1 15A NCAC 02B .0701 is adopted with changes as published in 33:16 NCR 1671-1717 as follows: 2 3 SECTION .0700 - NUTRIENT MANAGEMENT STRATEGY RULES FOR SURFACE WATERS 4 5 15A NCAC 02B .0701 NUTRIENT STRATEGIES DEFINITIONS 6 Unless the context indicates otherwise, the following words and phrases shall be interpreted as follows for the purposes 7 of this Section: In this Section, the following terms shall mean: 8 (1) "Agricultural uses" include the use of waters for stock watering, irrigation, and other farm purposes. 9 (2) "Allocation" means the mass quantity, as of nitrogen or phosphorus that a discharger, group of 10 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 11 12 discharge of nutrients but is prerequisite to such authorization in an NPDES permit. 13 (3) "Best Management Practice" or "BMP" means the same as defined in Rule .0202 of this Subchapter. 14 "Buffer" means the same as defined in Rule .0202 of this Subchapter. **(4)** (5) 15 "Built-upon area" means the same as defined in G.S. 143-214.7(b2). 16 (6) "Concentration(s)" means the same as defined in Rule .0202 of this Subchapter. 17 **(7)** "Contiguous" means the same as defined in Rule .0202 of this Subchapter. 18 (8) "Critical area" means the same as defined in Rule .0202 of this Subchapter. 19 (9) "Cropland" means agricultural land that is used for growing corn, grains, oilseed crops, cotton, 20 forages, tobacco, beans, or other vegetables or fruits. 21 (10)"Delivered", "Delivered" as in delivered allocation, load, or limit, means that portion of the 22 allocation, load, or limit that is measured or predicted estimated to be transported from a nutrient 23 source or discharge to a waterbody. A delivered value equals the corresponding discharge value 24 multiplied by its assigned transport or delivery factor. 25 (11)"Development" means the same as defined in G.S. 143-214.7. 26 (12)"Director" means the Director of the Division. 27 (13)"Discharge" as in discharge allocation, load, or limit means the allocation, load, or limit that is 28 measured at the point of discharge into surface waters. A discharge value is equivalent to a delivered 29 value divided by the transport factor for that discharge location. 30 (14)"Division" means the Division of Water Resources of the North Carolina Department of 31 Environmental Quality. Quality and its successors. 32 (15)"DMS" means the N.C. Division of Mitigation Services. Services or its successor. DMS, as 33 administrator of the Riparian Buffer Restoration Fund, is the only in-lieu fee program to which rules 34 of this Section apply. 35 <u>(16)</u> "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.

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1	(16)(17) "Estuary allocation" means the mass loading of total nitrogen or total phosphorus at the estuary that		
2	is reserved for a discharger or group of dischargers. A discharger's or group's estuary allocation is		
3	equivalent to its discharge allocation multiplied by its assigned transport factor.		
4	(17)(18) "Existing development" means structures and other land modifications resulting from development		
5	activities, other than those associated with agricultural or forest management activities, that meet		
6	the following criteria:		
7	(a) For projects that do not require a state <u>State</u> permit, they are in place or have established a		
8	vested right to construct relative to the effective date of the applicable local stormwater		
9	ordinance implemented pursuant to a new development stormwater rule of this Section;		
10	and		
11	(b) For projects that require a state State permit, they are in place before the effective date		
12	established in the applicable state State and federal entities stormwater rule of this Section.		
13	(18)(19) "Fertilizer" means the same as defined in Rule .0202 of this Subchapter.		
14	(19) "Industrial discharge(s)" means the same as defined in Rule .0202 of this Subchapter.		
15	(20) "Industrial discharge(s)" for the purpose of the nutrient strategy rules of this Section, means the		
16	discharge of industrial process treated wastewater or wastewater other than sewage. Stormwater		
17	shall not be considered to be an industrial wastewater unless it is contaminated with industrial		
18	wastewater. Industrial discharge includes:		
19	(a) Wastewater resulting from any process of industry or manufacture, or from the		
20	development of any natural resource; or		
21	(b) Wastewater resulting from processes of trade or business, including wastewater from		
22	laundromats and car washes, but not wastewater from restaurants.		
23	(20)(21) "Land-disturbing activity" means the same as defined in Rule .0202 of this Subchapter.		
24	(21)(22) "Load" means the mass quantity of a nutrient or pollutant released into surface waters over a given		
25	time period. Loads may be expressed in terms of pounds per year and may be expressed as "delivered		
26	load" or an equivalent "discharge load."		
27	(22)(23) "Load allocation" means the same as set forth in federal regulations 40 CFR 130.2(g), which is		
28	incorporated herein by reference, including subsequent amendments and editions. A copy of the		
29	most current version of the regulations is available free of charge on the internet at		
30	http://www.gpo.gov/fdsys/.		
31	(23)(24) "Local government" means the same as defined in Rule .0202 of this Subchapter.		
32	(24)(25) "MGD" means million gallons per day.		
33	(25)(26) "Nitrogen" means total nitrogen unless specified otherwise.		
34	(26)(27) "Nonpoint source load allocation" is that portion of an approved total maximum daily load (TMDL)		
35	TMDL] or calibrated nutrient response model assigned to all other nitrogen sources in the basin other		
36	than individually permitted wastewater facilities and represents the maximum allowable load of		
37	total nitrogen or total phosphorus to a waterbody from these nonpoint sources.		

1	(27)(28) "Nonpoint source pollution" means the same as defined in Rule .0202 of this Subchapter.
2	(28)(29) "Non-wasting endowment" is a fund that generates enough interest to cover the cost of perpetual
3	monitoring, maintenance, repair and renovation monitoring and enforcement of a nutrient reduction
4	project.by a perpetual steward.
5	(29)(30) "NPDES" means National Pollutant Discharge Elimination System, and eonnotes includes the
6	permitting process required for the operation of point source discharges in accordance with the
7	requirements of Section 402 of the Federal Water Pollution Control Act, 33 U.S.C. Section 1251
8	<u>1251,</u> et seq.
9	(30)(31) "Nutrients" means the combination of total nitrogen and total phosphorus for the purpose of the
10	nutrient rules of this section.
11	(31)(32) "Nutrient Offset Bank" is a site at which a nutrient reduction offset project that is implemented by
12	a provider except DMS and approved by the Division for the purpose of generating nutrient offset
13	eredit. credit by the Division through execution of a nutrient offset banking instrument. This term
14	does not include nutrient offset projects associated with an in-lieu fee program.
15	(32)(33) "Nutrient Offset Banking Instrument" is a written legal agreement between the Division and the
16	provider that governs the establishment, operation, and use of a nutrient offset bank.
17	(33)(34) "Nutrient Offset Project" is a nutrient reduction project that is implemented by DMS and approved
18	by the Division for the purpose of generating nutrient offset credit.
19	(34)(35) "Nutrient Reduction Practice" is any project type or type of programmatic effort that generates a
20	quantifiable or estimated decrease in nutrient loading, and for which practice design standards and
21	load reduction estimation methods have been approved in rule or by the Division.
22	(35)(36) "Nutrient Reduction Project" is a site-specific installation and implementation of a nutrient reduction
23	practice or combination of practices.
24	(36)(37) "Nutrient Sensitive Waters" means the same as defined or classified in Rule .0223 of this Subchapter.
25	(37)(38) "Permanent Nutrient Offset Credit" is a nutrient load reduction credit that is generated in compliance
26	with this rule. does not automatically expire. Permanent nutrient offset credits account for permanent
27	nutrient load reductions resulting from permanently installed and maintained nutrient reduction
28	practices. Permanent nutrient offset credits may be used for compliance with new development
29	stormwater rules of this Subchapter and may also satisfy other nutrient load reduction requirements
30	as described in this Subchapter. Nutrient offset credits are expressed in pounds of total nitrogen or
31	total phosphorus per year.
32	(39) "Perpetual Steward" means an entity that provides oversight for a permanent nutrient offset project.
33	"Oversight" for the purposes of this Item includes monitoring and enforcement responsibilities
34	assumed by the steward and approved by the Division as a condition of granting permanent nutrient
35	offset credit.
36	(38)(40) "Phosphorus" means total phosphorus unless specified otherwise.

1	(39)(41) "Provider" means any public or private person or entity that implements a nutrient reduction project
2	and seeks nutrient offset credit for sale, lease, or conveyance in exchange for remuneration
3	including DMS. Persons or entities other than DMS that seek to become a provider of nutrient offse
4	credits become so upon approval of a nutrient offset banking instrument by the Division.
5	(42) "Release" of nutrient offset credits means the Division approves and acknowledges the generation
6	of nutrient offset credits. Nutrient offset bank providers may sell, transfer, or use credits upon
7	release. DMS may debit credits upon project institution but credits will still be subject to fina
8	approval and release by DWR.
9	(40)(43) "Residuals" means the same as defined in Rule .0202 of this Subchapter.
10	(41)(44) "Stormwater Collection System" means the same as defined in 15A NCAC 02H .1002.
11	(45) "Stormwater Control Measure" or "SCM," also known as "Best Management Practice" or "BMP,"
12	"SCM" means the same as defined in 15A NCAC 02H .1002.
13	(43)(46) "Surface waters" means all waters of the state State as defined in G.S. 143 212 143-212, excep
14	underground waters.
15	(44)(47) "Term Nutrient Offset Credit" is a nutrient load reduction credit that accounts for annual nutrien
16	load reductions. for a finite period of time. Temporary nutrient offset credits are expressed in pounds
17	of total nitrogen or total phosphorus.
18	(45)(48) "Total Maximum Daily Load," or "TMDL," means the same as set forth in federal regulations 40
19	CFR 130.2(i) and 130.7(c)(1), which are incorporated herein by reference, including subsequen
20	amendments and editions. A copy of the most current version of the regulations is available free o
21	charge on the internet at http://www.gpo.gov/fdsys/.
22	(46)(49) "Total nitrogen" means the sum of the organic, nitrate, nitrite, and ammonia forms of nitrogen in a
23	water or wastewater.
24	(47)(50) "Total phosphorus" means the sum of the orthophosphate, polyphosphate, and organic forms o
25	phosphorus in a water or wastewater.
26	(48)(51) "Transportation facility" means the existing road surface, road shoulders, fill slopes, ferry termina
27	fill areas, and constructed stormwater conveyances or drainage canals adjacent to and directly
28	associated with the road.
29	(49)(52) "Transport factor" means the fraction of a discharged nitrogen or phosphorus load that is delivered
30	from the discharge point to a waterbody as established in an approved TMDL or other Division
31	publication.
32	(50)(53) "Wasteload allocation" is that portion of a nitrogen or phosphorus TMDL assigned to individually
33	permitted wastewater facilities and represents the maximum allowable load of total nitrogen or total
34	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-3
 282(c); 143B-282(d);
 Eff. January 1, 2020.

1	15A NCAC 02B	.0240 is readopted with changes as published in 33:16 NCR 1671-1717 as follows:
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3	15A NCAC 02E	3.0240.0703 NUTRIENT OFFSET PAYMENTS CREDIT TRADING
4	(a) The purpose	e of this Rule is to establish procedures for the optional payment of nutrient offset fees to the NC
5	Ecosystem Enha	ncement Program, subsequently referred to as the Program, or to other public or private parties where
6	the Program or s	such parties implement projects for nutrient offset purposes and accept payments for those purposes,
7	and where either	of the following applies:
8	(1)	The following rules of this Section allow offsite options or nutrient offset payments toward
9		fulfillment or maintenance of nutrient reduction requirements:
10		(A) .0234 and .0235 of the Neuse nutrient strategy,
11		(B) .0258 of the Tar Pamlico nutrient strategy, and
12		(C) applicable rules of the Jordan nutrient strategy, which is described in Rule .0262; and
13	(2)	Other rules adopted by the Commission allow this option toward fulfillment of nutrient load
14		reduction requirements.
15	(a) PURPOSE.	The purpose of this Rule is to establish standards and procedures applicable to providers for approval
16	of nutrient reduc	tion projects and associated nutrient offset credits that will be transferred to persons or entities subject
17	to nutrient rules	of this Subchapter. [Nutrient offset credits represent a compliance option where allowed by nutrient
18	rules of this Su	behapter.] Nutrient offset credit is distinct from nutrient accounting for direct compliance with
19	individual nutrie	ent strategy rules, which is not governed by this Rule [rule.] Nutrient accounting includes joint
20	compliance by n	nultiple local governments as authorized in individual nutrient strategy rules. Nutrient offset credits
21	represent a comp	pliance option where allowed by nutrient rules of this Subchapter, including:
22	(1)	the Neuse Nutrient Strategy as set forth in Rule .0710 of this Section;
23	(2)	the Tar-Pamlico Nutrient Strategy as set forth in Rule .0730 of this Section;
24	(3)	the Jordan Lake Nutrient Strategy as set forth in Rule .0262 of this Subchapter; and
25	(4)	the Falls Lake Nutrient Strategy as set forth in Rule .0275 of this Subchapter.
26	(b) Offset fees	paid pursuant to this Rule shall be used to achieve nutrient load reductions subject to the following
27	geographic restr	ictions:
28	(1)	Load reductions shall be located within the same 8 digit cataloguing unit, as designated by the US
29		Geological Survey, as the loading activity that is being offset;
30	(2)	The Division shall track impacts by 10 digit watershed, as designated by the US Geological Survey
31		and providers shall locate projects proportional to the location of impacts to the extent that the
32		projects would meet the least cost alternative criterion per S.L. 2007 438. The location of load
33		reduction projects shall be reviewed during the approval process described in Paragraph (c) of this
34		Rule;
35	(3)	Impacts that occur in the watershed of Falls Lake in the upper Neuse River Basin may be offset only
36		by load reductions in the same watershed; Impacts in the Neuse 01 8 digit cataloguing unit below

1		the Falls watershed, as designated by the US Geological Survey, may be offset only by load
2		reductions in that same lower watershed;
3	(4)	Restrictions established in the Jordan nutrient strategy, which is described in Rule 15A NCAC 02B
4		.0262; and
5	(5)	Any further restrictions established by the Commission through rulemaking.
6	(b) GEOGRAP	HIC RESTRICTIONS. Nutrient offset credits may be used to satisfy regulatory obligations only when
7	generated by a	nutrient reduction project within an allowable geographic area identified in G.S. 143-214.26, as
8	designated by the	he U.S. Geological Survey, with the following additional restrictions:
9	<u>(1)</u>	Nutrient offset credits may be used to satisfy regulatory obligations incurred in the upper Falls
10		watershed only if they were generated by a nutrient reduction project located within the upper Falls
11		watershed, as this geographic area is described in 15A NCAC 02B .0276.
12	<u>(2)</u>	Nutrient offset credits may be used to satisfy regulatory obligations incurred in the lower Falls
13		watershed only if they were generated by a nutrient reduction project located within the Falls Lake
14		watershed, as these geographic areas are described in 15A NCAC 02B .0276.
15	<u>(3)</u>	Nutrient offset credits may be used to satisfy regulatory obligations incurred in the Jordan Lake
16		watershed only if they were generated by a nutrient reduction project in the same subwatershed of
17		the Jordan Lake watershed, as these geographic areas are described in 15A NCAC 02B .0262.
18	<u>(4)</u>	Nutrient offset credits may be used to satisfy regulatory obligations incurred in the Neuse 01 8-digit
19		cataloguing unit, as designated by the U.S. Geological Survey, [below] outside of the Falls Lake
20		watershed only if they were generated by a nutrient reduction project [within the same geographic
21		area located outside of the Falls Lake watershed.
22	<u>(5)</u>	Nutrient offset credits generated by nutrient reduction projects for compliance with an estuarine
23		nutrient strategy shall be generated in an area that is within or drains to:
24		(A) [an assessment unit] surface waters identified for restoration under the applicable nutrient-
25		related TMDL or nutrient [strategy,] strategy; or
26		(B) [an assessment unit] surface waters classified as SA, SB, or SC that fails to meet the
27		chlorophyll-a water quality standard in a subsequent integrated report.
28	(c) The Progr	am and other parties shall obtain Division approval of proposed nutrient offset projects prior to
29	construction. C	ther parties shall sell credits in compliance with approved credit release schedules and with the
30	requirements of	this Rule. Project approval shall be based on the following standards:
31	(1)	Load reductions eligible for credit shall not include reductions used to satisfy other requirements
32		under the same nutrient strategy;
33	(2)	The Program and other parties shall agree to provide adequate financial assurance to protect and
34		maintain load reductions for the stated duration, including for maintenance, repair and renovation
35		of the proposed measure;
36	(3)	The Program and other parties shall agree that once credits are established for a measure and until
37		they are exhausted, they shall provide a credit/debit ledger to the Division at regular intervals;

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1	(4)	The P	rogram and other parties shall agree that the party responsible for a measure shall allow the
2		Divisi	on access to it throughout its lifetime for compliance inspection purposes;
3	(5)	The Pr	rogram or other party seeking approval shall obtain a site review from Division staff prior to
4		Divisi	on approval to verify site conditions suitable to achieve the proposed load reductions through
5		the pro	oposed measure; and
6	(6)	The P	rogram shall submit a proposal, and other parties shall submit a proposal or a draft banking
7		instru	ment, addressing the following items regarding a proposed load reducing measure:
8		(A)	Identify the location and site boundaries of the proposed measure, the geographic area to
9			be served by credits in compliance with the requirements of Paragraph (b) of this Rule,
10			existing conditions in the contributing drainage area and location of the measure, and the
11			nature of the proposed measure with sufficient detail to support estimates of load reduction
12			required in this Paragraph;
13		(B)	Provide calculations of the annual magnitudes of load reductions and identify final credit
14			values incorporating any delivery factors or other adjustments required under rules
15			identified in Paragraph (a) of this Rule;
16		(C)	Define the duration of load reductions, and provide a conservation easement or similar
17			legal mechanism to be recorded with the County Register of Deeds and that is sufficient to
18			ensure protection and maintenance of load reductions for the stated duration;
19		(D)	Identify the property owner and parties responsible for obtaining all permits and other
20			authorizations needed to establish the proposed measure, for constructing and ensuring
21			initial performance of the proposed measure, for reporting on and successfully completing
22			the measure, for holding and enforcing the conservation easement, and for ensuring
23			protection and maintenance of functions for its stated duration;
24		(E)	Provide a plan for implementing the proposed measure, including a timeline, a commitment
25			to provide an as built plan and report upon establishment of the measure, elements to be
26			included in the as built plan and report, a commitment to provide a bond or other financial
27			assurance sufficient to cover all aspects of establishment and initial performance prior to
28			the release of any credits, and criteria for successful completion; and
29		(F)	Provide a monitoring and maintenance plan designed to achieve successful completion,
30			that commits to annual reporting to the Division until success is achieved, that recognizes
31			the Division's authority to require extension or re initiation of monitoring depending on
32			progress toward success, and that commits to a final report upon completion. The final
33			report shall reaffirm the party that shall hold and enforce the conservation easement or
34			other legal instrument.
35	(c) NUTRIEN	T OFFSE	T CREDIT APPROVAL STANDARD. Providers shall demonstrate that a nutrient reduction
36	project is desig	ned, con	structed, [implemented] implemented, and sustained in a manner that, according to the best
37	available scient	tific evide	ence, [studies] studies, and principles, will generate the estimated nutrient load reduction for

1 the duration of time for which credits are approved. Nutrient offset credits shall be generated and transferred in 2 accordance with G.S. 143-214.26. 3 (d) The Program shall establish and revise nutrient offset rates as set out in Rule .0274 of this Section. Offset payments 4 accepted by the Program shall be placed into the Riparian Buffer Restoration Fund administered by the Department 5 pursuant to G.S. 143-214.21 6 (d) QUANTIFYING NUTRIENT OFFSET CREDITS. The quantity of nutrient offset credits eligible to be generated 7 by a nutrient reduction project shall be determined according to the following provisions: 8 Nutrient reduction credit sought on developed lands shall be calculated in relation to load reductions (1) 9 achieved relative to the project site's current loading condition, as determined by the provider and 10 verified by the Division; 11 <u>(2)</u> Nutrient load reductions shall be site-specific estimates of decreases in annual mass load of nitrogen 12 and/or or phosphorus to the nearest receiving surface water feature. Such estimates shall be 13 supported by the weight of evidence from available, current and applicable research, may involve 14 water quality modeling or engineering formulas and calculations, and shall reflect as closely as 15 possible project design specifications. 16 Note: The Commission seeks public comment on the following options regarding the generation of nutrient offset credits stream mitigation credits in spatially overlapping areas. OPTION 1: Reductions shall not include those already implemented to satisfy other requirements under the same (3) 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. 17 18 (4) Stream, buffer, or wetland mitigation credit that has not been used to satisfy a mitigation requirement 19 may be converted into nutrient offset credit if the credit-generating project or portion thereof 20 complies with this Rule. 21 <u>(5)</u> A nutrient reduction project may generate both nitrogen and phosphorus offset credits in the same

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

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area.

<u>(6)</u>

1		reduction credits and term nutrient reduction credits shall be maintained to separate leagers
2		separately, even if associated with the same nutrient offset [bank or] project.
3	<u>(7)</u>	Permanent nutrient offset credits may be utilized for temporary compliance purposes. If so, for For
4		each pound of annual term compliance credit received, 1/30th of one pound of permanent nutrient
5		offset credit shall be utilized and retired by removal from the applicable ledger. [This conversion
6		shall also be subject to other applicable trading ratios.
7	<u>(8)</u>	Nutrient offset credits that were approved prior to the adoption of this Rule may make application
8		to be reclassified. The Division shall approve the application [of] associated with any [bank] nutrient
9		offset project to reclassify credits as permanent [which] that meet the requirements for permanent
10		credits at the time of the application to be reclassified. Other nutrient offset credits that were
11		approved prior to the adoption of this Rule or that were conditionally approved pursuant to a
12		mitigation banking instrument or other agreement with DEQ prior to the adoption of this [rule,]
13		Rule, [are] shall be considered term credits and may be transferred between term and permanent
14		ledgers at a ratio of 30 years of term nutrient offset credit to one permanent nutrient offset credit.
15	<u>(9)</u>	Term nutrient offset credits shall be associated with the calendar year or years in which the
16		associated nutrient load reductions are generated.
17	(e) Persons who	seek to pay nutrient offset fees under rules of this Section shall do so in compliance with such rules,
18	the requirements	s of Paragraph (b) of this Rule, and the following:
19	(1)	A non-governmental entity shall purchase nutrient offset credit from a party other than the Program
20		if such credit is available in compliance with the criteria of this Rule at the time credit is sought, and
21		shall otherwise demonstrate to the permitting authority that such credit is not available before
22		seeking to make payment to the Program;
23	(2)	Offset payments made to the Program shall be contingent upon acceptance of the payment by the
24		Program. The financial, temporal and technical ability of the Program to satisfy the mitigation
25		request will be considered to determine whether the Program will accept or deny the request;
26	(3)	Where persons seek to offset more than one nutrient type, they shall make payment to address each
27		type;
28	(4)	The offset payment shall be an amount sufficient to fund 30 years of nutrient reduction.
29	(5)	Persons who seek offsets to meet new development stormwater permitting requirements shall
30		provide proof of offset credit purchase to the permitting authority prior to approval of the
31		development plan; and
32	(6)	A wastewater discharger that elects to purchase offset credits for the purpose of fulfilling or
33		maintaining nutrient reduction requirements shall submit proof of offset credit acquisition or a letter
34		of commitment from the Program or third party provider with its request for permit modification.
35		Issuance of a permit that applies credits to nutrient limits shall be contingent on receipt of proof of
36		offset credit acquisition. A discharger may propose to make incremental payments for additional
37		nutrient allocations, contingent upon receiving a letter of commitment from the Program or third

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1		party p	provider to provide the offset credit needed for permit issuance. In that event the Division may
2		issue o	or modify that permit accordingly, and shall condition any flow increase associated with that
3		increm	nental purchase on payment in full for the additional allocation. Offset responsibility for
4		nutrier	at increases covered under this Paragraph shall be transferred to the Program or third party
5		provid	er when it has received the entire payment.
6	(e) PROJECT	APPRO	VAL STANDARDS. Providers shall comply with the following requirements to request
7	approval from t	he Divis	ion to implement a nutrient reduction project for the purpose of generating nutrient offset
8	credits.		
9	<u>(1)</u>	<u>NUTR</u>	IENT OFFSET BANKING INSTRUMENT. Providers [except DMS] seeking approval of a
10		nutrier	nt offset bank shall submit their draft nutrient offset banking instrument to the Division prior
11		to seek	king approval of project plans. A nutrient offset banking instrument shall provide legal and
12		<u>financi</u>	ial assurances that a provider will implement, maintain, and sustain nutrient reduction projects
13		as pro	posed in subsequent project plans and associated nutrient reduction practice design
14		<u>specifi</u>	cations.
15	<u>(2)</u>	PROJE	ECT PLAN REQUIREMENTS. Prior to initiating a nutrient reduction project, providers shall
16		submit	t a project plan proposal to the Division for review and approval that includes the following
17		elemer	<u>nts:</u>
18		<u>(A)[</u>	Site A site location and site boundaries of the proposed project.
19		<u>(B)</u>	The geographic area eligible to be served by nutrient offset credits in accordance with
20			Paragraph (b) of this Rule [and] or in compliance with in-lieu fee nutrient offset [applicable
21			mitigation permit requirements applicable at the time an in-lieu fee payment was accepted.
22		<u>(C)</u>	Documentation of the conditions of the site at the time of the submittal of the project plan.
23		<u>(D)</u>	Documentation of the condition of the site during the baseline period of the applicable
24			nutrient [strategy.] strategy, unless excepted by Subparagraph (d)(1) of this Paragraph. The
25			Division may accept more recent documentation if it determines such documentation
26			establishes the probable loading condition of the site during the baseline period.
27		<u>(E)[</u>	Description] A description of the proposed project [with sufficient detail to] that supports
28			[support] compliance with the standard in Paragraph (c) of this Rule. Projects conforming
29			to minimum design criteria for stormwater control measures in 15A NCAC 02H .1050
30			through .1062 [meet] shall be deemed as meeting this requirement. Design criteria for
31			stormwater control measure variants and additional nutrient reduction practices established
32			in the Division's Catalog of Nutrient Reduction Practices also meet this requirement.
33		<u>(F)</u>	Nutrient credit calculations determined in conformance with Paragraph (d) of this Rule.
34		<u>(G)</u>	Identification of the property owner and parties responsible for obtaining all permits and
35			other authorizations needed to:
36			(i) establish the proposed [project, project;
37			(ii) construct and ensure initial performance of the [project, project;

