner that, according to the best available scientific evidence, [~~studies~~] 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~~] 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~~] State or federal requirements; or those resulting from [~~state~~] 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, or both, in the project plan. Permanent nutrient

reduction credits and term nutrient reduction credits shall be maintained [~~on separate ledgers~~] separately, even if associated with the same nutrient offset [~~bank or~~] project.

(7) Permanent nutrient offset credits may be utilized for temporary compliance purposes. If so, for[~~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~~] associated with any [~~bank~~] nutrient offset project to reclassify credits as permanent [~~which~~] that 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,~~] Rule, [~~are~~] shall be 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.

~~(c) 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~~]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~~] or in compliance with in-lieu fee nutrient offset [~~applicable mitigation permit~~] requirements applicable at the time an in-lieu fee payment was accepted.

(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.~~] strategy, unless excepted by Subparagraph (d)(1) of this Paragraph. The Division may accept more recent documentation if it determines such documentation establishes the probable loading condition of the site during the baseline period.

(E)[~~Description~~] A description of the proposed project [~~with sufficient detail to~~] that supports [~~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~~] shall be deemed as meeting 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 determined 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,~~]project;

(ii) construct and ensure initial performance of the [~~project,~~]project;

(iii) report on and successfully complete the [~~project,~~] project by completing all crediting milestones;

(iv) hold and enforce all easement or other protection [~~mechanisms,~~]mechanisms; and

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

(H) [~~Description~~] A 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~~] A description of how the project will be maintained and monitored after it has been installed and for its duration.

(J) [~~Description~~] A 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~~] State grant funding contributing to project implementation.

(3) FINANCIAL ASSURANCES. Providers [~~except DMS~~] seeking approval of a nutrient offset bank shall provide the financial assurance that a project plan will be [~~completed~~]constructed 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,~~] Division in accordance with this Subparagraph, 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~~] 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 [~~(c)(1),~~] (1), (2) and (3) of this [~~Rule~~] Paragraph 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~~] nutrient offset bank and until [~~the are exhausted~~] bank closure, nutrient offset bank 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~~] State grant funding 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:~~]All permanent nutrient offset projects shall comply with the following requirements:

(1) 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:~~]Perpetual stewards may not assume project maintenance or restoration responsibilities.

(2) 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.~~] completed permanent project. The endowment amount shall be proportionate to the duties accepted by the perpetual steward.

(3) For projects utilizing conservation easements, the provider shall acquire and then transfer a conservation easement to a perpetual steward in accordance with [~~16~~] 26 U.S.C. 170(h) and the Conservation and Historic Preservation Agreements Act, G.S. [~~121-34 et seq.~~] 121, Article 4. The terms of the conservation easement shall be consistent with a Division-approved template or be approved by the [~~Division.~~] Division as conforming to Paragraph (c) of this Rule. Non-governmental perpetual stewards shall be accredited by the Land Trust Accreditation [~~Commission.~~] Commission or approved by the Division.

(4) For projects utilizing [~~stormwater control measures (SCMs), SCMs~~] SCMs, they shall be placed in and protected by 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 generated by an SCM if it determines that the [~~bank or project~~] SCM 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, or this Rule.

(5) [~~Notwithstanding the other requirements of this Paragraph, a permanent project~~]Projects designed to restore a natural ecological community at the project site, which are completed and then damaged by natural causes, may be passively restored exclusively through natural ecological processes. [~~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~~] cataloguing unit or for each geographic area identified in ~~Paragraph (b),~~ Paragraph (b) of this Rule, 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),~~ Paragraph (b) of this Rule, 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~~] Projects shall be instituted before the end of the first full [~~state~~] State fiscal year after DMS receives payment and constructed before the end of the third full [~~state~~] 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,~~] (3) of this Paragraph, then DMS shall develop an action strategy to include in the annual report specified in Subparagraph [~~(i)(2) of this Rule.~~] (2) of this Paragraph. Action strategies shall include all of the following:

(A) a list of factors resulting in delays or deficiencies in procurement, project [~~implementation~~] implementation, [~~and/or~~] or [~~construction,~~] 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,~~] strategy;

(C) the anticipated date by which all outstanding nutrient offset credit requirements will be [~~satisfied,~~] satisfied; and

(D) an evaluation of current progress in relation to any prior action strategies.[~~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~~] those rules, the requirements of Paragraph (b) of this [~~rule,~~] 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~~] 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~~] NPDES wastewater discharge requirements, the applicant shall provide [~~10~~] 50 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 and 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.~~] Rule. Alternatively, the developer shall comply with all provisions of this [~~rule~~] 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 to the Division 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.~~] Rule. Any credits generated may then be utilized for compliance purposes as if acquired from another provider.

History Note: *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;~~]*
Eff. August 1, 1998;
Amended Eff. August 1, 2006;
Amended Eff. September 1, 2010.
Readopted Eff. January 1, 2020.

15A NCAC 02B .0232 is readopted with changes as published in 33:16 NCR 1671-1717 as follows:

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~~]Act, S.L. 1997-458. [~~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,~~]stormwater;

(2) Rule .0712 for [~~agriculture,~~]agriculture:

(3) Rule .0713 for wastewater [~~discharges,~~]discharges;

(4) Rule [~~.0714~~].0233 for riparian buffer [~~protection,~~] protection; and

(5) Rule [~~.0715~~].0241 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~~] The Division [~~is pursuing fuller evaluation of~~] shall evaluate the basin's nutrient dynamics to inform and guide adaptive management. [~~Evaluation~~] This evaluation shall [~~seek to~~] utilize all sources of available information, including stakeholder input, and shall consider drivers, [~~character~~] character, and shifts in the impairment with time, [~~trends~~] 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~~]The evaluation shall address the extent to which the reduction goals identified [~~above~~] in Paragraph (c) of this Rule have been achieved and shall [~~shall, based on its findings,~~] provide recommendations on management needs. The Division shall [~~seek to~~] complete [~~an~~] the evaluation within three years of the effective date of this [~~rule~~] Rule and shall distribute the findings [~~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~~ PENALTIES. Failure to meet requirements of the Neuse [~~Nutrient Strategy Rules~~] 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).

History Note: *Authority G.S. 143-214.1; 143-214.7; 143-215.1; 143-215.3(a)(1); 143B-282; S.L. 1995-572;* [~~*143-215.6A; 143-215.6B; 143-215.6C;*~~]

Eff. August 1, 1998.

Readopted Eff. January 1, 2020..

15A NCAC 02B .0235 is readopted with changes as published in 33:16 NCR 1671-1717 as follows:

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.

~~(1)~~(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.~~] Rule, except as noted in Sub-Item (3)(a) of this Rule where the Department shall implement them. 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,~~]Cary;

~~(b)~~(ii)[~~Durham,~~]Durham;

~~(c)~~(iii)[~~Garner,~~Garner;

~~(d)~~(iv)[~~Goldsboro,~~]Goldsboro;

~~(e)~~(v)[~~Havelock,~~]Havelock;

~~(f)~~(vi)[~~Kinston,~~]Kinston;

~~(g)~~(vii)[~~New Bern,~~]New Bern;

~~(h)~~(viii)[~~Raleigh,~~]Raleigh;

~~(i)~~(ix)[~~Smithfield,~~]Smithfield;

~~(j)~~(x)[~~Wilson,~~]Wilson;

~~(k)~~(xi)[~~Durham County,~~]Durham County;

~~(l)~~(xii)[~~Johnston County,~~]Johnston County;

~~(m)~~(xiii)[~~Orange County,~~]Orange County;

~~(n)~~(xiv)[~~Wake County, and~~]Wake County; and

~~(o)~~(xv) Wayne County.

(b) The following additional local [~~governments are subject to this Rule:~~]governments as of the effective date of this readoption:

(i) [~~Apex,~~] Apex;

(ii) [~~Clayton,~~] Clayton;

(iii) [~~Fuquay Varina,~~] Fuquay Varina;

(iv) [~~Greenville,~~] Greenville;

(v) [~~Holly Springs,~~] Holly Springs;

(vi) [~~Knightdale,~~] Knightdale;

(vii) [~~Morrisville,~~] Morrisville;

(viii) [~~Rolesville,~~] Rolesville;

(viii) [~~Wake Forest,~~] Wake Forest;

(ix) [~~Wendell,~~] Wendell;

(x) [~~Winterville,~~] Winterville;

(xi) [~~Craven County,~~] Craven County;

(xii) [~~Greene~~] Nash [~~County,~~] County;

[~~(xii) Nash County,~~]

[~~(xiv)~~] (xiii)[~~Pitt County,~~] Pitt County; and

[~~(xv)~~](xiv) 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)~~] (3) LOCAL PROGRAM IMPLEMENTATION REQUIREMENTS. All local governments subject to this [~~rule~~] Rule shall implement stormwater management programs approved by the Commission [~~pursuant to~~] following 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.~~] development projects not excluded under Item (4) of this Rule. To the extent permitted by federal law, including 33 USC 26, and 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~~] State or federal entity for the requirements of this Rule, the entity shall obtain Department review and approval.

(b) A plan to ensure maintenance of [~~stormwater control measures (SCMs)~~] 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.

(4) DEVELOPMENT EXCLUDED. The following development activities shall not be subject to this Rule:

(a) Projects disturbing less than:

(i) one acre for single family and duplex residential property and recreational facilities; and

(ii) one-half acre for commercial, industrial, institutional, multifamily residential, or local government land uses with the following exception: Projects below one-half acre that would replace or expand existing structures on a parcel, resulting in a cumulative built-upon area for the parcel exceeding twenty-four percent, shall be subject to Item (5) of this Rule;

(b) Development of an individual single-family or duplex residential lot that:

(i) Is not part of a larger common plan of development or sale as defined in 15A NCAC 02H .1002; and

(ii) Does not result in greater than five percent built upon area on the lot;

(c) Projects subject to requirements of the Falls Nutrient Strategy New Development Stormwater rule, 15A NCAC 02B .0277;

(d) Existing development as defined in 15A NCAC 02H .1002;

(e) Redevelopment as defined in G.S. 143-214.7(a1)(2); and

(f) Activities subject to requirements of the Neuse Agriculture rule, 15A NCAC 02B .0712.

(5) DEVELOPMENT PROJECT REQUIREMENTS. A proposed development project not excluded under Item (4) of this Rule shall be approved by a subject local government for the purpose of this Rule when the applicable requirements of Item [~~(4)~~](3) of this Rule and the following criteria are met.

~~(i)~~(a) The [~~project area,~~] project, as defined in State stormwater rule 15A NCAC 02H .1002, shall meet either a nitrogen loading rate target of 3.6 pounds/acre/year or "runoff volume match" as defined in [~~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;~~] that Rule. Proposed development projects that would replace or expand existing structures and result in a net increase in built-upon area shall meet one of these options for the project less any existing built-upon area. ~~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) Regarding stormwater treatment and other onsite post-construction elements, projects not subject to more stringent standards under one of the following State stormwater rules or a local ordinance shall meet 15A NCAC 02H .1003, which includes specifications for low- and high-density designs, vegetated setbacks, and stormwater outlets for all projects. Such projects shall use a high-density treatment threshold of twenty four percent or greater built-upon area and a storm depth of one inch for SCM design:

(i) Water Supply Watershed Protection rules, 15A NCAC 02B .0620 through .0624;

(ii) Coastal Counties stormwater rule 15A NCAC 02H .1019; or

(iii) Non-Coastal County HWQs and ORWs rule 15A NCAC 02H .1021.

(c) The following are exceptions to the onsite requirements of Sub-Item (b) of this Item:

(i) Proposed development projects may utilize an offsite SCM that is dedicated to treating an area encompassing the project, provided the SCM is designed to meet all applicable requirements identified in Sub-Item (b) of this Item; and

(ii) Proposed development undertaken by a local government solely as a public road expansion or public sidewalk project, or proposed development subject to the jurisdiction of the Surface Transportation Board, may meet the loading rate target of this Item entirely through use of permanent nutrient offset credit pursuant to Rule .0703 of this Section.

(d) Where in satisfying the onsite requirements of Sub-Item (b) of this Item, a project does not meet the loading rate target of this Item, it may do so through use of permanent nutrient offset credit pursuant to Rule .0703 of this Section. Persons doing so shall provide proof of credit acquisition to the permitting authority prior to approval of the development plan.

[~~(b)~~](e) 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 or exceeds the following criteria, [~~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)~~](f) 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 or exceeds the following criteria, [~~criteria at least as well,~~] as determined by the Division:

(i) Provides project site loading reduction estimates from the installation of [~~DEMLR~~] Department of Energy, Mineral and Land Resources (DEMLR) approved SCMs;

(ii) Reductions apply to the portion of the [~~project area's~~] project'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)~~](g) Proposed development projects shall demonstrate compliance with the riparian buffer protection requirements [~~of Rule .0714 of this Section.~~]set forth in 15A NCAC 02B .0233.

~~(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;~~

~~(c) 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~~] eight months of the effective date of this Rule, the Division shall submit a model local stormwater program embodying the elements in Items [~~(4) and~~] (3) through (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~~] pursuant to Sub-Item (2)(a) of this Rule and additional local governments designated [~~herein~~] pursuant to Sub-Item (2)(b) of this Rule 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~~] (3) through (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~~] (3) through (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;~~] 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)~~](3) 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~~] following its approval pursuant to the requirements of this [~~item~~] 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.

History Note: *Authority G.S. 143-214.1; 143-214.7; 143-214.26; 143-215.1; 143-215.3(a)(1); 143-215.8B; 143B-282; S.L. 1995, c. ~~572;~~ 572.~~[S.L. 1997-458; S.L. 2006-246;]~~*
Eff. August 1, 1998;
Amended Eff. January 15, 2011 (this permanent rule replaces the temporary rule approved by the RRC on December 16, 2010).
Readopted Eff. January 1, 2020.

15A NCAC 02B .0238 is readopted with changes as published in 33:16 NCR 1671-1717 as follows:

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~~] set forth in in Rule .0710 of this Section. Nothing in this [~~rule~~] 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~~]agricultural operations as [~~described~~] defined in Item (2) of this Rule,[~~Rule from its 1991-1995 baseline level,~~] as estimated by best available accounting [~~practices.~~]practices meeting the criteria set forth in Item (6) of this Rule from its 1991-1995 baseline level.

(a) PROCESS. This Rule requires [~~farmers~~] agricultural producers in the Basin to implement land management practices that collectively, on a [~~county or watershed~~] basin-wide basis, will achieve the nutrient goals.

(b) 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, and the Commission may undertake separate rule making to address atmospheric sources at a later date. ~~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) AGRICULTURAL OPERATIONS DEFINED. For the purposes of this Rule, "agricultural operations," are activities, and "agricultural producers" are persons engaging in those 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 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.

[~~(2)~~](3) APPLICABILITY. This Rule shall apply to all [~~persons~~]agricultural producers engaging in agricultural [~~operations,~~] 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~~] set forth in Sub-Item (2)(c) of this Rule 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)~~](4) IMPLEMENTATION PROCESS. [~~A Basin Oversight Committee and county-level Local Advisory Committees~~] A Basin Oversight Committee, as set forth in Item (5) of this Rule, and county-level Local Advisory Committees, as set forth in Item (7) of this Rule, 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 [~~lands~~] agricultural operations within the basin shall follow requirements set forth in Item [~~(5)~~](6) of this Rule. Agricultural [~~Producers~~] 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~~] Agricultural producers subject to this Rule may elect to implement practices meeting the standards identified in Item [~~(7)~~](8) 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~~] 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~~] 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 noncompliance, the Commission may conduct additional rulemaking to [~~seek~~] require 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)~~](5) BASIN OVERSIGHT COMMITTEE. The Basin Oversight Committee shall have the following membership, [~~role~~] 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~~]Rule is assured, the Director shall solicit one nomination for membership on this Committee from each agency or interest in Sub-Items (a)(i) through (a)(viii) of this Item. [~~(4)(a)(i) through (4)(a)(v) of this Rule.~~] The Director shall confirm nominees in writing or request alternative nominations. The Director may appoint a replacement at any time for an interest in Sub-Items (a)(vi) through (a)(viii) of this Item [~~(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:~~]Agriculture for Sub-Item (vii):

(i) Division of Soil and Water [~~Conservation,~~] 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),~~] Committee);

(iii) North Carolina Department of ~~Agriculture,~~ Agriculture and Consumer [~~Services,~~]Services;

(iv) North Carolina Cooperative Extension [~~Service,~~] Service; ~~and~~

(v) Division of Water ~~Quality.~~ [~~Resources,~~] Resources;

(vi) Up to two environmental [~~interests,~~] interests;

(vii) Up to two general farming [~~interest,~~] 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.~~

~~(c) 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.~~

~~(c) 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~~]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)~~](6) of this Rule. [~~Continue to~~]The Committee shall submit these reports as initiated in 2002, to the [~~Director annually;~~] Director;

(ii) Take actions [~~called for~~] set forth [~~under~~] in Sub-Item [~~(3)(b)~~](4)(b) of this Rule [~~as needed~~] to address maintenance of the nitrogen reduction goal; and

(iii) Identify and implement refinements to the accounting [~~method~~] methodology [~~as needed~~] to reflect advances in scientific understanding, including establishment or refinement of nutrient reduction efficiencies for BMPs.