1		(iii) report on and successfully complete the [project, project by completing all
2		crediting milestones:
3		(iv) hold and enforce all easement or other protection [mechanisms,]mechanisms; and
4		(v) ensure maintenance of the project for its credited duration.
5		(H) [Description] A description of how the project will be implemented, which shall include a
6		timeline and a commitment to provide an as-built report upon the full project construction
7		or installation.
8		(I) [Description] A description of how the project will be maintained and monitored after it
9		has been installed and for its duration.
10		(J) [Description] A description of how the project will be sustained for its credited life,
11		including a commitment to repair and renovate it as needed to maintain its performance, to
12		keep records of all such operation, maintenance, monitoring, repair and renovation, and to
13		notify the Division of any significant performance remediation needs and plans.
14		(K) Identification of federal or state State grant funding contributing to project
15		implementation.
16	<u>(3)</u>	FINANCIAL ASSURANCES. Providers [except DMS] seeking approval of a nutrient offset bank
17		shall provide the financial assurance that a project plan will be [completed]constructed as proposed.
18		The financial assurance shall be in the form of a completion bond, credit insurance, letter of credit,
19		escrow, or other vehicle acceptable to the [Division,] Division in accordance with this
20		Subparagraph, payable to, or for the benefit of, the Division, to ensure the involved property is
21		secured in fee title or by easement and that planting or construction, monitoring [and/or] or
22		maintenance are completed as necessary to meet the requirements of the project plan.
23	<u>(4)</u>	PROJECT PLAN APPROVAL. The Division shall approve the provider's project plan proposal
24		after verifying the provider's compliance with Subparagraphs [(e)(1),] (1), (2) and (3) of this [Rule]
25		Paragraph and completing an onsite review to verify that preconstruction site conditions are suitable
26		to generate the credits proposed by the project plan. However, the Division may partially or fully
27		waive these requirements for term practices or projects if it determines that the burden of compliance
28		is disproportionate to the value of the credits being generated and alternative means are used to
29		satisfy the basic credit approval standard set forth in Paragraph (c) of this Rule.
30	(f) Credits associ	ciated with load reducing activities funded under this Rule shall be awarded exclusively to the person,
31	municipality, dis	scharger, or group of dischargers who paid the offset fee.
32	(f) RELEASE	AND ACCOUNTING FOR NUTRIENT OFFSET CREDITS. The Division shall release nutrient
33	offset credits fro	m an approved project in the following manner:
34	<u>(1)</u>	The Division shall release credits to providers upon confirmation that project-specific milestones
35		reflected in the project plan's credit release schedule have been met. Project-specific milestones for
		reflected in the project plan's credit release schedule have been met. I roject-specific limestones for

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I		(A) Credits shall not be released until the property is secured in fee title or by easement and
2		financial assurance is posted for planting or construction of the project.
3		(B) No more than 50 percent of the credits shall be released for a project until financial
4		assurance is provided for monitoring and maintenance activities lasting until project
5		completion.
6		(C) No more than 80 percent of the credits shall be released for a project until the provider
7		complies with the requirements of Paragraph (g).
8	<u>(2)</u>	Once credits are released for a [project] nutrient offset bank and until [the are exhausted] bank
9		closure, nutrient offset bank providers [except for DMS] shall provide a credit/debit ledger to the
10		Division at [regular] intervals no less frequently than quarterly.
11	<u>(3)</u>	The Division shall not release any credits for a project if that project is financed in whole or in part
12		by [state] State grant funding or federal grant funding.
13	(g) MAINTAIN	IING PERMANENT NUTRIENT OFFSET CREDITS. [<mark>A provider shall transfer responsibility for</mark>
14	oversight of a co	mpleted permanent project to a perpetual steward in accordance with this Paragraph and the approved
15	project plan. A p	erpetual steward may also transfer responsibility to another perpetual steward in accordance with the
16	terms of this Pa r	ragraph, subject to DWR approval. The provider shall ensure that the following mechanisms are in
17	place to ensure t	that load reductions are sustained in perpetuity: All permanent nutrient offset projects shall comply
18	with the following	ng requirements:
19	<u>(1)</u>	A provider shall transfer responsibility for oversight of a completed permanent project to a perpetual
20		steward in accordance with this Paragraph and the approved project plan. A perpetual steward may
21		also transfer responsibility to another perpetual steward in accordance with the terms of this
22		Paragraph, subject to DWR approval. [The provider shall ensure that the following mechanisms are
23		in place to ensure that load reductions are sustained in perpetuity: Perpetual stewards may not
24		assume project maintenance or restoration responsibilities.
25	<u>(2)</u>	The provider shall create and transfer to the perpetual steward a non-wasting endowment or other
26		dedicated financial surety to provide for the oversight of the [project's load reductions,] completed
27		permanent project. The endowment amount shall be proportionate to the duties accepted by the
28		perpetual steward.
29	<u>(3)</u>	For projects utilizing conservation easements, the provider shall acquire and then transfer a
30		conservation easement to a perpetual steward in accordance with [46] 26 U.S.C. 170(h) and the
31		Conservation and Historic Preservation Agreements Act, G.S. [121-34 et seq.] 121, Article 4. The
32		terms of the conservation easement shall be consistent with a Division-approved template or be
33		approved by the [Division.] Division as conforming to Paragraph (c) of this Rule. Non-governmental
34		perpetual stewards shall be accredited by the Land Trust Accreditation [Commission.] Commission
35		or approved by the Division.
36	<u>(4)</u>	For projects utilizing [stormwater control measures (SCMs), SCMs] SCMs, they shall be placed in
37		and protected by recorded drainage easements with recorded access easements to the nearest public

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1		right-of-way for purposes of operation and maintenance. These easements shall be granted in favor
2		of the person or entity responsible for operating and maintaining the structures, with a note as to the
3		responsible person or entity. Structure operation and maintenance shall be the responsibility of the
4		landowner or easement holder unless the Division gives written approval for another person or
5		entity.] Easements shall be of sufficient width for inspection and maintenance of the project.
6	[(4)]	The Division may temporarily or permanently invalidate permanent credits generated by an SCM if
7		it determines that the [bank or project] SCM has been impacted due to failure to comply with the
8		terms of an associated project plan, nutrient offset banking instrument, easement, maintenance
9		agreement, [ex] other protective agreement, or this Rule.
10	<u>(5)</u>	[Notwithstanding the other requirements of this Paragraph, a permanent project] Projects designed
11		to restore a natural ecological community at the project site, which are completed and then damaged
12		by natural causes, may be passively restored exclusively through natural ecological processes.
13		[processes after project completion if:
14		(A) it is damaged by natural causes that could not have been prevented by the exercise of
15		foresight or caution, and
16		(B) the practice employed is designed to restore a natural ecological community at the project
17		<mark>site.</mark>]
18	(h) RENEWIN	IG TERM NUTRIENT OFFSET CREDITS. Expiring term nutrient offset credits may be renewed by
19	the provider upo	on providing documentation to the Division that the project meets the [basic] credit approval standard
20	set forth in Para	graph (c) of this Rule for the duration of the renewal period.
21	(i) ADDITION	AL PROVISIONS REGARDING THE DIVISION OF MITIGATION SERVICES.
22	<u>(1)</u>	DMS shall establish and revise nutrient offset rates as set out in 15A NCAC 02R .0602. Offset
23		payments accepted by DMS shall be placed into the Riparian Buffer Restoration Fund administered
24		by the Department pursuant to G.S. 143-214.21.
25	<u>(2)</u>	On or before November 30 of each year, DMS shall provide an annual report to the Division
26		concerning the nutrient in-lieu fee program that includes a requirement ledger. The requirement
27		ledger shall include all nutrient offset credit requirements paid by 8-digit [service area] cataloguing
28		unit or for each geographic area identified in Paragraph (b), Paragraph (b) of this Rule, the date by
29		which the requirement shall be satisfied by a project, [the requirement due date,] and the projects
30		and credits that have been applied to all requirements.
31	<u>(3)</u>	Subject to the geographic restrictions in Paragraph (b), Paragraph (b) of this Rule, DMS may accept
32		payments for nutrient offset credits prior to initiating projects. After accepting payment, DMS shall
33		construct projects that, upon completion as described in the approved project plan, will generate
34		nutrient offset credits sufficient to fulfill all new requirements generated by these payments. [Such
35		projects] Projects shall be instituted before the end of the first full [state] State fiscal year after DMS
36		receives payment and constructed before the end of the third full [state] State fiscal year after DMS

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I		receiv	es payment. DMS may also acquire credits from another provider to apply toward its
2		require	ements.
3	<u>(4)</u>	If DM	S fails to meet deadlines associated with project institution or construction as specified in
4		Subpa	ragraph [(i)(3) of this Rule,] (3) of this Paragraph, then DMS shall develop an action strategy
5		to incl	ude in the annual report specified in Subparagraph [(i)(2) of this Rule.] <mark>(2) of this Paragraph</mark> .
6		Action	strategies shall include all of the following:
7		<u>(A)</u>	a list of factors resulting in delays or deficiencies in procurement, project [implementation]
8			implementation, [and/or] or [construction,] construction;
9		<u>(B)</u>	specific actions and a timeline planned by DMS to satisfy outstanding credit requirements
10			such that a project will be instituted before the end of the first full state fiscal year after the
11			action strategy is submitted to the Division in the annual report and constructed before the
12			end of the third full state fiscal year after the action strategy is submitted to the Division in
13			the annual report, unless otherwise specified in the action [strategy,] strategy;
14		<u>(C)</u>	the anticipated date by which all outstanding nutrient offset credit requirements will be
15			[satisfied,] satisfied; and
16		<u>(D)</u>	an evaluation of current progress in relation to any prior action strategies.[strategies if
17			applicable.]
18	(j) NUTRIENT	OFFSE'	T CREDIT TRANSACTIONS. Parties who seek to acquire nutrient offset credits under rules
19	of this Subchapt	er shall	do so in compliance with [such] those rules, the requirements of Paragraph (b) of this [rule,]
20	Rule, G.S. 143-2	214.26, a	and the following:
21	<u>(1)</u>	Offset	payments made to DMS shall be contingent upon acceptance of the payment by DMS. DMS
22		shall c	onsider its financial, [temporal] temporal, and technical ability to satisfy the request to make
23		its det	ermination.
24	<u>(2)</u>	Where	persons seek to satisfy regulatory obligations for more than one nutrient type, they shall
25		acquir	e nutrient reduction credits to address each type.
26	<u>(3)</u>	Projec	ts shall be approved and the associated offset credits released by the Division before they may
27		be util	ized for NPDES wastewater permit compliance purposes.
28	<u>(4)</u>	For of	fset credits used to meet [the] NPDES wastewater discharge requirements, the applicant shall
29		provid	e [10] 50 percent additional credits to address the uncertainty factor for using unmonitored
30		nonpo	int source reductions to meet point source discharge limits. [For offset credits used to meet
31		the di	scharge requirements, the applicant shall provide no additional credits to address the
32		uncert	ainty factor for using monitored nonpoint source reductions to meet point source discharge
33		limits.	Application of this ratio is in addition to other ratios that may be applied, including delivery
34		or tran	sport factors where applicable.
35	<u>(5)</u>	Delive	ery factors shall be applied to estimate nutrient reductions to an impaired water body subject
36		to a nu	atrient strategy if required under rules of this Subchapter for that strategy.

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1	<u>(6)</u>	Term credits may be utilized for compliance only during the year in which they are generated and
2		as described in Subparagraph (d)(2) of this Rule. They may not be cumulatively banked for future
3		<u>years.</u>
4	(k) DEVELOP	ER-RESPONSIBLE NUTRIENT OFFSET PROJECTS. A developer subject to new development
5	stormwater requ	irements of this Subchapter may satisfy its nutrient reduction obligations by generating its own offsite
6	credits. It may d	o so by establishing a nutrient offset bank and generating credits in accordance with this [rule.] Rule.
7	Alternatively, th	ne developer shall comply with all provisions of this [rule] Rule governing the generation of nutrient
8	offset credits by	a provider with the following modifications:
9	<u>(1)</u>	Instead of a credit release schedule, credit for the project may be assigned upon construction of the
10		project and submission to the Division of the as-built report as described in the project plan;
11	<u>(2)</u>	Credit shall be assigned at a 50 percent rate based on the design specifications of the fully completed
12		project(s); and
13	<u>(3)</u>	Liability for the generation of credits as described in the project plan remains with the developer
14		until the completion of all milestones associated with the project.
15	(1) NPDES V	VASTEWATER PERMITTEE-RESPONSIBLE NUTRIENT OFFSET PROJECTS. A locality,
16	authority, utility	, or sanitation district operating a permitted wastewater facility subject to wastewater rules of this
17	Subchapter may	generate nutrient offset credits by installing projects in accordance with this [rule.] Rule. Any credits
18	generated may t	hen be utilized for compliance purposes as if acquired from another provider.
19		
20	History Note:	Authority G.S. 143-214.1; 143-214.20; 143-214.21; <u>143-214.26;</u> [S.L. 1995, c. 572; S.L. 2007, c.
21		438; S.L. 2009, c. 337; S.L. 2009, c. 484; S.L. 2009, c. 486;]
22		Eff. August 1, 1998;
23		Amended Eff. August 1, 2006;
24		Amended Eff. September 1, 2010.
25		Readopted Eff. January 1, 2020.

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1	15A NCAC 02B	.0232 is readop	tted with changes as published in 33:16 NCR 1671-1717 as follows:
2	15A NCAC 02B	0222 0710	NEUSE NUTRIENT STRATEGY: PURPOSE AND SCOPE NEUSE
4	ISA NCAC 02B	.0232 .0/10	RIVER BASIN NUTRIENT SENSITIVE WATERS MANAGEMENT
5			STRATEGY: BASIN NUTRIENT REDUCTION GOAL
6	(a) PURPOSE T	The nurnose of t	his Rule and Rules .0711 through .0715 of this Section is to attain the designated uses
7	• •		rith respect to meeting nutrient-related water quality standards pursuant to the
8		•	ommission's authority under the Clean Water Responsibility and Environmentally
9		•	997-458. [enacted by the North Carolina General Assembly in 1997 and other
10	authorities.] All	waters of the No	euse River Basin are supplementally classified as Nutrient Sensitive Waters (NSW)
11	pursuant to 15A	NCAC 02B .02	23. The rules enumerated in Paragraph (d) of this Rule together constitute the Neuse
12	nutrient strategy.	and shall be in	mplemented in accordance with 15A NCAC 02B .0223. [This Rule establishes the
13	framework of th	e Neuse nutrie	nt strategy.] Pursuant to 1995 (Reg. Sess., 1996) N.C. Session Laws, c. 572, the
14	Environmental N	Ianagement Coi	mmission hereby establishes the goal of reducing the average annual load of nitrogen
15	delivered to the	Neuse River Es	tuary from point and nonpoint sources by a minimum of 30 percent of the average
16	annual load for	the period 1991	through 1995 by the year 2001. All waters of the Neuse River Basin have been
17	supplementally c	lassified as Nut	rient Sensitive Waters (NSW) pursuant to 15A NCAC 2B .0223. The following rules
18	shall be impleme	nted in accorda	nce with 15A NCAC 2B .0223 in all waters of the Neuse River Basin:
19	(b) SCOPE AN	D LIMITATIO	N. The Neuse nutrient strategy rules require controls to reduce nitrogen loads from
20	significant source	es of this nutrier	nt throughout the Neuse Basin. These Rules do not address sources for which there is
21	insufficient scien	tific knowledge	e to base regulation. [The Commission may undertake additional rulemaking in the
22	future or make r	ecommendation	is to other rulemaking bodies as deemed appropriate to more fully address nutrient
23	sources to the No	e <mark>use River Estua</mark>	uy.]
24	(c) GOAL. To a	chieve the purp	oose of the Neuse nutrient strategy, the Commission established in the initial Neuse
25	nutrient strategy	rules, enacted in	n August 1998, the goal of reducing the average annual load of nitrogen delivered to
26	the Neuse estuary	y from point and	I nonpoint sources by a minimum of 30 percent below the average annual load for the
27	period 1991 thro	ugh 1995 and tl	hereafter maintaining it at or below that level. This amended strategy continues that
28	goal.		
29	(d) RULES ENU	<u>JMERATED. T</u>	The rules of the Neuse nutrient strategy, in addition to this one, are titled as follows:
30	(1)	Rule .0233 for	protection and maintenance of riparian areas,
31	(2)	Rule .0234 for	wastewater discharges,
32	(3)	Rule .0235 for	urban stormwater management,
33	(4)	Rules .0236 ar	nd .0238 for agricultural nitrogen reduction,
34	(5)	Rule .0239 for	nutrient management, and
35	(6)	Rule .0240 for	nitrogen offset fees.
36	<u>(1)</u>		[stormwater,]stormwater;
37	(2)	Rule .0712 for	[agriculture.]agriculture:

1	<u>(3)</u>	Rule .0713 for wastewater [discharges,]discharges;				
2	<u>(4)</u>	Rule [.0714].0233 for riparian buffer [protection,] protection; and				
3	<u>(5)</u>	Rule [.0715].0241 for riparian buffer program delegation				
4	(e) ADAPTIV	E MANAGEMENT. [Given ongoing impairment of the Neuse estuary more than a decade after full				
5	implementation	of the above rules, the Division [is pursuing fuller evaluation of] shall evaluate the basin's				
6	nutrient dynami	cs to inform and guide adaptive management. [Evaluation] This evaluation shall [seek to] utilize all				
7	sources of avail	able information, including stakeholder input, and shall consider drivers, [eharacter] character, and				
8	shifts in the imp	pairment with time, [trends] trends, and character of loading delivered to the estuary, and distribution				
9	and character o	f loading inputs to the basin and changes to those inputs over time. [Evaluation]The evaluation shall				
10	address the exte	ent to which the reduction goals identified [above] in Paragraph (c) of this Rule have been achieved				
11	and <mark>shall</mark> [shall,	based on its findings, provide recommendations on management needs. The Division shall seek to				
12	<u>complete [<mark>an</mark>] tl</u>	ne evaluation within three years of the effective date of this [rule] Rule and shall distribute the findings				
13	[its findings, wh	iich may recommend regulatory and non-regulatory actions,] upon completion. The Division shall also				
14	report biannual	ly to the Water Quality Committee of the Commission on implementation progress and reductions				
15	achieved by sou	<u>irces subject to the Neuse nutrient strategy. [The adaptive management approach is based on defined</u>				
16	goals, knowled g	ge of resources and impacts to those resources, appropriate technology and inventory. These inputs are				
17	used to plan, ac	et, monitor and evaluate. The process is iterative and the goal is continuous environmental quality				
18	improvement.]					
19	(f) GEOGRAP	HIC APPLICABILITY. The Neuse nutrient strategy shall apply in all areas draining to NSW waters				
20	within the Neus	e River Basin unless individual Neuse strategy rules describe other boundaries.				
21	(b)(g) PENAL	TIES PENALTIES. Failure to meet requirements of the Neuse [Nutrient Strategy Rules] nutrient				
22	strategy rules .	0233, .0234, .0235, .0236, .0238, .0239, and .0240 of this Section may result in imposition of				
23	enforcement measures as authorized by G.S. 143-215.6A (civil penalties), G.S. 143-215.6B (criminal penalties), and					
24	G.S. 143-215.60	C (injunctive relief).				
25						
26	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-				
27		215.6A; 143-215.6B; 143-215.6C;]				
28		Eff. August 1, 1998.				

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1	15A NCAC 02B	.0235 is readopted	l with chan	iges as publi	shed in 33:1	6 NCR 1671-171	7 as follows:
2							
3	15A NCAC 02B	.0235 <u>.0711</u>	NEUSE	RIVER	BASIN-	NUTRIENT	SENSITIVE WATERS
4	MANAGEMEN	T STRATEGY: 1	BASINWI	DE STORM	IWATER I	REQUIREMEN'	rs
5	The following is	the urban stormwa	ater manag	ement strate	gy for the N	euse River Basin	:
6	<u>(1)</u>	PURPOSE. The p	ourpose of	this Rule is t	to achieve ar	nd maintain the n	itrogen loading reduction goal
7		established for the	e Neuse Ri	ver Estuary i	n Rule .0710	0 of this Section f	rom an undeveloped condition
8		on lands in the	Neuse Riv	er Basin or	n which [ne	<mark>w]</mark> development	occurs. Nothing in this Rule
9		preempts the req	uirements	of 15A NC	AC 02B .02	277 for projects	subject to the Falls Reservoir
10		Nutrient Strategy	or prever	nts local gov	vernments fi	om implementin	g requirements that are more
11		restrictive than th	ose set for	<u>th in this Ru</u>	<u>le.</u>		
12	(1) (2)	APPLICABILIT	Y. The foll	owing local	government	s are designated,	based on population and other
13		factors, as parties	responsibl	le for implen	nenting storr	nwater managem	ent requirements as part of the
14		Neuse River Nu	trient Sens	sitive Water	s stormwate	er management s	strategy: shall implement the
15		stormwater mana	gement red	quirements o	of this [Rule	e.] Rule, except a	as noted in Sub-Item (3)(a) of
16		this Rule where	the Depart	ment shall i	<mark>mplement t</mark> l	<mark>nem.</mark> Municipalit	ies shall implement this Rule
17		throughout their	corporate l	limits and ex	<u>ktraterritoria</u>	l jurisdictions wi	thin the basin, while counties
18		shall implement	throughout	their territo	rial jurisdic	tions within the	basin. Counties named in this
19		Item may implem	ent this Ru	ıle within mı	<u>unicipalities</u>	not named in this	s Item in accordance with G.S.
20		160A-360(d).					
21		(a) Local go	overnments	s designated	under [the	original version	of this Rule effective August
22		<u>1998:</u>					
23		(a)<u>(i)</u>[Cary,] <u>Car</u>	<mark>y:</mark>			
24		(b) (ii)[Durham,]				
25		(c)(iii)[Garner,<u>G</u>a				
26		(d) (iv)[),] <u>Goldsbord</u>	<mark>);</mark>		
27		<u>(e)(v)[</u>	Havelock,	<u>,]Havelock;</u>			
28		<u>(f)(vi)[</u>	Kinston,]]				
29				,] <u>New Bern</u>	<u>:</u>		
30		(<u>h)(viii)</u>	[Raleigh,] <u>I</u>				
31		(i) (ix)[l,]Smithfield	<u>l;</u>		
32		(<u>i)(x)</u> [Wilson,]V				
33		(<u>k)(xi)</u> [Durham C	County,]Durl	nam County	<u>:</u>	
34		(1) (xii)[Johnston (County,]Joh	nston Count	<mark>y:</mark>	
35		(<u>m)(xiii)</u>		<mark>ge County,</mark>](_		
36		(<u>n)(xiv)</u>	Wake Cou	unty, and]W	ake County;	and	
37		(o) (xv)	Wayne Co	ounty.			

I		<u>(b)</u>	The following additional local governments are subject to this Rule: governments as of
2			the effective date of this readoption:
3			(i) [Apex,] Apex;
4			(ii) [Clayton,] Clayton:
5			(iii) [Fuquay Varina,] Fuquay Varina:
6			(iv) [Greenville,] Greenville;
7			(v) [Holly Springs,] Holly Springs;
8			(vi) [Knightdale,] Knightdale;
9			(vii) [Morrisville,] Morrisville;
10			(viii) [Rolesville,] Rolesville;
11			(viii) [Wake Forest,] Wake Forest;
12			(ix) [Wendell,] Wendell;
13			(x) [Winterville,] Winterville;
14			(xi) [Craven County,] Craven County:
15			(xii) [Greene] Nash [County,] County:
16			[(xii) Nash County,]
17			[(xiv)] (xiii)[Pitt County,] Pitt County; and
18			[(xv)](xiv) Wilson County.
19	(2)	Other in	acorporated areas and other counties, not listed under Item (1) of this Rule, may seek to
20		impleme	ent their own local stormwater management plan by complying with the requirements
21		specifie	d in Items (5) and (6) of this Rule.
22	[(3)	EXEMP	TION. A stormwater management plan is not required for new development on an
23		individu	al single family lot if the new development meets the following criteria:
24		(a)	It is not part of a larger common plan of development or sale; and
25		(b)	The project does not result in greater than five percent built upon area on the lot or it is for
26			purposes of a single family residence on a lot five acres in size or greater.]
27	(3)	The En	vironmental Management Commission may designate additional local governments by
28		amendir	ng this Rule based on their potential to contribute significant nutrient loads to the Neuse
29		River. A	At a minimum, the Commission shall review the need for additional designations to the
30		stormwa	tter management program as part of the basinwide planning process for the Neuse River
31		Basin. A	any local governments that are designated at a later date under the Neuse Nutrient Sensitive
32		Waters S	Stormwater Program shall meet the requirements under Items (5) and (6) of this Rule.
33	[(4)] <u>(3</u>)	LOCAL	PROGRAM IMPLEMENTATION REQUIREMENTS. All local governments subject to
34		this [rul	e] Rule shall implement stormwater management programs approved by the Commission
35		[<mark>pursuar</mark>	to following the timeframes set out in Item (6) of this Rule, or any subsequent
36		modifica	ations to those plans approved by the Director, according to the following requirements and

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1	the sta	andards contained in Item (5) of this Rule: Local stormwater programs shall address nitrogen
2	reduct	tions for both existing and new development and include the following elements:
3	(a)	Review and approval of stormwater management plans for new developments to ensure
4		that: The requirement for local government approval of a stormwater plan for all proposed
5		[new development projects disturbing one acre or more for single family and duplex
6		residential property and recreational facilities, and one half acre or more for commercial,
7		industrial, institutional, multifamily residential, or local government property. Where
8		proposed new development on an existing developed lot not part of a larger common plan
9		of development results in built upon area exceeding 24 percent, a stormwater plan
10		addressing the new project area shall be required.] development projects not excluded
11		under Item (4) of this Rule. To the extent permitted by federal law, including 33 USC 26,
12		and where pursuant to G.S. 153A-454 and G.S. 160A-459 a local government program
13		does not review a development project proposed by a [state] State or federal entity for the
14		requirements of this Rule, the entity shall obtain Department review and approval.
15	<u>(b)</u>	A plan to ensure maintenance of [stormwater control measures (SCMs)] SCMs
16		implemented to comply with this Rule for the life of the development;
17	<u>(c)</u>	A plan to ensure enforcement and compliance with the provisions in Item (5) of this Rule
18		for the life of the development;
19	<u>(d)</u>	A public education program to inform citizens how to reduce nutrient pollution and to
20		inform developers about the nutrient requirements set forth in Item (5) of this Rule;
21	<u>(e)</u>	A mapping program that includes major components of the municipal separate storm sewer
22		system, waters of the State, land use types, and location of sanitary sewers; and
23	<u>(f)</u>	A program to identify and remove illegal discharges.
24 <u>(4)</u>	DEVE	ELOPMENT EXCLUDED. The following development activities shall not be subject to this
25	Rule:	
26	<u>(a)</u>	Projects disturbing less than:
27		(i) one acre for single family and duplex residential property and recreational
28		facilities; and
29		(ii) one-half acre for commercial, industrial, institutional, multifamily residential, or
30		local government land uses with the following exception: Projects below one-half
31		acre that would replace or expand existing structures on a parcel, resulting in a
32		cumulative built-upon area for the parcel exceeding twenty-four percent, shall be
33		subject to Item (5) of this Rule:
34	<u>(b)</u>	Development of an individual single-family or duplex residential lot that:
35		(i) Is not part of a larger common plan of development or sale as defined in 15A
36		NCAC 02H .1002; and
37		(ii) Does not result in greater than five percent built upon area on the lot:

1		<u>(c)</u>	Projects subject to requirements of the Falls Nutrient Strategy New Development
2			Stormwater rule, 15A NCAC 02B .0277;
3		<u>(d)</u>	Existing development as defined in 15A NCAC 02H .1002;
4		<u>(e)</u>	Redevelopment as defined in G.S. 143-214.7(a1)(2); and
5		<u>(f)</u>	Activities subject to requirements of the Neuse Agriculture rule, 15A NCAC 02B .0712.
6	<u>(5)</u>	DEVE	LOPMENT PROJECT REQUIREMENTS. A proposed development project not excluded
7		under I	tem (4) of this Rule shall be approved by a subject local government for the purpose of this
8		Rule w	then the applicable requirements of Item [(4)](3) of this Rule and the following criteria are
9		met.	
10		<u>(i)(a)</u>	The [project area,] project, as defined in State stormwater rule 15A NCAC 02H .1002, shall
11			meet either a nitrogen loading rate target of 3.6 pounds/acre/year or "runoff volume match"
12			as defined in [the definition of runoff volume match found in 15A NCAC 02H .1002.
13			Except as otherwise stated in this Item, the project may meet the loading rate target through
14			use of permanent nutrient offset credit pursuant to Rule .0703 of this Section. Persons who
15			seek nutrient offset credit to these requirements shall provide proof of nutrient offset credit
16			acquisition to the permitting authority prior to approval of the development plan;] that
17			Rule. Proposed development projects that would replace or expand existing structures and
18			result in a net increase in built-upon area shall meet one of these options for the project less
19			any existing built-upon area. the nitrogen load contributed by new development activities
20			is held at 70 percent of the average nitrogen load contributed by the 1995 land uses of the
21			non urban areas of the Neuse River Basin. The local governments shall use a nitrogen
22			export standard of 3.6 pounds/acre/year, determined by the Environmental Management
23			Commission as 70 percent of the average collective nitrogen load for the 1995 non urban
24			land uses in the basin above New Bern. The EMC may periodically update the design
25			standard based on the availability of new scientific information; Developers shall have the
26			option of offsetting part of their nitrogen load by funding offsite management measures by
27			making payment to the NC Ecosystem Enhancement Program or to another seller of offset
28			eredits approved by the Division or may implement other offset measures contingent upon
29			approval by the Division. Offset payments shall meet the requirements of Rule .0240 of
30			this Section, which establishes procedural requirements for nutrient offset payments.
31			However, before using offset payments, the development must attain, at a minimum, a
32			nitrogen export that does not exceed 6 pounds/acre/year for residential development and
33			10 pounds/acre/year for commercial or industrial development;
34		(ii)	For the following local governments and any additional local governments identified in
35			rule by the Commission, the post-construction requirements of 15 NCAC 02B .0277 shall
36			supersede the requirements in this Sub item for areas within their jurisdiction within the

1		watersh	ed of the Falls of the Neuse Reservoir: Durham, Raleigh, Durham County, Orange
2		County,	and Wake County; and
3	<u>b)</u>	Regardin	ng stormwater treatment and other onsite post-construction elements, projects not
4		subject t	o more stringent standards under one of the following State stormwater rules or a
5		local ord	linance shall meet 15A NCAC 02H .1003, which includes specifications for low-
6		and high	-density designs, vegetated setbacks, and stormwater outlets for all projects. Such
7		<u>projects</u>	shall use a high-density treatment threshold of twenty four percent or greater built-
8		<mark>upon are</mark>	ea and a storm depth of one inch for SCM design:
9		(i)	Water Supply Watershed Protection rules, 15A NCAC 02B .0620 through .0624;
10		(ii)	Coastal Counties stormwater rule 15A NCAC 02H .1019; or
11		(iii)	Non-Coastal County HWQs and ORWs rule 15A NCAC 02H .1021.
12	<u>c)</u>	The following	owing are exceptions to the onsite requirements of Sub-Item (b) of this Item:
13		(i)	Proposed development projects may utilize an offsite SCM that is dedicated to
14			treating an area encompassing the project, provided the SCM is designed to meet
15			all applicable requirements identified in Sub-Item (b) of this Item; and
16		(ii)	Proposed development undertaken by a local government solely as a public road
17			expansion or public sidewalk project, or proposed development subject to the
18			jurisdiction of the Surface Transportation Board, may meet the loading rate target
19			of this Item entirely through use of permanent nutrient offset credit pursuant to
20			Rule .0703 of this Section.
21	<u>(d)</u>	Where in	a satisfying the onsite requirements of Sub-Item (b) of this Item, a project does not
22		meet the	loading rate target of this Item, it may do so through use of permanent nutrient
23		offset cr	edit pursuant to Rule .0703 of this Section. Persons doing so shall provide proof
24		of credit	acquisition to the permitting authority prior to approval of the development plan.
25 <mark>[</mark> -	(b)] <u>(e)</u>	Untreate	d nutrient loading rates from the project area shall be determined through the use
26		of the to	ol most recently approved by the Division to have met the following criteria, or
27		through	an alternative method that meets or exceeds the following criteria, [eriteria at least
28		as well,]	as determined by the Division:
29		<u>(i)</u>	Provides [project] site-scale estimates of annual precipitation-driven total
30			nitrogen [and total phosphorus] load;
31		<u>(ii)</u>	From all land cover types on a project site at build-out;
32		<u>(iii)</u>	Based on land-cover-specific nitrogen and phosphorus loading coefficients and
33			annual runoff volume; and
34		<u>(iv)</u>	Is supported by the weight of evidence from available, current, and applicable
35			research.
36 <u>[</u>	(c)](<u>f)</u>	Nutrient	loading rate reductions resulting from the use of SCMs shall be determined
37		through	the use of the tool most recently approved by the Division to have met the

1		follow	ing criteria, or through an alternative method that meets or exceeds the following
2		<u>criteria</u>	. [eriteria at least as well,] as determined by the Division:
3		<u>(i)</u>	Provides project site loading reduction estimates from the installation of
4			[DEMLR] Department of Energy, Mineral and Land Resources (DEMLR)
5			approved SCMs;
6		<u>(ii)</u>	Reductions apply to the portion of the [project area's] project's runoff volume that
7			is directed to the SCMs;
8		<u>(iii)</u>	The method partitions the runoff volume processed by the SCM among
9			hydrologic fates and assigns nutrient concentrations to each of those fates; and
10		<u>(iv)</u>	The method is supported by the weight of evidence from available, current, and
11			applicable research.
12	[(d)	Project	s shall meet the requirements set forth in 15A NCAC 02H .1003. Projects that use
13		SCMs	to treat stormwater shall use the required storm depths and meet the SCM and
14		density	requirements set forth in the stormwater programs to which they are subject
15		pursua	nt to 15A NCAC 02H .1017, .1019, and .1021. Projects not subject to any of these
16		Rules s	shall be considered high-density if they contain twenty four percent or greater built
17		<mark>upon-a</mark>	rea or have greater than two dwelling units per acre, and shall use a storm depth of
18		one inc	ch for SCM design.]
19	[(e)	Propos	ed new development undertaken by a local government solely as a public road
20		expans	ion or public sidewalk project or proposed new development subject to the
21		jurisdi	ction of the Surface Transportation Board shall be exempt from the requirements of
22		Sub Ite	em (5)(d) of this Rule and may meet the loading rate targets through use of
23		permar	nent nutrient offset credit pursuant to Rule .0703 of this Section;]
24	[(f)	Propos	ed development projects that would replace or expand existing structures and would
25		result i	n a net increase in built upon area shall be responsible for nitrogen loading from the
26		area of	disturbance less any preexisting built-upon area located therein. The developer shall
27		<mark>have tl</mark>	ne option to either achieve the percent loading reduction goal established in Rule
28		.0710 c	of this Section or meet the loading rate target of this Item;
29	[(g)	Propos	ed new development projects may utilize an offsite SCM that is dedicated to treating
30		<mark>an are</mark>	a encompassing the project provided the SCM complies with the applicable
31		require	ements of this Item for the area that it treats;
32	[(h)	Where	pursuant to G.S. 153A 454 and G.S. 160A 459 a local government program does
33		not rev	iew a development project proposed by a state or federal entity for the requirements
34		of this	Rule, the entity shall obtain Department review and approval; and
35	[(i)](g)	Propos	ed development projects shall demonstrate compliance with the riparian buffer
36		protect	ion requirements [of Rule .0714 of this Section.]set forth in 15A NCAC 02B .0233.

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1			(iii)	there is no net increase in peak flow leaving the site from the predevelopment
2				conditions for the 1 year, 24 hour storm.
3		(b)	Review	of new development plans for compliance with requirements for protecting and
4			maintair	ning existing riparian areas as specified in 15A NCAC 02B .0233;
5		(c)	Implem	entation of public education programs;
6		(d)	Identific	eation and removal of illegal discharges;
7		(e)	Identific	eation of suitable locations for potential stormwater retrofits (such as riparian areas)
8			that cou	ld be funded by various sources; and
9		(f)	Submitt	al of an annual report on October 30 to the Division documenting progress on and
10			net char	nges to nitrogen load from the local government's planning jurisdiction.
11	(5)	Local	governme	nts shall implement stormwater management programs according to their plans
12		approv	ed by the	Commission as of March 2001. Local governments administering a stormwater
13		manag	ement pro	gram shall submit annual reports to the Division documenting their progress and
14		net cha	ınges to ni	t rogen load by October 30 of each year.
15	(6)	If a loc	al govern	ment fails to properly implement an approved plan, then stormwater management
16		require	ments for	existing and new urban areas within its jurisdiction shall be administered through
17		the NP	DES mun	icipal stormwater permitting program per 15A NCAC 02H .0126:
18		(a)	Subject	local governments shall develop and implement comprehensive stormwater
19			manage	ment programs, tailored toward nitrogen reduction, for both existing and new
20			develop	ment.
21		(b)	These st	cormwater management programs shall provide all components that are required of
22			local go	vernment stormwater programs in Sub items (4)(a) through (f) of this Rule.
23		(c)	Local go	overnments that are subject to an NPDES permit shall be covered by the permit for
24			at least	one permitting cycle (five years) before they are eligible to submit a local
25			stormwa	ater management program for consideration and approval by the EMC.
26	<u>(6)</u>	RULE	IMPLEM	ENTATION
27		<u>(a)</u>	<u>Within</u>	four eight months of the effective date of this Rule, the Division shall submit a
28			model le	ocal stormwater program embodying the elements in Items [(4) and] (3) through
29			(5) of th	is Rule to the Commission for approval. The Division shall work [in cooperation]
30			with sub	oject local governments in developing this model program.
31		<u>(b)</u>	Local g	overnments designated [under the original version of this Rule effective August
32			<mark>1998]</mark> pı	ursuant to Sub-Item (2)(a) of this Rule and additional local governments designated
33			[herein]	pursuant to Sub-Item (2)(b) of this Rule shall submit a local stormwater program
34			for appr	oval by the Commission within six months and 12 months, respectively, of the
35			Commis	ssion's approval of the model local program. These local programs shall meet or
36			exceed 1	the requirements in Items [(4) and] <mark>(3) through</mark> (5) of this Rule.

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1		<u>(c)</u>	The Division shall provide recommendations to the Commission regarding proposed local
2			programs. The Commission shall approve programs or require changes based on the
3			standards set out in Items [(4) and] (3) through (5) of this Rule. Should the Commission
4			require changes, the applicable local government shall have three months to submit
5			revisions, and the Division shall provide follow-up recommendations to the Commission
6			within two months after receiving [revisions;] revisions.
7		<u>(d)</u>	Within six months after the Commission's approval of a local program, the [affected] local
8			government shall complete adoption of and implement its local stormwater program.
9		<u>(e)</u>	Local governments administering a stormwater program shall submit annual reports in
10			electronic format to the Division documenting their progress regarding each
11			implementation requirement in Item [(4)](3) of this Rule and net changes to nitrogen load
12			by October 30th of each year. Annual reports shall also include as appendices all data
13			utilized by nutrient calculation tools for each development stormwater plan approved in
14			accordance with this Rule.
15		<u>(f)</u>	Any significant modifications to a local program [subsequent to] following its approval
16			pursuant to the requirements of this [item] Item shall be submitted to the Director for
17			approval.
18	<u>(7)</u>	<u>COMPI</u>	LIANCE. A local government's authority to approve [new] development stormwater plans
19		for com	pliance with this Rule pursuant to Item (5) of this Rule shall be contingent upon maintaining
20		its own	compliance with this Rule. A local government that fails to submit an acceptable local
21		stormwa	ater program within the timeframe established in this Rule, fails to implement an approved
22		progran	n, or fails to comply with annual reporting requirements shall be in violation of this Rule.
23			
24		History	Note: Authority G.S. 143-214.1; 143-214.7; <u>143-214.26</u> ; 143-215.1; 143-215.3(a)(1);
25		143-215	5.8B; 143B-282; S.L. 1995, c. <mark>572;</mark> <u>572.[S.L. 1997-458; S.L. 2006-246;]</u>
26		Eff. Aug	rust 1, 1998;
27		Amende	d Eff. January 15, 2011 (this permanent rule replaces the temporary rule approved by the
28		RRC on	December 16, 2010).
29		Readon	ted Eff. January 1, 2020.

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

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15A NCAC 02B <u>.0238.0712</u> NEUSE <u>RIVER BASIN NUTRIENT SENSITIVE WATERS</u> <u>MANAGEMENT BASIN NUTRIENT STRATEGY: AGRICULTURAL</u> <u>NITROGEN REDUCTION STRATEGY</u> 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.

- All persons engaging in agricultural operations in the Neuse River Basin shall collectively achieve (1) 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

1	may undertake separate rule making to require such measures it deems necessary from
2	these sources to support the goals of the Neuse Nutrient Sensitive Waters Strategy.
3 (2)	AGRICULTURAL OPERATIONS DEFINED. For the purposes of this Rule, "agricultural
4	operations," are activities, and "agricultural producers" are persons engaging in those activities, that
5	relate to any of the following pursuits:
6	(a) The commercial production of crops or horticultural products other than trees. As used in
7	this Rule, "commercial" shall mean activities conducted primarily for financial profit.
8	(b) Research activities in support of commercial production.
9	(c) The production or management of any of the following number of livestock or poultry at
10	any time, excluding nursing young:
11	(i) 5 or more horses:
12	(ii) 20 or more cattle;
13	(iii) 20 or more swine not kept in a feedlot, or 150 or more swine kept in a feedlot;
14	(iv) 120 or more sheep;
15	(v) 130 or more goats:
16	(vi) 650 or more turkeys;
17	(vii) 3,500 or more chickens; or
18	(viii) Any single species of any other livestock or poultry, or any combination of species
19	of livestock or poultry that exceeds 20,000 pounds of live weight at any time.
20 [(2)](3	
21	agricultural [operations,] operations [including those related to crops, horticulture, livestock, and
22	poultry, in the geographic area subject to the Neuse nutrient strategy as described in Rule .0710 of
23	this Section. This Rule applies to livestock and poultry operations [above the size thresholds in this
24	Item] set forth in Sub-Item (2)(c) of this Rule in addition to requirements for animal operations set
25	forth in general permits issued pursuant to G.S. 143-215.10C. Nothing in this Rule shall be deemed
26	to allow the violation of any assigned surface water, groundwater, or air quality standard by any
27	agricultural operation, including any livestock or poultry operation below the size thresholds in this
28	Item. [For the purposes of this Rule, agricultural operations are activities that relate to any of the
29	following pursuits:
30	(a) The commercial production of crops or horticultural products other than trees. As used in
31	this Rule, commercial shall mean activities conducted primarily for financial profit.
32	(b) Research activities in support of such commercial production.
33	(c) The production or management of any of the following number of livestock or poultry at
34	any time, excluding nursing young:
35	(i) 5 or more horses;
36	(ii) 20 or more cattle;
37	(iii) 20 or more swine not kept in a feedlot, or 150 or more swine kept in a feedlot;

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1	(1V)	120 or more sheep;
2	(v)	130 or more goats;
3	(vi)	650 or more turkeys;
4	(vi) 3,500 or more chickens; or
5	(vi	i) Any single species of any other livestock or poultry, or any combination of species
6		of livestock or poultry that exceeds 20,000 pounds of live weight at any time.
7	[(3)](4)	<u> TATION PROCESS. [<mark>A-Basin Oversight Committee and county-level Local Advisory</mark></u>
8	Committees	A Basin Oversight Committee, as set forth in Item (5) of this Rule, and county-level
9	Local Advis	sory Committees, as set forth in Item (7) of this Rule, shall coordinate activities and
10	account for	progress. [The membership, roles and responsibilities of these committees are set forth
11	in Items (4) and (6) of this Rule.] Accounting for nitrogen load-reducing actions on [lands]
12	<u>agricultural</u>	operations within the basin shall follow requirements set forth in Item [(5)](6) of this
13	Rule. Agric	ultural [Producers] producers may be eligible to obtain cost share and technical
14	assistance fr	om the NC Agriculture Cost Share Program and similar federal programs to contribute
15	to their cour	ties' ongoing nitrogen reductions. Committee activity shall be guided by the following:
16	<u>(a)</u> <u>OP</u>	TIONS FOR INDIVIDUAL OPERATIONS. [Persons] Agricultural producers subject
17	to :	this Rule may elect to implement practices meeting the standards identified in Item
18	[(7	(8) of this Rule that contribute to maintenance of collective local compliance with the
19	<u>goa</u>	ıl identified in Item (1) of this Rule, but are not required to implement any specific
20	pra	ctices provided their basin collectively maintains compliance with the goal.
21	<u>(b)</u> <u>MA</u>	AINTENANCE OF GOAL. Accounting shall annually demonstrate maintenance or
22	exc	eedence of the nitrogen reduction goal on a basin basis. Where three sequential annual
23	<u>rep</u>	orts show that the [Basin] basin did not meet its nitrogen reduction goal, the Basin
24	<u>Ov</u>	ersight Committee shall work with the Division of Soil and Water Conservation and
25	Loc	cal Advisory [Committees] Committees, particularly those representing counties not
26	<u>me</u>	eting the goals, to seek reduction actions by operations to bring agriculture collectively
27	<u>bac</u>	k into compliance, and shall report on their efforts in subsequent annual reports. Should
28	<u>sub</u>	sequent annual reports not reverse the trend of noncompliance, the Commission may
29	<u>cor</u>	duct additional rulemaking to [seek] require a more specific implementation plan from
30	the	Basin Oversight Committee, which may include an assessment of need for specific
31	<u>act</u>	ion by the Commission.
32	(2) [(4)](5) <u>BA</u>	SIN OVERSIGHT COMMITTEE. The Basin Oversight Committee shall have the
33	following m	embership, [role] role, and responsibilities: Formation and membership of the Basin
34	Oversight C	ommittee. The Environmental Management Commission shall delegate to the Secretary
35	of the Depa	rtment of Environment and Natural Resources the responsibility of forming a Basin
36	Oversight C	ommittee.

1		(a)	The Se	cretary shall solicit one nomination for membership on this Committee from each
2			of the	following agencies: MEMBERSHIP. The Director of the Division of Water
3			Resour	ces shall be responsible for maintaining the following membership composition.
4			<u>Until</u> s	such time as the Commission determines that long-term compliance with this
5			[rule] <u>R</u>	ule is assured, the Director shall solicit one nomination for membership on this
6			Comm	ittee from each agency or interest in Sub-Items (a)(i) through (a)(viii) of this Item.
7			[(4)(a)	(i) through (4)(a)(v) of this Rule.] The Director shall confirm nominees in writing or
8			<u>reques</u>	t alternative nominations. The Director may appoint a replacement at any time for
9			an inte	rest in Sub-Items <mark>(a)(vi) through (a)(viii) of this Item</mark> [(4)(a)(vi) through (4)(a)(viii)
10			of this	Rule upon request of representatives of that interest or by the request of the
11			Comm	issioner of [Agriculture:]Agriculture for Sub-Item (vii):
12			(i)	Division of Soil and Water [Conservation,] Conservation;
13			(ii)	United States Department of Agriculture- Natural Resources Conservation
14				Service, Service (shall serve in an "ex-officio" non-voting capacity and shall
15				function as a technical program advisor to the [Committee).
16			(iii)	North Carolina Department of Agriculture, Agriculture and Consumer
17				[Services,]Services;
18			(iv)	North Carolina Cooperative Extension [Service; 3] Service: and
19			(v)	Division of Water Quality. [Resources,] Resources:
20			<u>(vi)</u>	<u>Up to two environmental [interests,]</u> interests;
21			(vii)	Up to two general farming [interest,] interest; and
22			(viii)	Scientific community with experience related to water quality problems in the
23				Neuse River Basin.
24		(b)	The Se	cretary shall also solicit one nomination that represents environmental interests, one
25			nomina	ation that represents agricultural interests, and one from the scientific community
26			with ex	sperience related to water quality problems in the Neuse River Basin.
27		(c)	The Se	cretary, Department of Environment and Natural Resources, shall appoint members
28			of the	Basin Oversight Committee from the nominees provided in Sub Items (2)(a) and
29			(2)(b)	of this Rule. Members shall be appointed for a term not to exceed five years and
30			shall so	erve at the pleasure of the Secretary. The United States Department of Agriculture-
31			Natura	l Resources Conservation Service member shall serve in an "ex-officio" non-voting
32			capacit	y and shall function as a technical program advisor to the Committee.
33	(3)	Role o	f the Ba	asin Oversight Committee. The Environmental Management Commission shall
34		delegat	e the foll	owing responsibilities to the Basin Oversight Committee.
35		(a)	Develo	p a tracking and accounting methodology, as described below, for evaluating total
36			nitroge	n loading from agricultural operations and progress toward reaching the total
37			nitroge	n net loading reduction from the implementation BMPs within the Neuse River

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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.

- Submit a draft accountability process in accordance with the requirements in Sub Items (3)(a) and (3)(c) of this Rule to the Environmental Management Commission for review within six months after the effective date of the rule and the final accountability process to the Environmental Management Commission for approval within one year after the effective date of the rule. The Environmental Management Commission shall approve the accountability process if it meets requirements in Sub Items (3)(a) and (3)(c) of this Rule. If the Basin Oversight Committee fails to submit an approvable accountability process to the Environmental Management Commission, then the Environmental Management Commission may accept alternative accountability process proposals within 15 months of the effective date of this Rule. If the Environmental Management Commission fails to receive an approvable accountability process, then the Environmental Management Commission may require all agricultural operations to follow the standard Best Management Practices option as specified in Item (8) of this Rule.
- (e) Include in the accountability process a method to accurately track implementation of BMPs, including location and type of BMPs; to estimate nitrogen reductions from BMP implementation; to quantify increases or decreases in nitrogen loading due to changes in land use, modified agricultural activity, or atmospheric nitrogen loading, based on the best available scientific information; to ensure operation and maintenance of BMPs, including year round management for water control structures; to address life expectancy of BMPs; and a method to ensure maintenance of the nitrogen net loading reduction after the initial five years of this Rule, including substitute BMPs to replace expired practices and additional BMPs to offset new sources of nitrogen.
 - 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

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1			collectiv	vely meet their total nitrogen reduction. If the Basin Oversight Committee fails to
2			allocate	the nitrogen loading reductions from agricultural operations to counties or
3			watershe	eds within the Neuse River Basin, the Environmental Management Commission
4			may ass	ign the agricultural nitrogen reductions based on the approved accountability
5			process	as described in Sub Items (3)(a) and (3)(c) of this Rule.
6		(e)	Review,	approve and summarize county nitrogen reduction strategies and present these
7			strategie	s to the Environmental Management Commission for approval within two years
8			from the	effective date of this Rule.
9		(f)	Review,	approve and summarize local nitrogen reduction annual reports and present these
10			reports t	to the Environmental Management Commission each October. Information to be
11			included	in the Annual Report is described in Item (5)(d) of this Rule.
12		<u>(b)</u>	ROLE.	<u>Γhe Basin Oversight Committee shall:</u>
13			<u>(i)</u>	Continue to review, [approve, and summarize local nitrogen loss annual
14				reports to ensure ongoing implementation of the accounting method approved by
15				the Commission under the original version of this Rule effective August 1998, as
16				conforming to the requirements of Item [(5)](6) of this Rule. [Continue to]The
17				Committee shall submit these reports as initiated in 2002, to the [Director
18				annually;] Director;
19			<u>(ii)</u>	Take actions [called for] set forth [under] in Sub-Item [(3)(b)](4)(b) of this Rule
20				[as needed] to address maintenance of the nitrogen reduction goal; and
21			<u>(iii)</u>	Identify and implement refinements to the accounting [method] methodology [as
22				needed to reflect advances in scientific understanding, including establishment
23				or refinement of nutrient reduction efficiencies for BMPs.
24	[(5)](6)	ACCOL	JNTING	METHODOLOGY. [Success in meeting this Rule's purpose will] The
25		<u>requiren</u>	nents of I	tem (1) of this Rule shall be gauged by estimating percentage changes in nitrogen
26		loss from	n agricult	tural [lands] operations in the Neuse Basin. The Basin Oversight Committee shall
27		[develo j	develo	p, maintain, and update [as indicated elsewhere] as set forth in [of] this Item,
28		account	ing metho	ods that meet the following requirements:
29		<u>(a)</u>	The nits	rogen method shall estimate baseline and annual total nitrogen losses from
30			agricultu	<u>ıral operations in each county and for the entire Neuse Basin;[Basin. Baseline</u>
31			losses a	nd relative loss reduction progress shall be adjusted as frequently as can be
32			supporte	ed by available data to account for lands permanently removed from agricultural
33			control t	hrough development;]
34		<u>(b)</u>	The nitro	ogen method shall include a means of tracking implementation of BMPs, including
35			number,	type, and area affected;
36		<u>(c)</u>	The nitr	rogen method shall include a means of estimating incremental nitrogen loss
37			reduction	ns from implementation of BMPs that conform to requirements of Item [(7)](8) of

1			this Ru	le and of evaluating progress toward and maintenance of the nutrient goal from
2			changes	s in BMP implementation, fertilization, and changes in individual crop acres; and
3		<u>(d)</u>	The nits	rogen method shall be refined as research and technical advances allow.
4	(4) -[(6)]	<u>(7)</u>	Formati	on and membership of the Local Advisory Committees. LOCAL ADVISORY
5		COMM	IITTEES.	The Environmental Management Commission shall delegate to the Directors of
6		the Div	vision of	Water Quality Resources and Division of Soil and Water Conservation the
7		respons	sibility o	f forming shall maintain Local Advisory Committees. Committees initially
8		establis	hed in Fe	bruary and March, 1999, as follows:
9		(a)	The Dir	ectors shall form Local Advisory Committees in MEMBERSHIP. For each county
10			(or <u>or</u> w	atershed specified by the Basin Oversight Committee) Committee within the Neuse
11			River I	Basin. The Basin, the Directors shall solicit nominations for jointly maintain
12			membe	rship on the Local Advisory Committee from each of the following local
13			agencie	s: <u>entities.</u> [entities, whose appointees shall serve at the pleasure of the Directors:]
14			(i)	Soil and Water Conservation [District,] District:
15			(ii)	United States Department of Agriculture- Natural Resources Conservation
16				[Service,] <u>Service;</u>
17			(iii)	North Carolina Department of [Agriculture,] Agriculture;
18			(iv)	North Carolina Cooperative Extension [Service,] Service;
19			(v)	North Carolina Division of Soil and Water [Conservation, 2005] Conservation; and
20			(vi)	The Directors shall also solicit at least two nominations that represents a local
21				farmer in the county watershed. At least two [farmers] agricultural producers that
22				reside in the county.
23			The So	il and Water Conservation District may be designated by the Basin Oversight
24			Commi	ttee as the lead agency on the Local Advisory Committee.
25		<u>(b)</u>	ROLE.	Local Advisory Committees shall:
26			<u>(i)</u>	Continue to submit annual reports to the Basin Oversight Committee estimating
27				total crop production on agricultural operations for the preceding calendar year,
28				summarizing land use changes in the county and making recommendations to the
29				Basin Oversight Committee on the need for updates to the accounting
30				methodology. Reports shall include documentation on the BMPs implemented,
31				including type and location, that satisfy the requirements [identified] in Item
32				[(6)](8) of this Rule and documentation of any expired contracts for BMPs; and
33			<u>(ii)</u>	Take actions called for under Sub-Item [(3)(b)](4)(b) of this Rule to address
34				maintenance of the nitrogen reduction goal.
35	[(7)](8)	PRACT	TICE ST	ANDARDS. To receive nutrient reduction credit, [credit under the accounting
36		method	s describ	<mark>ed elsewhere in this Rule,]</mark> a BMP shall be included in the accounting method <mark>set</mark>
37		forth in	Item (6)	of this Rule, [approved by the Commission under the original version of this Rule

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1		effectiv	e August 1998,] or in a subsequent revision to that method identified in annual reporting,
2		and it sl	hall be implemented according to the applicable nutrient-related standards identified by the
3		[<mark>BOC</mark>] <u>F</u>	Basin Oversight Committee and established by the NC Soil and Water Conservation
4		Commi	ssion or the USDA-Natural Resources Conservation Service in North Carolina.
5		(b)	The Environmental Management Commission and Soil and Water Conservation
6			Commission shall appoint members of Local Advisory Committee from the nominees
7			provided in Sub Item (4)(a) of this Rule and shall be appointed for a term not to exceed
8			five years and shall serve at the pleasure of the Commissions.
9	(5)	Role of	the Local Advisory Committees. The Environmental Management Commission shall
10		delegate	the following responsibilities to employees of the Department who are members of the
11		Local A	dvisory Committees and employees of the Division of Soil and Water Conservation or its
12		designe	e. These employees shall act with advice from the Local Advisory Committees.
13		(a)	Conduct a sign up process for persons wishing to voluntarily implement the local nitrogen
14			reduction strategy as specified in Item (7) of this Rule. This sign up process shall be
15			completed within one year following the effective date of this Rule.
16		(b)	Develop local nitrogen reduction strategies that meet the nitrogen loading reduction goal
17			for agricultural operations assigned by the Basin Oversight Committee. The local strategies
18			shall be designed to achieve the required nitrogen loading reduction within five years from
19			the effective date of this Rule. A matrix of best management practice options, which
20			account for stream order, floodplain width, and regional variations in soil types and
21			topography, may be used in developing the local nitrogen reduction strategies. Local
22			nitrogen reduction strategies must specify the name and location of participant agricultural
23			farming operations, BMPs which will be required as part of the plan, estimated nitrogen
24			reduction, schedule for BMP implementation, and operation and maintenance
25			requirements. If the Local Advisory Committee fails to develop the local nitrogen reduction
26			strategy, the Environmental Management Commission may develop the strategy based on
27			the tracking and accounting method approved by the Environmental Management
28			Commission.
29		(e)	Submit an annual report to the Basin Oversight Committee each May on net total nitrogen
30			loading reductions from agricultural operations, the implementation of BMPs for nitrogen
31			control, and progress towards the total nitrogen loading reduction requirements in the
32			Neuse River Basin above and below New Bern.
33		(d)	Include in the annual report, at a minimum, documentation on the BMPs implemented
34			(including type and location), their costs, documentation of any expired contracts for
35			BMPs, estimated nitrogen net loading reductions achieved as a result of those BMPs, any
36			increases or decreases in nitrogen loading resulting from changes in land use or modified
37			agricultural related activity, discussion of operation and maintenance of BMPs, and a

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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.