[~~(5)~~](6) ACCOUNTING METHODOLOGY. [~~Success in meeting this Rule's purpose will~~] The requirements of Item (1) of this Rule shall be gauged by estimating percentage changes in nitrogen loss from agricultural [~~lands~~] operations in the Neuse Basin. The Basin Oversight Committee shall [~~develop~~] develop, maintain, and update [~~as indicated elsewhere~~] ~~-~~as set forth in [~~of~~] 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;[~~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)~~](8) 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)~~](7) ~~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. [~~entities, whose appointees shall serve at the pleasure of the Directors:~~]

(i) Soil and Water Conservation [~~District,~~] District;

(ii) United States Department of Agriculture- Natural Resources Conservation [~~Service,~~] Service;

(iii) North Carolina Department of [~~Agriculture,~~] Agriculture;

(iv) North Carolina Cooperative Extension [~~Service,~~] Service;

(v) North Carolina Division of Soil and Water [~~Conservation,~~] 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~~] agricultural producers 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)~~](8) of this Rule and documentation of any expired contracts for BMPs; and

(ii) Take actions called for under Sub-Item [~~(3)(b)~~](4)(b) of this Rule to address maintenance of the nitrogen reduction goal.

[~~(7)~~](8) PRACTICE STANDARDS. To receive nutrient reduction credit, [~~credit under the accounting methods described elsewhere in this Rule,~~] a BMP shall be included in the accounting method set forth in Item (6) of this Rule, [~~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]Basin Oversight Committee 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.

(c) 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.~~

History Note: *Authority G.S. 143-214.1; 143-214.7; 143-215.3(a)(1); [~~S.L. 1997-458;~~]*
Eff. August 1, 1998.
Readopted Eff. January 1, 2020.

15A NCAC 02B .0234 is readopted with changes as published in 33:16 NCR 1671-1717 as follows:

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~~] discharges from wastewater treatment facilities in the Neuse River Basin that receive nitrogen-bearing wastewater and are required to obtain individual NPDES permits. [~~Dischargers~~] Discharges 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.~~] Strategy Rules of this Subchapter.

(3) Definitions. ~~For the purposes of this Rule, the following definitions apply~~: The terms used in this Rule shall be as defined in Rule .0701 of this Section and as follows:

(a) In regard to point source dischargers, treatment facilities, wastewater flows or discharges, or like matters:

(i) "Existing" means that which obtained ~~a~~an NPDES permit on or before December 31, 1995.

(ii) "Expanding" means that which increases beyond its permitted flow as defined in Sub-Item (3)(b) of this Rule.

(iii) "New" means that which had not obtained ~~a~~an 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)~~] (b) "Permitted flow" means the maximum monthly average flow authorized in a facility's NPDES permit as of December 31, 1995, with the following exceptions:

Facility Name	NPDES No.	Permitted Flow (MGD)
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~~] 1999 by the [~~USEPA,~~] US Environmental Protection Agency (EPA), the nitrogen wasteload allocation for point sources shall not exceed 1.64 million pounds per calendar 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~~] nutrient offset credits obtained in accordance with G.S. [~~143-214.26.~~] 143-214.26 and Rule .0703 of this Section.

(b) The Commission shall order future revisions in the Nitrogen TMDL and 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~~ 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~~ are 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; and

(vi) incentives for ~~responsible~~ nutrient management planning, utilities management, resource protection, and cooperative efforts among ~~dischargers; and~~ dischargers.

~~(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 the sum of its active individual discharge allocation, pursuant to Item (5) of this ~~Rule.~~ [~~Rule, adjusted to reflect any subsequent transfer of~~] Rule and any active allocation or nutrient offset

credits acquired pursuant to [~~the rules of the Neuse River nutrient management strategy.~~] Rule .0703 [~~and .0710~~] of this Section.

(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~~Director shall modify an existing facility's permit to 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(c)(2).~~] .0105(c)(2) prior to submitting an application to discharge.

(b) New facilities submitting an application shall ~~make every reasonable effort to obtain~~ acquire, or demonstrate contractual agreement to [~~acquire,~~] acquire prior to authorization to discharge, nitrogen ~~estuary~~ allocation ~~for the proposed wastewater discharge from existing dischargers. If estuary allocation cannot be obtained from the existing facilities, new facilities may or purchase a portion of the nonpoint source load allocation for a period of 30 years~~ from existing dischargers or nitrogen offset credits pursuant to [~~G.S. 143-214.26, or~~] Rule .0703 of this [~~Section, or both,~~] Section for the proposed discharge. The allocation and offset [~~credit~~] credits shall be sufficient for ~~a period of 30~~ [~~no less than 10~~] ~~years 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.~~ any partial calendar year in which the permit becomes effective plus 10 subsequent years of discharge at the proposed design flow [~~rate.~~] rate in accordance with 15A NCAC 02H .0112(c). ~~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 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 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.~~ The Director shall not issue a permit authorizing discharge from a new facility unless the applicant has satisfied the requirements of Sub-Items (a), (b), and (e) of this Item. If a new facility's permit contains tiered flow limits for expansion, the Director shall not authorize an increased discharge unless the applicant has satisfied the requirements of Sub-Items (a), (b), and (e) of this Item for that discharge.

(d) The [~~technology-based~~] 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~~] following technology-based mass limit, whichever is ~~less.~~ 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~~] achievable, calculated at the monthly average flow limit in the facility's NPDES [~~permit, whichever is less.~~] permit.

(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 or, where an existing permit contains tiered limits, requests to discharge at an increased flow 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 renewal, in accordance with 15A NCAC 02H .0112(c).~~] any partial calendar year in which the permit becomes effective plus 10 subsequent years of discharge at the proposed design flow rate.

(f) New dischargers ~~must~~ shall meet a monthly average total phosphorous limit of ~~1~~ 1.0 mg/L.

(g) The ~~director~~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(c)(2).~~].0105(c)(2) prior to submitting an application to discharge.

~~(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.~~]

~~(c) 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)~~] (b) ~~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~~] discharge at an increased flow, ~~may purchase a portion of the nonpoint source load allocation~~ shall acquire, or demonstrate contractual agreement to [~~acquire,~~] acquire prior to authorization to discharge at the increased flow, nitrogen allocation from existing dischargers or [~~purchase nutrient~~] nitrogen offset credits pursuant to [~~G.S. 143-214.26,~~] Rule .0703 of this Section, or both, for the proposed discharge. The allocation and offset credits shall be sufficient for ~~a period of 30~~ [~~10~~] ~~years~~ any partial calendar year in which the permit becomes effective plus 10 subsequent years of discharge at [~~te~~] the proposed design flow [~~rate.~~] rate in accordance with 15A NCAC 02H .0112(c). ~~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 offset 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)~~] (c) The [~~director~~]Director shall not issue a permit authorizing [~~expansion of~~] increased discharge from an existing facility unless the applicant has satisfied the requirements of

[~~Sub-Item (d)~~] Sub-Items (a), (b), and (e) of this Item. If a facility's permit contains tiered flow limits for expansion, the [~~director~~]Director shall not [~~issue an authorization to~~] authorize discharge at an increased flow unless the applicant has satisfied the requirements of [~~Sub-Item (d)~~] Sub-Items (a), (b), and (e) of this Item.

~~(e)~~ [~~(f)~~] (d) 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~~] following technology-based mass limit, whichever is ~~less.~~ 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 facility's NPDES permit, or its existing limit, 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 facility's modified NPDES [~~permit;~~] permit, except that the limit shall be no less than the facility's original allocation per Item (5) of this Rule; and

(ii) For facilities [~~of an~~] treating industrial [~~nature,~~] wastewaters, the mass equivalent to the best available technology economically [~~achievable or a concentration of 3.2 mg/L~~] achievable, calculated 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.~~] permit.

~~(f)~~ [~~(g)~~] (e) ~~The nitrogen discharge allocation limit 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 or, where an existing permit contains tiered limits, requests to discharge at an increased flow shall [~~further~~] demonstrate that the facility has sufficient [~~means~~] nitrogen allocation or offset credits to meet its effluent nutrient limitations for [~~at least 10 years beyond the requested renewal. pursuant to renewal, in accordance with 15A NCAC 02H .0112(c).~~] any partial calendar year in which the permit becomes effective plus 10 subsequent years of discharge at the proposed design flow rate.

~~(g)~~ [~~(h)~~] (f) Expanding facilities ~~must~~ shall meet a monthly average total phosphorous limit of ~~1~~ 1.0 mg/L unless they are a co-permittee member ~~in good standing~~ of a group compliance association described in Item (9) of this Rule, in which case they ~~must~~ shall meet a quarterly average total phosphorus limit of ~~2~~ 2.0 mg/L.

~~(h)~~ [~~(i)~~] (g) The ~~director~~Director shall modify an expanding facility's permit to 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~~ nitrogen 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~~ shall 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~~ be a co-permittee member of 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~~ group 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~~ are 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.

History Note: *Authority G.S. 143-214.1; 143-215; 143-215.1; 143-215.3(a)(1); S.L. 1995, c. 572;*
Temporary Adoption Eff. January 22, 1998;
Eff. August 1, 1998;
Temporary Amendment Eff. March 15, 2000;
Temporary Amendment Expired on December 10, 2000;
Amended Eff. April 1, 2003;
Readopted Eff. January 1, 2020.

15A NCAC 02B .0730 is adopted with changes as published in 33:16 NCR 1671-1717 as follows:

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~~ Act, S.L. 1997-458. ~~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~~ Rule ~~.0101(e)(3) and~~ 15A NCAC 02B ~~.0223.~~ .0223 of this Subchapter. 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.~~ Rule .0223 of the Subchapter. ~~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~~.0259 Riparian Buffer Protection; and

(f) Rule ~~.0735~~.0261 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~~ The Division ~~is pursuing fuller evaluation of~~ shall evaluate the basin's nutrient dynamics to inform and guide adaptive management. ~~Evaluation~~ This evaluation shall ~~seek to~~ utilize all sources of available information, including stakeholder input, and shall consider drivers, ~~character~~ character, and shifts in the impairment with time, ~~trends~~ 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~~ The evaluation shall address the extent to which the reduction goals identified in Item (2) of this Rule have been achieved and shall ~~shall, based on its findings,~~ provide recommendations on management needs. The Division shall ~~seek to~~ complete ~~an~~ the evaluation within three years of the effective date of this Rule and shall distribute the findings ~~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 the requirements of the Tar-Pamlico nutrient strategy rules ~~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.

History Note: *Authority G.S. 143-214.1; 143-214.7; 143-215.3(a)(1); 143-215.6A; ~~143-215.6B; 143-215.6C;~~ 143-215.8B; 143B-282; ~~S.L. 1997-458;~~*
Eff. January 1, 2020.

15A NCAC 02B .0258 is readopted with changes as published in 33:16 NCR 1671-1717 as follows:

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.~~] Rule, except as noted in Subparagraph (c)(1) of this Rule where the Department shall implement them. 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~~] Greenville;

(B)[~~Henderson~~] Henderson;

(C)[~~Oxford~~] Oxford;

(D)[~~Rocky Mount~~] Rocky Mount;

(E)[~~Tarboro~~] Tarboro;

(F)[~~Washington~~] Washington;

(G)[~~Beaufort County~~] Beaufort County;

(H)[~~Edgecombe County~~] Edgecombe County;

(I)[~~Franklin County~~] Franklin County;

(J)[~~Nash County~~] Nash County; and

(K)[~~Pitt County~~] Pitt County.

(2) [~~The Following additional local governments are subject to this Rule:~~]As of the effective date of this readoption, Wilson County.

[~~(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 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.~~]

(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~~] following the timeframes set out in Paragraph [~~(c)~~] (f) 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 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.~~] development projects not excluded under Paragraph (d) of this Rule. ~~These stormwater plans shall not be approved by the subject local governments unless the following criteria are met:~~ To the extent permitted by federal law, including 33 USC 26, and 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~~]State or federal entity for the requirements of this Rule, the entity shall obtain Department review and approval.

(2) A plan to ensure maintenance of [~~stormwater control measures (SCMs)~~] SCMs implemented to comply with this [~~rule~~] Rule for the life of the development;

(3) A plan to ensure enforcement and compliance with the provisions in Paragraph (e) 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 (e) 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 EXCLUDED. The following development activities shall not be subject to this Rule:

(1) Projects disturbing less than:

(A) one acre for single family and duplex residential property and recreational facilities; and

(B) one-half acre for commercial, industrial, institutional, multifamily residential, or local government land uses with the following exception: Projects below one-half acre that would replace or expand existing structures on a parcel, resulting in a cumulative built-upon area for the parcel exceeding twenty-four percent, shall be subject to Paragraph (e) of this Rule;

(2) Development of an individual single-family or duplex residential lot that:

(A) Is not part of a larger common plan of development or sale as in 15A NCAC 02H .1002; and

(B) Does not result in greater than five percent built upon area on the lot;

(3) Existing development as defined in rule 15A NCAC 02H .1002;

(4) Redevelopment as defined in G.S. 143-214.7(a1)(2); and

(5) Activities subject to requirements of the Tar-Pamlico Agriculture rule, 15A NCAC 02B .0732.

[~~(d)~~](e) DEVELOPMENT PROJECT REQUIREMENTS. A proposed development project not excluded under Paragraph (d) of this Rule shall be approved by a subject local government for the purpose of this Rule when the applicable requirements of Paragraph (c) of this Rule 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,~~] project, 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 "runoff volume match" as defined in [~~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;~~] that Rule. Proposed development projects that would replace or expand existing structures and result in a net increase in built-upon area shall meet one of these options for the project less any existing built-upon area.

(2) Regarding stormwater treatment and other onsite post-construction elements, projects not subject to more stringent standards under one of the following State stormwater rules or a local ordinance shall meet 15A NCAC 02H .1003, which includes specifications for low- and high-density designs, vegetated setbacks, and stormwater outlets for all projects. Such projects shall use a high-density treatment threshold of twenty four percent or greater built-upon area and a storm depth of one inch for SCM design:

(A) Water Supply Watershed Protection rules, 15A NCAC 02B .0620 through .0624;

(B) Coastal Counties stormwater rule 15A NCAC 02H .1019; or

(C) Non-Coastal County HWQs and ORWs rule 15A NCAC 02H .1021.

(3) The following are exceptions to the onsite requirements of Subparagraph (2) of this Paragraph:

(A) Proposed development projects may utilize an offsite SCM that is dedicated to treating an area encompassing the project, provided the SCM is designed to meet all applicable requirements identified in Subparagraph (2) of this Paragraph; and

(B) Proposed development undertaken by a local government solely as a public road expansion or public sidewalk project, or proposed development subject to the jurisdiction of the Surface Transportation Board, may meet the loading rate target of this Paragraph entirely through use of permanent nutrient offset credit pursuant to Rule .0703 of this Section.

(4) Where in satisfying the onsite requirements of Subparagraph (2) of this Paragraph, a project does not meet the loading rate target of this Paragraph, it may do so through use of permanent nutrient offset credit pursuant to Rule .0703 of this Section. Persons doing so shall provide proof of credit acquisition to the permitting authority prior to approval of the development plan.

[~~(2)~~](5) 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 or exceeds the following criteria, [~~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)~~](6) 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 or exceeds the following criteria, [~~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~~]project'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;]

(7) Proposed development projects shall demonstrate compliance with the riparian buffer protection requirements set forth in 15A NCAC 02B .0259.

(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)~~](f) RULE IMPLEMENTATION

(1) Within [~~four~~] eight 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)~~] through (e) 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 pursuant to Subparagraph (b)(1) of this Rule [~~under the original version of this Rule effective April 2001~~] and additional local governments designated [~~herein~~] pursuant to Subparagraph (b)(2) of this Rule 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)~~] through (e) 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)~~] through (e) 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;~~]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~~] 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.

(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)~~](g) COMPLIANCE. A local government's authority to approve [~~new~~]development stormwater plans for compliance with this Rule pursuant to Paragraph [~~(d)~~] (e) 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 ;~~]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.~~

History Note: *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); 143-215.8B; S.L. 1997-458; S.L. 2006-246;*
Eff. April 1, 2001.
Readopted Eff. January 1, 2020.

15A NCAC 02B .0256 is readopted with changes as published in 33:16 NCR 1671-1717 as follows:

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~~]agricultural operations as [~~described~~] defined in Paragraph (b) of this [~~Rule,~~]Rule. This Rule requires persons engaging in agricultural operations in the [~~Basin~~] 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~~] Oversight Committee [~~will~~] shall coordinate activities and account for progress.