- 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.
- Local nitrogen reduction strategy option. All persons subject to this Rule that choose to implement (7)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.
 - 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

1	forested	riparian	area are prohibited. The protected riparian area shall have two zones as
2	follows:		
3	(i)	Zone 1	shall be undisturbed forest. Zone 1 begins at the top of bank for
4		intermit	tent streams and perennial streams without tributaries and extends
5		landwar	d a distance of 30 feet on each side of the waterbody, measured
6		horizont	ally on a line perpendicular to the waterbody. For all other waterbodies,
7		Zone 1 b	regins at the top of bank or the mean high water line and extends landward
8		a distan	ce of 30 feet, measured horizontally on a line perpendicular to the
9		waterbo	dy. Forest vegetation of any width that exists in Zone 1 as of July 22, 1997
10		must be	preserved and maintained in accordance with Sub Items (8)(a)(i)(A) (E)
11		of this P	Rule. The application of fertilizer in Zone 1 is prohibited. The following
12		practices	s and activities are allowed in Zone 1:
13		(A)	Natural regeneration of forest vegetation and planting vegetation to
14			enhance the riparian area if disturbance is minimized, provided that any
15			plantings shall primarily consist of locally native trees and shrubs;
16		(B)	Selective cutting of individual trees of high value in the outer 20 feet of
17			Zone 1, provided that the basal area of this outer 20 foot wide area
18			remains at or above 75 square feet per acre and is computed according
19			to the following method. Basal area of this outer 20 foot wide area shall
20			be computed every 100 feet along the stream to ensure even distribution
21			of forest vegetation and shall be based on all trees measured at 4.5 feet
22			from ground level. No tracked or wheeled equipment is allowed in Zone
23			1 except at stream crossings which are designed, constructed and
24			maintained in accordance with Forest Practice Guidelines Related to
25			Water Quality (15A NCAC 1J.02010209);
26		(C)	Horticulture or silvicultural practices to maintain the health of individual
27			trees;
28		(D)	Removal of individual trees which are in danger of causing damage to
29			dwellings, other structures, or the stream channel; and
30		(E)	Removal of dead trees and other timber cutting techniques necessary to
31			prevent extensive pest or disease infestation if recommended by the
32			Director, Division of Forest Resources and approved by the Director,
33			Division of Water Quality.
34	(ii)	Zone 2:	begins at the outer edge of Zone 1 and extends landward a minimum of
35		20 feet	as measured horizontally on a line perpendicular to the waterbody. The
36		combine	ed minimum width of Zones 1 and 2 shall be 50 feet on all sides of the
37		waterbo	dy. Vegetation in Zone 2 shall consist of a dense ground cover composed

1			of herbaceous or woody species which provides for diffusion and infiltration of
2			runoff and filtering of pollutants. The following practices and activities are
3			allowed in Zone 2 in addition to those allowed in Zone 1: Periodic mowing and
4			removal of plant products such as timber, nuts, and fruit is allowed on a periodic
5			basis provided the intended purpose of the riparian area is not compromised by
6			harvesting, disturbance, or loss of forest or herbaceous ground cover. Forest
7			vegetation in Zone 2 may be managed to minimize shading on adjacent land
8			outside the riparian area if the water quality function of the riparian area is not
9			compromised.
10		(iii)	The following practices and activities are not allowed in Zone 1 and Zone 2:
11			(A) Land disturbing activities and placement of fill and other materials, other
12			than those allowed in Items (8)(a)(i) and (8)(b) of this Rule;
13			(B) New development;
14			(C) New on site sanitary sewage systems which use ground absorptions;
15			(D) Any activity that threatens the health and function of the vegetation
16			including, but not limited to, application of fertilizer or chemicals in
17			amounts exceeding the manufacturer's recommended rate, uncontrolled
18			sediment sources on adjacent lands, and the creation of any areas with
19			bare soil.
20		(iv)	Timber removal and skidding of trees in the riparian area shall be directed away
21			from the water course or water body. Skidding shall be done in a manner to
22			prevent creation of ephemeral channels perpendicular to the water body. Any tree
23			removal must be performed in a manner that does not compromise the intended
24			purpose of the riparian area and is in accordance with the Forest Practices
25			Guidelines Related to Water Quality (15A NCAC 1J.0201.0209).
26	(b)	The fo	llowing waterbodies and land uses are exempt from the riparian area requirement:
27		(i)	Ditches and manmade conveyances, other than modified natural streams, which
28			under normal conditions do not receive drainage waters from any tributary
29			ditches, canals, or streams, unless the ditch or manmade conveyance delivers
30			runoff directly to waters classified in accordance with 15A NCAC 2B .0100;
31		(ii)	Ditches and manmade conveyances other than modified natural streams which are
32			used exclusively for drainage of silvicultural land or naturally forested areas. All
33			forest harvesting operations shall be in compliance with North Carolina's Forest
34			Practices Guidelines Related to Water Quality;
35		(iii)	Areas mapped as perennial streams, intermittent streams, lakes, ponds or estuaries
36			on the most recent versions of United States Geological Survey 1:24,000 scale

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1		(7.5 m	inute quadrangle) topographic maps where no perennial, intermittent
2		waterb	ody, or lakes, ponds or estuaries exists on the ground;
3	(iv)	Ponds a	and lakes created for animal watering, irrigation, or other agricultural uses
4		that are	e not part of a natural drainage way that is classified in accordance with
5		15A N	CAC 2B .0100;
6	(v)	Water o	dependent structures as defined in 15A NCAC 2B .0202 provided that they
7		are loca	ated, designed, constructed and maintained to provide maximum nutrient
8		remova	ıl, to have the least adverse effects on aquatic life habitat and to protect
9		water q	uality;
10	(vi)	The fol	llowing uses may be allowed where no practical alternative exists. A lack
11		of prac	tical alternatives may be shown by demonstrating that, considering the
12		potenti	al for a reduction in size, configuration or density of the proposed activity
13		and all	l alternative designs, the basic project purpose cannot be practically
14		accomp	blished in a manner which would avoid or result in less adverse impact to
15		surface	waters. Also, these structures shall be located, designed, constructed, and
16		maintai	ined to have minimal disturbance, to provide maximum nutrient removal
17		and ero	sion protection, to have the least adverse effects on aquatic life and habitat,
18		and to	protect water quality to the maximum extent practical through the use of
19		best ma	anagement practices:
20		(A)	Road crossings, railroad crossings, bridges, airport facilities, and utility
21			erossings may be allowed if conditions specified in Sub Item (8)(b)(vi)
22			of this Rule are met;
23		(B)	Stormwater management facilities and ponds, and utility construction
24			and maintenance corridors for utilities such as water, sewer or gas, may
25			be allowed in Zone 2 of the riparian area as long as the conditions
26			specified in Sub Item (8)(b)(vi) of this Rule are met and they are located
27			at least 30 feet from the top of bank or mean high water line. Additional
28			requirements for utility construction and maintenance corridors are listed
29			in Sub-Item (8)(b)(vi) of this Rule.
30	(vii)	A corri	idor for the construction and maintenance of utility lines, such as water,
31	. ,		or gas, (including access roads and stockpiling of materials) may run
32			I to the stream and may be located within Zone 2 of the riparian area, as
33			no practical alternative exists and they are located at least 30 feet from the
34		_	pank or mean high water line and best management practices are installed
35			mize runoff and maximize water quality protection to the maximum extent
36			able. Permanent, maintained access corridors shall be restricted to the
37		_	ım width practicable and shall not exceed 10 feet in width except at
			,

1			manhole locations. A 10 feet by 10 feet perpendicular vehicle turnaround is
2			allowed provided they are spaced at least 500 feet apart along the riparian area;
3		(viii)	Stream restoration projects, scientific studies, stream gauging, water wells,
4			passive recreation facilities such as boardwalks, trails, pathways, historic
5			preservation and archaeological activities are allowed; provided that they are
6			located in Zone 2 and are at least 30 feet from the top of bank or mean high water
7			line and are designed, constructed and maintained to provide the maximum
8			nutrient removal and erosion protection, to have the least adverse effects on
9			aquatic life and habitat, and to protect water quality to maximum extent practical
10			through the use of best management practices. Activities that must cross the
11			stream or be located within Zone 1 are allowed as long as all other requirements
12			of this Item are met;
13		(ix)	Stream crossings associated with timber harvesting are allowed if performed in
14			accordance with the Forest Practices Guidelines Related to Water Quality (15A
15			NCAC 1J.0201 .0209); and
16		(x)	In addition to exceptions included in Sub Item (8)(b)(i) (ix), canals, ditches, and
17			other drainage conveyances are exempt from the riparian area requirement if both
18			water control structures with a water control structure management plan and a
19			nutrient management plan, are implemented on the adjacent agricultural land
20			according to the standards and specifications of the USDA Natural Resources
21			Conservation Service or the standards and specifications adopted by the NC Soil
22			and Water Conservation Commission. The water control structures and nutrient
23			management practices must provide equivalent protection and directly affect the
24			land and waterbodies draining into the waterbody exempted from the riparian area
25			requirement. To the maximum extent practical, water control structures shall be
26			managed to maximize nitrogen removal throughout the year. A technical
27			specialist designated pursuant to rules adopted by the Soil and Water
28			Conservation Commission must provide written approval that the nutrient
29			management and water management plans meet the standards and specifications
30			of the USDA Natural Resources Conservation Service or the standards and
31			specifications adopted by the NC Soil and Water Conservation Commission. If
32			the nutrient management plans and water management plans are not implemented,
33			then a riparian area pursuant to this Section is required.
34	(e)	The foll	lowing are modifications to the riparian area requirements.
35	. /	(i)	On agricultural land where either water control structures with a water control
36			structure management plan, or a nutrient management plan is implemented
37			according to the standards and specifications of the USDA Natural Resources

1			Conservation Service or the standards and specifications adopted by the NC Soil
2			and Water Conservation Commission, then a 20 ft forested or a 30 ft vegetated
3			buffer is required. The water control structures or nutrient management practices
4			must provide equivalent protection and directly affect the land and waterbodies
5			draining into the waterbody with a modified buffer requirement. To the maximum
6			extent practical, water control structures shall be managed to maximize nitrogen
7			removal throughout the year. A technical specialist designated pursuant to rules
8			adopted by the Soil and Water Conservation Commission must provide written
9			approval that the nutrient management plan meets the standards and specifications
10			of the USDA Natural Resources Conservation Service or the standards and
11			specifications adopted by the NC Soil and Water Conservation Commission.
		(::)	
12		(ii)	A vegetated riparian area may be substituted for an equivalent width of forested
13			riparian area within 100 feet of tile drainage.
14		(iii)	Where the riparian area requirements would result in an unavoidable loss of
15			tobacco allotments [(7 CFR 723.220(c))] and the BMPs of controlled drainage or
16			nutrient management are not in place, forest cover is required only in the first 20
17			feet of the riparian area.
18	(d)	Mainter	nance of Zones 1 and 2 is required in accordance with this Rule.
19		(i)	Sheet flow must be maintained to the maximum extent practical through
20			dispersing concentrated flow and re establishment of vegetation to maintain the
21			effectiveness of the riparian area.
22		(ii)	Concentrated runoff from new ditches or manmade conveyances must be
23			dispersed into sheetflow before the runoff enters Zone 2 of the riparian area.
24			Existing ditches and manmade conveyances, as specified in Sub Item (8)(b)(ii) of
25			this Rule, are exempt from this requirement; however, care shall be taken to
26			minimize pollutant loading through these existing ditches and manmade
27			conveyances from fertilizer application or erosion.
28		(iii)	Periodic corrective action to restore sheet flow shall be taken by the landowner if
29		, ,	necessary to impede the formation of erosion gullies which allow concentrated
30			flow to bypass treatment in the riparian area.
31	(e)	Periodic	maintenance of modified natural streams such as canals is allowed provided that
32	(-)		unce is minimized and the structure and function of the riparian area is not
33			mised. A grassed travelway is allowed on one side of the waterbody when
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•			ive forms of maintenance access are not practical. The width and specifications of
35			elway shall be only that needed for equipment access and operation. The travelway
36		shall be	-located to maximize stream shading.

1		(f)	Where the standards and management requirements for riparian areas are in conflict with
2			other laws, regulations, and permits regarding streams, steep slopes, erodible soils,
3			wetlands, floodplains, forest harvesting, surface mining, land disturbance activities,
4			development in Coastal Area Management Act Areas of Environmental Concern, or other
5			environmental protection areas, the more protective shall apply.
6		(g)	The Environmental Management Commission acknowledges that best management
7			practices under the standard management practice option of this Rule do not fully address
8			nitrogen loading, including atmospheric emissions and deposition, from animal operations.
9			As information becomes available on nitrogen loadings from animal operations and best
10			management practices to control these loadings, other best management practices from
11			animal operations may be required by the Commission as necessary to achieve equivalent
12			reduction in nitrogen loadings therefrom. These additional best management practices shall
13			be required if deemed necessary to achieve a net total nitrogen loading reduction from the
14			animal operations based on average 1991–1995 conditions.
15			
16	History Note:	Author	ity G.S. 143-214.1; 143-214.7; 143-215.3(a)(1); [S.L. 1997-458;]
17		Eff. Au	gust 1, 1998.
1 &		Reador	oted Eff. January 1, 2020

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1	15A NCAC 02B	.0234 is r	eadopte	ed with char	<u>nges</u> as pub	lished in 33:	16 NCR 1671-171	7 as follows:	
2									
3	15A NCAC 02B	<u>.0234.07</u>	<u>13</u>	NEUSE	RIVER	BASIN	- NUTRIENT	SENSITIVE	WATERS
4			MANA	GEMENT	STRATE	GY: WAST	EWATER DISCI	HARGE REQU	IREMENTS
5	The following is	the Natio	nal Poll	lutant Disch	narge Elimi	nation Syste	em (NPDES) waste	water discharge	management
6	strategy for the N	leuse Rive	er Basin	ı:					
7	(1)	Purpose.	The p	urpose of th	nis Rule is t	to establish 1	minimum nutrient	control requirem	ents for [the]
8		point sou	arce disc	charges in tl	he Neuse R	iver Basin ir	n order to maintain	or restore <mark>the</mark> wa	ater quality in
9		the Neus	se River	Estuary and	d protect its	s designated	uses.		
10	(2)	Applicat	oility. T	his Rule ap	plies to all	[dischargers] <u>discharges</u> from v	vastewater treatn	nent facilities
11		in the N	leuse R	iver Basin	that receiv	e nitrogen-l	bearing wastewate	r and are requir	red to obtain
12		individu	al NPD	ES permits.	. [Discharg	g <mark>ers</mark>] <u>Dischar</u>	<mark>rges</mark> in the Falls L	ake watershed a	are subject to
13		additiona	<u>al nutrie</u>	ent control r	equiremen	ts under the	Falls Water Supply	<u>v Nutrient [<mark>Strate</mark></u>	egy, per Rule
14		.0275 of	this Sul	<mark>bchapter.</mark>] <u>S</u>	Strategy Ru	les of this Su	<mark>ıbchapter.</mark>		
15	(3)	Definition	ons. <mark>For</mark>	the purpos	es of this F	Rule, the foll	<mark>owing definitions</mark>	apply: The terms	s used in this
16		Rule sha	ll be as	defined in I	Rule .0701	of this Section	on and as follows:		
17		(a)	In rega	rd to point s	source disc	hargers, trea	tment facilities, wa	stewater flows of	or discharges,
18			or like	matters:					
19			(i)	"Existing	" means tha	nt which obta	ained <u>aan</u> NPDES _I	permit on or befo	ore December
20				31, 1995.					
21			(ii)	"Expandi	ng" means	that which in	ncreases beyond its	s permitted flow	as defined in
22				Sub-Item	(3)(b) of th	is Rule.			
23			(iii)	"New" m	eans that	which had i	not obtained a <u>an</u> 1	NPDES permit	on or before
24				December	r 31, 1995.				
25		[(b)	"MGD	" means mi l	llion gallon	<mark>s per day.</mark>			
26		(c)	"Nitrog	<mark>gen wastelo</mark>	<mark>ad allocati</mark>	on" is that	portion of the N	euse River nitr	ogen TMDL
27			assigne	d to indivi	<mark>dually perr</mark>	<mark>nitted waste</mark>	water facilities in	the basin and r	<mark>epresents the</mark>
28			maxim	<mark>um allowal</mark>	ble load o	f total nitro	ogen to the estua	ry from these	point source
29			dischar	gers.					
30		(d)	"Nitrog	gen estuary	allocation'	<mark>" or "estuar</mark>	y allocation" mea	is the mass loa	ding of total
31			nitroge:	<mark>n at the e</mark> s	<mark>stuary that</mark>	is reserved	for a discharger	or group of di	schargers. A
32			dischar	ger's or gro t	<mark>up's estuary</mark>	<mark>allocation is a</mark>	<mark>s equivalent to its d</mark>	ischarge allocati	on multiplied
33			<mark>by its a</mark>	<mark>ssigned trar</mark>	<mark>nsport facte</mark>	er.			
34		(e)	"Nitrog	<mark>gen discharg</mark>	<mark>ge allocatio</mark>	<mark>n" or "disch</mark>	<mark>arge allocation" m</mark> e	ans the mass lo	a <mark>ding of total</mark>
35			<mark>nitroge</mark>	<mark>n at the poin</mark>	nt(s) of disc	<mark>harge that is</mark>	reserved for a discl	l <mark>arger or group o</mark>	<mark>f dischargers.</mark>
36			A disch	<mark>arger's or g</mark>	roup's disc l	harge allocat	tion is equivalent to	its estuary alloc	ation divided
37			by its a	<mark>ssigned trar</mark>	<mark>nsport facte</mark>	er.			

1		(f)	"Nitrogen TMDL," o	<mark>r "TMDL," means</mark>	the total nitrogen load to the Neuse River estuary
2			that is predicted to m	<mark>aintain adequate v</mark>	vater quality to support all designated uses in the
3			estuary and is appro	oved by the Unit	ed States Environmental Protection Agency in
4			accordance with the f	<mark>ederal Clean Wate</mark>	<mark>r Act.</mark>
5		(g)	"Nonpoint source lo	<mark>ad allocation" is t</mark>	hat portion of the Neuse River nitrogen TMDL
6			assigned to all other	r nitrogen sources	in the basin other than individually permitted
7			wastewater facilities	and represents the	maximum allowable load of total nitrogen to the
8			estuary from these no	npoint sources.	
9		[(h)]	"Permitted flow" me	ans the maximum	monthly average flow authorized in a facility's
10			NPDES permit as of	December 31, 199:	5, with the following exceptions:
11					
12			Facility Name	NPDES No.	Permitted Flow (MGD)
13			Benson	NC0020389	3.00
14			Goldsboro	NC0023949	16.80
15			Kenly	NC0064891	0.63
16			Snow Hill	NC0020842	0.50
17			Wilson	NC0023906	14.00
18					
19		[(i)	"Total nitrogen" mea	uns the sum of the	organic, nitrate, nitrite, and ammonia forms of
20			<mark>nitrogen.</mark>		
21		(j)	"Transport factor" is	the fraction of the	total nitrogen in a discharge that is predicted to
22			reach the estuary.		
23	(4)	This Ite	m specifies the nitroge	n wasteload alloca	tion for point sources.
24		(a)	Beginning In accorda	nce with the calend	lar year 2003, Nitrogen TMDL for the Neuse River
25			Estuary, approved in	[<mark>2001</mark>]	e [USEPA,] <u>US Environmental Protection Agency</u>
26			(EPA), the nitrogen v	wasteload allocation	on for point sources shall not exceed 1.64 million
27			pounds per calendar	year. The nitroger	wasteload allowance for point sources shall not
28			exceed the nitrogen	wasteload allocation	on plus any portion of the nonpoint source load
29			allocation purchased	in accordance with	the provisions in Items (7) and (8) of this Rule and
30			15A NCAC 02B .024	l0. [nutrient] <u>nutric</u>	ent offset credits obtained in accordance with G.S.
31			[143-214.26.] <u>143-21</u>	4.26 and Rule .070	03 of this Section.
32		(b)	The Commission sh	all order future	revisions in the Nitrogen TMDL and nitrogen
33			wasteload allocation	whenever [chan	ges to the TMDL establish reductions in the
34			allocations to point so	<mark>ources are</mark>] necessa	ry to ensure that water quality in the estuary meets
35			all applicable standard	ds in 15A NCAC 0	2B .0200 or to conform with applicable state State
36			or federal requiremen		
37	(5)	This Ite	m specifies the initial of	listribution of nitro	gen discharge allocations for point sources.

1		(a)	Upon a	doption of this Rule and until Until revised as provided elsewhere in this Rule, the
2			followi	ing group and individual discharge allocations for total nitrogen shall apply in order
3			to com	ply with the nitrogen wasteload allocation for point sources in Item (4) of this Rule:
4			(i)	Dischargers with permitted flows less than 0.5 MGD shall be assigned
5				collectively an annual discharge allocation of 138,000 pounds of total nitrogen.
6			(ii)	Dischargers upstream of Falls Lake Dam and with permitted flows greater than or
7				equal to 0.5 MGD shall be assigned collectively an annual discharge allocation of
8				443,700 pounds of total nitrogen.
9			(iii)	Municipal dischargers downstream of Falls Lake Dam and with permitted flows
10				greater than or equal to 0.5 MGD shall be assigned collectively an annual
11				discharge allocation of 2,021,400 pounds of total nitrogen.
12			(iv)	Industrial dischargers downstream of Falls Lake Dam and with permitted flows
13				greater than or equal to 0.5 MGD shall be assigned collectively an annual
14				discharge allocation of 396,900 pounds of total nitrogen.
15			(v)	Within each group in Sub-Items (i) - (iv) of this Item, each individual discharger
16				shall be assigned an individual discharge allocation and the equivalent estuary
17				allocation. Each discharger's discharge allocation shall be calculated as its
18				permitted flow divided by the total permitted flow of the group, multiplied by the
19				group discharge allocation.
20		(b)	In the	event that the nitrogen <u>TMDL and its</u> wasteload allocation for point sources <mark>is</mark> <u>are</u>
21			revised	, as provided in Item (4) of this Rule, the Commission shall apportion the revised
22			load ar	mong the existing facilities and shall revise discharge allocations as needed. The
23			Comm	ission may consider such factors as:
24			(i)	fate and transport of nitrogen in the river basin;
25			(ii)	technical feasibility and economic reasonableness of source reduction and
26				treatment methods;
27			(iii)	economies of scale;
28			(iv)	nitrogen control measures already implemented;
29			(v)	probable need for growth and expansion; and
30			(vi)	incentives for responsible nutrient management planning, utilities management,
31				resource protection, and cooperative efforts among dischargers; and dischargers.
32			(vii)	other factors the Commission deems relevant.
33	(6)	This Ite	m specif	ries nutrient controls for existing facilities.
34		(a)	Beginn	ing with calendar year 2003, each discharger with a permitted flow equal to or
35			greater	than 0.5 MGD shall be subject to a total nitrogen permit limit equal to the sum of
36			its <u>acti</u>	ve individual discharge allocation, pursuant to Item (5) of this Rule. [Rule, adjusted]
37			to refle	ect any subsequent transfer of Rule and any active allocation or nutrient offset
				

1			credits acquired pursuant to [the rules of the Neuse River nutrient management strategy.]
2			Rule .0703 [and .0710] of this Section.
3		(b <u>)</u>	Effective January 1, 2003, dischargers shall be subject to the following limits for total
4			phosphorus: All existing facilities below Falls Lake Dam with permitted flows greater than
5			or equal to 0.5 MGD shall meet a quarterly average total phosphorus limit of 2 mg/L.
6			(i) All existing facilities above Falls Lake Dam with permitted flows greater than or
7			equal to 0.05 MGD shall meet a quarterly average total phosphorus limit of 2
8			mg/L.
9			(ii) All existing facilities below Falls Lake Dam with permitted flows greater than or
10			equal to 0.5 MGD shall meet a quarterly average total phosphorus limit of 2 mg/L.
11		(c)	The director Director shall modify an existing facility's permit to establish more stringent
12			limits for nitrogen or phosphorus upon finding that such limits are necessary to protect
13			water quality standards in localized areas.
14	(7)	This It	tem specifies nutrient controls for new facilities.
15		(a)	New facilities proposing to discharge wastewater shall evaluate all practical alternatives to
16			surface water discharge [discharge and report its findings] pursuant to 15A NCAC 02H
17			[.0105(e)(2).] .0105(c)(2) prior to submitting an application to discharge.
18		(b)	New facilities submitting an application shall make every reasonable effort to obtain
19			acquire, or demonstrate contractual agreement to [acquire,] acquire prior to authorization
20			to discharge, nitrogen estuary allocation for the proposed wastewater discharge from
21			existing dischargers. If estuary allocation cannot be obtained from the existing facilities,
22			new facilities may or purchase a portion of the nonpoint source load allocation for a period
23			of 30 years from existing dischargers or nitrogen offset credits pursuant to [G.S. 143-
24			214.26, or Rule .0703 of this [Section, or both,] Section for the proposed discharge. The
25			allocation and offset [eredit] credits shall be sufficient for a period of 30 [no less than 10]
26			years at a rate of 200 percent of the cost as set in 15A NCAC 02B .0240 to implement
27			practices designed to offset the loading created by the new facility. any partial calendar
28			year in which the permit becomes effective plus 10 subsequent years of discharge at the
29			proposed design flow [rate.] rate in accordance with 15A NCAC 02H .0112(c).
30			for each 30 year portion of the nonpoint source load [No less than 10 years'] allocation
31			[and credits] shall be made [in full] prior to the ensuing permit issuance. [issuance, except
32			that the Director may allow up to 20 years for payment if the applicant provides sufficient
33			financial assurance that it can make such payment per G.S. 143-215.1(b)(4)(b). For offset
34			credits used to meet the discharge requirements, the applicant shall provide 10 percent
35			additional credits to address the uncertainty factor for using unmonitored nonpoint source
36			reductions to meet point source discharge limits. For credits used to meet the discharge
37			requirements, the applicant shall provide no additional credits to address the uncertainty

1			factor for using monitored nonpoint source reductions to meet point source discharge
2			limits.]
3		(c)	No application for a new discharge shall be made or accepted without written
4			documentation demonstrating that the requirements of Sub Items (a) and (b) of this Item
5			have been met. The Director shall not issue a permit authorizing discharge from a new
6			facility unless the applicant has satisfied the requirements of Sub-Items (a), (b), and (e) of
7			this Item. If a new facility's permit contains tiered flow limits for expansion, the Director
8			shall not authorize an increased discharge unless the applicant has satisfied the
9			requirements of Sub-Items (a), (b), and (e) of this Item for that discharge.
10		(d)	The [technology based] nitrogen discharge allocation limit for a new facility treating shall
11			not exceed the nitrogen load equivalent to its active allocation and offset credits, or the
12			[applicable] following technology-based mass limit, whichever is less. less: [Technology-
13			based limits are as follows: municipal or domestic wastewaters shall not exceed the mass
14			equivalent to a concentration of 3.5 mg/L at the maximum monthly average flow limit in
15			the facility's NPDES permit.
16			(i) For facilities treating municipal or domestic wastewaters, the mass load
17			equivalent to a concentration of 3.5 mg/L at the monthly average flow limit in the
18			facility's NPDES permit; and
19			(ii) For facilities treating industrial wastewaters, the mass load equivalent to [either]
20			the best available technology economically [achievable or a discharge
21			concentration of 3.2 mg/L] achievable, calculated at the monthly average flow
22			limit in the facility's NPDES [permit, whichever is less.]
23		(e)	The nitrogen discharge allocation for a new facility treating industrial wastewaters shall
24			not exceed the mass equivalent of either the best available technology economically
25			achievable or a discharge concentration of 3.2 mg/L at the maximum monthly average flow
26			limit in the facility's NPDES permit, whichever is less. Subsequent applications for permit
27			renewal or, where an existing permit contains tiered limits, requests to discharge at an
28			increased flow shall demonstrate that the facility has sufficient nitrogen allocation or offset
29			credits to meet its effluent nutrient limitations for [at least 10 years beyond the requested
30			renewal. pursuant to renewal, in accordance with 15A NCAC 02H .0112(c).
31			calendar year in which the permit becomes effective plus 10 subsequent years of discharge
32			at the proposed design flow rate.
33		(f)	New dischargers $\frac{1.0}{1.0}$ meet a monthly average total phosphorous limit of $\frac{1.0}{1.0}$ mg/L.
34		(g)	The director Director shall establish more stringent limits for nitrogen or phosphorus upon
35			finding that such limits are necessary to protect water quality standards in localized areas.
36	(8)	This Ite	em specifies nutrient controls for expanding facilities.

[discharge and report its findings] pursuant to 15A NCAC 02H [-0105(e)(2)-]_0105(2) prior to submitting an application to discharge. (b) Facilities submitting an application for increased discharge shall make every reason effort to minimize increases in their nitrogen discharges, such as [by] reducing source nitrogen to the facility or increasing the nitrogen treatment capacity of the facility; obtain estuary allocation from existing dischargers. [facility-] (c) No application for an expanding facility shall be made or accepted without we documentation demonstrating that the requirements of Sub Items (a) and (b) of this have been met. (d) [et] (b) If these measures do not produce adequate estuary allocation for the expanding facilities Facilities submitting application for increased discharge or, when existing permit contains tiered limits, for authorization to [operate] discharge and substance of the surface of the su	nable ses of or to
prior to submitting an application to discharge. (b) Facilities submitting an application for increased discharge shall make every reason effort to minimize increases in their nitrogen discharges, such as [by] reducing source nitrogen to the facility or increasing the nitrogen treatment capacity of the facility; obtain estuary allocation from existing dischargers. [facility.] (c) No application for an expanding facility shall be made or accepted without we documentation demonstrating that the requirements of Sub Items (a) and (b) of this have been met. (d) [e] [b] If these measures do not produce adequate estuary allocation for the expanding facilities Facilities Facilities submitting application for increased discharge or, when	nable es of or to ritten Item
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8 (c) No application for an expanding facility shall be made or accepted without we documentation demonstrating that the requirements of Sub Items (a) and (b) of this have been met. 10 (d) (e) (b) If these measures do not produce adequate estuary allocation for the expanding facilities Facilities submitting application for increased discharge or, when	Item
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12 flows, facilities Facilities submitting application for increased discharge or, when	
12 flows, facilities Facilities submitting application for increased discharge or, when	
	c an
existing definit contains defed limits, for authorization to reperate discharge?	
14 increased flow, may purchase a portion of the nonpoint source load allocation shall acc	
or demonstrate contractual agreement to [acquire,] acquire prior to authorization	_
discharge at the increased flow, nitrogen allocation from existing dischargers or [pure	
17 nutrient nitrogen offset credits pursuant to [G.S. 143 214.26] Rule .0703 of this Sec	
or both, for the proposed discharge. The allocation and offset credits shall be sufficient	
19 a period of 30 [10] years any partial calendar year in which the permit becomes effe	
20 plus 10 subsequent years of discharge at [te] the proposed design flow [rate.] ra	
21 accordance with 15A NCAC 02H .0112(c). at a rate of 200 percent of the cost as	
22 15A NCAC 02B .0240 to implement practices designed to offset the loading created b	
23 new facility. Payment for each 30 year portion of the nonpoint source load allocation	-
24 offset credits shall be made in full prior to the ensuing permit issuance. sissuance, es	
25 that the Director may allow up to 20 years for payment if the applicant provides suffi	-
financial assurance that it can make such payment per G.S. 143-215.1(b)(4)(b). For one of the such payment per G.S. 143-215.1(b)(4)(b).	offset
27 credits used to meet the discharge requirements, the applicant shall provide 10 pe	rcent
28 additional credits to address the uncertainty factor for using unmonitored nonpoint so	
reductions to meet point source discharge limits. For offset credits used to mee	t the
discharge requirements, the applicant shall provide no additional credits to addres	s the
31 uncertainty factor for using monitored nonpoint source reductions to meet point so	ource
32 discharge limits.	
33 [(d)] [No application for an expanding facility shall be made or accepted without w	<mark>ritten</mark>
documentation demonstrating that the requirements of Sub Items (a) through (c) or	
35 Item have been met.	
36 [(e)] (c) The [director] Director shall not issue a permit authorizing [expansion of] increase.	eased
discharge from an existing facility unless the applicant has satisfied the requirement	

1	[Sub Item (d)] Sub-Items (a), (b), and (e) of this Item. If a facility's permit contains tiered
2	flow limits for expansion, the [director]Director shall not [issue an authorization to]
3	authorize discharge at an increased flow unless the applicant has satisfied the requirements
4	of [Sub Item (d)] Sub-Items (a), (b), and (e) of this Item.
5	(e) [(f)] (d) The nitrogen discharge allocation limit for an expanded facility shall not exceed the
6	nitrogen load equivalent to its active allocation and offset credits, or the [applicable]
7	following technology-based mass limit, whichever is less. [Technology based limits
8	are as follows: treating municipal or domestic wastewaters shall not exceed the mass
9	equivalent to a concentration of 3.5 mg/L at the maximum monthly average flow limit in
10	the facility's NPDES permit, or its existing limit, allocation, whichever is greater.
11	(i) For facilities treating municipal or domestic wastewaters, the mass equivalent to
12	a concentration of 3.5 mg/L at the monthly average flow limit in the facility's
13	modified NPDES [permit;] permit, except that the limit shall be no less than the
14	facility's original allocation per Item (5) of this Rule; and
15	(ii) For facilities [of an] treating industrial [nature,] wastewaters, the mass equivalent
16	to the best available technology economically [achievable or a concentration of
17	3.2 mg/L] achievable, calculated at the monthly average flow limit in the facility's
18	modified NPDES [permit, whichever is less. If the resulting mass value is less
19	than the facility's existing discharge allocation, the existing discharge allocation
19	
20	shall not be reduced.] permit.
20	shall not be reduced.
20 21	shall not be reduced.] permit. (f) [(g)] (e) The nitrogen discharge allocation limit for expanding facilities of an industrial nature
20 21 22	shall not be reduced. permit. (f) [(g)] (c) The nitrogen discharge allocation limit for expanding facilities of an industrial nature shall not exceed the mass equivalent to the best available technology economically
20212223	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
2021222324	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
202122232425	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
20 21 22 23 24 25 26	shall not be reduced. Dermit. (f) [(g)] (c) 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
20 21 22 23 24 25 26 27	shall not be reduced. (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
20 21 22 23 24 25 26 27 28	shall not be reduced. (f) [(g)] (c) 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
20 21 22 23 24 25 26 27 28	shall not be reduced. (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
20 21 22 23 24 25 26 27 28 29 30	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
20 21 22 23 24 25 26 27 28 29 30 31	shall not be reduced. (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(e). [any partial calendar year in which the permit becomes effective plus 10 subsequent years of discharge at the proposed design
20 21 22 23 24 25 26 27 28 29 30 31	shall not be reduced. (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(e).] any partial calendar year in which the permit becomes effective plus 10 subsequent years of discharge at the proposed design flow rate.
20 21 22 23 24 25 26 27 28 29 30 31 32	shall not be reduced. (f) [g] (c) 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(e).] any partial calendar year in which the permit becomes effective plus 10 subsequent years of discharge at the proposed design flow rate. (g) [th] [f] Expanding facilities must shall meet a monthly average total phosphorous limit of 4.
20 21 22 23 24 25 26 27 28 29 30 31 32 33	shall not be reduced. (f) [(g)] (c) 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(e).] 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

1		(h) [(i	(g) The director Director shall modify an expanding facility's permit to establish more
2			stringent limits for nitrogen or phosphorus upon finding that such limits are necessary to
3			protect water quality standards in localized areas.
4	(9)	This I	tem describes the option for dischargers to join a group compliance association to collectively
5		meet <mark>r</mark>	nutrient <u>nitrogen</u> load allocations. <u>limits.</u>
6		(a)	Any or all facilities within the basin may form a group compliance association to meet
7			nitrogen estuary allocations limits collectively. Any such association must shall apply for
8			and shall be subject to an NPDES group permit that establishes the effective total nitrogen
9			allocations limits, expressed as loads delivered to the estuary, for the association and for
10			its members. More than one group compliance association may be established. No facility
11			may belong to be a co-permittee member of more than one association formed pursuant to
12			this Rule at a any given time.
13		(b)	No later than 180 days prior to coverage under a new NPDES group permit, or expiration
14			of the association an existing NPDES group permit, the association and its members shall
15			submit an application for-a an NPDES permit for the discharge of total nitrogen to the
16			surface waters of the Neuse River Basin. The NPDES group permit shall be issued to the
17			association and its members as co permittees ("association NPDES permit"). It shall
18			contain the association's estuary allocation and individual estuary allocations for each of
19			the members. co-permittees.
20		(c)	An association's estuary allocation limit of total nitrogen shall be the sum of its members'
21			individual estuary allocations and nutrient offset credits plus any other estuary allocation
22			and offset credits obtained by the association or its members. members pursuant to this
23			strategy.
24		(d)	An association and its members may reapportion the their individual estuary allocations
25			and nutrient offset credits of its members on an annual basis. The association NPDES group
26			permit shall be modified to reflect the revised individual estuary allocations. allocations
27			and limits.
28		(e)	Beginning in calendar year 2003, if If an association does not meet its estuary allocation,
29			limit in any year, it shall make offset payments for nonpoint source controls obtain nutrient
30			offset credits in accordance with G.S. 143-214.26 to offset its mass exceedance no later
31			than May 1 of the following year at the rate set in 15A NCAC 02B .0240. year.
32		(f)	Association members shall be exempted from deemed compliant with the permit limits for
33			total nitrogen contained in their individually issued NPDES permits so long as while they
34			remain are members in an association. Association members shall be exempted from
35			deemed compliant with their individual estuary allocations limits in the association NPDES
36			group permit as long as in any year in which the association is in compliance with its
37			estuary allocation. limit. If the association fails to meet its estuary allocation, exceeds its
			·

1		group limit, the association and the any members that have failed to meet exceed their
2		individual estuary allocations limits in the association NPDES group permit will shall be
3		deemed to be out of compliance with the association NPDES group permit.
4	(10)	Regional Facilities. In the event that an existing If an NPDES-permitted discharger or group of
5		dischargers accepts wastewater from another NPDES-permitted treatment facility in the Neuse
6		River Basin and that acceptance results in the elimination of the discharge from the treatment
7		facility, the eliminated facility's total nitrogen estuary allocation shall be transferred and added to
8		the accepting discharger's estuary allocation.
9		
10	History Note:	Authority G.S. 143-214.1; 143-215; 143-215.1; 143-215.3(a)(1); S.L. 1995, c. 572;
11		Temporary Adoption Eff. January 22, 1998;
12		Eff. August 1, 1998;
13		Temporary Amendment Eff. March 15, 2000;
14		Temporary Amendment Expired on December 10, 2000;
15		Amended Eff. April 1, 2003;
16		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 <u>.0735.0261</u> 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, eharacter character, and shifts in the impairment with time, trends trends, and character of loading delivered to the estuary, and distribution and character

1		of loading inputs to the basin and changes to those inputs over time. Evaluation The evaluation shall
2		address the extent to which the reduction goals identified in Item (2) of this Rule have been achieved
3		and shall shall, based on its findings, provide recommendations on management needs. The Division
4		shall seek to complete an the evaluation within three years of the effective date of this Rule and shall
5		distribute the findings its findings, which may recommend regulatory and non regulatory actions
6		upon completion. The Division shall also report biannually to the Water Quality Committee of the
7		Commission on implementation progress and reductions achieved by sources subject to the Tar-
8		Pamlico nutrient strategy. The adaptive management approach is based on defined goals, knowledge
9		of resources and impacts to those resources, appropriate technology and inventory. These inputs are
10		used to plan, act, monitor and evaluate. The process is iterative and the goal is continuous
11		environmental quality improvement.
12	(5)	GEOGRAPHIC APPLICABILITY. The Tar-Pamlico nutrient strategy shall apply in all areas
13		draining to waters within hydrologic units 03020101, 03020102, 03020103, 03020104, and portions
14		of 03020105 located on the Albemarle-Pamlico peninsula unless individual Tar-Pamlico strategy
15		rules describe other boundaries.
16	(6)	PENALTIES. Failure to meet the requirements of the Tar-Pamlico nutrient strategy rules mee
17		requirements of Rules the Tar Pamlico nutrient strategy may result in imposition of enforcemen
18		measures as authorized by G.S. 143-215.6A, G.S. 143-215.6B, and G.S. 143-215.6C.
19		
20	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-
21		<u>215.8B; 143B-282</u> ; S.L. 1997-458;
22		Eff. January 1, 2020.

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1	15A NCAC 02B	.0258 is re	eadopted with changes as published in 33:16 NCR 16/1-1/17 as follows:
2			
3	15A NCAC 02B	. .0258 . <u>.073</u>	TAR-PAMLICO RIVER BASIN- NUTRIENT SENSITIVE WATERS
4			MANAGEMENT STRATEGY: BASINWIDE STORMWATER
5			REQUIREMENTS
6	(a) PURPOSE.	The purpo	ose of this Rule are as follows. is to achieve and maintain the nitrogen and phosphorus
7	loading reduction	n goals for	the Tar-Pamlico River Estuary set out in Rule .0730 of this Section from an undeveloped
8	condition on land	ds in the Ta	ar-Pamlico River Basin on which [new]development occurs. Nothing in this Rule preempts
9	local governmen	ts from im	plementing requirements that are more restrictive than those set forth in this Rule.
10	(1)	To achiev	ve and maintain a reduction in nitrogen loading to the Pamlico estuary from lands in the
11		Tar Paml	lico River Basin on which new development occurs. The goal of this Rule is to achieve a
12		30 percer	nt reduction relative to pre-development levels;
13	(2)	To limit	phosphorus loading from these lands to the estuary. The goal of this Rule is to limit
14		phosphor	rus loading to pre-development levels;
15	(3)	To provi	de control for peak stormwater flows from new development lands to ensure that the
16		nutrient 1	processing functions of existing riparian buffers and streams are not compromised by
17		channel e	prosion; and
18	(4)	To minin	nize, to the greatest extent practicable, nitrogen and phosphorus loading to the estuary from
19		existing c	developed areas in the basin.
20	(b) APPLICAB	ILITY. <u>The</u>	e following local governments shall implement the stormwater management requirements
21	of this [Rule.] R	<mark>ule, except</mark>	as noted in Subparagraph (c)(1) of this Rule where the Department shall implement them.
22	Municipalities sl	nall implen	nent this Rule throughout their corporate limits and extraterritorial jurisdictions within the
23	basin, while cour	<u>nties shall i</u>	implement throughout their territorial jurisdictions within the basin. Counties named in this
24	Paragraph may is	mplement t	this Rule within municipalities not named in accordance with G.S. 160A-360(d). This Rule
25	shall apply to loo	eal governr	ments in the Tar Pamlico basin according to the following criteria.
26	(1)	Local gov	vernments designated under [the original version of] this Rule effective April 2001: This
27		Rule shal	ll apply to the following municipal areas:
28		(A)[Greenville] Greenville;
29		(B)[Henderson] Henderson;
30		(C)[Oxford] <u>Oxford;</u>
31		(D)[Rocky Mount:
32		(E)[Tarboro:
33		(F) <mark>[</mark>	Washington;
34		(G)[Beaufort County] Beaufort County;
35		(H)[Edgecombe County] Edgecombe County;
36		<u>(I)</u> [Franklin County] <u>Franklin County:</u>
37		<u>(J)</u> [Nash County] Nash County; and

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1		(K)[Pitt County] Pitt County.
2	(2)	[The Following additional local governments are subject to this Rule:] As of the effective date of
3		this readoption, Wilson County.
4		[(A)
5		[(B) Vance County] Edgecombe
6		[(C) Wilson County] Franklin
7		(D) Nash
8		(E) Pitt
9	(3) The En	vironmental Management Commission may designate additional local governments as subject to this
10	Rule b	y amending this Rule based on the potential of those jurisdictions to contribute significant nutrient
11	loads t	o the Tar Pamlico River. At a minimum, the Commission shall review the need for additional
12	designa	ations as part of the Basinwide process for the Tar Pamlico River Basin. The Commission shall
13	conside	er, at a minimum, the following criteria related to local governments: population within the basin,
14	popula	tion density, past and projected growth rates, proximity to the estuary, and the designation status of
15	munici	palities within candidate counties.
16	[(3) EXEM	PTION. A stormwater management plan is not required for new development on an individual single-
17	family	lot if the new development meets the following criteria:
18	(a)	It is not part of a larger common plan of development or sale; and
19	(b)	The project does not result in greater than five percent built upon area on the lot or it is for purposes
20		of a single family residence on a lot five acres in size or greater.
21	(c) LOCAL PR	OGRAM IMPLEMENTATION REQUIREMENTS. All local governments subject to this Rule shall
22	develop stormw	rater management programs for submission to and approval by the Commission according to the
23	following minin	num standards: <u>implement stormwater management programs approved by the Commission [pursuant</u>
24	to] <u>following</u> the	e timeframes set out in Paragraph [(e)] (f) of this Rule, or any subsequent modification to those plans
25	approved by the	Director, according to the following requirements and the standards contained in Paragraph (d) of
26	this Rule:	
27	(1)	A The requirement that a stormwater management plan for local government approval of a
28		stormwater plan for all proposed [new development projects disturbing one acre or more for single
29		family and duplex residential property and recreational facilities, and one half acre or more for
30		commercial, industrial, institutional, multifamily residential, or local government property. Where
31		proposed new development on an existing developed lot not part of a larger common plan of
32		development results in built upon area exceeding 24 percent, a stormwater plan addressing the new
33		project area shall be required.] development projects not excluded under Paragraph (d) of this Rule.
34		These stormwater plans shall not be approved by the subject local governments unless the following
35		eriteria are met: To the extent permitted by federal law, including 33 USC 26, and where pursuant
36		to G.S. 153A-454 and G.S. 160A-459 a local government program does not review a development

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1		project	t proposed by a [state]State or federal entity for the requirements of this Rule, the entity shall
2		<u>obtain</u>	Department review and approval.
3	<u>(2)</u>	A plar	to ensure maintenance of [stormwater control measures (SCMs)] SCMs implemented to
4		comply	y with this [rule] Rule for the life of the development;
5	<u>(3)</u>	<u>A plan</u>	to ensure enforcement and compliance with the provisions in Paragraph (e) of this Rule for
6		the life	e of the development;
7	<u>(4)</u>	A pub	lic education program to inform citizens how to reduce nutrient pollution and to inform
8		develo	pers about the nutrient requirements set forth in Paragraph (e) of this Rule;
9	<u>(5)</u>	A map	ping program that includes major components of the municipal separate storm sewer system,
10		waters	of the State, land use types, and location of sanitary sewers; and
11	<u>(6)</u>	A prog	gram to identify and remove illegal discharges.
12	(d) DI	EVELOPME	NT EXCLUDED. The following development activities shall not be subject to this Rule:
13	<u>(1)</u>) Projec	ts disturbing less than:
14		(A) or	ne acre for single family and duplex residential property and recreational facilities; and
15		(B) or	ne-half acre for commercial, industrial, institutional, multifamily residential, or local
16			government land uses with the following exception: Projects below one-half acre that
17			would replace or expand existing structures on a parcel, resulting in a cumulative built-
18			upon area for the parcel exceeding twenty-four percent, shall be subject to Paragraph (e)
19			of this Rule;
20	<u>(2</u>	Develo	opment of an individual single-family or duplex residential lot that:
21		<u>(A)</u>	Is not part of a larger common plan of development or sale as in 15A NCAC 02H .1002;
22		<u>and</u>	
23		<u>(B)</u>	Does not result in greater than five percent built upon area on the lot;
24	<u>(3)</u>	<u>Existir</u>	ng development as defined in rule 15A NCAC 02H .1002;
25	<u>(4)</u>	Redev	elopment as defined in G.S. 143-214.7(a1)(2); and
26	<u>(5)</u>) Activit	ties subject to requirements of the Tar-Pamlico Agriculture rule, 15A NCAC 02B .0732.
27	[(d)](e) D	EVELOPME	NT PROJECT REQUIREMENTS. A proposed development project not excluded under
28	Paragraph ((d) of this Ru	shall be approved by a subject local government for the purpose of this Rule when the
29	applicable r	requirements	of Paragraph (c) of this Rule and the following criteria are met:
30		(A)	The nitrogen load contributed by the proposed new development activity shall not exceed
31			70 percent of the average nitrogen load contributed by the non urban areas in the Tar-
32			Pamlico River basin based on land use data and nitrogen export research data. Based on
33			1995 land use data and available research, the nitrogen load value shall be 4.0 pounds per
34			acre per year;
35		(B)	The phosphorus load contributed by the proposed new development activity shall not
36			exceed the average phosphorus load contributed by the non-urban areas in the Tar Pamlico
37			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
<u>(1)</u>	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.
<u>(2)</u>	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.
<u>(4)</u>	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)

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1	[(2)](3)	Untreat	ed nutrient loading rates from the project area shall be determined through the use of the tool
2		most re	cently approved by the Division to have met the following criteria, or through an alternative
3		method	that meets or exceeds the following criteria, [eriteria at least as well,] as determined by the
4		Divisio	<u>n:</u>
5		<u>(A)</u>	Provides project site-scale estimates of annual precipitation-driven total nitrogen and total
6			phosphorus load;
7		<u>(B)</u>	From all land cover types on a project site at build-out;
8		<u>(C)</u>	Based on land-cover-specific nitrogen and phosphorus loading coefficients and annual
9			runoff volume; and
10		<u>(D)</u>	Is supported by the weight of evidence from available, current, and applicable research.
11	[(3)](6)	Nutrien	t loading rate reductions resulting from the use of SCMs shall be determined through the use
12		of the to	ool most recently approved by the Division to have met the following criteria, or through an
13		alternat	ive method that meets or exceeds the following criteria, [eriteria at least as well,] as
14		determi	ned by the Division:
15		<u>(A)</u>	Provides project site loading reduction estimates from the installation of DEMLR-
16			approved SCMs:
17		<u>(B)</u>	Reductions apply to the portion of the [project area's]project's runoff volume that is
18			directed to the SCMs;
19		<u>(C)</u>	The method partitions the runoff volume processed by the SCM among hydrologic fates
20			and assigns nutrient concentrations to each of those fates; and
21		<u>(D)</u>	The method is supported by the weight of evidence from available, current, and applicable
22			research.
23	[(4)	-	s shall meet the requirements set forth in 15A NCAC 02H .1003. Projects that use SCMs to
24			ormwater shall use the required storm depths and meet the SCM and density requirements set
25			the stormwater programs to which they are subject pursuant to Rules 15A NCAC 02H .1017,
26			and .1021. Projects not subject to any of these rules shall be considered high density if they
27			twenty four percent or greater built upon area or have greater than two dwelling units per
28			d shall use a storm depth of one inch for SCM design.
29	[(5)		ed new development undertaken by a local government solely as a public road expansion or
30		_	sidewalk project or proposed new development subject to the jurisdiction of the Surface
31			ortation Board shall be exempt from the requirements of Subparagraph (d)(4) of this Rule
32			y meet the loading rate targets through use of permanent nutrient offset credit pursuant to
33			7 03 of this Section;]
34	[(6)		ed development projects that would replace or expand existing structures and would result in
35			crease in built-upon area shall be responsible for nutrient loading from the area of disturbance
36		<mark>less an</mark> y	preexisting built upon area located in the disturbance area. The developer shall have the property that the property of the p