(1) PROCESS. This Rule requires ~~farmers~~ agricultural producers in the ~~Basin~~ basin to implement land management practices that collectively, on a ~~county or watershed~~ basin-wide 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, and the Commission may undertake separate rule making to address atmospheric sources at a later date. ~~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~~]agricultural producers engaging in agricultural [~~operations,~~] 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~~] set forth in Subparagraph (b)(3) of this Rule 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:~~ "agricultural operations," are activities, and "agricultural producers" are persons engaging in those 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~~ "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~~ (A) and (B) of this Subparagraph shall comply with [~~Forest Practices Guidelines Related to Water Quality codified at~~] ~~15A NCAC 01I.~~ 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.~~ (A) and (B) of this Subparagraph

(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.~~106-850.

(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).

(VII) The CFRs in this Subparagraph are incorporated by reference, including subsequent amendments and editions, and may be accessed free of charge at www.gpo.gov.

(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~~] A Basin Oversight Committee, as set forth in Paragraph (d) of this Rule, and county-level Local Advisory Committees, as set forth in Paragraph (e) of this Rule, shall coordinate activities and account for progress. ~~The membership, roles and responsibilities of these committees are set forth in Paragraphs (f) and (g) of this Rule.~~ ~~Committees' activities shall be guided by the following constraints:~~ Accounting for nutrient-reducing actions on [~~lands~~] agricultural operations within the basin shall follow requirements set forth in Subparagraph (d)(3) of this Rule. [~~Producers~~] Agricultural 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~~] Agricultural producers 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~~] 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 conduct additional rulemaking to [~~seek~~]require 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~~] 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:~~] 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 or interest in Parts (A) through (J) of this Subparagraph. The Director shall confirm nominees in writing or request alternative nominations. The Director may appoint a replacement at any time for an interest in Parts (F) through (J) of this Subparagraph upon request of representatives of that interest or by the request of the Commissioner of Agriculture for Part (G):

(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,~~]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~~]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)~~ Subparagraph (3) of this Paragraph. [~~of this Rule.~~] [~~Continue to~~]The Committee shall present these reports as initiated in 2002, to the [~~Director annually;~~]Director;

(B) Take actions [~~called for~~] set forth [~~under~~] in [~~Subparagraphs~~] Subparagraph (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; [~~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~~] The requirements of Paragraph (a) of this Rule shall be gauged by estimating percentage changes in nitrogen loss from agricultural [~~lands~~] operations 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~~] develop, maintain, and update as [~~indicated elsewhere~~] set forth 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;[~~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)~~ (f) of this Rule and of evaluating progress toward and maintenance of the nutrient [~~objectives~~] goals 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.~~] Subaragraph (d)(2)(D).

~~(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~~] Per S.L. 2001-355, 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~~] The Committee 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~~] agricultural producers that reside in the county.

(2) APPOINTMENT OF MEMBERS. ~~The~~ [~~Per S.L. 2001, c. 355,~~] Per S.L. 2001-355, 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 (1)(A), (1)(B), (1)(D), and (1)(E) of this Subparagraph. [~~(e)(1)(A), (e)(1)(B), (e)(1)(D), and (e)(1)(E) of this Rule.~~] As directed by ~~S.L. 2001, c. 355,~~ S.L. 2001-355, the Commissioner of Agriculture shall appoint the members described in ~~Subparagraphs~~ [~~Parts~~] [~~(e)(1)(C) and (e)(1)(F) of this Rule~~] Part (1)(F) of this Subparagraph 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~~] 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

(B) Take actions called for under Subparagraph (c)(2) of this Rule as needed to address maintenance of the nitrogen and phosphorus reduction goals.

~~(A) 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;~~

~~(B) Designate a member agency to compile and retain copies of all individual plans produced to comply with this Rule;~~

~~(C) 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;

(D) Ensure that any changes to the design of the local strategy will continue to meet the nutrient goals of this Rule; and

(E) 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.

(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.

(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.

(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.

(C) Local nutrient control strategies may prioritize BMP implementation to establish the most efficient and effective means of achieving the nutrient goals.

(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.

(f) PRACTICE STANDARDS. To receive nutrient reduction credit, [~~credit under the accounting methods described elsewhere in this Rule,~~] a BMP shall be included in the accounting method set forth in Subparagraph (d)(3) of this Rule, [~~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~~]Basin Oversight Committee and established by the NC Soil and Water Conservation Commission or the USDA-Natural Resources Conservation Service in North Carolina.

History Note: *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;~~*
Eff. September 1, 2001;
Temporary Amendment Eff. January 1, 2002 (exempt from 270 day requirement-S.L. 2001-355).
Readopted Eff. January 1, 2020.

15A NCAC 02B .0229 is readopted with changes as published in 33:16 NCR 1671-1717 as follows:

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. This Rule applies to Tar-Pamlico Basin Association member facilities on or after June 1, 2025. This Rule applies to other facilities upon this Rule's effective date.

(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 Item (4) of this Rule.

(c) "New" means that which had not obtained an NPDES permit on or before December 8, 1994.

(4) "Permitted flow" means the maximum monthly average flow authorized in a facility's NPDES permit as of 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:~~

~~Payment=((PF$_e$ x (TN+TP) x 1384) (0.5 x (TN+TP) x 1384)) x (BMP$_e$ x 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)~~] (5) This Item specifies nutrient controls for new facilities.

(a) Proposed new wastewater dischargers shall evaluate all practical alternatives to surface water discharge [~~discharge and report its findings~~] pursuant to 15A NCAC 02H [~~.0105(c)(2).~~] .0105(c)(2) prior to submitting an application to discharge.

(b) The technology-based 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:~~] exceed:

(i) [~~for~~] For facilities treating municipal or domestic wastewater, the mass load equivalent to a concentration of [~~3.0~~] 3.5 mg/L TN and 0.5 mg/L TP at the monthly average flow limit in the facility's NPDES permit; and

(ii) [~~for~~] 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~~] achievable, calculated at the monthly average flow limit in the facility's NPDES [~~permit, whichever is less.~~] permit.

(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 [~~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).~~] any partial calendar

year in which the permit becomes effective plus 10 subsequent years of discharge at the proposed design flow rate in accordance with 15A NCAC 02H .0112(c).

(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.~~] The Director shall not issue a permit authorizing discharge from a new facility unless the applicant has satisfied the requirements of Sub-Items (a), (c), and (e) of this Item. If a facility's permit contains tiered flow limits for expansion, the Director shall not authorize an increased discharge unless the applicant has satisfied the requirements of Sub-Items (a), (c), and (e) of this Item.

(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~~] any partial calendar year in which the permit becomes effective plus [~~ten~~] 10 subsequent years of discharge at the proposed design flow rate in accordance with 15A NCAC 02H .0112(c).

(f) The [~~director~~] 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)~~] (6) This Item specifies nutrient controls for expanding facilities.

(a) [~~Facilities proposing expansion~~] Expanding facilities shall evaluate all practical alternatives to surface water discharge [~~and report its findings~~] pursuant to 15A NCAC 02H .0105(c)(2) prior to submitting an application to discharge. [~~.0105(c)(2).~~]

(b) The nitrogen and phosphorus discharge limits for an [~~expanded~~] expanding facility shall not exceed the greater of loads equivalent to its active allocation and offset credit, or the [~~applicable~~] following technology-based mass [~~limit, whichever is less, for each nutrient. Technology based limits are as follows:~~] limits:

(i) [~~for~~] For facilities treating municipal or domestic [~~wastewaters,~~] wastewater, the mass equivalent to a concentration of [~~3.0~~] 3.5 mg/L TN and 0.5 mg/L TP at the monthly average flow limit in the NPDES permit; and

(ii) [~~for~~] 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~~] achievable, calculated at the monthly average flow limit in the facility's NPDES [~~permit, whichever is less.~~] permit.

(c) Facilities submitting application for increased discharge or, where an existing permit contains tiered flow limits, for authorization to [~~operate~~] discharge at an increased flow, shall acquire or demonstrate contractual agreement to acquire, prior to authorization to discharge at the increased flow, nutrient [~~estuary~~] allocation from existing dischargers or [~~purchase~~] nutrient offset credits pursuant to Rule .0703 of this Section [~~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 to meet its effluent nutrient limitations for [~~no less than 10~~] any partial calendar year in which the permit becomes effective plus 10 subsequent years of discharge at the proposed design flow [~~rate.~~] rate in accordance with 15A NCAC 02H .0112(c). [~~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.~~] The [~~director~~] Director shall not issue a permit authorizing [~~expansion of~~] increased discharge from an existing facility unless the applicant has satisfied the requirements of [~~Sub-Item (d)~~] Sub-Items (a), (c), and (e) of this Item. If a facility's permit contains tiered flow limits for expansion, the [~~director~~] Director shall not [~~issue an authorization to operate~~] authorize discharge at an increased flow unless the applicant has satisfied the requirements of [~~Sub-Item (d)~~] Sub-Items (a), (c), and (e) of this Item.

(e) Subsequent applications for permit renewal shall [~~further~~] demonstrate that the facility has sufficient [~~means~~] nitrogen allocation or offset credits to meet its effluent nutrient limitations for [~~at least~~] any partial calendar year in which the permit becomes effective plus 10 subsequent years [~~beyond renewal. See~~] of discharge at the proposed design flow rate in accordance with 15A NCAC 02H .0112(c).

(f) The [~~director~~] Director shall modify an expanding facility's permit to establish more stringent limits for nitrogen or phosphorus upon finding that such limits are necessary to protect water quality standards in localized areas.

(g) Existing wastewater dischargers expanding to greater than 0.5 MGD design capacity may petition the [~~Commission or its designee~~] Director for an exemption from Sub-Items [~~(a) through (g)~~] (a) through (c) and (e) 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~~] shall 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:~~

~~Payment=((PF$_e$ x (TN+TP) x 1384) (PF x (TN+TP) x 1384)) x (BMP$_e$ x 1.1) where:~~

~~Payment = the nutrient offset payment ($);~~

~~PFe = 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.~~

History Note: *Authority G.S. 143-214.1; 143-215.1; 143-215.3(a)(1); [~~143B-282(a) (d);~~] 143-215.8B; 143B-282; [~~S.L. 1997-458;~~]*
Eff. April 1, 1997;
Readopted Eff. January 1, 2020.

15A NCAC 02B .0236 is repealed through readoption as published in 33:16 NCR 1671-1717 as follows:

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

History Note: *Authority G.S. 143.214.1; 143.214.7; 143.215.3(a)(1).*
Eff. August 1, 1998;
Repealed Eff. January 1, 2020.

15A NCAC 02B .0237 is repealed through readoption as published in 33:16 NCR 1671-1717 as follows:

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

History Note: *Authority G.S. 143-214.1;*
Eff. April 1, 1997;
Repealed Eff. January 1, 2020.

15A NCAC 02B [~~.0249~~] .0239 is repealed through readoption as published in 33:16 NCR 1671-1717 as follows:

15A NCAC 02B .0239 NEUSE RIVER BASIN: NUTRIENT SENSITIVE WATERS MANAGEMENT STRATEGY: NUTRIENT MANAGEMENT

History Note: *Authority G.S. 143-214.1; 143-214.7; 143-215.3(a)(1);*
Eff. August 1, 1998;
Repealed Eff.. January 1, 2020.

15A NCAC 02B .0255 is repealed through readoption as published in 33:16 NCR 1671-1717 as follows:

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

History Note: *Authority G.S. 143-214.1; 143-214.7; 143-215.3(a)(1); 143-215.6A; 143-215.6B; 143-215.6C;*
Eff. April 1, 2001;
Repealed Eff. January 1, 2020.

15A NCAC 02B .0257 is repealed through readoption as published in 33:16 NCR 1671-1717 as follows:

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

History Note: *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);*
Eff. April 1, 2001;
Repealed Eff. January 1, 2020.

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

October 17, 2019

Jennifer Everett
Rulemaking Coordinator, EMC
Sent via email only to: Jennifer.Everett@ncdenr.gov

Re: Extension of the Period of Review for 15A NCAC 02B .0229, .0232, .0234, .0235, .0236, .0237, .0238, .0239, .0240, .0255, .0256, .0257, .0258, .0701, and .0730

Dear Ms. Everett:

At its meeting this morning, the Rules Review Commission extended the period of review for the above-captioned rules in accordance with G.S. 150B-21.10. They did so in response to a request from the agency to extend the period in order to allow the agency to address technical changes and submit the rewritten rules at a later meeting.

Pursuant to G.S. 150B-21.13, when the Commission extends the period of review, it is required to approve or object to rules or call a public hearing on the same within 70 days.

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

Sincerely,

Amanda J. Reeder
Commission Counsel

cc: John Huisman, DEQ

Burgos, Alexander N

Subject: FW: Request for Extension

From: Everett, Jennifer <jennifer.everett@ncdenr.gov>
Sent: Sunday, October 6, 2019 1:41 PM
To: Reeder, Amanda J <amanda.reeder@oah.nc.gov>
Cc: Huisman, John <john.huisman@ncdenr.gov>
Subject: Request for Extension

Dear Ms. Reeder,

We are kindly requesting the RRC to grant an extension for the period of review regarding EMC rules in 15A NCAC 02B. This will allow additional time for staff to address your technical change requests. Please let us know if you have any questions.

Thank You,

Jennifer

Jennifer Everett
DEQ Rulemaking Coordinator
N.C. Depart. Of Environmental Quality
Office of General Counsel
1601 Mail Service Center
Raleigh, NC 27699-1601
Tele: (919)-707-8614

REQUEST FOR TECHNICAL CHANGE

AGENCY: Environmental Management Commission

RULE CITATION: 15A NCAC 02B .0701

DEADLINE FOR RECEIPT: Friday, October 11, 2019

***PLEASE NOTE:* This request may extend to several pages. Please be sure you have reached the end of the document.**

The Rules Review Commission staff has completed its review of this Rule prior to the Commission's next meeting. The Commission has not yet reviewed this Rule and therefore there has not been a determination as to whether the Rule will be approved. You may call our office to inquire concerning the staff recommendation.

In reviewing this Rule, the staff recommends the following technical changes be made:

On the Submission for Permanent Rule form, Box 2, please insert the full name of the Rule.

Please note, as you are creating a new Section, you will need to create a name for the Section.

On line 4, delete "Unless context indicates otherwise" and "interpreted as follows" In fact, why not just state "In this Section, the following terms shall mean:"

In (2), line 7, and elsewhere the term is used, what is a "discharger"? Is this someone who creates a discharge as defined in Item (13)?

What does the sentence on lines 9-10 mean? I am sure your regulated public understands, but I do not and want to understand it.

In (10), please either move the comma within the quotation marks or delete it. Whatever you do here, please have Item (13) be consistent.

In (10), line 20, who will predict this? Based upon what?

On line 21 and elsewhere you use the term, who is "assigning" these things?

And what are "transport or delivery factors" on line 22?

In (13), lines 26-27, what does this mean? What are these factors? Does your regulated public know?

In (14), line 29, end the sentence after "Quality."

In (15), line 30, end the sentence after "Services."

What is the purpose of the sentence on lines 30-32? Assuming you need it, capitalize "Section" on line 31.

Amanda J. Reeder
Commission Counsel
Date submitted to agency: October 1, 2019

Did you add the definition in Item (16) due to public comments?

On lines 33 and 34 replace "enumerated" with "set forth"

In (18)(a) and (b), Page 2, line 4, 7, and 8, is "state" NC? If so, please capitalize the term.

In (18)(a), how is it determined that the right is vested? Is this just because it will have begun prior to the effective date?

Was Item (20) added due to public comment?

In (20), line 11, you do not need "For the purpose of the nutrient strategy rules of this Section" given that these rules govern that. State "Industrial discharge(s)" means the discharge…"

On line 13, considered by whom?

In Item (23), line 23, delete "in federal regulations" and just state "as set forth in 40 CFR…"

In (26), line 29, specified otherwise where? In a specific rule?

In (27), as you have not yet defined "TMDL" you need to spell it out here. You can say "total maximum daily load (TMDL)" if you'd like.

On Page 3, please delete the blank line space on line 1.

In (30), line 1, what do you mean by "connotes"? Why not use "includes" or "refers"?

On line 4, please insert a comma after "1251"

In (32), line 8, how is this approved? Is this addressed by another Rule?

In (35), line 16, estimated by whom?

On line 17, how is the Division approving this outside of following an EMC rule? Are you relying upon G.S. 143-214.26(a) for this?

In (38), line 22, capitalize "Rule" and replace "which" with "that" And is the generation compliant with this particular Rule, rather than this Section or another rule in the Section?

In (39), line 29, put "Oversight" in quotation marks and replace "in this context" with "for the purposes of this Item" so it reads "Oversight" for the purposes of this Item includes…"

In (42), how does the Division approve and acknowledge this?

Also, why not refer to "Division" as the defined term is "Division of Water Resources"?

On Page 4, lines 1-2, I think this sentence is missing language. What will still be subject to final approval?

In (46), so that I am clear – you are using all of the waters in that definition, but excluding underground waters (which is included in that statutory definition)? If so, why not replace "except" with "excluding"? And please insert a comma after 143-212.

On line 7, please capitalize "State" since you mean "NC"

In (47), what is a "finite period of time"? Where is it set forth?

In the History Note, line 29, I believe you mean "143-214.3" not "1432-214.3"

Also on line 29, please insert a hyphen in "143-215.3"

Why are you citing to G.S. 143-215.6A, 6B, and 6C, as those are statues that speak to the imposition of penalties?

Please retype the rule accordingly and resubmit it to our office at 1711 New Hope Church Road, Raleigh, North Carolina 27609.

Amanda J. Reeder
Commission Counsel
Date submitted to agency: October 1, 2019

15A NCAC 02B .0701 is adopted with changes as published in 33:16 NCR 1671-1717 as follows:

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. DMS, as administrator of the Riparian Buffer Restoration Fund, is the only in-lieu fee program to which rules of this section apply.

(16) "Estuarine Nutrient Strategy" means the Neuse Nutrient Strategy as enumerated in Rule .0710 of this Section and the Tar-Pamlico Nutrient Strategy as enumerated in Rule .0730 of this Section.

~~(16)~~(17) "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)~~(18) "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)~~(19) "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) "Industrial discharge(s)" For the purpose of the nutrient strategy rules of this Section, means the discharge of industrial process treated wastewater or wastewater other than sewage. Stormwater shall not be considered to be an industrial wastewater unless it is contaminated with industrial wastewater. Industrial discharge includes:

(a) Wastewater resulting from any process of industry or manufacture, or from the development of any natural resource; or

(b) Wastewater resulting from processes of trade or business, including wastewater from laundromats and car washes, but not wastewater from restaurants.

~~(20)~~(21) "Land-disturbing activity" means the same as defined in Rule .0202 of this Subchapter.

~~(21)~~(22) "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)~~(23) "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)~~(24) "Local government" means the same as defined in Rule .0202 of this Subchapter.

~~(24)~~(25) "MGD" means million gallons per day.

~~(25)~~(26) "Nitrogen" means total nitrogen unless specified otherwise.

~~(26)~~(27) "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)~~(28) "Nonpoint source pollution" means the same as defined in Rule .0202 of this Subchapter.

~~(28)~~(29) "Non-wasting endowment" is a fund that generates enough interest to cover the cost of perpetual ~~monitoring, maintenance, repair and renovation~~ monitoring and enforcement of a nutrient reduction ~~project.~~by a perpetual steward.

~~(29)~~(30) "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)~~(31) "Nutrients" means the combination of total nitrogen and total phosphorus for the purpose of the nutrient rules of this section.

~~(31)~~(32) "Nutrient Offset Bank" is a site at which a nutrient ~~reduction~~ offset project ~~that~~ is implemented by a provider ~~except DMS~~ and approved ~~by the Division~~ for ~~the purpose of generating~~ nutrient offset ~~credit.~~ credit by the Division through execution of a nutrient offset banking instrument. This term does not include nutrient offset projects associated with an in-lieu fee program.

~~(32)~~(33) "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)~~(34) "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)~~(35) "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)~~(36) "Nutrient Reduction Project" is a site-specific installation and implementation of a nutrient reduction practice or combination of practices.

~~(36)~~(37) "Nutrient Sensitive Waters" means the same as defined or classified in Rule .0223 of this Subchapter.

~~(37)~~(38) "Permanent Nutrient Offset Credit" is a nutrient load reduction credit that is generated in compliance with this ~~rule.~~ rule which does not automatically expire. 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.

(39) "Perpetual Steward" means an entity that provides oversight for a permanent nutrient offset project. Oversight in this context includes monitoring and enforcement responsibilities assumed by the steward and approved by the Division as a condition of granting permanent nutrient offset credit.

~~(38)~~(40) "Phosphorus" means total phosphorus unless specified otherwise.

~~(39)~~(41) "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.~~

(42) "Release" of nutrient offset credits means the Division of Water Resources approves and acknowledges the generation of nutrient offset credits. Nutrient offset bank providers may sell,

transfer, or use credits upon release. DMS may debit credits upon project institution but will still be subject to final approval and release of credits by DWR.

~~(40)~~(43) "Residuals" means the same as defined in Rule .0202 of this Subchapter.

~~(41)~~(44) "Stormwater Collection System" means the same as defined in 15A NCAC 02H .1002.

(45) "Stormwater Control Measure" or ~~"SCM," also known as "Best Management Practice" or "BMP,"~~ "SCM" means the same as defined in 15A NCAC 02H .1002.

~~(43)~~(46) "Surface waters" means all waters of the state as defined in G.S. 143-212 except underground waters.

~~(44)~~(47) "Term Nutrient Offset Credit" is a nutrient load reduction credit that accounts for annual nutrient load ~~reductions.~~ for a finite period of time. Temporary nutrient offset credits are expressed in pounds of total nitrogen or total phosphorus.

~~(45)~~(48) "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)~~(49) "Total nitrogen" means the sum of the organic, nitrate, nitrite, and ammonia forms of nitrogen in a water or wastewater.

~~(47)~~(50) "Total phosphorus" means the sum of the orthophosphate, polyphosphate, and organic forms of phosphorus in a water or wastewater.

~~(48)~~(51) "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)~~(52) "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)~~(53) "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.

History Note: *Authority G.S. 143-214.1; 1432-214.3;143-214.5; 143-214.7; 143-215.1; 143215.3; 143-215.3(a)(1); 143-215.6A; 143-215.6B; 143-215.6C; 143-215.8B; 143B-282(c); 143B-282(d);*
Eff. November 1, 2019.

REQUEST FOR TECHNICAL CHANGE

AGENCY: Environmental Management Commission

RULE CITATION: 15A NCAC 02B .0703 (formerly .0240)

DEADLINE FOR RECEIPT: Friday, October 11, 2019

The Rules Review Commission staff has completed its review of this Rule prior to the Commission's next meeting. The Commission has not yet reviewed this Rule and therefore there has not been a determination as to whether the Rule will be approved. You may call our office to inquire concerning the staff recommendation.

In reviewing this Rule, the staff recommends the following technical changes be made:

On the Submission for Permanent Rule form, Box 2, please insert the full new name of the Rule.

Throughout this Rule, I take it you wish to retain the all caps introductory statements for the Paragraphs?

In (a), lines 18-19, what do you mean by this sentence? Should you state, "Nutrient offset credit does not include nutrient accounting, which includes joint compliance by multiple local governments as authorized by individual nutrient strategy rules, and is not governed by this Rule."?

On line 21, end the sentence after "including" and insert a colon.

In (a)(1) through (4), consider replacing "enumerated" with "set forth in"

In (a)(3), what part of Rule 02B .0262 are you referring to?

In (b), Page 2, line 8, I take it you are relying upon G.S. 134-214.26(f) to establish these additional restrictions?

In (b)(1), line 11, and (b)(2), line 14, I do not understand the cross-reference to 02B .0276. What part of that Rule are you referring to?

In (b)(5)(A), line 25, replace the comma with a semicolon.

In (b)(5)(B), line 26, are these classifications known to your regulated public? I see them used in Rule 02B .0101(d) – are these the same classifications, such that they relate to tidal saltwater?

In (c), Page 3, line 36, insert a comma after "implemented"

On line 36, who determines what is "best available"?

Page 4, line 1, insert a comma after "evidence"

On line 2, I take it the time of approval will be governed by the rest of this Rule?

Amanda J. Reeder
Commission Counsel
Date submitted to agency: October 1, 2019

In (d), who will quantify the credits? The Division? The bank?

In (d)(1), line 9, what is a "loading condition"?

On line 10, how will this be verified?

In (d)(2), line 12, do not use "and/or" Use one or the other. Based upon the language here, I suspect you mean "nitrogen or phosphorus or both" so use "or"

On line 13, what is "weight of the evidence from available, current and applicable research"?

On line 14, who will determine if it "may" involve water quality modeling, etc.? The provider or the Division or the bank?

On line 14, who will determine what is "as closely as possible"?

In (d)(3), capitalize "State" since I think you mean "NC" where it's uses.

In (d)(4), line 19, who will convert this? Is this requested by the provider and then granted by the Division?

In (d)(5), do you mean "total nitrogen" here (as the term "nitrogen" is defined in Rule .0701?)

In (d)(7), Page 5, line 3, should this read "If so, for each pound…" to show that if the credit is being utilized for temporary compliance purposes?

What does the sentence on lines 5-6 mean? What are "other applicable trading ratios"? Who determines this?

In (d)(8), line 9, replace "which" with "that"

Line 12, replace "are" with "shall be"

I suggest beginning (e)(2)(A), (E), (H), (I), and (J) with articles, specifically "A"

In (e)(2)(B), Page 6, line 20, what are the "applicable" requirements? The ones in their permit?

In (e)(2)(C) and (D), what will this documentation entail?

In (e)(2)(D), line 23, what is the "baseline period"?

Line 24, properly delete the period after "strategy" and insert a comma.

I do not understand the "excepted by Subparagraph (d)(1) of this Paragraph" What are you intending to cross-reference here?

Is the additional language on lines 24-26 added due to public comment?

How will the Division determine whether the documentation establishes this?

In (e)(2)(E), line 27, what is "sufficient" here?

On line 29, replace "meet" with "shall be deemed as meeting" And make a conforming change if you retain the language on line 32.

On lines 31-32, what is this Catalog? Where is it set forth in rule or law? Or is exempt from rulemaking pursuant to G.S. 150B-2(8a)(h)?

In (e)(2)(F), line 33, should this read "calculations determined in conformance"?

End (e)(2)(G)(i) through (iv) with semicolons, not commas.

In (e)(2)(G)(ii), line 37, ensure how? Note the same question for (e)(2)(G)(v).

In (e)(2)(G)(iii), Page 7, line 1, define "successfully" and what is required for the report?

In (e)(2)(H), line 5, what is an "as-built" report?

In (e)(2)(J), line 9, is this "commitment" a statement??

In (e)(2)(K), line 12, if "state" refers to NC, capitalize it.

In (e)(3), line 16, what are these other vehicles "acceptable to the Division"? How will this be determined?

What specific authority are you relying upon to require this financial assurance? Is it G.S. 143-215.1(d1)?

On line 18, replace "and/or" with "or"

In (e)(4), lines 21-22, how does this determination of suitability get made? Is this within the inspector's discretion?

What does the language on lines 22-25 mean? How will this work? What are the "alternative means" referenced on line 24?

In (f)(1), line 31, what is the "credit release schedule"?

In (f)(1)(B), I thought that (e)(3) required the submission of this information before approval of the credits. How does this work?

In (f)(2), Page 8, line 5, define or delete "regular"

In (f)(3), what is going on here? And if you mean "NC" then please capitalize State on line 7.

In (g)(1), line 17, how does this approval process work? How is it requested and upon what does the Director approve this?

In (g)(2), what does the language on lines 22-23 mean?

In (g)(3), line 25, I do not see how 16 USC 170 is applicable, and I do not see an (h) for that statute. What did you mean to cross-reference?

Line 26, please state "G.S. 121, Article 4."

On line 27, what is this "Division-approved template"? What does it contain? How does one get a copy of it?

On lines 27-28, how is this approval requested and upon what basis is it granted?

On line 29, you need to show that you removed the comma after "Commission" post-publication.

In addition, how is this approval granted?

In (g)(4), line 30, you already defined "SCM" so there is no need to recite it here. Either state "For projects utilizing SCMs, they shall be" or just delete "(SCMs)"

On line 31, who determines what is "nearest"?

Lines 33-34, what is the "responsible person or entity"?

Line 36, inspection and maintenance by whom? The provider?

On Page 9, line 2, what do you mean by "impacted"?

In (g)(5), line 7, I take it your regulated public knows what "passively restored exclusively through natural ecological processes" means?

In (h), line 14, why do you need "basic"?

Also, please correct the margins in (h)

In (i)(2), line 22, is the "8-digit service area" the same as the "8-digit cataloguing unit" in Paragraph (b)? If so, why aren't the terms the same?

In (i)(3), so that I'm clear – the Division of Mitigation Services is going to construct these projects?

On line 28, what is the "approved project plan"? Who approves it?

On line 29, who determines what is "sufficient"?

Delete the "Such" on line 29 and begin the sentence "Projects"

On lines 30 and 31, I believe "State" should be capitalized.

In (i)(4), line 35, I think you meant to cross-reference Subparagraph (2).

End (i)(4)(A), (B) and (C) with semicolons, not commas.

In (i)(4)(A), Page 10, line 1, insert a comma after "implementation"

On line 2, replace "and/or" with "and" or "or"

In (i)(4)(B), aren't you saying that they must meet the timelines in (i)(3)? If so, why not state that?

In (i)(4)(D), line 9, who will determine if this is applicable?

In (j), line 12, replace "such" before "rules" with "those"

In (j)(1), line 15, insert a comma after "temporal"

And I take it this addresses whether DMS will accept the payments?

In (j)(4), is the additional language on lines 22 (increasing the additional credits from 10 to 50, and deleting the language on lines 23-26) due to public comment?

In (j)(6), line 31, I do not understand this cross-reference. Did you mean to cite to a different Subparagraph?

In (k), line 35, the provider can create its own nutrient offset bank, as set forth in G.S. 143-214.26(c)(1)? And then seek Department approval, as set forth in that statute?

On line 36, how does following this Rule without enrolling in a nutrient offset bank qualify under G.S. 143-214.26? Or is the intent that the developer isn't subject to the same requirements in a bank under this Rule that the provider is subject to?

In (k)(1), Page 11, line 2, who will this report be sent to?

In (k)(3), line 6, what are these "milestones"?

In (l), line 9, please capitalize "Rule"

In the History Note, why are you citing to any of these Session Laws?

Please retype the rule accordingly and resubmit it to our office at 1711 New Hope Church Road, Raleigh, North Carolina 27609.

Amanda J. Reeder
Commission Counsel
Date submitted to agency: October 1, 2019

15A NCAC 02B .0240 is readopted with changes as published in 33:16 NCR 1671-1717 as follows:

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. Nutrient offset credits represent a compliance option where allowed by nutrient rules of this Subchapter, including but not limited to:

(1) the Neuse Nutrient Strategy as enumerated in Rule .0710 of this Section,

(2) the Tar-Pamlico Nutrient Strategy as enumerated in Rule .0730 of this Section,

(3) the Jordan Lake Nutrient Strategy as enumerated in Rule .0262 of this Subchapter, and

(4) the Falls Lake Nutrient Strategy as enumerated in Rule .0275 of this Subchapter.

~~(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 Lake 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~~] outside of the Falls Lake watershed only if they were generated by a nutrient reduction project [~~within the same gregraphi area~~] located outside of the Falls Lake watershed.

(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~~] surface waters identified for restoration under the applicable nutrient-related TMDL or nutrient strategy, or

(B) [~~an assessment unit~~] surface waters 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, or both, in the project plan. Permanent nutrient

reduction credits and term nutrient reduction credits shall be maintained [~~on separate ledgers~~] separately, 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~~] associated with any [~~bank~~] nutrient offset project 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,~~] 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. unless excepted by Subparagraph (d)(1) of this Paragraph. The Division may accept more recent documentation if it determines such documentation establishes the probable loading condition of the site during the baseline period.

(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~~] seeking approval of a nutrient offset bank 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),~~](1), (2) and (3) of this [~~Rule~~] Paragraph 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~~] nutrient offset bank and until [~~the are exhausted~~] bank closure, nutrient offset bank 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 grant funding 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:~~]All permanent nutrient offset projects shall comply with the following requirements:

(1) 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:~~]Perpetual stewards may not assume project maintenance or restoration responsibilities.

(2) 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.~~] completed permanent project. The endowment amount shall be proportionate to the duties accepted by the perpetual steward.

(3) 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 or approved by the Division.

(4) For projects utilizing stormwater control measures (SCMs), SCMs shall be placed in and protected by 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 generated by an SCM if it determines that the [~~bank or project~~] SCM 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, or this Rule.

(5) [~~Notwithstanding the other requirements of this Paragraph, a permanent project~~]Projects designed to restore a natural ecological community at the project site, which are completed and then damaged by natural causes, may be passively restored exclusively through natural ecological processes. [~~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),~~ Paragraph (b) of this Rule, 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),~~ Paragraph (b) of this Rule, 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,~~] (3) of this Paragraph, then DMS shall develop an action strategy to include in the annual report specified in Subparagraph [~~(i)(2) of this Rule.~~] (3) of this Paragraph. 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,~~] 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~~] NPDES wastewater discharge requirements, the applicant shall provide [~~10~~] 50 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.~~] Rule. Alternatively, the developer shall comply with all provisions of this [~~rule~~] 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.