1		option to either achieve the percent loading reduction goals established in Rule .0730 of this Section
2		or meet the loading rate targets of this Paragraph;
3	[(7)	Proposed new development projects may utilize an offsite SCM that is dedicated to treating an area
4		encompassing the project provided the SCM complies with the applicable requirements of this
5		Paragraph for the area that it treats;
6	<u>(7)</u>	Proposed development projects shall demonstrate compliance with the riparian buffer protection
7		requirements set forth in 15A NCAC 02B .0259.
8		(D) Developers shall have the option of partially offsetting their nitrogen and phosphorus loads
9		by providing treatment of off site developed areas. The off site area must drain to the same
10		classified surface water, as defined in the Schedule of Classifications, 15A NCAC 2B
11		.0316, that the development site drains to most directly. The developer must provide legal
12		assurance of the dedicated use of the off site area for the purposes described here, including
13		achievement of specified nutrient load reductions and provision for regular operation and
14		maintenance activities, in perpetuity. The legal assurance shall include an instrument, such
15		as a conservation easement, that maintains this restriction upon change of ownership or
16		modification of the off site property. Before using off site treatment, the new development
17		must attain a maximum nitrogen export of six pounds/acre/year for residential development
18		and 10 pounds/acre/year for commercial or industrial development.
19	[(8)	Where pursuant to G.S. 153A 454 and G.S. 160A 459 a local government program does not review
20		a development project proposed by a state or federal entity for the requirements of this Rule, the
21		entity shall obtain Department review and approval; and]
22	[(9)	Proposed new development shall demonstrate compliance with the riparian buffer protection
2223	[(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
	[(9)	
23	(2)	requirements of Rule .0734 of this Section or subsequent amendments or replacement to those
23 24	(2)	requirements of Rule .0734 of this Section or subsequent amendments or replacement to those requirements.]
232425	(2)	requirements of Rule .0734 of this Section or subsequent amendments or replacement to those requirements. A public education program to inform citizens of how to reduce nutrient pollution and to inform
23242526		requirements of Rule .0734 of this Section or subsequent amendments or replacement to those requirements.] 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).
23 24 25 26 27		requirements of Rule .0734 of this Section or subsequent amendments or replacement to those requirements.] 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 (e)(1). A mapping program that includes major components of the municipal separate storm sewer system,
23 24 25 26 27 28	(3)	requirements of Rule .0734 of this Section or subsequent amendments or replacement to those requirements.] 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). 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.
23 24 25 26 27 28 29	(3)	requirements of Rule .0734 of this Section or subsequent amendments or replacement to those requirements.] 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). 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. A program to identify and remove illegal discharges.
23 24 25 26 27 28 29 30	(3)	requirements of Rule .0734 of this Section or subsequent amendments or replacement to those requirements. 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). 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. A program to identify and remove illegal discharges. A program to identify and prioritize opportunities to achieve nutrient reductions from existing
23 24 25 26 27 28 29 30 31	(3) (4) (5)	requirements of Rule .0734 of this Section or subsequent amendments or replacement to those requirements. 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). 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. A program to identify and remove illegal discharges. A program to identify and prioritize opportunities to achieve nutrient reductions from existing developed areas.
23 24 25 26 27 28 29 30 31 32	(3) (4) (5)	requirements of Rule .0734 of this Section or subsequent amendments or replacement to those requirements. 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). 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. A program to identify and remove illegal discharges. A program to identify and prioritize opportunities to achieve nutrient reductions from existing developed areas. A program to ensure maintenance of BMPs implemented as a result of the provisions in
23 24 25 26 27 28 29 30 31 32 33	(3) (4) (5) (6)	requirements of Rule .0734 of this Section or subsequent amendments or replacement to those requirements. 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). 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. A program to identify and remove illegal discharges. A program to identify and prioritize opportunities to achieve nutrient reductions from existing developed areas. A program to ensure maintenance of BMPs implemented as a result of the provisions in Subparagraphs (c)(1) and (c)(5).
23 24 25 26 27 28 29 30 31 32 33 34	(3) (4) (5) (6) (7)	requirements of Rule .0734 of this Section or subsequent amendments or replacement to those requirements.] 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). 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. A program to identify and remove illegal discharges. A program to identify and prioritize opportunities to achieve nutrient reductions from existing developed areas. A program to ensure maintenance of BMPs implemented as a result of the provisions in Subparagraphs (c)(1) and (c)(5). A program to ensure enforcement and compliance with the provisions in Subparagraph (c)(1).

1		degradation of surface water quality, degradation of aquatic or wetland habitat or biota, or
2		destabilization of conveyance structure of involved surface waters. Such local governments shall
3		also be responsible for including appropriate supporting information to quantify nutrient and flow
4		reductions provided by these measures and describing the administrative process for implementing
5		such strategies.
6	[(e)](f) RULE I	MPLEMENTATION
7	<u>(1)</u>	Within [four] eight months of the effective date of this Rule, the Division shall submit a model local
8		stormwater program embodying the elements in Paragraphs (c) [and (d)] through (e) of this Rule to
9		the Commission for approval. The Division shall work [in-cooperation] with subject local
10		governments in developing this model program.
11	(2)	Local governments designated pursuant to Subparagraph (b)(1) of this Rule [under the original
12		version of this Rule effective April 2001 and additional local governments designated [herein]
13		pursuant to Subparagraph (b)(2) of this Rule shall submit a local stormwater program for approval
14		by the Commission within six months and 12 months, respectively, of the Commission's approval
15		of the model local program. These local programs shall meet or exceed the requirements in
16		Paragraphs (c) [and (d)] through (e) of this Rule.
17	<u>(3)</u>	The Division shall provide recommendations to the Commission regarding proposed local
18		programs. The Commission shall approve programs or require changes based on the standards set
19		out in Paragraphs (c) [and (d)] through (e) of this Rule. Should the Commission require changes,
20		the applicable local government shall have three months to submit revisions, and the Division shall
21		provide follow-up recommendations to the Commission within two months after receiving
22		[revisions;] <u>revisions.</u>
23	<u>(4)</u>	Within six months after the Commission's approval of a local program, the [affected] local
24		government shall complete adoption of and implement its local stormwater program.
25	<u>(5)</u>	Local governments administering a stormwater program shall submit annual reports in electronic
26		format to the Division documenting their progress regarding each implementation requirement in
27		Paragraph (c) of this Rule and net changes to nitrogen load by October [30] 30th of each year. Annual
28		reports shall also include as appendices all data utilized by nutrient calculation tools for each
29		development stormwater plan approved in accordance with this Rule.
30	<u>(6)</u>	Any significant modifications to a local government's program shall be submitted to the Director
31		for approval.
32	(d) TIMEFRA	ME FOR IMPLEMENTATION. The timeframe for implementing the stormwater management
33	program shall be	e as follows:
34	(1)	Within 12 months of the effective date of this Rule, the Division shall submit a model local
35		stormwater program that embodies the minimum criteria described in Paragraph (c) of this Rule to
36		the Commission for approval. The Division shall work in cooperation with subject local
37		governments in developing this model program.

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1	(2)	Within 12 months of the Commission's approval of the model local stormwater program or within
2		12 months of a local government's later designation pursuant to Subparagraph (b)(3), subject local
3		governments shall submit their local stormwater management programs to the Commission for
4		review and approval. These local programs shall meet or exceed the requirements in Paragraph (c)
5		of this Rule.
6	(3)	Within 18 months of the Commission's approval of the model local stormwater program or within
7		18 months of a local government's later designation pursuant to Subparagraph (b)(3), subject local
8		governments shall adopt and implement their approved local stormwater management program.
9	(4)	Local governments administering a stormwater management program shall submit annual reports to
10		the Division documenting their progress and net changes to nitrogen load by October 30 of each
11		year.
12	[(f)](g) COMPI	IANCE. A local government's authority to approve [new]development stormwater plans for
13	compliance with	this Rule pursuant to Paragraph [(d)] (e) of this Rule shall be contingent upon maintaining its own
14	compliance with	this Rule. A local government that fails to submit an acceptable local stormwater management
15	program within t	he timeframe established in this Rule, or fails to implement an approved [program <u>.</u>]program, or fails
16	to comply with	annual reporting requirements shall be in violation of this Rule. In this case, the stormwater
17	management rec	quirements for its jurisdiction shall be administered through the NPDES municipal stormwater
18	permitting progr	ram per 15A NCAC 2H .0126. Any local government that is subject to an NPDES municipal
19	stormwater perm	nit pursuant to this Rule shall:
20	(1)	Develop and implement comprehensive stormwater management program to reduce nutrients from
21		both existing and new development. This stormwater management program shall meet the
22		requirements of Paragraph (c) of this Rule for new and existing development.
23	(2)	Be subject to the NPDES permit for at least one permitting cycle (five years) before it is eligible to
24		submit a local stormwater management program to the Commission for consideration and approval.
25		
26	History Note:	Authority G.S. 143-214.1; 143-214.7; <u>143-214.26</u> ; <u>143-215.1</u> ; <u>1</u> 43-215.3(a)(1); 143-215.6A; 143-
27		215.6B; 143-215.6C; 143 B -282(d); 143-215.8B; <u>S.L. 1997-458; S.L. 2006-246;</u>
28		Eff. April 1, 2001.
29		Readopted Eff. January 1, 2020.
30		

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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.
 - 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

I	nutrient strateg	y as des	cribed in Rule .0/30 of this Section. This Rule applies to livestock and poultry operations		
2	[<mark>above the size</mark>	threshol	ds in this Item] set forth in Subparagraph (b)(3) of this Rule in addition to requirements for		
3	animal operation	animal operations set forth in general permits issued pursuant to G.S. 143-215.10C. Nothing in this Rule shall be			
4	deemed to allo	deemed to allow the violation of any assigned surface water, groundwater, or air quality standard by any agricultura			
5	operation, including any livestock or poultry operation below the size thresholds in this Paragraph. [Nothing in this				
6	Rule shall be d	eemed to	allow the violation of any assigned surface water, groundwater, or air quality standard by any		
7	<mark>agricultural op</mark>	eration, i i	ncluding any livestock or poultry operation below the size thresholds in this Paragraph.] For		
8	the purposes of	this Rule	, agricultural operations are activities that relate to any of the following pursuits: "agricultural		
9	operations," ar	e activitie	es, and "agricultural producers" are persons engaging in those activities, that relate to any of		
10	the following p	<mark>ursuits:</mark>			
11	(1)	The co	ommercial production of crops or horticultural products other than trees. As used in this Rule,		
12			ereial "commercial" shall mean activities conducted primarily for financial profit.		
13	(2)	Resea	rch activities in support of such commercial production.		
14	(3)	The pr	roduction or management of any of the following number of livestock or poultry at any time,		
15		exclud	ling nursing young:		
16		(A)	20 or more horses;		
17		(B)	20 or more cattle;		
18		(C)	150 or more swine;		
19		(D)	120 or more sheep;		
20		(E)	130 or more goats;		
21		(F)	650 or more turkeys;		
22		(G)	3,500 or more chickens; or		
23		(H)	A number of any Any single species of any other livestock or poultry, or any combination		
24			of species of livestock or poultry that exceeds 20,000 pounds of live weight at any time.		
25	(4)	Certai	n tree-harvesting activities described and defined as follows.		
26		(A)	The one-time harvest of trees on land within a riparian buffer described in 15A NCAC 02B		
27			Rule .0259 [.0734 of this Section] that was open farmland on September 1, 2001. This one-		
28			time harvest of trees may be conducted within one tree cropping interval only under a		
29			verifiable farm plan that received final approval from a local agricultural agency on or after		
30			September 1, 2001 and that expressly allowed the harvest of trees no earlier than 10 years		
31			after the trees are established and the return of the land to another agricultural pursuit.		
32		(B)	The one-time harvest of trees on land within a riparian buffer described in 15A NCAC 02B		
33			.0259 [.0734] that had trees established under an agricultural incentive program as of		
34			September 1, 2001.		
35		(C)	All tree harvesting described in Subparagraphs Parts (b)(4)(A) and (b)(4)(B) of this Rule		
36			(A) and (B) of this Subparagraph shall comply with [Forest Practices Guidelines Related		

to Water Quality codified at 15A NCAC 011. 02 NCAC 60C. The nutrient removal

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1		function	ons that v	were provided by trees prior to their harvest shall be replaced by other
2		measu	res that ar	re implemented by the owner of the land from which the trees are harvested.
3	(D)		•	definitions shall apply to terms used in Subparagraphs Parts (b)(4)(A)
4		throug	sh (b)(4)(C) of this Rule. (A) and (B) of this Subparagraph
5		(i)	"Agric	ultural incentive program" means any of the following programs and any
6			predec	essor program to any of the following programs:
7			(I)	Agriculture Cost Share Program for Nonpoint Source Pollution Control
8				established by G.S. <u>143-215.74.106-850</u> .
9			(II)	Conservation Reserve Enhancement Program established by 7 C.F.R.
10				Part 1410 (January 1, 2001 Edition) and 15A NCAC 06G .0101 through
11				15A NCAC 06G .0106.
12			(III)	Conservation Reserve Program established by 7 C.F.R. Part 1410
13				(January 1, 2001 Edition).
14			(IV)	Environmental Quality Incentives Program established by 7 C.F.R. Part
15				1466 (January 1, 2001 Edition).
16			(V)	Wetlands Reserve Program established by 7 C.F.R. Part 1467 (January
17				1, 2001 Edition).
18			(VI)	Wildlife Habitat Incentives Program established by 7 C.F.R. Part 636
19				(January 1, 2001 Edition).
20			(VII)	The CFRs in this Subparagraph are incorporated by reference, including
21				subsequent amendments and editions, and may be accessed free of
22				charge at www.gpo.gov.
23		(ii)	"Local	agricultural agency" means the North Carolina Cooperative Extension
24			Service	e, the Farm Services Agency of the United States Department of
25			Agricu	ulture, the Natural Resources Conservation Service of the United States
26			Depart	tment of Agriculture, a Soil and Water Conservation District created
27			pursua	nt to G.S. 139-5, or their successor agencies.
28		(iii)	"Open	farmland" means the footprint of land used for pasture or for crops or
29			horticu	ultural products other than trees. Open farmland may contain scattered trees
30			if an o	open canopy existed on September 1, 2001 as determined from the most
31			recent	aerial photographs taken prior to September 1, 2001 for the Farm Services
32			Agenc	y of the United States Department of Agriculture.
33		(iv)	"Tree"	means a woody plant with a diameter equal to or greater than five inches
34		. ,		neasured at a height of four and one-half feet above the ground.
35		(v)		cropping interval" means the time required to establish and grow trees that
36		` /		table for harvesting. The tree-cropping interval shall be set out in the farm
37				nd shall be no less than 10 years after the trees are established.
			1	- ,

(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

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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 (c) 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:

- 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) <u>Up to two Environmental environmental</u> interests;
- (G) Basinwide farming interests;

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1		(H)	Pasture-based livestock interests; and
2		(I)	Cropland farming interests; and General farming interests; and
3		(J)	The scientific community with experience related to water quality problems in the Tar-
4			Pamlico River Basin.
5	(2)	ROLE	. The Basin Oversight Committee shall:
6		(A)	Develop a tracking and accounting methodology pursuant to Subparagraph (f)(3) of this
7			Rule. A final nitrogen methodology shall be submitted to the Commission for approval
8			within one year after the effective date of this Rule. A final methodology for phosphorus
9			shall be submitted at the earliest date possible as determined by the Basin Oversight
10			Committee with input from the technical advisory committee described in Part (f)(2)(D) of
11			this Rule.
12		<u>(A)</u>	Continue to review, [approve, and summarize local nitrogen and phosphorus
13			reduction annual reports to ensure ongoing implementation of the accounting methods
14			approved by the Commission under the original version of this Rule in October 2002 for
15			nitrogen and November 2005 for phosphorus as conforming to the requirements of
16			Subparagraph (d)(3) Subparagraph (3) of this Paragraph. [of this Rule.] [Continue to]The
17			Committee shall present these reports as initiated in 2002, to the Director
18			annually;] <u>Director;</u>
19		<u>(B)</u>	Take actions [ealled for] set forth [under] in [Subparagraphs] Subparagraph (c)(2) of this
20			Rule [as needed] to address maintenance of the nitrogen and phosphorus reductions goals;
21		<u>(C)</u>	Identify and implement future refinements to the accounting methodology [as needed] to
22			reflect advances in scientific understanding, including establishment of nutrient reduction
23			efficiencies for BMPS; [BMPs.]
24		(D)	Appoint a Reassemble as needed a phosphorus technical advisory committee within 6
25			months of the effective date of this Rule to update the qualitative phosphorus method
26			approved by the Commission in October 2005, titled Accounting Method for Tracking
27			Relative Changes in Agricultural Phosphorus Loading to the Tar-Pamlico River, in order
28			to revise phosphorus baseline values and annual changes in factors affecting agricultural
29			phosphorus loss. to inform the Basin Oversight Committee on rule related issues. The
30			Basin Oversight Committee shall direct the committee to take the following actions at a
31			minimum: monitor advances in scientific understanding related to phosphorus loading,
32			evaluate the need for additional management action to meet the phosphorus loading goal,
33			and report its findings to the Basin Oversight Committee on an annual basis. The Basin
34			Oversight Committee shall in turn report these findings and its recommendations to the
35			Commission on an annual basis following the effective date of this Rule, until such time
36			as the Commission, with input from the Basin Oversight Committee, determines that the
37			technical advisory committee has fulfilled its purpose. The Basin Oversight Committee

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1			shall solicit nominations for this committee from the Division of Soil and Water
2			Conservation, United States Department of Agriculture Natural Resources Conservation
3			Service, North Carolina Department of Agriculture and Consumer Services, North
4			Carolina Cooperative Extension Service, Division of Water Quality, environmental
5			interests, agricultural interests, and the scientific community with experience related to the
6			committee's charge.
7		(D)	Review, approve and summarize county or watershed local strategies and present these
8			strategies to the Commission for approval within two years after the effective date of this
9			Rule.
10		(E)	Establish minimum requirements for, review, approve and summarize local nitrogen and
11			phosphorus loading annual reports as described under Subparagraph (g)(5) of this Rule,
12			and present these reports to the Commission each October, until such time as the
13			Commission determines that annual reports are no longer needed to assure long term
14			maintenance of the nutrient goals.
15	(3)	ACCO	DUNTING METHODOLOGY. The Basin Oversight Committee shall develop an accounting
16	` `		vidology that meets the following requirements:
17		(A)	The methodology shall quantify baseline total nitrogen and phosphorus loadings from
18			agricultural operations in each county and for the entire basin.
19		(B)	The methodology shall include a means of tracking implementation of BMPs, including
20		, ,	number, type, and area affected.
21		(C)	The methodology shall include a means of estimating incremental nitrogen and phosphorus
22			reductions from actual BMP implementation and of evaluating progress toward the nutrient
23			goals from BMP implementation. The methodology shall include nutrient reduction
24			efficiencies for individual BMPs and combinations of BMPs that can be implemented
25			toward the nitrogen and phosphorus goals.
26		(D)	The methodology shall allow for future refinements to the nutrient baseline loading
27			determinations, and to the load reduction accounting methodology.
28		(E)	The methodology shall provide for quantification of changes in nutrient loading due to
29		,	changes in agricultural land use, modifications in agricultural activity, or changes in
30			atmospheric nitrogen loading to the extent allowed by advances in technical understanding.
31		(F)	The methodology shall include a method to track maintenance of the nutrient net loads
32		. ,	after the initial eight years of this Rule, including tracking of changes in BMPs and
33			additional BMPs to offset new or increased sources of nutrients from agricultural
34			operations.
35		[Succe	ess in meeting this Rule's purpose will The requirements of Paragraph (a) of this Rule shall
36		-	aged by estimating percentage changes in nitrogen loss from agricultural [lands] operations in
37		_	ar-Pamlico Basin and by evaluating broader trends in indicators of phosphorus loss from
			• • • • • • • • • • • • • • • • • • • •

1		agricu	<u>Itural lands in the Tar-Pamlico Basin. The Basin Oversight Committee shall</u> [develop]
2		<u>develo</u>	p, maintain, and update as [indicated elsewhere] set forth in this Paragraph, accounting
3		metho	ds that meet the following requirements:
4		<u>(A)</u>	The nitrogen method shall estimate baseline and annual total nitrogen losses from
5			agricultural operations in each county and for the entire Tar-Pamlico Basin;[Basin-
6			Baseline losses and relative loss reduction progress shall be adjusted as frequently as can
7			be supported by available data to account for lands permanently removed from agricultural
8			control through development;
9		<u>(B)</u>	The nitrogen and phosphorus methods shall include a means of tracking implementation of
10			BMPs, including number, type, and area affected;
11		<u>(C)</u>	The nitrogen method shall include a means of estimating incremental nitrogen loss
12			reductions from implementation of BMPs that conform to requirements of Paragraph (g)
13			(f) of this Rule and of evaluating progress toward and maintenance of the nutrient
14			[objectives] goals from changes in BMP implementation, fertilization, and changes in
15			individual crop acres;
16		<u>(D)</u>	The nitrogen and phosphorus methods shall be refined as research and technical advances
17			allow; and
18		<u>(E)</u>	The phosphorus method shall quantify baseline values for and annual changes in factors
19			affecting agricultural phosphorus loss as identified in the report by the phosphorus
20			technical advisory committee described [elsewhere] in [this Paragraph.] Subaragraph
21			(d)(2)(D).
22	(g)<mark>(e)</mark> LOCAL A	ADVISO	RY COMMITTEES. The Local Advisory Committees shall have the following membership,
23	roles, and respon	nsibilitie	s:
24	(1)	MEM	BERSHIP. A [Per S.L. 2001, c. 355, a] Per S.L. 2001-355, a Local Advisory Committee shall
25		be app	ointed maintained as provided in this Paragraph in each county (or or watershed as specified
26		by the	Basin Oversight Committee) Committee, within the Tar-Pamlico River Basin. As directed by
27		S.L. 2	001, c. 355, the Local Advisory Committees shall be appointed on or before November 1,
28		2001.	[They] The Committee shall terminate upon a finding by the Environmental Management
29		Comm	nission that the long-term maintenance of nutrient loads in the Tar-Pamlico River Basin is
30		assure	d. Each Local Advisory Committee shall consist of:
31		(A)	One representative of the local Soil and Water Conservation District;
32		(B)	One local representative of the United States Department of Agriculture- Natural
33			Resources Conservation Service;
34		(C)	One local representative of the North Carolina Department of Agriculture and Consumer
35			Services;
36		(D)	One local representative of the North Carolina Cooperative Extension Service;

1		(E)	One local representative of the North Carolina Division of Soil and Water Conservation;
2			and
3		(F)	At least five, but not more than 10 farmers who reside in the county or watershed. At least
4			two [farmers] agricultural producers that reside in the county.
5	(2)	APPC	DINTMENT OF MEMBERS. The [Per S.L. 2001, c. 355,] Per S.L. 2001-355, the Director of
6		the D	ivision of Water Quality Resources and the Director of the Division of Soil and Water
7		Conse	ervation of the Department of Environment and Natural Resources Agriculture and Consumer
8		Service	ees shall jointly appoint members described in Subparagraphs Parts (1)(A), (1)(B), (1)(D), and
9		<u>(1)(E)</u>	of this Subparagraph. [(e)(1)(A), (e)(1)(B), (e)(1)(D), and (e)(1)(E) of this Rule.] As directed
10		by <mark>S.I</mark>	2. 2001, c. 355, S.L. 2001-355, the Commissioner of Agriculture shall appoint the members
11		descri	bed in Subparagraphs [Parts] [(e)(1)(C) and (e)(1)(F) of this Rule] <u>Part (1)(F) of this</u>
12		<u>Subpa</u>	uragraph from persons nominated by nongovernmental organizations whose members produce
13		or ma	nage significant agricultural commodities in each county or watershed. Members of the Local
14		Advis	ory Committees shall serve at the pleasure of their appointing authority.
15	<u>(3)</u>	ROLE	E. The Local Advisory Committees shall:
16		<u>(A)</u>	Continue to submit annual reports to the Basin Oversight Committee estimating total crop
17			production on agricultural operations for the preceding calendar year, summarizing land
18			use changes in the [eounty] county, and making recommendations to the Basin Oversight
19			Committee on the need for updates to the accounting methodology. Reports shall include
20			documentation on the BMPs implemented, including type and location, that satisfy the
21			requirements [identified] in Paragraph (f) of this Rule and documentation of any expired
22			contracts for BMPs; and
23		<u>(B)</u>	Take actions called for under Subparagraph (c)(2) of this Rule as needed to address
24			maintenance of the nitrogen and phosphorus reduction goals.
25		(A)	Conduct a registration process for persons subject to this Rule. This registration process
26			shall be completed within one year after the effective date of this Rule. It shall obtain
27			information that shall allow Local Advisory Committees to develop local strategies in
28			accordance with Subparagraph (g)(4) of this Rule. At minimum, the registration process
29			shall request the type and acreage of agricultural operations, nutrient reducing BMPs
30			implemented since January 1, 1992 and their operational status, and the acres affected by
31			those BMPs. It shall provide persons with information on requirements and options under
32			this Rule, and on available technical assistance and cost share options;
33		(B)	Designate a member agency to compile and retain copies of all individual plans produced
34			to comply with this Rule;
35		(C)	Develop local nutrient control strategies for agricultural operations, pursuant to
36			Subparagraph (g)(4) of this Rule, to meet the nitrogen and phosphorus goals assigned by
37			the Basin Oversight Committee. The nitrogen component of the control strategy shall be

1			submitted to the Basin Oversight Committee no later than twenty three months from the
2			effective date of this Rule. The phosphorus component of the control strategy shall be
3			submitted within one year of the date that the Commission approves a phosphorus
4			accounting methodology as described in Part (f)(2)(A) of this Rule;
5		(D)	Ensure that any changes to the design of the local strategy will continue to meet the nutrient
6			goals of this Rule; and
7		(E)	Submit annual reports to the Basin Oversight Committee, pursuant to Subparagraph $(g)(5)$
8			of this Rule, each May until such time as the Commission determines that annual reports
9			are no longer needed to assure long term maintenance of the nutrient goals.
10	(4)	LOCAL	NUTRIENT CONTROL STRATEGIES. The Local Advisory Committees shall be
11		responsi	ble for developing county or watershed nutrient control strategies that meet the following
12		requirem	nents. If a Local Advisory Committee fails to submit a nutrient control strategy as required
13		in Part	(g)(3)(C) of this Rule, the Commission may develop one based on the accounting
14		methodo	plogy that it approves pursuant to Part (f)(2)(A) of this Rule.
15		(A)	Local nutrient control strategies shall be designed to achieve the required nitrogen
16			reduction goals within five years after the effective date of this Rule, and to maintain those
17			reductions in perpetuity or until such time as this Rule is revised to modify this
18			requirement. Strategies shall be designed to meet the phosphorus loading goals within four
19			years of the date that the Commission approves a phosphorus accounting methodology as
20			described in Part (f)(2)(A) of this Rule.
21		(B)	Local nutrient control strategies shall specify the numbers and types of all agricultural
22			operations within their areas, numbers of BMPs that will be implemented by enrolled
23			operations and acres to be affected by those BMPs, estimated nitrogen and phosphorus
24			reductions, schedule for BMP implementation, and operation and maintenance
25			requirements.
26		(C)	Local nutrient control strategies may prioritize BMP implementation to establish the most
27			efficient and effective means of achieving the nutrient goals.
28	(5)	ANNUA	AL REPORTS. The Local Advisory Committees be responsible for submitting annual
29		reports f	or their counties or watersheds. Annual reports shall be submitted to the Basin Oversight
30		Committ	tee each May until such time as the Commission determines that annual reports are no longer
31		needed to	o assure long term maintenance of the nutrient goals. Annual reports shall quantify progress
32		toward tl	he nutrient goals with sufficient detail to allow for compliance monitoring at the farm level.
33		The Bas	in Oversight Committee shall determine reporting requirements to meet these objectives.
34		Those re	equirements may include information on BMPs implemented by individual farms, proper
35		BMP op	eration and maintenance, BMPs discontinued, changes in agricultural land use or activity,
36		and resu	ltant net nutrient loss changes.