History Note: *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;*
Eff. August 1, 1998;
Amended Eff. August 1, 2006;
Amended Eff. September 1, 2010.
Readopted Eff. November 1, 2019.

REQUEST FOR TECHNICAL CHANGE

AGENCY: Environmental Management Commission

RULE CITATION: 15A NCAC 02B .0710 (formerly .0232)

DEADLINE FOR RECEIPT: Friday, October 11, 2019

The Rules Review Commission staff has completed its review of this Rule prior to the Commission's next meeting. The Commission has not yet reviewed this Rule and therefore there has not been a determination as to whether the Rule will be approved. You may call our office to inquire concerning the staff recommendation.

In reviewing this Rule, the staff recommends the following technical changes be made:

On the Submission for Permanent Rule form, Box 2, please insert the full new name of the Rule.

What is the purpose of this Rule? What are you regulating with this Rule text? It seems to me that the only thing you are regulating through this Rule is the statement in Paragraph (a) that the waters are NSW, and Paragraphs (d), (f), and (g). The remaining language reads as policy goals or aspirational language, and does not appear to mandate anything. Why do you need the additional language? I suggest deleting almost all of the language in this Rule.

Assuming you need to retain some of the language:

In (a), line 6, what are "designated purposes"? Designated by whom?

On lines 8-9, what is this Act? Is there a citation you can give, perhaps SL 1995-572?

What other authorities are you relying upon on line 9?

On lines 12-13, what is the use of this sentence? What is the framework?

In (b), line 20, what is a "significant source"?

On lines 20-21, what sources are you excluding? What is "insufficient scientific knowledge"?

On lines 21-23, delete this sentence. The Commission does not need to state that it has authority to undertake rulemaking in future or can make recommendations. As it is unclear as written (who deems it "appropriate" and what is "fully"), delete it.

In (c), why do you need to state this goal when it was required by a Session Law and prior rules?

End (d)(1) through (4) with semicolons, not commas.

In (d)(4) and (5), I do not see that these Rules exist. What are you referring to?

Amanda J. Reeder
Commission Counsel
Date submitted to agency: October 1, 2019

In (e), what does any of this language regulate? Most of it reads as a mandate from EMC to its staff and is therefore internal management. That is not language that belongs in a Rule. (See G.S. 150B-2(8a)(a))

Assuming you need to retain any of it:

On line 4, what is "impairment" and "full"?

On line 5, what are the "above" rules?

On line 5, define "fuller"

How is the Division "pursuing" this?

On lines 5-6, what is "inform and guide"?

On line 6, what do you mean it shall "seek" to utilize all sources? What are "all sources"?

On line 7, define "drivers"

On line 7, insert a comma after "character" before "and shifts" and "trends"

What are "trends and character"?

On line 9, state "The evaluation shall address…"

On line 9, what do you mean by "above"? Do you mean in this Paragraph?

Who is this evaluation provided to?

On line 11, capitalize "Rule"

On line 11, distribute to whom?

On line 13, who is this Committee? I take it "Commission" is the EMC?

Line 15, what is "appropriate"? Who decides this?

Even if you keep any part of this Paragraph, delete lines 14-16. They are ambiguous as written and are not rule language.

In (g), line 19, why is "Nutrient Strategy Rules" capitalized? It's not elsewhere in the Rule.

In the History Note, delete the references to G.S. 143-215.6A, 143-215.6B, and 143-215.6C.

Please retype the rule accordingly and resubmit it to our office at 1711 New Hope Church Road, Raleigh, North Carolina 27609.

Amanda J. Reeder
Commission Counsel
Date submitted to agency: October 1, 2019

15A NCAC 02B .0232 is readopted with changes as published in 33:16 NCR 1671-1717 as follows:

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).

History Note: *Authority G.S. 143-214.1; 143-214.7; 143-215.1; 143-215.3(a)(1); 143-215.6A; 143-215.6B; 143-215.6C;*
Eff. August 1, 1998.
Readopted Eff. November 1, 2019.

REQUEST FOR TECHNICAL CHANGE

AGENCY: Environmental Management Commission

RULE CITATION: 15A NCAC 02B .0711 (formerly .0235)

DEADLINE FOR RECEIPT: Friday, October 11, 2019

The Rules Review Commission staff has completed its review of this Rule prior to the Commission's next meeting. The Commission has not yet reviewed this Rule and therefore there has not been a determination as to whether the Rule will be approved. You may call our office to inquire concerning the staff recommendation.

In reviewing this Rule, the staff recommends the following technical changes be made:

On the Submission for Permanent Rule form, Box 2, please insert the full new name of the Rule.

I note that you made several changes to this Rule post-publication. However it appears that most of the language was simply moved around, rather than removed entirely. I take it that these changes were made in response to comment?

In (1), line 7, what part of Rule .0710 are you referring to?

On lines 10-11, are you referring to G.S. 143-214.5(d)?

In (2), line 16, where does (3)(a) refer to the Department implementing these? That Item speaks to implementation by local governments.

In (2)(a), line 21, why are you referring to the "original rule"? Why not state "Local governments designated under this Rule effective August 1998:"

End (2)(a)(i) through (xiv) with semicolons, not commas.

In (2)(b), Page 2, if the intent is to add these as of the effective date of this readoption, why not state that?

End (2)(b)(i) through (xiii) with a semicolon, not a comma.

In (3), I take it this is to implement G.S. 143-214.7(d)?

On line 33, capitalize "Rule"

On line 33, replace "pursuant to" with "following"

On line 35, what authority are you relying upon for the Director to approve this? The delegation authority in G.S. 143-215.3(4)? And will this approval be based upon the requirements of this Rule?

Amanda J. Reeder
Commission Counsel
Date submitted to agency: October 1, 2019

In (3)(a), lines 9-10, while I know this is the citation used in the two NC laws cited, state "33 USC 26" and insert a comma after it.

On line 11, if you mean "NC" where you say "state" then capitalize it.

In (3)(b), line 14, either state "stormwater control measures" or "SCMs" but not both.

In (3)(e), line 20, what are "major" components?

In (4)(a)(ii), line 29, what do you mean by "Such below"? If it's projects less than a half-acre, state that.

On line 31, replace "would" with "shall"

On line 32, delete "the requirements of "

In (4)(b)(i), line 34, what is a "common plan"? Does your regulated public know?

In (4)(c), lines 36-37, and (4)(f), Page 4, line 3, do not give the Rule name, only the citation.

In (5)(a), lines 9-14, please replace "or the definition of runoff volume match found in" with "or "runoff volume match" as defined in that Rule."

On line 15, delete the second "would"

In (5)(b), Page 5, line 2, capitalize "State"

On line 3, delete "state stormwater rule"

Line 4, insert a comma after "setbacks"

In (5)(b)(i) through (iii), just cite to the rules. Don't include the names.

In (5)(c)(i), line 11, how is this "dedication" determined?

On line 12, insert a comma after "project"

In (5)(c), line 10, you refer to "Sub-Item (5)(b) of this Rule" and then on line 13, you refer to "Sub-Item (b) of this Item" I prefer the latter, but please be consistent.

In (5)(c)(ii), line 16, what is this Board?

In (5)(d), so that I'm clear – on line 20, are you referring to the loading rate set forth in (5)(a)?

In (5)(e), line 23, determined by whom?

In (5)(e), line 24, and (f), line 35 what is this tool? Approved how? What is contained in it? Are the requirements for it set forth in Rule, or is it exempt under G.S. 150B-2(8a)(h)? How does one obtain it? How does one know that this is the "most recently" approved version?

On lines 25 and 36, delete "as least as well" If you really want to keep some language, why not "meets or exceeds"?

On lines 26 and 37, how will the Division determine this? Based upon what?

In (5)(f)(i), Page 6, line 1, what is "DEMLR"? And how are these approved? Are they set forth in Rules?

In (5)(f)(iv), what is this? How is it determined and by whom?

In (5)(g), this Rule does not seem to exist. What rule did you mean to cite to?

In (6)(a), line 23, where did the change to this timeframe come from? Comments?

I take it (6)(a) is to implement 143-214.7(c)?

On line 25, what is "in cooperation"?

In (6)(b), line 27, I suggest you state, "designated pursuant to Sub-Item (2)(a) of this Rule" and on line 28, delete "herein" and state "designated pursuant to Sub-Item (2)(b) of this Rule."

End (6)(c), line 37, with a period to be consistent with the other Sub-Items in this Item.

In (6)(d), Page 8, line 1, delete "affected"

In (6)(e), line 4, what is this "electronic format"? Is this up to the local government?

In (6)(f), line 9, what are "significant modifications"?

On line 9, replace "subsequent to" with "following"

Line 10, capitalize "Item"

On line 10, what is the authority for the Director to approve this? And what is this approval based upon?

In the History Note, what portions of these Session Laws are you referring to? Why are you citing to them as rulemaking authority?

Please retype the rule accordingly and resubmit it to our office at 1711 New Hope Church Road, Raleigh, North Carolina 27609.

Amanda J. Reeder
Commission Counsel
Date submitted to agency: October 1, 2019

15A NCAC 02B .0235 is readopted with changes as published in 33:16 NCR 1671-1717 as follows:

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.

~~(1)~~(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.~~] Rule, except as noted in Sub-Item (3)(a) of this Rule where the Department shall implement them. 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:~~]governments:

(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~~] Nash County,

[~~(xii) Nash County,~~]

[~~(xiv)~~] (xiii) Pitt County, and

[~~(xv)~~](xiv) 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)~~] (3) LOCAL PROGRAM IMPLEMENTATION REQUIREMENTS. All local governments subject to this rule shall implement stormwater management programs approved by the Commission 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.~~] development projects not excluded under Item (4) of this Rule. To the extent permitted by federal law, including Chapter 26 of Title 33 of the United States Code and 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.

(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.

(4) DEVELOPMENT EXCLUDED. The following development activities shall not be subject to this Rule:

(a) Projects disturbing less than:

(i) one acre for single family and duplex residential property and recreational facilities; and

(ii) one-half acre for commercial, industrial, institutional, multifamily residential, or local government land uses with the following exception. Such below half-acre projects that would replace or expand existing structures on a parcel, resulting in a cumulative built-upon area for the parcel exceeding twenty-four percent, would be subject to the requirements of Item (5) of this Rule;

(b) Development of an individual single-family or duplex residential lot that:

(i) Is not part of a larger common plan of development or sale; and

(ii) Does not result in greater than five percent built upon area on the lot;

(c) Projects subject to requirements of the Falls Nutrient Strategy New Development Stormwater rule, 15A NCAC 02B .0277;

(d) Existing development as defined in 15A NCAC 02H .1002;

(e) Redevelopment as defined in G.S. 143-214.7(a1)(2); and

(f) Activities subject to requirements of the Neuse Agriculture Rule, 15A NCAC 02B .0712.

(5) DEVELOPMENT PROJECT REQUIREMENTS. A proposed development project not excluded under Item (4) of this Rule shall be approved by a subject local government for the purpose of this Rule when the applicable requirements of Item [~~(4)~~](3) of this Rule and the following criteria are met.

~~(i)~~(a) The [~~project area,~~] project, as defined in state stormwater rule 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;~~] that rule. Proposed development projects that would replace or expand existing structures and would result in a net increase in built-upon area shall meet one of these options for the project less any existing built-upon area. ~~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) Regarding stormwater treatment and other onsite post-construction elements, projects not subject to more stringent standards under one of the following state stormwater rules or a local ordinance shall meet state stormwater rule 15A NCAC 02H .1003, which includes specifications for low- and high-density designs, vegetated setbacks and stormwater outlets for all projects. Such projects shall use a high-density treatment threshold of twenty four percent or greater built-upon area and a storm depth of one inch for SCM design:

(i) Water Supply Watershed Protection rules, 15A NCAC 02B .0620 through .0624;

(ii) Coastal Counties stormwater rule 15A NCAC 02H .1019; or

(iii) Non-Coastal County HWQs and ORWs rule 15A NCAC 02H .1021.

(c) The following are exceptions to the onsite requirements of Sub-Item (5)(b) of this Rule:

(i) Proposed development projects may utilize an offsite SCM that is dedicated to treating an area encompassing the project provided the SCM is designed to meet all applicable requirements identified in Sub-Item (b) of this Item; and

(ii) Proposed development undertaken by a local government solely as a public road expansion or public sidewalk project, or proposed development subject to the jurisdiction of the Surface Transportation Board, may meet the loading rate target of this Item entirely through use of permanent nutrient offset credit pursuant to Rule .0703 of this Section.

(d) Where in satisfying the onsite requirements of Sub-Item (b) of this Item, a project does not meet the loading rate target of this Item, it may do so through use of permanent nutrient offset credit pursuant to Rule .0703 of this Section. Persons doing so shall provide proof of credit acquisition to the permitting authority prior to approval of the development plan.

[~~(b)~~](e) 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)~~](f) 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~~] project'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)~~](g) 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;~~

~~(c) 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~~] eight months of the effective date of this Rule, the Division shall submit a model local stormwater program embodying the elements in Items [~~(4) and~~] (3) through (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~~] (3) through (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~~] (3) through (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)~~](3) 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.

History Note: *Authority G.S. 143-214.1; 143-214.7; 143-214.26; 143-215.1; 143-215.3(a)(1); 143-215.8B; 143B-282; S.L. 1995, c. 572; S.L. 1997-458; S.L. 2006-246;*
Eff. August 1, 1998;
Amended Eff. January 15, 2011 (this permanent rule replaces the temporary rule approved by the RRC on December 16, 2010).
Readopted Eff. November 1, 2019.

REQUEST FOR TECHNICAL CHANGE

AGENCY: Environmental Management Commission

RULE CITATION: 15A NCAC 02B .0712 (formerly .0238)

DEADLINE FOR RECEIPT: Friday, October 11, 2019

The Rules Review Commission staff has completed its review of this Rule prior to the Commission's next meeting. The Commission has not yet reviewed this Rule and therefore there has not been a determination as to whether the Rule will be approved. You may call our office to inquire concerning the staff recommendation.

In reviewing this Rule, the staff recommends the following technical changes be made:

On the Submission for Permanent Rule form, Box 2, please insert the full new name of the Rule.

On line 8, and elsewhere the term is used what are "agricultural operations"? I see that "agricultural uses" is defined in Rule .0701. Should that term be used here or should Rule .0701 be amended to use this term? Or do you mean for the language on Page 2, lines 6-7 to be the definition? If so, I suggest you move that language to Page 1, and make this part of the overall language, maybe after line 10. Or create a new (1) that is "Agricultural operations defined"

On line 9, what do you mean by "prefaced"? If you mean as set forth in, state that.

On line 9, capitalize "Rule"

In (1), line 23, what part of Rule .0710 are you referring to?

On lines 23-24, what is "agricultural production"?

On line 24, what is this baseline level from 1991-1995? Where is it set forth?

On line 24, estimated by whom? And on line 25, are these accounting practices what is set forth in Item (5)? If so, why not state that? If not, what are these "best available accounting practices"?

In (1)(a), line 26, and elsewhere the term is used, what is a "farmer" in this context? Do they have to earn a living from the activity?

On line 27, what is a "watershed basis"?

I do not see the regulatory purpose of (1)(b), as it only states that further rulemaking may occur. Delete it. When you do so, be sure to move the language in (a) to (1), as you cannot have an (a) without a (b).

In (2), Page 2, line 1, what part of Rule .0710 are you referring to?

On line 2, why do you need "above", given that Sub-Item (c) refers to "# or more"? Why not state "livestock and poultry operations set forth in Sub-Item (c)"?

Amanda J. Reeder
Commission Counsel
Date submitted to agency: October 1, 2019

I am not sure I understand the lines of 2 and 3 – are you saying that the underlying permit and this Rule applies? Why do you need to say that – are you concerned that farmers will think their permit no longer applies?

What is the purpose of lines 3-6?

If you do not move the language to a more prominent position (which I strongly encourage), then be sure to state on line 6, "For the purposes of this Rule, "agricultural operations" shall mean activities…"

In (2)(a), line 9, put "commercial" in quotation marks. And what is "primarily"? Who determines this, based upon what?

In (2)(b), line 10, delete "such"

In (3), lines 22-24, state "A Basin Oversight Committee, as set forth in Item (4) of this Rule, and county-level Local Advisory Committees, as set forth in Item (6) of this Rule, shall coordinate activities and account for progress. Accounting for nitrogen load-reducing…"

Line 26, what is a "producer"?

In (3)(a), so that I'm clear – no one is required to participate if the basin meets the goal?

In (3)(b), line 34, how is this demonstration done?

On lines 34-35, I think the language of Rule .0712(c)(2), line 26, is better and recommend using that language here if possible.

On line 36, why is "Basin" capitalized?

On Page 3, line 4, since you say the Commission "may" take this action, you need to provide some guidance within the Rule as to when this will happen under these circumstances.