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1	(f) PRACTICE	STANDARDS. To receive nutrient reduction credit, [eredit under the accounting methods described]
2	elsewhere in thi	s Rule, a BMP shall be included in the accounting method set forth in Subparagraph (d)(3) of this
3	<u>Rule,</u> [approved	I by the Commission under the original version of this Rule effective September 2001, or in a
4	subsequent revis	sion to that method identified in annual reporting, and it shall be implemented according to applicable
5	nutrient-related	standards identified by the [BOC]Basin Oversight Committee and established by the NC Soil and
6	Water Conserva	tion Commission or the USDA-Natural Resources Conservation Service in North Carolina.
7		
8	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.
9		2001-355; S.L. 1997-458;
10		Eff. September 1, 2001;
11		Temporary Amendment Eff. January 1, 2002 (exempt from 270 day requirement-S.L. 2001-355).
12		Readopted Eff. January 1, 2020.

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1	15A NCAC 02I	3 .0229 is reado _j	pted with changes as published in 33:16 NCR 1671-1717 as follows:				
2							
3	15A NCAC 02	В .0229 .0733	TAR-PAMLICO NUTRIENT STRATEGY: NEW AND EXPANDING				
4			WASTEWATER DISCHARGER REQUIREMENTS RIVER BASIN				
5			NUTRIENT SENSITIVE WATERS MANAGEMENT STRATEGY:				
6			NUTRIENT OFFSET PAYMENTS FOR NON-TAR-PAMLICO BASIN				
7			ASSOCIATION MEMBERS				
8	The following i	s the manageme	ent strategy for new and expanding wastewater dischargers in the Tar-Pamlico River				
9	basin:						
10	<u>(1)</u>	Purpose. The	purpose of this Rule is to establish minimum nutrient control requirements for new				
11		and expanding	g point source discharges in the Tar-Pamlico River Basin in order to maintain or restore				
12		water quality	in the Pamlico Estuary and protect its designated uses.				
13	(a) All waters	of the Tar Pamli	ico River Basin have been supplementally classified nutrient sensitive waters (NSW)				
14	pursuant to 15A	NCAC 2B .022	23. The following procedures are to be implemented in accordance with 15A NCAC				
15	2B .0223 in all	waters of the Ta	ar Pamlico River Basin for those wastewater dischargers who are not members of the				
16	Tar Pamlico Ba	sin Association;					
17	(b) Existing w	astewater disch	argers expanding to greater than 0.5 million gallons per day (MGD), who are not				
18	members of the	Tar Pamlico Ba	asin Association, shall be required to offset their additional nutrient loads by funding				
19	nonpoint source	nonpoint source control programs approved by the Division of Water Quality prior to the issuance of their NPDES					
20	permit and at e	permit and at each renewal. Nitrogen and phosphorus loads shall be offset at the rate of 110 percent of the cost to					
21	implement BM	Ps designed to re	educe that same load created by expanding the discharge above 0.5 MGD. Equations				
22	for calculating t	he offset costs a	re:				
23	<u>(2)</u>	Applicability.	This Rule applies to all discharges from wastewater treatment facilities in the Tar-				
24		Pamlico Rive	r Basin that receive nitrogen- or phosphorus-bearing wastewater and are required to				
25		obtain individ	dual NPDES permits. This Rule applies to Tar-Pamlico Basin Association member				
26		facilities on o	er after June 1, 2025. This Rule applies to other facilities upon this Rule's effective				
27		<u>date.</u>					
28	<u>(3)</u>	Definitions. T	The terms used in this Rule, in regard to point source dischargers, treatment facilities,				
29		wastewater flo	ows or discharges, or like matters, shall be as defined in Rule .0701 of this Section and				
30		as follows:					
31		(a) "Exis	sting" means that which obtained an NPDES permit on or before December 8, 1994.				
32		<u>(b) "Exp</u>	oanding" means that which increases beyond its permitted flow as defined in Item (4)				
33		<u>of</u> th	is Rule.				
34		(c) "Nev	w" means that which had not obtained an NPDES permit on or before December 8,				
35		<u>1994</u>	<u>.</u>				
36	<u>(4)</u>	"Permitted flo	ow" means the maximum monthly average flow authorized in a facility's NPDES				
37		permit as of I	December 8, 1994.				

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1	(1)	For an	existing 1	facility with permitted flow of less than or equal to 0.5 MGD as of December 8,
2		1994 e	xpanding	to greater than 0.5 MGD who is not a member of the Tar Pamlico Basin
3		Associa	ition:	
4		Paymer	nt=((PF _e -x	x (TN+TP) x 1384) (0.5 x (TN+TP) x 1384)) x (BMP_e x 1.1) where:
5		Paymer	nt = the no	utrient offset payment (\$);
6		$PF_e = P$	ermitted	Flow including expansion (MGD);
7		TN = 6	mg/l tota	l nitrogen for domestic discharges or BAT for industrial discharges;
8		TP = 1	mg/l total	phosphorus for domestic discharges or BAT for industrial discharges;
9		1384 =	conversion	on factor;
10		0.5 = th	e permitt	ed flow (MGD) above which payment for additional nutrient loading is required;
11		BMP _e =	Best Ma	nagement Practice cost effectiveness rate in \$/kg as set in 15A NCAC 2B .0237 of
12		this Sec	etion;	
13		1.1 = 1	10 percen	t of the cost for the nonpoint source controls.
14	[(4)] <u>(5</u>)	This Ite	m specifi	es nutrient controls for new facilities.
15		<u>(a)</u>	Propose	ed new wastewater dischargers shall evaluate all practical alternatives to surface
16			water c	<mark>lischarge</mark> [discharge and report its findings] pursuant to 15A NCAC 02H
17			[.0105(2)(2). 0105(c)(2) prior to submitting an application to discharge.
18		<u>(b)</u>	The tecl	nnology-based nitrogen and phosphorus discharge limits for a new facility shall not
19			[<mark>exceed</mark>	loads equivalent to its active allocation and offset credit, or the applicable
20			technol e	ogy based mass limit, whichever are less, for each nutrient. Technology based
21			limits a	re as follows:] <mark>exceed:</mark>
22			<u>(i)</u>	[for facilities treating municipal or domestic wastewater, the mass load
23				equivalent to a concentration of [3.0] 3.5 mg/L TN and 0.5 mg/L TP at the
24				monthly average flow limit in the facility's NPDES permit; and
25			<u>(ii)</u>	[for facilities treating industrial wastewater, the mass load equivalent to the
26				best available technology economically [achievable or a discharge concentration
27				of 3.2 mg/L TN and 0.5 mg/L TP] achievable, calculated at the monthly average
28				flow limit in the facility's NPDES [permit, whichever is less.] permit.
29		<u>(c)</u>	Propose	d new dischargers submitting an application shall acquire nutrient allocation from
30			existing	dischargers or nutrient offset credits pursuant to Rule .0703 of this Section
31			[Section	n, Nutrient Offset Trading Program, or both, for the mass load dictated by this Item.
32			The allo	ocation and offset credits shall be sufficient for [a period of no less than 10 years of
				ge at the proposed design flow rate. Payment for no less than 10 years' allocation
33			dischar g	ge at the proposed design now rate. I ayment for no less than 10 years amount on
33 34				dits shall be made in full prior to the ensuing permit issuance, except that the
			and cre	

1		year in which the permit becomes effective plus 10 subsequent years of discharge at the
2		proposed design flow rate in accordance with 15A NCAC 02H .0112(c).
3	<u>(d)</u>	[No application for a new discharge shall be made or accepted without written
4		documentation demonstrating that the requirements of Sub Items (b) and (c) of this Item
5		have been met.] The Director shall not issue a permit authorizing discharge from a new
6		facility unless the applicant has satisfied the requirements of Sub-Items (a), (c), and (e) of
7		this Item. If a facility's permit contains tiered flow limits for expansion, the Director shall
8		not authorize an increased discharge unless the applicant has satisfied the requirements of
9		Sub-Items (a), (c), and (e) of this Item.
10	<u>(e)</u>	Subsequent applications for permit renewal shall demonstrate that the facility has sufficient
11		nitrogen allocation or offset credits to meet its effluent nutrient limitations for [at least 10]
12		years beyond the requested renewal pursuant to] any partial calendar year in which the
13		permit becomes effective plus [ten] 10 subsequent years of discharge at the proposed
14		design flow rate in accordance with 15A NCAC 02H .0112(c).
15	<u>(f)</u>	The [director] Director shall establish more stringent limits for nitrogen or phosphorus
16		upon finding that such limits are necessary to protect water quality standards in localized
17		areas.
18	[(5)] <u>(6)</u> This It	em specifies nutrient controls for expanding facilities.
19	<u>(a)</u>	[Facilities proposing expansion] Expanding facilities shall evaluate all practical
20		alternatives to surface water discharge [and report its findings] pursuant to 15A NCAC
21		02H .0105(c)(2) prior to submitting an application to discharge. [.0105(e)(2).
22	<u>(b)</u>	The nitrogen and phosphorus discharge limits for an [expanded] expanding facility shall
23		not exceed the greater of loads equivalent to its active allocation and offset credit, or the
24		[applicable] following technology-based mass [limit, whichever is less, for each nutrient.
25		Technology based limits are as follows:
26		(i) [for facilities treating municipal or domestic [wastewaters,] wastewater, the
27		mass equivalent to a concentration of [3.0] 3.5 mg/L TN and 0.5 mg/L TP at the
28		monthly average flow limit in the NPDES permit; and
29		(ii) [for facilities treating industrial wastewater, the mass load equivalent to the
30		best available technology economically [achievable or a discharge concentration
31		of 3.2 mg/L TN and 0.5 mg/L TP] achievable, calculated at the monthly average
32		flow limit in the facility's NPDES [permit, whichever is less.] permit.
33	<u>(c)</u>	Facilities submitting application for increased discharge or, where an existing permit
34		contains tiered flow limits, for authorization to [operate] discharge at an increased flow,
35		shall acquire or demonstrate contractual agreement to acquire, prior to authorization to
36		discharge at the increased flow, nutrient [estuary] allocation from existing dischargers or
37		[purchase] nutrient offset credits pursuant to Rule .0703 of this Section [Section, Nutrient

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1			Offse	Trading Program, or both, for the proposed discharge above 0.5 million gallons per
2			<u>day (N</u>	MGD). The allocation and offset credits shall be sufficient to meet its effluent nutrient
3			<u>limita</u>	<u>tions</u> <u>for</u> [no less than 10] <u>any partial calendar year in which the permit becomes</u>
4			<u>effect</u>	<mark>ive plus 10 subsequent</mark> years of discharge at the proposed design flow [rate.] <mark>rate in</mark>
5			accor	dance with 15A NCAC 02H .0112(c). [Payment for no less than 10 years' allocation
6			and e	redits shall be made in full prior to the ensuing permit issuance, except that the
7			Direc	tor may allow up to 20 years for payment if the applicant provides sufficient financial
8			assura	ince that it can make such payment per G.S. 143-215.1(b)(4)(b).]
9		<u>(d)</u>	[No-a	application for an expanding facility shall be made or accepted without written
10			docur	nentation demonstrating that the requirements of Sub Items (a) through (c) of this
11			Item l	nave been met.] <u>The <mark>[director</mark>] <u>Director</u> shall not issue a permit authorizing [expansion</u>
12			<mark>of</mark>] <u>in</u>	creased discharge from an existing facility unless the applicant has satisfied the
13			requir	rements of [Sub-Item (d)]
14			conta	ins tiered flow limits for expansion, the [director] Director shall not [issue an
15			autho:	rization to operate] authorize discharge at an increased flow unless the applicant has
16			<u>satisfi</u>	ed the requirements of [Sub Item (d)] Sub-Items (a), (c), and (e) of this Item.
17		<u>(e)</u>	Subse	quent applications for permit renewal shall [further] demonstrate that the facility has
18			suffic	ient [means] nitrogen allocation or offset credits to meet its effluent nutrient
19			<u>limita</u>	tions for [at least] any partial calendar year in which the permit becomes effective
20			<u>plus 1</u>	0 subsequent years [beyond renewal. See] of discharge at the proposed design flow
21			rate ir	accordance with 15A NCAC 02H .0112(c).
22		<u>(f)</u>	The [director] Director shall modify an expanding facility's permit to establish more
23			string	ent limits for nitrogen or phosphorus upon finding that such limits are necessary to
24			protec	et water quality standards in localized areas.
25		<u>(g)</u>	Existi	ng wastewater dischargers expanding to greater than 0.5 MGD design capacity may
26			petitio	on the [Commission or its designee] <u>Director</u> for an exemption from Sub-Items [(a)
27			throu g	gh (g)] (a) through (c) and (e) of this Item upon meeting and maintaining all of the
28			follov	ving conditions:
29			<u>(i)</u>	The facility has reduced its annual average TN and TP loading by 30 percent from
30				its annual average 1991 TN and TP loading. Industrial facilities may alternatively
31				demonstrate that nitrogen and phosphorus are not part of the waste stream above
32				background levels.
33			<u>(ii)</u>	The expansion does not result in annual average TN or TP loading greater than 70
34				percent of the 1991 annual average TN or TP load. Permit limits [may] shall be
35				established to ensure that the 70 percent load is not exceeded.
36	(2)	For an	expandi	ng facility with a permitted flow of greater than or equal to 0.5 MGD as of December
37		0 100	1 .	not a member of the Tar Pamlico Rasin Association:

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I		Payment= $((PF_e \times (TN+TP) \times 1384) (PF \times (TN+TP) \times 1384)) \times (BMP_e \times 1.1)$ where:
2		Payment = the nutrient offset payment (\$);
3		PFe = Permitted Flow including expansion (MGD);
4		PF = Permitted Flow as of December 8, 1994 (MGD);
5		TN = 6 mg/l total nitrogen for domestic discharges or BAT for industrial discharges;
6		TP = 1 mg/l total phosphorus for domestic discharges or BAT for industrial discharges;
7		1384 = conversion factor;
8		BMP _e = Best Management Practice cost effectiveness rate in \$/kg as set in 15A NCAC 2B .0237 of
9		this Section;
10		1.1 = 110 percent of the cost for the nonpoint source controls.
11	(c) New waster	water dischargers with permitted flows greater than or equal to 0.05 MGD, who are not members of
12	the Tar Pamlico	Basin Association, shall be required to offset their nutrient loads by funding nonpoint source control
13	programs appro	ved by the Division of Water Quality prior to the issuance of their NPDES permit and at each renewal.
14	Nitrogen and pl	nosphorus loads shall be offset at the rate of 110 percent of the cost to implement BMPs designed to
15	reduce that same	e loading created by the new discharge above 0.05 MGD. The equation for calculating the offset costs
16	1S:	
17		Payment = PF x (TN+TP) x $1384 \times (BMP_e \times 1.1)$ where:
18		Payment = the nutrient offset payment (\$);
19		PF = Permitted Flow (MGD);
20		TN = 6 mg/l total nitrogen for domestic discharges or BAT for industrial discharges;
21		TP = 1 mg/l total phosphorus for domestic discharges or BAT for industrial discharges;
22		1384 = conversion factor;
23		BMP _e = Best Management Practice cost effectiveness rate in \$/kg as set in 15A NCAC 2B .0237 of
24		this Section;
25		1.1 = 110 percent of the cost for the nonpoint source controls.
26	(d) Existing wa	stewater dischargers expanding to greater than 0.5 MGD, who are not members of the Tar Pamlico
27	Basin Associati	on, may petition the Commission or its designee for an exemption from Paragraph (b) of this Rule
28	upon meeting al	l of the following conditions:
29	(1)	For industrial facilities:
30		(A) The facility has reduced its annual average TN loading by 30 percent from its annual
31		average 1991 TN loading or nitrogen is not part of the waste stream above background
32		levels;
33		(B) The facility has reduced its annual average TP loading by 30 percent from its annual
34		average 1991 TP loading or phosphorus is not part of the waste stream above background
35		levels;

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I		(C) The expansion does not result in annual average TN loading greater than 70 percent of the
2		1991 annual average TN load. Permit limits may be established to insure that the 70 percent
3		load is not exceeded;
4		(D) The expansion does not result in annual average TP loading greater than 70 percent of the
5		1991 annual average TP load. Permit limits may be established to insure that the 70 percent
6		load is not exceeded;
7		(E) To maintain its exemption from Paragraph (b) of this Rule, a facility must continue to meet
8		the requirements of Subparagraph (d)(1) Parts (A) through (D) of this Rule.
9	(2)	For municipal facilities:
10		(A) The facility has reduced its annual average TN loading by 30 percent from its annual
11		average 1991 TN loading;
12		(B) The facility has reduced its annual average TP loading by 30 percent from its annual
13		average 1991 TP loading;
14		(C) The expansion does not result in annual average TN loading greater than 70 percent of the
15		1991 annual average TN load. Permit limits may be established to insure that the 70 percent
16		load is not exceeded;
17		(D) The expansion does not result in annual average TP loading greater than 70 percent of the
18		1991 annual average TP load. Permit limits may be established to insure that the 70 percent
19		load is not exceeded;
20		(E) To maintain its exemption from Paragraph (b) of this Rule, a facility must continue to meet
21		the requirements of Subparagraph (d)(2) Parts (A) through (D) of this Rule.
22		
23	History Note:	Authority G.S. 143-214.1; <u>143-215.1; 143-215.3(a)(1);</u> [143B-282(a) (d);] <u>143-215.8B; 143B-282;</u>
24		[S.L. 1997-458;]
25		Eff. April 1, 1997;
26		Readonted Eff. January 1, 2020.

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1	15A NCAC 02H	3.0236 is repealed through readoption as published in 33:16 NCR 1671-1717 as follows:
2		
3	15A NCAC 021	3.0236 NEUSE RIVER BASIN-NUTRIENT SENSITIVE WATERS MANAGEMENT
4		STRATEGY: AGRICULTURAL NITROGEN LOADING REDUCTION
5		
6	History Note:	Authority G.S. 143.214.1; 143.214.7; 143.215.3(a)(1).
7		Eff. August 1, 1998;
8		Repealed Eff. January 1, 2020.

1	15A NCAC 02E	3 .0237 is	repealed through readoption as published in 33:16 NCR 1671-1717 as follows:
2			
3	15A NCAC 02I	3 .0237	BEST MANAGEMENT PRACTICE COST-EFFECTIVENESS RATE
4			
5	History Note:	Author	ity G.S. 143-214.1;
6		Eff. Ap	ril 1, 1997;
7		Repeal	ed Eff. January 1, 2020.

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1	15A NCAC 021	B [.0249] <u>.0239</u> is repealed through readoption as published in 33:16 NCR 1671-1717 as follows:
2		
3	15A NCAC 02	B.0239 NEUSE RIVER BASIN: NUTRIENT SENSITIVE WATERS MANAGEMENT
4		STRATEGY: NUTRIENT MANAGEMENT
5		
6	History Note:	Authority G.S. 143-214.1; 143-214.7; 143-215.3(a)(1);
7		Eff. August 1, 1998;
8		Repealed Eff January 1, 2020.

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1	15A NCAC 02E	3 .0255 is	repealed through read	doption as	publishe	ed in 33	:16 NCR 1671	-1717 as follows	; :
2									
3	15A NCAC 021	В .0255	TAR-PAMLICO	RIVER	BASII	N -	NUTRIENT	SENSITIVE	WATERS
4			MANAGEMENT	STRAT	EGY:	AGRI	CULTURAL	NUTRIENT	LOADING
5			GOALS						
6									
7	History Note:	Author	ity G.S. 143-214.1; 14	43-214.7; 1	43-215	3(a)(1)	; 143-215.6A;	143-215.6B; 143	-215.6C;
8		Eff. Ap	ril 1, 2001;						
9		Repeal	ed Eff. January 1, 202	<u>20.</u>					

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1	15A NCAC 02B	.0257 is repealed through readoption as published in 33:16 NCR 1671-1717 as follows:
2		
3	15A NCAC 02B	3.0257 TAR-PAMLICO RIVER BASIN - NUTRIENT SENSITIVE WATERS
4		MANAGEMENT STRATEGY: NUTRIENT MANAGEMENT
5		
6	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
7		143B-282(d);
8		Eff. April 1, 2001;
9		Renealed Fff January 1 2020

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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

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

E-mail correspondence to and from this address may be subject to the North Carolina Public Records Law and may be disclosed to third parties.

Email correspondence to and from this address may be subject to the North Carolina Public Records Law and may be disclosed to third parties by an authorized state official.

REQUEST FOR TECHNICAL CHANGE

AGENCY: Environmental Management Commission

RULE CITATION: 15A NCAC 02B .0701

DEADLINE FOR RECEIPT: Friday, October 11, 2019

<u>PLEASE NOTE:</u> 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.

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.

1	15A NCAC 02E	3 .0701 is adopted with changes as published in 33:16 NCR 1671-1717 as follows:
2		
3	15A NCAC 021	B .0701 NUTRIENT STRATEGIES DEFINITIONS
4	Unless the conte	ext indicates otherwise, the following words and phrases shall be interpreted as follows for the purposes
5	of this Section:	
6	(1)	"Agricultural uses" include the use of waters for stock watering, irrigation, and other farm purposes.
7	(2)	"Allocation" means the mass quantity, as of nitrogen or phosphorus that a discharger, group of
8		dischargers, or other source is potentially allowed to release into surface waters. Allocations may
9		be expressed as delivered or discharge quantities. Possession of allocation does not authorize the
10		discharge of nutrients but is prerequisite to such authorization in an NPDES permit.
11	(3)	"Best Management Practice" means the same as defined in Rule .0202 of this Subchapter.
12	(4)	"Buffer" means the same as defined in Rule .0202 of this Subchapter.
13	(5)	"Built-upon area" means the same as defined in G.S. 143-214.7(b2).
14	(6)	"Concentration(s)" means the same as defined in Rule .0202 of this Subchapter.
15	(7)	"Contiguous" means the same as defined in Rule .0202 of this Subchapter.
16	(8)	"Critical area" means the same as defined in Rule .0202 of this Subchapter.
17	(9)	"Cropland" means agricultural land that is used for growing corn, grains, oilseed crops, cotton,
18		forages, tobacco, beans, or other vegetables or fruits.
19	(10)	"Delivered", as in delivered allocation, load, or limit, means that portion of the allocation, load, or
20		limit that is measured or predicted to be transported from a nutrient source or discharge to a
21		waterbody. A delivered value equals the corresponding discharge value multiplied by its assigned
22		transport or delivery factor.
23	(11)	"Development" means the same as defined in G.S. 143-214.7.
24	(12)	"Director" means the Director of the Division.
25	(13)	"Discharge" as in discharge allocation, load, or limit means the allocation, load, or limit that is
26		measured at the point of discharge into surface waters. A discharge value is equivalent to a delivered
27		value divided by the transport factor for that discharge location.
28	(14)	"Division" means the Division of Water Resources of the North Carolina Department of
29		Environmental Quality and its successors.
30	(15)	"DMS" means the N.C. Division of Mitigation Services or its successor. DMS, as administrator of
31		the Riparian Buffer Restoration Fund, is the only in-lieu fee program to which rules of this section
32		apply.
33	<u>(16)</u>	"Estuarine Nutrient Strategy" means the Neuse Nutrient Strategy as enumerated in Rule .0710 of
34		this Section and the Tar-Pamlico Nutrient Strategy as enumerated in Rule .0730 of this Section.
35	(16) (1	7) "Estuary allocation" means the mass loading of total nitrogen or total phosphorus at the estuary that
36		is reserved for a discharger or group of dischargers. A discharger's or group's estuary allocation is
37		equivalent to its discharge allocation multiplied by its assigned transport factor.

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1	(17)(18) "Existing development" means structures and other land modifications resulting from development
2	activities, other than those associated with agricultural or forest management activities, that meet
3	the following criteria:
4	(a) For projects that do not require a state permit, they are in place or have established a vested
5	right to construct relative to the effective date of the applicable local stormwater ordinance
6	implemented pursuant to a new development stormwater rule of this Section; and
7	(b) For projects that require a state permit, they are in place before the effective date
8	established in the applicable state and federal entities stormwater rule of this Section.
9	(18)(19) "Fertilizer" means the same as defined in Rule .0202 of this Subchapter.
10	(19) "Industrial discharge(s)" means the same as defined in Rule .0202 of this Subchapter.
11	(20) "Industrial discharge(s)" For the purpose of the nutrient strategy rules of this Section, means the
12	discharge of industrial process treated wastewater or wastewater other than sewage. Stormwater
13	shall not be considered to be an industrial wastewater unless it is contaminated with industrial
14	wastewater. Industrial discharge includes:
15	(a) Wastewater resulting from any process of industry or manufacture, or from the
16	development of any natural resource; or
17	(b) Wastewater resulting from processes of trade or business, including wastewater from
18	laundromats and car washes, but not wastewater from restaurants.
19	(20)(21) "Land-disturbing activity" means the same as defined in Rule .0202 of this Subchapter.
20	(21)(22) "Load" means the mass quantity of a nutrient or pollutant released into surface waters over a given
21	time period. Loads may be expressed in terms of pounds per year and may be expressed as "delivered
22	load" or an equivalent "discharge load."
23	(22)(23) "Load allocation" means the same as set forth in federal regulations 40 CFR 130.2(g), which is
24	incorporated herein by reference, including subsequent amendments and editions. A copy of the
25	most current version of the regulations is available free of charge on the internet at
26	http://www.gpo.gov/fdsys/.
27	(23)(24) "Local government" means the same as defined in Rule .0202 of this Subchapter.
28	(24)(25) "MGD" means million gallons per day.
29	(25)(26) "Nitrogen" means total nitrogen unless specified otherwise.
30	(26)(27) "Nonpoint source load allocation" is that portion of an approved TMDL or calibrated nutrient
31	response model assigned to all other nitrogen sources in the basin other than individually permitted
32	wastewater facilities and represents the maximum allowable load of total nitrogen or total
33	phosphorus to a waterbody from these nonpoint sources.
34	(27)(28) "Nonpoint source pollution" means the same as defined in Rule .0202 of this Subchapter.
35	(28)(29) "Non-wasting endowment" is a fund that generates enough interest to cover the cost of perpetual
36	monitoring, maintenance, repair and renovation monitoring and enforcement of a nutrient reduction
37	project.by a perpetual steward.