In (4), line 8, insert a comma after "role"

I do not think that Sub-Item (4)(a) says what you mean for it to say. For example, the Sub-Item does not actually require the appointment of anyone in (a)(vi) through (viii). It only addresses the replacement of them. And who determines in (a)(vi) and (vii) whether to appoint one, two, or none of these individuals?

In (4)(a), delete lines 13-14.

On lines 15-16, what is the point of this language? I suggest deleting it.

Since the term "Director" is defined in Rule .0701 as the Director of the Division of Water Resources, why not state "The Director shall solicit one nomination for membership from each agency in Sub-Items (a)(i) through (v) of this Item."

On lines 18, 29, and 30, what is "interest"? How is this determined?

End the Sub-Items (4)(a)(i) through (vii) with semicolons, not commas.

In (4)(a)(viii), what is this "scientific community"? And how many shall be appointed?

In (4)(b)(i), Page 5, line 22, approve how? Based upon what? Is it Item (5)? And insert a comma after "approve"

On lines 23-24, what are these methods? Where are they set forth?

Line 25, state "The Committee shall submit…"

On line 26, why do you need "as initiated in 2002"?

On line 26, you do not need "annually" as you already stated this on line 22.

In (4)(b)(ii), line 27, replace "called for under" with "set forth in"

On line 27, who determines whether this is "needed'? (Please note the same question on line 29)

In (4)(b)(iii), line 29, is the "accounting method" the same thing as the "accounting methodology" in Item (5)?

On line 31, what is a "BMP" Is it a "Best Management Practice" as defined in Rule .0701? If so, then amend .0701 to add that acronym in Item (3) of that Rule.

In (5), who is estimating this? The Basin Oversight Committee, the local advisory committee, the Division, the Commission?

On line 32, what do you mean by "Success in meeting this Rule's purpose"? Why not state "The requirements of Item (1) of this Rule shall be gauged…"

On line 32, replace "will" with "shall"

On line 34, insert a comma after "develop"

On line 34, what do you mean by "indicated"? Do you mean "as set forth in"? If so, state that.

What statutory authority are you relying upon for the Basin Oversight Committee to create this accounting method?

In (5)(d), Page 6, line 10, how does this get determined? I take it the Basin Oversight Committee does it, but how do they know about these advances?

In (6), line 15, why are you citing to these dates?

In (6)(a), line 17, underline the new "or" before "watershed"

On line 20, the Directors can just release individuals or agencies at their discretion? What is the authority of the Directors to do this?

End (6)(a)(i) through (v) with semicolons, not commas.

Does the language in (6)(a)(vi) ("at least two) mean that there is only one representative is allowed for (a)(i) through (v)?

In (6)(b)(i), line 32, why state "Continue"? The requirements are to submit a report, so I suggest stating "Submit annual…"

Page 7, line 1, delete "identified"

In (6)(b)(ii), so that I'm clear – the Local Advisory Committee will take this action, not the Basin Oversight Committee?

In (7), line 6, delete "described elsewhere"

Lines 6-7, what is this approved method and how is it obtained? How was it approved? Was it formerly in this Rule and now deleted?

On line 8, annual reporting by whom? Can the Basin Oversight Committee or Local Advisory Committee create its own revision and follow that?

On line 9, what is "applicable" here? Does your regulated public know?

On line 9, if by "BOC" you mean "Basin Oversight Committee" please state that.

Lines 9-11, what are these standards established by these two agencies? Are they in rule or regulation? How does one know what they are? Where can they be found?

In the History Note, Page 14, line 25, what part of SL 1997-458 are you relying upon for your rulemaking authority?

Please retype the rule accordingly and resubmit it to our office at 1711 New Hope Church Road, Raleigh, North Carolina 27609.

Amanda J. Reeder
Commission Counsel
Date submitted to agency: October 1, 2019

15A NCAC 02B .0238 is readopted with changes as published in 33:16 NCR 1671-1717 as follows:

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 collectively, on a [~~county or~~] watershed basis, will achieve the nutrient goals.

(b) 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 (a)(i) through (a)(v) of this Item. [~~(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 (a)(vi) through (a)(viii) of this Item [~~(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.~~

~~(c) 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.

(c) 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;[~~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.~~

~~(c) 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.~~

History Note: *Authority G.S. 143-214.1; 143-214.7; 143-215.3(a)(1); S.L. 1997-458;*
Eff. August 1, 1998.
Readopted Eff. November 1, 2019.

REQUEST FOR TECHNICAL CHANGE

AGENCY: Environmental Management Commission

RULE CITATION: 15A NCAC 02B .0713 (formerly .0234)

DEADLINE FOR RECEIPT: Friday, October 11, 2019

The Rules Review Commission staff has completed its review of this Rule prior to the Commission's next meeting. The Commission has not yet reviewed this Rule and therefore there has not been a determination as to whether the Rule will be approved. You may call our office to inquire concerning the staff recommendation.

In reviewing this Rule, the staff recommends the following technical changes be made:

On the Submission for Permanent Rule form, Box 2, please insert the full new name of the Rule.

In (1), line 9, what are these "designated uses"?

In (3), line 16, delete the comma after "Rule"

In (3)(a), line 18, what are "like matters"?

In (3)(a)(ii), are you referring to what is set forth in Sub-Item (3)(b)? If so, state that. And if so, doesn't that only apply to existing facilities?

I see that some of the terms that were in (3) that were deleted post-publication are in Rule .0701, but not all of them were. Does your regulated public know what these terms mean?

In (4)(a), line 25, was this approved by the US Environmental Protection Agency? Is this acronym defined elsewhere? And should there be a space between "US" and "EPA" if so?

In (4)(b), line 32, will this order be done via rulemaking? If not, what is the authority of the Commission to do this outside of rulemaking?

On line 35, are these applicable standards known? And will they all remain in Section .0200, or are some being moved to other Sections?

In (5)(a), Page 3, line 1, where is this revision provided for?

In (5)(a)(v), line 16, assigned by whom?

In (5)(b), please note my earlier concerns that Item (4) does not allow the changes outside of rulemaking. In addition, you state on line 23 the Commission "may" consider these factors. Do you mean "shall" instead?

What does (5)(b)(i) mean? I am sure your regulated public understands, but I do not and wanted to ask.

Amanda J. Reeder
Commission Counsel
Date submitted to agency: October 1, 2019

In (5)(b)(ii), line 25, what is "technical feasibility and economic reasonableness"? Who decides this?

In (5)(b)(v), line 29, what is "probable"?

In (5)(b)(vi), line 30, what is "responsible planning"

In (5)(b)(vii), what will these factors be? Will they be determined on a case-by-case basis? If so, state that.

In (6)(a), Page 4, line 2, why do you need "Beginning with calendar year 2003,"?

How does this work with the nitrogen limits in G.S. 143-215.1(c1)?

On line 7, what part of Rule .0710 are you referring to?

In (6)(b), line 8, why do you need "Effective January 1, 2003"?

What statutory authority are you relying upon for (6)(b) to allow the Director to do this outside of rulemaking? Please note the same question for (7)(g) and (8)(g).

Delete the blank line space on line 33.

In (7)(a), line194, and elsewhere the term is used, what are "practical alternatives"?

In (7)(b), line 23, and (8)(b), Page 6, line 18, what do you mean by "demonstrate"? Do you mean "have a contractual agreement"?

On line 32 and elsewhere the term is used, replace "ten" with "10" (See Rule 26 NCAC 02C .0108(9)(b))

In (7)(c), Page 5, so that I'm clear – the facility doesn't have to meet (e) and (f) until after they begin operation?

In (7)(d), line 15, and (8)(d), Page 7, line 12, replace the period after "less" with a colon.

In (7)(d)(ii), lines 23 -24, what is "best available technology economically achievable"? To whom, as determined by whom? Please note the same question for (8)(d)(ii).

On line 25, I do not think you need "whichever is less" given that you have the language on line 15 and the deletion on line 24.

In (8)(d)(ii), Page 7, line 20, I am simply asking – here, you use the term "industrial nature" but in (7)(d)(ii), the term is "industrial wastewaters." Did you intend for these to be different terms?

In (8)(e), line 34, should the word "nitrogen" be after "sufficient" as it is in (7)(e)?

In (8)(f), this is the first time you refer to the co-permittee and it's in relation to phosphorous; you do not do so for nitrogen, making me wonder if the provisions of Item (9) do not apply to nitrogen.

But it clearly does, so why not add this language to (8)(e)? Or does this collective limit only affect phosphorous? And then Item (9) only affects nitrogen? Why aren't both addressed in Item (9)?

In (9)(a), line 14, is it that more than one group may be established per basin? If so, please state that.

It seems to me that the order of Sub-Items (9)(e) and (f) should be switched.

In the History Note, what part of S.L. 1995-572 are you citing to as your rulemaking authority?

Please retype the rule accordingly and resubmit it to our office at 1711 New Hope Church Road, Raleigh, North Carolina 27609.

Amanda J. Reeder
Commission Counsel
Date submitted to agency: October 1, 2019

15A NCAC 02B .0234 is readopted with changes as published in 33:16 NCR 1671-1717 as follows:

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~~] discharges from wastewater treatment facilities in the Neuse River Basin that receive nitrogen-bearing wastewater and are required to obtain individual NPDES permits. [~~Dischargers~~] Discharges 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.~~] Strategy Rules of this Subchapter.

(3) Definitions. ~~For the purposes of this Rule, the following definitions apply~~: The terms used in this Rule, shall be as defined in Rule .0701 of this Section and as follows:

(a) In regard to point source dischargers, treatment facilities, wastewater flows or discharges, or like matters:

(i) "Existing" means that which obtained ~~a~~an 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~~an 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)~~] (b) "Permitted flow" means the maximum monthly average flow authorized in a facility's NPDES permit as of December 31, 1995, with the following exceptions:

Facility Name	NPDES No.	Permitted Flow (MGD)
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~~] 1999 by the USEPA, the nitrogen wasteload allocation for point sources shall not exceed 1.64 million pounds per calendar 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~~] nutrient offset credits obtained in accordance with G.S. [~~143-214.26.~~] 143-214.26 and Rule .0703 of this Section.

(b) The Commission shall order future revisions in the Nitrogen TMDL and 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~~ are 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 the sum of its active individual discharge allocation, pursuant to Item (5) of this ~~Rule.~~ [~~Rule, adjusted to reflect any subsequent transfer of~~] Rule and any active allocation or nutrient offset credits acquired pursuant to [~~the rules of the Neuse River nutrient management strategy.~~] Rules .0703 and .0710 of this Section.

(b) Effective January 1, 2003, ~~dischargers shall be subject to the following limits for total phosphorus:~~ [~~All~~] 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~~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(c)(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,~~] acquire prior to authorization to discharge, nitrogen ~~estuary~~ allocation ~~for the proposed wastewater discharge from existing dischargers. If estuary allocation cannot be obtained from the existing facilities, new facilities may or purchase a portion of the nonpoint source load allocation for a period of 30 years~~ from existing dischargers or nitrogen offset credits pursuant to [~~G.S. 143-214.26, or~~] Rule .0703 of this Section, or both, for the proposed discharge. The allocation and offset [~~credit~~] credits shall be sufficient for ~~a period of 30~~ [~~no less than 10~~] ~~years 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.~~ any partial calendar year in which the permit becomes effective plus ten subsequent years of discharge at the proposed design flow [~~rate.~~] rate in accordance with 15A NCAC 02H .0112(c). ~~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 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 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.~~ The Director shall not issue a permit authorizing discharge from a new facility unless the applicant has satisfied the requirements of Sub-Items (a) through (d) and (g) of this Item. If a new facility's permit contains tiered flow limits for expansion, the Director shall not authorize an increased discharge unless the applicant has satisfied the requirements of Sub-Items (a) through (d) and (g) of this Item for that discharge.

(d) The [~~technology based~~] 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~~] following 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~~] achievable, calculated 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 or, where an existing permit contains tiered limits, requests to discharge at an increased flow 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 renewal, in accordance with 15A NCAC 02H .0112(c).~~] any partial calendar year in which the permit becomes effective plus ten subsequent years of discharge at the proposed design flow rate.

(f) New dischargers ~~must~~ shall meet a monthly average total phosphorous limit of ~~1~~ 1.0 mg/L.

(g) The ~~director~~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(c)(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.~~]

~~(c) 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)~~] (b) ~~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~~] discharge at an increased flow, ~~may purchase a portion of the nonpoint source load allocation~~ shall acquire, or demonstrate contractual agreement to [~~acquire,~~] acquire prior to authorization to discharge at the increased flow, nitrogen allocation from existing dischargers or [~~purchase nutrient~~] nitrogen offset credits pursuant to [~~G.S. 143-214.26,~~] Rule .0703 of this Section, or both, for the proposed discharge. The allocation and offset credits shall be sufficient for ~~a period of 30~~ [~~10~~] ~~years~~ any partial calendar year in which the permit becomes effective plus 10 subsequent years of discharge at [~~te~~] the proposed design flow [~~rate.~~] rate in accordance with 15A NCAC 02H .0112(c). ~~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 offset 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)~~] (c) The [~~director~~]Director shall not issue a permit authorizing [~~expansion of~~] increased discharge from an existing facility unless the applicant has satisfied the requirements of [~~Sub-Item (d)~~] Sub-Items (a) through (d) and (g) of this Item. If a facility's permit contains tiered flow limits for expansion, the [~~director~~]Director shall not [~~issue an authorization to~~] authorize discharge at an increased flow unless the applicant has satisfied the requirements of [~~Sub-Item (d)~~] Sub-Items (a) through (d) and (g) of this Item.

~~(e)~~ [~~(f)~~] (d) 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~~] following 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 facility's NPDES permit, or its existing limit, 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 facility's modified NPDES [~~permit;~~] permit, except that the limit shall be no less than the facility's original allocation per Item (5) of this Rule; 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~~] achievable, calculated 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.~~] permit.

~~(f)~~ [~~(g)~~] (e) ~~The nitrogen discharge allocation limit 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 or, where an existing permit contains tiered limits, requests to discharge at an increased flow, shall [~~further~~] demonstrate that the facility has sufficient [~~means~~] allocation or offset credits to meet its effluent nutrient limitations for [~~at least 10 years beyond the requested renewal. pursuant to renewal, in accordance with 15A NCAC 02H .0112(c).~~] any partial calendar year in which the permit becomes effective plus ten subsequent years of discharge at the proposed design flow rate.

~~(g)~~ [~~(h)~~] (f) Expanding facilities ~~must~~ shall meet a monthly average total phosphorous limit of ~~1~~ 1.0 mg/L unless they are a co-permittee member ~~in good standing~~ of a group compliance association described in Item (9) of this Rule, in which case they ~~must~~ shall meet a quarterly average total phosphorus limit of ~~2~~ 2.0 mg/L.

~~(h)~~ [~~(i)~~] (g) The ~~director~~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~~ shall 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~~ group 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~~ are 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.

History Note: *Authority G.S. 143-214.1; 143-215; 143-215.1; 143-215.3(a)(1); S.L. 1995, c. 572;*
Temporary Adoption Eff. January 22, 1998;
Eff. August 1, 1998;
Temporary Amendment Eff. March 15, 2000;
Temporary Amendment Expired on December 10, 2000;
Amended Eff. April 1, 2003.
Readopted Eff. November 1, 2019.

REQUEST FOR TECHNICAL CHANGE

AGENCY: Environmental Management Commission

RULE CITATION: 15A NCAC 02B .0730

DEADLINE FOR RECEIPT: Friday, October 11, 2019

The Rules Review Commission staff has completed its review of this Rule prior to the Commission's next meeting. The Commission has not yet reviewed this Rule and therefore there has not been a determination as to whether the Rule will be approved. You may call our office to inquire concerning the staff recommendation.

In reviewing this Rule, the staff recommends the following technical changes be made:

On the Submission for Permanent Rule form, Box 2, please insert the full new name of the Rule.

What is the purpose of this Rule? What are you regulating with this Rule text? It seems to me that the only thing you are regulating through this Rule is the statement in Paragraph (a) that the waters are NSW, and Items (3), (5), and (6). The remaining language reads as policy goals or aspirational language and does not appear to mandate anything. Why do you need the additional language? I suggest deleting almost all of the language in this Rule.

Assuming you need to retain some of the language:

On line 5, what are "designated purposes"? Designated by whom?

On lines 86-7, what is this Act? Is there a citation?

What other authorities are you relying upon on line 7?

On line 9, why are you citing to Rule .0101(e)(3)? I note the agency is not doing so in Rule .0710.

On lines 11-12, what is the use of this sentence? What is the framework?

In (1), line 14, what is a "significant source"?

On lines 15, what sources are you excluding? What is "insufficient scientific knowledge"?

On lines 16-18, delete this sentence. The Commission does not need to state that it has authority to undertake rulemaking in future or can make recommendations. As it is unclear as written (who deems it "appropriate" and what is "fully"), delete it.

In (2), was this goal specifically required by a Session Law? Is it SL 2001-355(4)(c)? And why do you need this Item?

In (3)(e) and (f), I do not see that these Rules exist. What are you referring to?

Amanda J. Reeder
Commission Counsel
Date submitted to agency: October 1, 2019

In (4), what does any of this language regulate? Most of it reads as a mandate from EMC to its staff and is therefore internal management. That is not language that belongs in a Rule. (See G.S. 150B-2(8a)(a))

Assuming you need to retain any of this:

On line 32, what is "impairment" and "full"?

On line 33, what are the "above" rules?

On line 33, define "fuller"

How is the Division "pursuing" this?

On line 34, what is "inform and guide"?

On line 34, what do you mean it shall "seek" to utilize all sources? What are "all sources"?

On line 35, define "drivers"

On line 36, insert a comma after "character" before "and shifts" and "trends"

What are "trends and character"?

Page 2, line 1, state "The evaluation shall address…"

On line 4, distribute to whom?

On lines 5-6, who is this Committee? I take it "Commission" is the EMC?

Line 8, what is "appropriate"? Who decides this?

Even if you keep any part of this Paragraph, delete lines 9-10. They are ambiguous as written and are not rule language.

In (5), what are these numbers? Does your regulated public know? Who sets these "hydrologic units"?

In (6), state "Failure to meet the requirements of these Rules" or "Failure to meet the requirements of the rules of the Tar-Pamlico nutrient strategy…"

In the History Note, delete the references to G.S. 143-215.6A, 143-215.6B, and 143-215.6C.

Also in the History Note, what part of S.L. 1997-458 are you relying upon for rulemaking authority? Should you not add S.L. 2001-355?

Please retype the rule accordingly and resubmit it to our office at 1711 New Hope Church Road, Raleigh, North Carolina 27609.

Amanda J. Reeder
Commission Counsel
Date submitted to agency: October 1, 2019

15A NCAC 02B .0730 is adopted with changes as published in 33:16 NCR 1671-1717 as follows:

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~~ Rule .0101(e)(3) and 15A NCAC 02B .~~0223.~~ .0223 of this Subchapter. 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.~~ Rule .0223 of the Subchapter. This ~~rule~~ 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.

History Note: *Authority G.S. 143-214.1; 143-214.7; 143-215.3(a)(1); 143-215.6A; 143-215.6B; 143-215.6C; 143215.8B; 143B-282; S.L. 1997-458;*
Eff. November 1, 2019.

REQUEST FOR TECHNICAL CHANGE

AGENCY: Environmental Management Commission

RULE CITATION: 15A NCAC 02B .0731 (formerly .0258)

DEADLINE FOR RECEIPT: Friday, October 11, 2019

The Rules Review Commission staff has completed its review of this Rule prior to the Commission's next meeting. The Commission has not yet reviewed this Rule and therefore there has not been a determination as to whether the Rule will be approved. You may call our office to inquire concerning the staff recommendation.

In reviewing this Rule, the staff recommends the following technical changes be made:

On the Submission for Permanent Rule form, Box 2, please insert the full new name of the Rule.

I note that you made several changes to this Rule post-publication. However it appears that most of the language was simply moved around, rather than removed entirely. I take it that these changes were made in response to comment?

In (a), line 7, what part of Rule .0730 are you referring to?

On lines 8-9, are you referring to G.S. 143-214.5(d)?

In (b), line 21, where does (c)(1) refer to the Department implementing these?

In (b)(1), line 26, why are you referring to the "original rule"? Why not state "Local governments designated under this Rule effective April 2001:"

End (b)(1)(A) through (J) with semicolons and insert an "and" after "Nash County;" on line 37.

In (b)(2), Page 2, if the intent is to add these as of the effective date of this readoption, why not state that?

Since you cannot have an (A) without a (B), please state in (b)(2), "The following additional local government as of the effective date of this readoption is Wilson County." Or just "As of the effective date of this readoption, Wilson County."

In (c), I take it this is to implement G.S. 143-214.7(d)?

On line 22, replace "pursuant to" with "following"

On line 23, should this cross-reference be updated to Paragraph (f)?

On lines 23-24, what authority are you relying upon for the Director to approve this? The delegation authority in G.S. 143-215.3(4)? And will this approval be based upon the requirements of this Rule?

Amanda J. Reeder
Commission Counsel
Date submitted to agency: October 1, 2019

In (c)(1), lines 33-34, while I know this is the citation used in the two NC laws cited, state "33 USC 26" and insert a comma after it.

On line 35, if you mean "NC" where you say "state" then capitalize it.

In (c)(2), Page 3, line 1, either state "stormwater control measures" or "SCMs" but not both.

In (c)(5), line 7, what are "major" components?

In (d)(1)(B), line 14, what do you mean by "Such below"? If it's projects less than a half-acre, state that.

On line 16, replace "would" with "shall"

On line 17, delete "the requirements of "

In (d)(2)(A), line 19, what is a "common plan"? Does your regulated public know?

In (d)(5), line 23, do not give the Rule name, only the citation.

In (e)(1), Page 4, line 4, capitalize "State" or delete it.

On lines 6-10, please replace "or the definition of runoff volume match found in" with "or "runoff volume match" as defined in that Rule."

On line 11, delete the second "would"

In (e)(2), line 14, capitalize "State"

On line 15, delete "state stormwater rule"

Line 16, insert a comma after "setbacks"

In (e)(2)(A) through (C), just cite to the rules. Don't include the names.

In (e)(3)(A), line 23, how is this "dedication" determined?

On line 24, insert a comma after "project"

In (e)(2)(B), line 28, what is this Board?

So that I'm clear – on line 28, are you referring to the loading rate set forth in (e)(1)?

On line 30, end the sentence "Section."

In (e)(5), line 35, determined by whom?

In (e)(5), line 24, and (e)(6) Page 5, line 8, what is this tool? Approved how? What is contained in it? Are the requirements for it set forth in Rule, or is it exempt under G.S. 150B-2(8a)(h)? How does one obtain it? How does one know that this is the "most recently" approved version?

On lines 37 and Page 5, line 9, delete "as least as well" If you really want to keep some language, why not "meets or exceeds"?

On lines 37 and Page 5, line 9, how will the Division determine this? Based upon what?

In (e)(5)(D) and (e)(6)(D), what is this? Who determines this?

In (e)(6)(A), Page 5, line 10, what is "DEMLR"? And how are these approved? Are they set forth in Rules?

In (e)(7), Page 6, line 2, this Rule does not seem to exist. What rule did you mean to cite to?

In (f)(1), Page 7, line 2, where did the change to this timeframe come from? Comments?

I take it (f)(1) is to implement 143-214.7(c)?

On line 4, what is "in cooperation"?

In (f)(2), line 6, I suggest you state, "designated pursuant to Subparagraph (b)(1) of this Rule" and on line 7, delete "herein" and state "designated pursuant to Subparagraph (b)(2) of this Rule."

End (f)(3), line 16, with a period to be consistent with the other Subparagraphs in this Paragraph.

In (f)(4), line 17, delete "affected"

In (f)(5), line 19, what is this "electronic format"? Is this up to the local government?

On line 21, do you wish to say "30th" to be consistent with Rule .0711?

In (f)(6), line 24, what are "significant modifications"?

On line 25, what is the authority for the Director to approve this? And what is this approval based upon?

In (g), Page 8, line 10, please properly insert the comma after "program" and remove the extra space between "program" and "or"

In the History Note, what portions of these Session Laws are you referring to? Why are you citing to them as rulemaking authority?

Please retype the rule accordingly and resubmit it to our office at 1711 New Hope Church Road, Raleigh, North Carolina 27609.

Amanda J. Reeder
Commission Counsel
Date submitted to agency: October 1, 2019

15A NCAC 02B .0258 is readopted with changes as published in 33:16 NCR 1671-1717 as follows:

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.~~] Rule, except as noted in Subparagraph (c)(1) of this Rule where the Department shall implement them. 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~~]following additional local [~~governments are subject to this Rule:~~]government:

~~(A) [Granville County]~~ ~~Beaufort~~

~~(B) [Vance County]~~ ~~Edgecombe~~

~~(C)~~ (A) 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 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.~~]

(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 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.~~] development projects not excluded under Paragraph (d) of this Rule. ~~These stormwater plans shall not be approved by the subject local governments unless the following criteria are met:~~ To the extent permitted by federal law, including Chapter 26 of Title 33 of the United States Code and 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.

(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 (e) 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 (e) 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 EXCLUDED. The following development activities shall not be subject to this Rule:

(1) Projects disturbing less than:

(A) one acre for single family and duplex residential property and recreational facilities; and

(B) one-half acre for commercial, industrial, institutional, multifamily residential, or local government land usese with the following exception. Such below half-acre projects that would replace or expand existing structures on a parcel, resulting in a cumulative built-upon area for the parcel exceeding twenty-four percent, would be subject to the requirements of Paragraph (e) of this Rule;

(2) Development of an individual single-family or duplex residential lot that:

(A) Is not part of a larger common plan of development or sale; and

(B) Does not result in greater than five percent built upon area on the lot;

(3) Existing development as defined in rule 15A NCAC 02H .1002;

(4) Redevelopment as defined in G.S. 143-214.7(a1)(2); and

(5) Activities subject to requirements of the Tar-Pamlico Agriculture rule, 15A NCAC 02B .0732.

[~~(d)~~](e) DEVELOPMENT PROJECT REQUIREMENTS. A proposed development project not excluded under Paragraph (d) of this Rule shall be approved by a subject local government for the purpose of this Rule when the applicable requirements of Paragraph (c) of this Rule 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,~~] project, as defined in state stormwater rule 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 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;~~] that rule. Proposed development projects that would replace or expand existing structures and would result in a net increase in built-upon area shall meet one of these options for the project less any existing built-upon area.

(2) Regarding stormwater treatment and other onsite post-construction elements, projects not subject to more stringent standards under one of the following state stormwater rules or a local ordinance shall meet state stormwater rule 15A NCAC 02H .1003, which includes specifications for low- and high-density designs, vegetated setbacks and stormwater outlets for all projects. Such projects shall use a high-density treatment threshold of twenty four percent or greater built-upon area and a storm depth of one inch for SCM design:

(A) Water Supply Watershed Protection rules, 15A NCAC 02B .0620 through .0624;

(B) Coastal Counties stormwater rule 15A NCAC 02H .1019; or

(C) Non-Coastal County HWQs and ORWs rule 15A NCAC 02H .1021.

(3) The following are exceptions to the onsite requirements of Subparagraph (2) of this Paragraph:

(A) Proposed development projects may utilize an offsite SCM that is dedicated to treating an area encompassing the project provided the SCM is designed to meet all applicable requirements identified in Subparagraph (2) of this Paragraph; and

(B) Proposed development undertaken by a local government solely as a public road expansion or public sidewalk project, or proposed development subject to the jurisdiction of the Surface Transportation Board, may meet the loading rate target of this Paragraph entirely through use of permanent nutrient offset credit pursuant to Rule .0703 of this Section; and

(4) Where in satisfying the onsite requirements of Subparagraph (2) of this Paragraph, a project does not meet the loading rate target of this Paragraph, it may do so through use of permanent nutrient offset credit pursuant to Rule .0703 of this Section. Persons doing so shall provide proof of credit acquisition to the permitting authority prior to approval of the development plan;

[~~(2)~~](5) 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)~~](6) 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~~]project'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;~~]

(7) Proposed development projects shall demonstrate compliance with the riparian buffer protection requirements of Rule .0734 of this Section.

~~(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)~~](f) RULE IMPLEMENTATION

(1) Within [~~four~~] eight 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)~~] through (e) 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)~~] through (e) 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)~~] through (e) 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)~~](g) COMPLIANCE. A local government's authority to approve [~~new~~]development stormwater plans for compliance with this Rule pursuant to Paragraph [~~(d)~~] (e) 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.~~

History Note: *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); 143-215.8B; S.L. 1997-458; S.L. 2006-246;*
Eff. April 1, 2001.
Readopted Eff. November 1, 2019.

REQUEST FOR TECHNICAL CHANGE

AGENCY: Environmental Management Commission

RULE CITATION: 15A NCAC 02B .0732 (formerly .0256)

DEADLINE FOR RECEIPT: Friday, October 11, 2019

The Rules Review Commission staff has completed its review of this Rule prior to the Commission's next meeting. The Commission has not yet reviewed this Rule and therefore there has not been a determination as to whether the Rule will be approved. You may call our office to inquire concerning the staff recommendation.

In reviewing this Rule, the staff recommends the following technical changes be made:

On the Submission for Permanent Rule form, Box 2, please insert the full new name of the Rule.

On line 11, what part of Rule .0730 are you referring to?

Also on line 11, what is this baseline level from 1991? Where is it set forth?

On line 12, what do you mean by "best available accounting practices"?

Also on line12, what is "agricultural production"?

On line 13, and elsewhere the term is used what are "agricultural operations"? I see that "agricultural uses" is defined in Rule .0701. Should that term be used here or should Rule .0701 be amended to use this term? Or do you mean for the language on line 33 to be the definition?

On line 13, why is "Basin" capitalized?

On lines 14-15, "achieve and maintain" how? Will this tie into (c)(2) and (d)(3)?

On line 16, if you are referring to the Basin Oversight Committee and Local Advisory Committees, why not state that?

On line 16, replace "will" with "shall"?

In (a)(1), line 17, and elsewhere the term is used, what is a "farmer" in this context? Do they have to earn a living from the activity?

On line 18, what is a "watershed basis"?

I do not see the regulatory purpose of (a)(2)), as it only states that further rulemaking may occur. Delete it. When you do so, be sure to move the language in (1) to (a), as you cannot have a (1) without a (2).

In (b), line 33, delete or define "generally"

Amanda J. Reeder
Commission Counsel
Date submitted to agency: October 1, 2019

On line 35, what part of Rule .0730 are you referring to?

On line 35, why do you need "above", given that (b)(3) refers to "# or more"? Why not state "livestock and poultry operations set forth in Subparagraph (b)(3)"?

If you do not do that, replace "Item" with "Paragraph" on line 35.

I am not sure I understand the use of line 36 – are you saying that the underlying permit and this Rule applies? Why do you need to say that – are you concerned that farmers will think their permit no longer applies?

What is the purpose of lines 37 through Page 2, line 2? And even if you need it, you've restated it on lines 2-4 and need to delete it there.

If you do not move the language to a different place in the Rule, then be sure to state on line 4, "For the purposes of this Rule, "agricultural operations" shall mean activities…"

In (b)(1), line 7, put "commercial" in quotation marks. And what is "primarily"? Who determines this, based upon what? Or are you relying upon the language from SL 2001-355?

In (b)(2), line 8, delete "such"

In (b)(4)(A), line 22, and (b)(4)(B), line 28, I do not see a Rule .0734. What rule did you intend to cite to?

I note that all of (b)(4) seems to recite SL 2001-355. Therefore, I take it your regulated public knows what "verifiable" and "expressly" means?

I am only asking – is (b)(4)(B) still applicable?

In (b)(4)(C), lines 31-32, just state "shall comply with 02 NCAC 60C."

On lines 32-33, what are "nutrient removal functions"? Does your regulated public know? What are "other measures"?

And to be clear – only the owner of the land can implement this, not a lessee?

In (b)(4)(D), line 36, I think only (A) and (B) are affected by these definitions.

In (b)(4)(D)(i)(I), Page 3, line 4, this citation was recodified in 2011 to G.S. 106-850. Please update it.

In (b)(4)(D)(i)(II), and elsewhere you refer to the CFRs, please be sure to incorporate these by reference using G.S. 150B-21.6.

Also on lines 6-7, these Soil and Water Conservation Commission rules were transferred and are now in 02 NCAC 59F and 06F. Please update the citations and incorporate these by reference. Since they are rules in the NCAC, you do not need to state where copies can be obtained.

Amanda J. Reeder
Commission Counsel
Date submitted to agency: October 1, 2019

In (b)(4)(D)(iii), line 22, given that this language came from Session Law, I take it your regulated public knows what "scattered trees" are?

In (b)(4)(D)(v), line 29, is "suitable for cropping" known to your regulated public?

In (c), lines 32-35, state "A Basin Oversight Committee, as set forth in Paragraph (d) of this Rule, and county-level Local Advisory Committees, as set forth in Paragraph (e) of this Rule, shall coordinate activities and account for progress. Accounting for nitrogen load-reducing…"

Line 36, what is a "producer"?

In (c)(1), Page 4, so that I'm clear – no one is required to participate if the basin meets the goal?

In (c)(2), line 25, how is this demonstration done?

On 27, why is "Basin" capitalized?

On line 29, what do you mean by "particularly"? And I note this language is not in Rule .0712. I take it this is on purpose?

On line 32, since you say the Commission "may" take this action, you need to provide some guidance within the Rule as to when this will happen under these circumstances.

In (d), Page 5, line 35, insert a comma after "role"

I do not think that Subparagraph (d)(1) says what you mean for it to say. For example, the Subparagraph does not actually require the appointment of anyone in (d)(1)(F) through (J). It only addresses the replacement of them. And who determines in (d)(1)(G) through (J) whether to appoint one, two, or none of these individuals?

Delete lines 7-8.

On lines 9-10, what is the point of this language? I suggest deleting it.

Since the term "Director" is defined in Rule .0701 as the Director of the Division of Water Resources, why not state "The Director shall solicit one nomination for membership from each agency …"

On lines 12, 21, 22, 23, and 24, what is "interest"? How is this determined?

End (d)(1)(E), line 20, with a semicolon rather than a comma?

In (d)(1)(J), what is this "scientific community"? And how many shall be appointed?

In (d)(2)(A), line 34 approve how? Based upon what? And insert a comma after "approve"

On lines 35-36, what are these methods? Where are they set forth? Are you referring to the ones set forth in Subparagraph (d)(3)?

Page 7, line 1, state "The Committee shall submit…"

On line 2, why do you need "as initiated in 2002"?

On line 2, you do not need "annually" as you already stated this on line 35 of Page 6.

In (d)(2)(B), line 3, replace "called for under" with "set forth in"

On line 3, who determines whether this is "needed'? (Please note the same question on line 5 and 8)

On line 31, what is a "BMP" Is it a "Best Management Practice" as defined in Rule .0701? If so, then amend .0701 to add that acronym in Item (3) of that Rule.

In (d)(2)(D), line 10, approved by the Commission how? And is this method in Rule or is it exempt from rulemaking under a provision of law, such as G.S. 150B-2(8a)(h)?

In (d)(3), who is estimating this? The Basin Oversight Committee, the local advisory committee, the Division, the Commission?

On Page 8, line 19, what do you mean by "Success in meeting this Rule's purpose"? Why not state "The requirements of Item (1) of this Rule shall be gauged…"

On line 19, replace "will" with "shall"

On line 20, what are "broader trends in indicators of phosphorus loss"?

On line 22, insert a comma after "develop"

On line 22, what do you mean by "indicated"? Do you mean "as set forth in"? If so, state that.

What statutory authority are you relying upon for the Basin Oversight Committee to create this accounting method?

In (d)(3)(C), Page 8, line 32, there is no Paragraph (g) of this Rule. Do you mean Paragraph (e)?

On line 33, what are "nutrient objectives"? I note that Rule .0712 refers to "nutrient goals". Is the difference intentional?

In (d)(3)(D), how does this get determined? I take it the Basin Oversight Committee does it, but how do they know about these advances?

In (d)(3)(E), Page 9, line 2, you are not requiring a report of this committee in the Rule, and this committee won't exist unless constituted. Did you mean to require a report in (d)(2)(D)?

On line 3, replace "elsewhere" with the citation, which is likely Subparagraph (d)(2)(D) of this Paragraph.

In (e)(1), line 6, insert a comma after "2001-355"

On line 10, replace "They" with "It" or "The committee"

Amanda J. Reeder
Commission Counsel
Date submitted to agency: October 1, 2019

I note again that most of this language came from SL 2001-355. So, I take it that this language (such as "significant agricultural commodities") is known to your regulated public?

In (e)(1), line 10, replace "They" with "It" and how will this be determined? In accordance with the Session Law?

In (e)(1)(F), this language differs from the Session Law. So, who will decide if there should be three or more farmers?

In (e)(2), line 23, insert a comma after "2001-355"

On line 29, the only Part affected by the language on lines 29-31 is (e)(1)(F), not (C). Please address that here.

Do you need to retain the language on lines 31-32?

In (e)(3)(A), line 34, why state "Continue"? The requirements are to submit a report, so I suggest stating "Submit annual…"

On line 36, insert a comma after "county"

Page 10, line 2, delete "identified"

In (e)(3)(B), so that I'm clear – the Local Advisory Committee will take this action, not the Basin Oversight Committee?

In (f), Page 11, line 19, who determines when this is "needed"?

In (7), lines 19-20, delete "described elsewhere"

Lines 20-21, what is this approved method and how is it obtained? How was it approved? Was it formerly in this Rule and now deleted?

On line 21-22, annual reporting by whom? Can the Basin Oversight Committee or Local Advisory Committee create its own revision and follow that?

On line 22, what is "applicable" here? Does your regulated public know?

On line 22, if by "BOC" you mean "Basin Oversight Committee" please state that.

On lines 23-24, what are these standards established by these two agencies? Are they in rule or regulation? How does one know what they are? Where can they be found?

In the History Note, why are you citing to G.S. 143-215.6A, 6B, and 6C?

Also in the History Note, what part of SL 1997-458 are you relying upon for your rulemaking authority?

Please retype the rule accordingly and resubmit it to our office at 1711 New Hope Church Road, Raleigh, North Carolina 27609.

Amanda J. Reeder
Commission Counsel
Date submitted to agency: October 1, 2019

15A NCAC 02B .0256 is readopted with changes as published in 33:16 NCR 1671-1717 as follows:

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~~ Parts (A) and (B) of this Subparagraph shall comply with Forest Practices Guidelines Related to Water Quality codified at ~~15A NCAC 01I.~~ 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.~~ (A) through (C) of this Subparagraph

(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)~~

Subparagraph (3) of this Paragraph. [~~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;[~~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~~] Per S.L. 2001-355 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,~~] Per S.L. 2001-355 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 (1)(A), (1)(B), (1)(D), and (1)(E) of this Subparagraph. [~~(e)(1)(A), (e)(1)(B), (e)(1)(D), and (e)(1)(E) of this Rule.~~] As directed by ~~S.L. 2001, c. 355,~~ S.L. 2001-355, the Commissioner of Agriculture shall appoint the members described in ~~Subparagraphs~~ Parts [~~(e)(1)(C) and (e)(1)(F) of this Rule~~] (1)(C) and (1)(F) of this Subparagraph 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

(B) Take actions called for under Subparagraph (c)(2) of this Rule as needed to address maintenance of the nitrogen and phosphorus reduction goals.

~~(A) 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;~~

~~(B) Designate a member agency to compile and retain copies of all individual plans produced to comply with this Rule;~~

~~(C) 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;~~

~~(D) Ensure that any changes to the design of the local strategy will continue to meet the nutrient goals of this Rule; and~~

~~(E) 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.~~

~~(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.~~

~~(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.~~

~~(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.~~

~~(C) Local nutrient control strategies may prioritize BMP implementation to establish the most efficient and effective means of achieving the nutrient goals.~~

~~(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.~~

(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.

History Note: *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;*
Eff. September 1, 2001;
Temporary Amendment Eff. January 1, 2002 (exempt from 270 day requirement-S.L. 2001-355).
Readopted Eff. November 1, 2019.

REQUEST FOR TECHNICAL CHANGE

AGENCY: Environmental Management Commission

RULE CITATION: 15A NCAC 02B .0733 (formerly .0229)

DEADLINE FOR RECEIPT: Friday, October 11, 2019

The Rules Review Commission staff has completed its review of this Rule prior to the Commission's next meeting. The Commission has not yet reviewed this Rule and therefore there has not been a determination as to whether the Rule will be approved. You may call our office to inquire concerning the staff recommendation.

In reviewing this Rule, the staff recommends the following technical changes be made:

On the Submission for Permanent Rule form, Box 2, please correct the rule citation (.0229) and insert the full new name of the Rule. Please also correct the citation in Box 9B.

In (1), line 12, what are these "designated uses"?

In (2), were the changes made on lines 25-26 in response to public comment?

On line 26, please capitalize "Rule"

In (3), line 27, delete the comma after "Rule"

On line 28, what are "like matters"?

In (3)(b), where are these permits set forth in the Rule? Is it Items (4)(b) and (5)(b?

In Sub-Item (4)(a), Page 2, line 11, and elsewhere the term is used, what are "practical alternatives"? Does your regulated public know?

In (4)(b()ii), line 21, what is the "best available technology economically available"? To whom, as determined by whom? Note the same question for (5)(b)(ii)

In (4)((c), lines 27-31, do not underline and strike the same language.

On line 32, insert a comma after "effective" and replace "ten" with "10" (see Rule 26 NCAC 02C .0108(9)(b))

In (4)(d), line 36, capitalize "Director" Note the same for Page 3, lines 1 and 9, and Page 4, lines 5, 8, and 16.

Page 3, lines 7, 34, and Page 4, line 14, replace "ten" with "10"

What statutory authority are you relying upon for (4)(f) to allow the Director to do this outside of rulemaking? Please note the same question for (5)(f).

Amanda J. Reeder
Commission Counsel
Date submitted to agency: October 1, 2019

In (5)(b), lines 17-18, what is "technology-based mass limits"?

In (5)(c), line 27, I am only asking – here, you say "operate" but in Rule .0713, you refer to "discharge" Should these rules use the same terms?

In (5)c), line 28, what do you mean by "demonstrate"? Do you mean "have a contractual agreement"?

Line 33, insert a comma after "effective"

In (5)(d), Page 4, so that I'm clear – the facility doesn't have to meet (e) and (f) until after they begin operation?

In (5)(e), line 12, define "sufficient"

In (5)(g), line 19, who is the designee? Does the regulated public know?

In (5)(g)(i), line 22, what is "TN and TP loading"? Is it Total Nitrogen and Total Phosphorus? If so, why not state hat here or insert these acronyms into Rule .0701(49) and (50)?

In (5)(g)(ii), line 27, who will establish these? And do you mean "shall" rather than "may"? If not, then under what circumstances will the permit limit not be established to ensure that the 70 percent load is not exceeded?

In the History Note, I suggest simply citing to G.S. 143B-282.

And what part of S.L. 1995-478 are you citing to as your rulemaking authority that was not codified into a law?

Please retype the rule accordingly and resubmit it to our office at 1711 New Hope Church Road, Raleigh, North Carolina 27609.

Amanda J. Reeder
Commission Counsel
Date submitted to agency: October 1, 2019

15A NCAC 02B .0229 is readopted with changes as published in 33:16 NCR 1671-1717 as follows:

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. This Rule applies to Tar-Pamlico Basin Association member facilities on or after June 1, 2025. This Rule applies to other facilities upon this rule's effective date.

(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:~~

~~Payment=((PF$_e$ x (TN+TP) x 1384) (0.5 x (TN+TP) x 1384)) x (BMP$_e$ x 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 technology-based 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:~~] exceed:

(i) [~~for~~] For facilities treating municipal or domestic wastewater, the mass load equivalent to a concentration of [~~3.0~~] 3.5 mg/L TN and 0.5 mg/L TP at the monthly average flow limit in the facility's NPDES permit; and

(ii) [~~for~~] 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~~] achievable, calculated at the monthly average flow limit in the facility's NPDES [~~permit, whichever is less.~~] permit.

(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).~~] any partial calendar year in which the permit becomes effective plus ten subsequent years of discharge at the proposed design flow rate in accordance with 15A NCAC 02H .0112(c).

(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.~~] The director shall not issue a permit authorizing discharge from a new facility unless the applicant has satisfied the requirements of Sub-Items (a), (c), and (e) of

this Item. If a facility's permit contains tiered flow limits for expansion, the director shall not authorize an increased discharge unless the applicant has satisfied the requirements of Sub-Items (a), (c), and (e) of this Item.

(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~~] any partial calendar year in which the permit becomes effective plus ten subsequent years of discharge at the proposed design flow rate in accordance with 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~~] Expanding facilities shall evaluate all practical alternatives to surface water discharge [~~and report its findings~~] pursuant to 15A NCAC 02H .0105(c)(2) prior to submitting an application to discharge. [~~.0105(c)(2).~~]

(b) The nitrogen and phosphorus discharge limits for an [~~expanded~~] expanding facility shall not exceed the greater of loads equivalent to its active allocation and offset credit, or the [~~applicable~~] following technology-based mass [~~limit, whichever is less, for each nutrient. Technology based limits are as follows:~~] limits:

(i) [~~for~~] For facilities treating municipal or domestic [~~wastewaters,~~] wastewater, the mass equivalent to a concentration of [~~3.0~~] 3.5 mg/L TN and 0.5 mg/L TP at the monthly average flow limit in the NPDES permit; and

(ii) [~~for~~] 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~~] achievable, calculated at the monthly average flow limit in the facility's NPDES [~~permit, whichever is less.~~] permit.

(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 or demonstrate contractual agreement to acquire, prior to authorization to discharge at the increased flow, 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 to meet its effluent nutrient limitations for [~~no less than 10~~] any partial calendar year in which the permit becomes effective plus ten subsequent years of discharge at the proposed design flow [~~rate.~~] rate in accordance with 15A NCAC 02H .0112(c). [~~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.~~] The director shall not issue a permit authorizing [~~expansion of~~] increased discharge from an existing facility unless the applicant has satisfied the requirements of [~~Sub-Item (d)~~] Sub-Items (a), (c), and (e) of this Item. If a facility's permit contains tiered flow limits for expansion, the director shall not [~~issue an authorization to operate~~] authorize discharge at an increased flow unless the applicant has satisfied the requirements of [~~Sub-Item (d)~~] Sub-Items (a), (c), and (e) of this Item.

(e) Subsequent applications for permit renewal shall [~~further~~] demonstrate that the facility has sufficient [~~means~~] nitrogen allocation or offset credits to meet its effluent nutrient limitations for [~~at least~~] any partial calendar year in which the permit becomes effective plus ten subsequent years [~~beyond renewal. See~~] of discharge at the proposed design flow rate in accordance with 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.

(g) 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)~~] (a) through (c) and (e) 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:~~

~~Payment=((PF$_e$ x (TN+TP) x 1384) (PF x (TN+TP) x 1384)) x (BMP$_e$ x 1.1) where:~~

~~Payment = the nutrient offset payment ($);~~

~~PFe = 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.~~

History Note: *Authority G.S. 143-214.1; 143-215.1; 143-215.3(a)(1); 143B-282(a)-(d); S.L. 1997-458;*
Eff. April 1, 1997.
Readopted Eff. November 1, 2019.

REQUEST FOR TECHNICAL CHANGE

AGENCY: Environmental Management Commission

RULE CITATION: All Repeals (15A NCAC 02B .0236,.0237, .0239, .0255, and .0257)

DEADLINE FOR RECEIPT: Friday, October 11, 2019

The Rules Review Commission staff has completed its review of this Rule prior to the Commission's next meeting. The Commission has not yet reviewed this Rule and therefore there has not been a determination as to whether the Rule will be approved. You may call our office to inquire concerning the staff recommendation.

In reviewing this Rule, the staff recommends the following technical changes be made:

On the Submission for Permanent Rule form, Box 9B, you state that two of these repealed rules are being recodified. However, they are not being recodified, they are being repealed.

.0236: On line 8, why are you saying this Rule is being recodified? You are repealing it.

.0239: On line 1, please correct the citation in the Introductory Statement to .0239

.0255: On line 1, please simply insert a space between ".0255" and "is" You do not need to show this as a change.

In the History Note, line 9, why are you saying this Rule is being recodified? You are repealing it.

Please retype the rule accordingly and resubmit it to our office at 1711 New Hope Church Road, Raleigh, North Carolina 27609.

Amanda J. Reeder
Commission Counsel
Date submitted to agency: October 1, 2019

15A NCAC 02B .0236 is repealed through readoption as published in 33:16 NCR 1671-1717 as follows:

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

History Note: *Authority G.S. 143.214.1; 143.214.7; 143.215.3(a)(1).*
Eff. August 1, 1998.
Repealed Eff. November 1, 2019. (This rule has been recodified to 15A NCAC 02B .0712)

15A NCAC 02B .0237 is repealed through readoption as published in 33:16 NCR 1671-1717 as follows:

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

History Note: *Authority G.S. 143-214.1;*
Eff. April 1, 1997.
Repealed Eff. November 1, 2019.

15A NCAC 02B .0249 is repealed through readoption as published in 33:16 NCR 1671-1717 as follows:

15A NCAC 02B .0239 NEUSE RIVER BASIN: NUTRIENT SENSITIVE WATERS MANAGEMENT STRATEGY: NUTRIENT MANAGEMENT

History Note: *Authority G.S. 143-214.1; 143-214.7; 143-215.3(a)(1);*
Eff. August 1, 1998.
Repealed Eff. November 1, 2019.

15A NCAC 02B .0255is repealed through readoption as published in 33:16 NCR 1671-1717 as follows:

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

History Note: *Authority G.S. 143-214.1; 143-214.7; 143-215.3(a)(1); 143-215.6A; 143-215.6B; 143-215.6C;*
Eff. April 1, 2001.
Repealed Eff. November 1, 2019. (This rule has been recodified to 15A NCAC 02B .0732)

15A NCAC 02B .0257 is repealed through readoption as published in 33:16 NCR 1671-1717 as follows:

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

History Note: *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);*
Eff. April 1, 2001.
Repealed Eff. November 1, 2019.