1	
2	(29)(30) "NPDES" means National Pollutant Discharge Elimination System, and connotes the permitting
3	process required for the operation of point source discharges in accordance with the requirements
4	of Section 402 of the Federal Water Pollution Control Act, 33 U.S.C. Section 1251 et seq.
5	(30)(31) "Nutrients" means the combination of total nitrogen and total phosphorus for the purpose of the
6	nutrient rules of this section.
7	(31)(32) "Nutrient Offset Bank" is a site at which a nutrient reduction offset project that is implemented by
8	a provider except DMS and approved by the Division for the purpose of generating nutrient offset
9	eredit. credit by the Division through execution of a nutrient offset banking instrument. This term
10	does not include nutrient offset projects associated with an in-lieu fee program.
11	(32)(33) "Nutrient Offset Banking Instrument" is a written legal agreement between the Division and the
12	provider that governs the establishment, operation, and use of a nutrient offset bank.
13	(33)(34) "Nutrient Offset Project" is a nutrient reduction project that is implemented by DMS and approved
14	by the Division for the purpose of generating nutrient offset credit.
15	(34)(35) "Nutrient Reduction Practice" is any project type or type of programmatic effort that generates a
16	quantifiable or estimated decrease in nutrient loading, and for which practice design standards and
17	load reduction estimation methods have been approved in rule or by the Division.
18	(35)(36) "Nutrient Reduction Project" is a site-specific installation and implementation of a nutrient reduction
19	practice or combination of practices.
20	(36)(37) "Nutrient Sensitive Waters" means the same as defined or classified in Rule .0223 of this Subchapter.
21	(37)(38) "Permanent Nutrient Offset Credit" is a nutrient load reduction credit that is generated in compliance
22	with this rule. rule which does not automatically expire. Permanent nutrient offset credits account
23	for permanent nutrient load reductions resulting from permanently installed and maintained nutrient
24	reduction practices. Permanent nutrient offset credits may be used for compliance with new
25	development stormwater rules of this Subchapter and may also satisfy other nutrient load reduction
26	requirements as described in this Subchapter. Nutrient offset credits are expressed in pounds of total
27	nitrogen or total phosphorus per year.
28	(39) "Perpetual Steward" means an entity that provides oversight for a permanent nutrient offset project.
29	Oversight in this context includes monitoring and enforcement responsibilities assumed by the
30	steward and approved by the Division as a condition of granting permanent nutrient offset credit.
31	(38)(40) "Phosphorus" means total phosphorus unless specified otherwise.
32	(39)(41) "Provider" means any public or private person or entity that implements a nutrient reduction project
33	and seeks nutrient offset credit for sale, lease, or conveyance in exchange for remuneration,
34	including DMS. Persons or entities other than DMS that seek to become a provider of nutrient offset
35	credits become so upon approval of a nutrient offset banking instrument by the Division.
36	(42) "Release" of nutrient offset credits means the Division of Water Resources approves and
37	acknowledges the generation of nutrient offset credits. Nutrient offset bank providers may sell,

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1	<u>1</u>	transfer, or use credits upon release. DMS may debit credits upon project institution but will still
2	<u>1</u>	be subject to final approval and release of credits by DWR.
3	(40) (43) '	"Residuals" means the same as defined in Rule .0202 of this Subchapter.
4	(41) (44) '	"Stormwater Collection System" means the same as defined in 15A NCAC 02H .1002.
5	(45)	"Stormwater Control Measure" or "SCM," also known as "Best Management Practice" or "BMP,"
6	-	"SCM" means the same as defined in 15A NCAC 02H .1002.
7	(43) (46) '	"Surface waters" means all waters of the state as defined in G.S. 143-212 except underground waters.
8	(44) (47)	"Term Nutrient Offset Credit" is a nutrient load reduction credit that accounts for annual nutrient
9	1	load reductions. for a finite period of time. Temporary nutrient offset credits are expressed in pounds
10		of total nitrogen or total phosphorus.
11	(45) (48) '	"Total Maximum Daily Load," or "TMDL," means the same as set forth in federal regulations 40
12	(CFR 130.2(i) and 130.7(c)(1), which are incorporated herein by reference, including subsequent
13	8	amendments and editions. A copy of the most current version of the regulations is available free of
14		charge on the internet at http://www.gpo.gov/fdsys/.
15	(46) (49) '	"Total nitrogen" means the sum of the organic, nitrate, nitrite, and ammonia forms of nitrogen in a
16	•	water or wastewater.
17	(47) (50)	"Total phosphorus" means the sum of the orthophosphate, polyphosphate, and organic forms of
18	1	phosphorus in a water or wastewater.
19	(48) (51)	"Transportation facility" means the existing road surface, road shoulders, fill slopes, ferry terminal
20	t	fill areas, and constructed stormwater conveyances or drainage canals adjacent to and directly
21	8	associated with the road.
22	(49)(52) '	"Transport factor" means the fraction of a discharged nitrogen or phosphorus load that is delivered
23	t	from the discharge point to a waterbody as established in an approved TMDL or other Division
24	1	publication.
25	(50) (53) '	"Wasteload allocation" is that portion of a nitrogen or phosphorus TMDL assigned to individually
26	1	permitted wastewater facilities and represents the maximum allowable load of total nitrogen or total
27	1	phosphorus to the estuary from these point source dischargers.
28		
29	History Note:	Authority G.S. 143-214.1; 1432-214.3;143-214.5; 143-214.7; 143-215.1; 143215.3; 143-
30	2	215.3(a)(1); 143-215.6A; 143-215.6B; 143-215.6C; 143-215.8B; 143B-282(c); 143B-282(d);
31	Ī	<u>Eff. November 1, 2019.</u>

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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?

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 (I), 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.

1	15A NCAC 02	B .0240 is readopted with changes as published in 33:16 NCR 1671-1717 as follows:
2		
3	15A NCAC 02	B .0240.0703 NUTRIENT OFFSET PAYMENTS CREDIT TRADING
4	(a) The purpo	se of this Rule is to establish procedures for the optional payment of nutrient offset fees to the NC
5	Ecosystem Enl	nancement Program, subsequently referred to as the Program, or to other public or private parties where
6	the Program or	such parties implement projects for nutrient offset purposes and accept payments for those purposes,
7	and where eith	er of the following applies:
8	(1)	The following rules of this Section allow offsite options or nutrient offset payments toward
9		fulfillment or maintenance of nutrient reduction requirements:
10		(A) .0234 and .0235 of the Neuse nutrient strategy,
11		(B) .0258 of the Tar Pamlico nutrient strategy, and
12		(C) applicable rules of the Jordan nutrient strategy, which is described in Rule .0262; and
13	(2)	Other rules adopted by the Commission allow this option toward fulfillment of nutrient load
14		reduction requirements.
15	(a) PURPOSE	. The purpose of this Rule is to establish standards and procedures applicable to providers for approval
16	of nutrient redu	action projects and associated nutrient offset credits that will be transferred to persons or entities subject
17	to nutrient rule	s of this Subchapter. [Nutrient offset credits represent a compliance option where allowed by nutrient
18	rules of this S	Subchapter.] Nutrient offset credit is distinct from nutrient accounting for direct compliance with
19	individual nutr	ient strategy rules, which is not governed by this rule. Nutrient accounting includes joint compliance
20	by multiple loc	cal governments as authorized in individual nutrient strategy rules. Nutrient offset credits represent a
21	compliance opt	tion where allowed by nutrient rules of this Subchapter, including but not limited to:
22	<u>(1)</u>	the Neuse Nutrient Strategy as enumerated in Rule .0710 of this Section,
23	<u>(2)</u>	the Tar-Pamlico Nutrient Strategy as enumerated in Rule .0730 of this Section,
24	<u>(3)</u>	the Jordan Lake Nutrient Strategy as enumerated in Rule .0262 of this Subchapter, and
25	<u>(4)</u>	the Falls Lake Nutrient Strategy as enumerated in Rule .0275 of this Subchapter.
26	(b) Offset fee	s paid pursuant to this Rule shall be used to achieve nutrient load reductions subject to the following
27	geographic res	t rictions:
28	(1)	Load reductions shall be located within the same 8 digit cataloguing unit, as designated by the US
29		Geological Survey, as the loading activity that is being offset;
30	(2)	The Division shall track impacts by 10 digit watershed, as designated by the US Geological Survey
31		and providers shall locate projects proportional to the location of impacts to the extent that the
32		projects would meet the least cost alternative criterion per S.L. 2007 438. The location of load
33		reduction projects shall be reviewed during the approval process described in Paragraph (c) of this
34		Rule;
35	(3)	Impacts that occur in the watershed of Falls Lake in the upper Neuse River Basin may be offset only
36		by load reductions in the same watershed; Impacts in the Neuse 01-8 digit cataloguing unit below

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1		the Falls watershed, as designated by the US Geological Survey, may be offset only by load
2		reductions in that same lower watershed;
3	(4)	Restrictions established in the Jordan nutrient strategy, which is described in Rule 15A NCAC 02B
4		.0262; and
5	(5)	Any further restrictions established by the Commission through rulemaking.
6	(b) GEOGRAI	PHIC RESTRICTIONS. Nutrient offset credits may be used to satisfy regulatory obligations only when
7	generated by a	nutrient reduction project within an allowable geographic area identified in G.S. 143-214.26, as
8	designated by t	he U.S. Geological Survey, with the following additional restrictions:
9	<u>(1)</u>	Nutrient offset credits may be used to satisfy regulatory obligations incurred in the upper Falls
10		watershed only if they were generated by a nutrient reduction project located within the upper Falls
11		watershed, as this geographic area is described in 15A NCAC 02B .0276.
12	<u>(2)</u>	Nutrient offset credits may be used to satisfy regulatory obligations incurred in the lower Falls
13		watershed only if they were generated by a nutrient reduction project located within the Falls Lake
14		watershed, as these geographic areas are described in 15A NCAC 02B .0276.
15	<u>(3)</u>	Nutrient offset credits may be used to satisfy regulatory obligations incurred in the Jordan Lake
16		watershed only if they were generated by a nutrient reduction project in the same subwatershed of
17		the Jordan Lake watershed, as these geographic areas are described in 15A NCAC 02B .0262.
18	<u>(4)</u>	Nutrient offset credits may be used to satisfy regulatory obligations incurred in the Neuse 01 8-digit
19		cataloguing unit, as designated by the U.S. Geological Survey, [below] outside of the Falls Lake
20		watershed only if they were generated by a nutrient reduction project [within the same gregraphi
21		area] located outside of the Falls Lake watershed.
22	<u>(5)</u>	Nutrient offset credits generated by nutrient reduction projects for compliance with an estuarine
23		nutrient strategy shall be generated in an area that is within or drains to:
24		(A) [an assessment unit surface waters identified for restoration under the applicable nutrient-
25		related TMDL or nutrient strategy, or
26		(B) [an assessment unit] surface waters classified as SA, SB, or SC that fails to meet the
27		chlorophyll-a water quality standard in a subsequent integrated report.
28	(c) The Progr	ram and other parties shall obtain Division approval of proposed nutrient offset projects prior to
29	construction. (Other parties shall sell credits in compliance with approved credit release schedules and with the
30	requirements of	f this Rule. Project approval shall be based on the following standards:
31	(1)	Load reductions eligible for credit shall not include reductions used to satisfy other requirements
32		under the same nutrient strategy;
33	(2)	The Program and other parties shall agree to provide adequate financial assurance to protect and
34		maintain load reductions for the stated duration, including for maintenance, repair and renovation
35		of the proposed measure;
36	(3)	The Program and other parties shall agree that once credits are established for a measure and until
37		they are exhausted, they shall provide a credit/debit ledger to the Division at regular intervals;

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1	(4)	The Pa	ogram and other parties shall agree that the party responsible for a measure shall allow the
2		Division	on access to it throughout its lifetime for compliance inspection purposes;
3	(5)	The Pr	rogram or other party seeking approval shall obtain a site review from Division staff prior to
4		Division	on approval to verify site conditions suitable to achieve the proposed load reductions through
5		the pro	pposed measure; and
6	(6)	The Pa	ogram shall submit a proposal, and other parties shall submit a proposal or a draft banking
7		instrur	ment, addressing the following items regarding a proposed load reducing measure:
8		(A)	Identify the location and site boundaries of the proposed measure, the geographic area to
9			be served by credits in compliance with the requirements of Paragraph (b) of this Rule,
10			existing conditions in the contributing drainage area and location of the measure, and the
11			nature of the proposed measure with sufficient detail to support estimates of load reduction
12			required in this Paragraph;
13		(B)	Provide calculations of the annual magnitudes of load reductions and identify final credit
14			values incorporating any delivery factors or other adjustments required under rules
15			identified in Paragraph (a) of this Rule;
16		(C)	Define the duration of load reductions, and provide a conservation easement or similar
17			legal mechanism to be recorded with the County Register of Deeds and that is sufficient to
18			ensure protection and maintenance of load reductions for the stated duration;
19		(D)	Identify the property owner and parties responsible for obtaining all permits and other
20			authorizations needed to establish the proposed measure, for constructing and ensuring
21			initial performance of the proposed measure, for reporting on and successfully completing
22			the measure, for holding and enforcing the conservation easement, and for ensuring
23			protection and maintenance of functions for its stated duration;
24		(E)	Provide a plan for implementing the proposed measure, including a timeline, a commitment
25			to provide an as built plan and report upon establishment of the measure, elements to be
26			included in the as built plan and report, a commitment to provide a bond or other financial
27			assurance sufficient to cover all aspects of establishment and initial performance prior to
28			the release of any credits, and criteria for successful completion; and
29		(F)	Provide a monitoring and maintenance plan designed to achieve successful completion,
30			that commits to annual reporting to the Division until success is achieved, that recognizes
31			the Division's authority to require extension or re initiation of monitoring depending on
32			progress toward success, and that commits to a final report upon completion. The final
33			report shall reaffirm the party that shall hold and enforce the conservation easement or
34			other legal instrument.
35	(c) NUTRIEN	Γ OFFSE	T CREDIT APPROVAL STANDARD. Providers shall demonstrate that a nutrient reduction
36	project is design	ned, cons	tructed, implemented and sustained in a manner that, according to the best available scientific

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1	evidence, stu	udies and principles, will generate the estimated nutrient load reduction for the duration of time for which
2	credits are a	pproved. Nutrient offset credits shall be generated and transferred in accordance with G.S. 143-214.26.
3	(d) The Prog	gram shall establish and revise nutrient offset rates as set out in Rule .0274 of this Section. Offset payments
4	accepted by	the Program shall be placed into the Riparian Buffer Restoration Fund administered by the Department
5	pursuant to (G.S. 143 214.21
6	(d) QUANT	TIFYING NUTRIENT OFFSET CREDITS. The quantity of nutrient offset credits eligible to be generated
7	by a nutrient	t reduction project shall be determined according to the following provisions:
8	(1)	Nutrient reduction credit sought on developed lands shall be calculated in relation to load reductions
9		achieved relative to the project site's current loading condition, as determined by the provider and
10		verified by the Division;
11	<u>(2)</u>	Nutrient load reductions shall be site-specific estimates of decreases in annual mass load of nitrogen
12		and/or phosphorus to the nearest receiving surface water feature. Such estimates shall be supported
13		by the weight of evidence from available, current and applicable research, may involve water quality
14		modeling or engineering formulas and calculations, and shall reflect as closely as possible project
15		design specifications.
16		
	[Note: The	Commission seeks public comment on the following options regarding the generation of nutrient offset credits
	stream miti į	gation credits in spatially overlapping areas.]
	(3) [Q	PTION 1: Reductions shall not include those already implemented to satisfy other requirements under the same
	nu'	trient strategy; other local, state or federal requirements; or those resulting from state or federal compensatory
	mi	tigation requirements. Specifically, a nutrient reduction project shall not generate nutrient offset credits and stream,
	bu	ffer or wetland mitigation credits in spatially overlapping areas.
	[O]	PTION 2: Unless specifically excepted in Rule, reductions shall not include those already implemented to satisfy
	oth	ter requirements under the same nutrient strategy; other local, state or federal requirements; or those resulting from
	sta	te or federal compensatory mitigation requirements. Specifically, a nutrient reduction project shall not generate
	nut	trient offset credits and buffer or wetland mitigation credits in spatially overlapping areas. However, restored forest
	<u>bu</u> t	ffer areas associated with stream mitigation projects may generate both stream and nutrient offset credits in spatially
	ove	erlapping areas within 50 feet from the top of the stream bank.

18 <u>(4)</u> Stream, buffer, or wetland mitigation credit that has not been used to satisfy a mitigation requirement 19 may be converted into nutrient offset credit if the credit-generating project or portion thereof 20 complies with this Rule. 21 A nutrient reduction project may generate both nitrogen and phosphorus offset credits in the same <u>(5)</u> 22 23 A nutrient reduction project may be designed to generate permanent nutrient offset credit [and/] or <u>(6)</u> 24 term nutrient offset credit and shall specify which, or both, in the project plan. Permanent nutrient

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1		reduction credits and term nutrient reduction credits shall be maintained [on separate ledgers]
2		separately, even if associated with the same nutrient offset [bank or] project.
3	<u>(7)</u>	Permanent nutrient offset credits may be utilized for temporary compliance purposes. For each
4		pound of annual term compliance credit received, 1/30th of one pound of permanent nutrient offset
5		credit shall be utilized and retired by removal from the applicable ledger. This conversion shall also
6		be subject to other applicable trading ratios.
7	<u>(8)</u>	Nutrient offset credits that were approved prior to the adoption of this Rule may make application
8		to be reclassified. The Division shall approve the application [of] associated with any [bank] nutrient
9		offset project to reclassify credits as permanent which meet the requirements for permanent credits
10		at the time of the application to be reclassified. Other nutrient offset credits that were approved prior
11		to the adoption of this Rule or that were conditionally approved pursuant to a mitigation banking
12		instrument or other agreement with DEQ prior to the adoption of this [rule,] Rule, are considered
13		term credits and may be transferred between term and permanent ledgers at a ratio of 30 years of
14		term nutrient offset credit to one permanent nutrient offset credit.
15	<u>(9)</u>	Term nutrient offset credits shall be associated with the calendar year or years in which the
16		associated nutrient load reductions are generated.
17	(e) Persons who	seek to pay nutrient offset fees under rules of this Section shall do so in compliance with such rules,
18	the requirements	s of Paragraph (b) of this Rule, and the following:
19	(1)	A non-governmental entity shall purchase nutrient offset credit from a party other than the Program
20		if such credit is available in compliance with the criteria of this Rule at the time credit is sought, and
21		shall otherwise demonstrate to the permitting authority that such credit is not available before
22		seeking to make payment to the Program;
23	(2)	Offset payments made to the Program shall be contingent upon acceptance of the payment by the
24		Program. The financial, temporal and technical ability of the Program to satisfy the mitigation
25		request will be considered to determine whether the Program will accept or deny the request;
26	(3)	Where persons seek to offset more than one nutrient type, they shall make payment to address each
27		type;
28	(4)	The offset payment shall be an amount sufficient to fund 30 years of nutrient reduction.
29	(5)	Persons who seek offsets to meet new development stormwater permitting requirements shall
30		provide proof of offset credit purchase to the permitting authority prior to approval of the
31		development plan; and
32	(6)	A wastewater discharger that elects to purchase offset credits for the purpose of fulfilling or
33		maintaining nutrient reduction requirements shall submit proof of offset credit acquisition or a letter
34		of commitment from the Program or third party provider with its request for permit modification.
35		Issuance of a permit that applies credits to nutrient limits shall be contingent on receipt of proof of
36		offset credit acquisition. A discharger may propose to make incremental payments for additional
37		nutrient allocations, contingent upon receiving a letter of commitment from the Program or third

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1		party p	provider to provide the offset credit needed for permit issuance. In that event the Division may
2		issue (or modify that permit accordingly, and shall condition any flow increase associated with that
3		incren	nental purchase on payment in full for the additional allocation. Offset responsibility for
4		nutrie	nt increases covered under this Paragraph shall be transferred to the Program or third party
5		provid	er when it has received the entire payment.
6	(e) PROJECT	APPRO	VAL STANDARDS. Providers shall comply with the following requirements to request
7	approval from	the Divis	sion to implement a nutrient reduction project for the purpose of generating nutrient offset
8	credits.		
9	<u>(1)</u>	NUTR	RIENT OFFSET BANKING INSTRUMENT. Providers [except DMS] seeking approval of a
10		nutrie	nt offset bank shall submit their draft nutrient offset banking instrument to the Division prior
11		to seel	king approval of project plans. A nutrient offset banking instrument shall provide legal and
12		financ	ial assurances that a provider will implement, maintain, and sustain nutrient reduction projects
13		as pro	oposed in subsequent project plans and associated nutrient reduction practice design
14		specifi	ications.
15	<u>(2)</u>	<u>PROJI</u>	ECT PLAN REQUIREMENTS. Prior to initiating a nutrient reduction project, providers shall
16		submi	t a project plan proposal to the Division for review and approval that includes the following
17		eleme	ats:
18		<u>(A)</u>	Site location and site boundaries of the proposed project.
19		<u>(B)</u>	The geographic area eligible to be served by nutrient offset credits in accordance with
20			Paragraph (b) of this Rule and in compliance with applicable mitigation permit
21			requirements.
22		<u>(C)</u>	Documentation of the conditions of the site at the time of the submittal of the project plan.
23		<u>(D)</u>	Documentation of the condition of the site during the baseline period of the applicable
24			nutrient strategy. unless excepted by Subparagraph (d)(1) of this Paragraph. The Division
25			may accept more recent documentation if it determines such documentation establishes the
26			probable loading condition of the site during the baseline period.
27		<u>(E)</u>	Description of the proposed project with sufficient detail to support compliance with the
28			standard in Paragraph (c) of this Rule. Projects conforming to minimum design criteria for
29			stormwater control measures in 15A NCAC 02H .1050 through .1062 meet this
30			requirement. Design criteria for stormwater control measure variants and additional
31			nutrient reduction practices established in the Division's Catalog of Nutrient Reduction
32			Practices also meet this requirement.
33		<u>(F)</u>	Nutrient credit calculations in conformance with Paragraph (d) of this Rule.
34		<u>(G)</u>	Identification of the property owner and parties responsible for obtaining all permits and
35			other authorizations needed to:
36			(i) establish the proposed project.
37			(ii) construct and ensure initial performance of the project.

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1			(iii) report on and successfully complete the project,
2			(iv) hold and enforce all easement or other protection mechanisms, and
3			(v) ensure maintenance of the project for its credited duration.
4		<u>(H)</u>	Description of how the project will be implemented, which shall include a timeline and a
5			commitment to provide an as-built report upon the full project construction or installation
6		<u>(I)</u>	Description of how the project will be maintained and monitored after it has been installed
7			and for its duration.
8		<u>(J)</u>	Description of how the project will be sustained for its credited life, including a
9			commitment to repair and renovate it as needed to maintain its performance, to keep
10			records of all such operation, maintenance, monitoring, repair and renovation, and to notify
11			the Division of any significant performance remediation needs and plans.
12		<u>(K)</u>	Identification of federal or state grant funding contributing to project implementation.
13	<u>(3)</u>	FINAN	NCIAL ASSURANCES. Providers [except DMS] <mark>seeking approval of a nutrient offset bank</mark>
14		shall pr	rovide the financial assurance that a project plan will be completed as proposed. The financia
15		assuran	nce shall be in the form of a completion bond, credit insurance, letter of credit, escrow, or
16		other v	rehicle acceptable to the Division, payable to, or for the benefit of, the Division, to ensure the
17		involve	ed property is secured in fee title or by easement and that planting or construction, monitoring
18		and/or	maintenance are completed as necessary to meet the requirements of the project plan.
19	<u>(4)</u>	<u>PROJE</u>	ECT PLAN APPROVAL. The Division shall approve the provider's project plan proposa
20		after ve	erifying the provider's compliance with Subparagraphs [(e)(1),](1), (2) and (3) of this Rule
21		Paragra	aph and completing an onsite review to verify that preconstruction site conditions are suitable
22		to gene	erate the credits proposed by the project plan. However, the Division may partially or fully
23		waive t	these requirements for term practices or projects if it determines that the burden of compliance
24		is dispi	roportionate to the value of the credits being generated and alternative means are used to
25		satisfy	the basic credit approval standard set forth in Paragraph (c) of this Rule.
26	(f) Credits assoc	iated wit	th load reducing activities funded under this Rule shall be awarded exclusively to the person
27	municipality, dis	charger,	or group of dischargers who paid the offset fee.
28	(f) RELEASE	AND A	CCOUNTING FOR NUTRIENT OFFSET CREDITS. The Division shall release nutrient
29	offset credits fro	m an app	proved project in the following manner:
30	<u>(1)</u>	The Di	ivision shall release credits to providers upon confirmation that project-specific milestones
31		reflecte	ed in the project plan's credit release schedule have been met. Project-specific milestones for
32		perman	nent nutrient offset credits shall conform to the following requirements:
33		<u>(A)</u>	Credits shall not be released until the property is secured in fee title or by easement and
34			financial assurance is posted for planting or construction of the project.
35		<u>(B)</u>	No more than 50 percent of the credits shall be released for a project until financial
36			assurance is provided for monitoring and maintenance activities lasting until project
37			completion.

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1		(C) No more than 80 percent of the credits shall be released for a project until the provider
2		complies with the requirements of Paragraph (g).
3	<u>(2)</u>	Once credits are released for a [project] nutrient offset bank and until [the are exhausted] bank
4		closure, nutrient offset bank providers [except for DMS] shall provide a credit/debit ledger to the
5		Division at regular intervals no less frequently than quarterly.
6	<u>(3)</u>	The Division shall not release any credits for a project if that project is financed in whole or in part
7		by state grant funding or federal grant funding.
8	(g) MAINTAIN	NING PERMANENT NUTRIENT OFFSET CREDITS. [<mark>A provider shall transfer responsibility for</mark>
9	oversight of a co	mpleted permanent project to a perpetual steward in accordance with this Paragraph and the approved
10	project plan. A p	perpetual steward may also transfer responsibility to another perpetual steward in accordance with the
11	terms of this Pa r	ragraph, subject to DWR approval. The provider shall ensure that the following mechanisms are in
12	place to ensure t	that load reductions are sustained in perpetuity: All permanent nutrient offset projects shall comply
13	with the following	ng requirements:
14	(1)	A provider shall transfer responsibility for oversight of a completed permanent project to a perpetual
15		steward in accordance with this Paragraph and the approved project plan. A perpetual steward may
16		also transfer responsibility to another perpetual steward in accordance with the terms of this
17		Paragraph, subject to DWR approval. [The provider shall ensure that the following mechanisms are
18		in place to ensure that load reductions are sustained in perpetuity: Perpetual stewards may not
19		assume project maintenance or restoration responsibilities.
20	<u>(2)</u>	The provider shall create and transfer to the perpetual steward a non-wasting endowment or other
21		dedicated financial surety to provide for the oversight of the [project's load reductions.] completed
22		permanent project. The endowment amount shall be proportionate to the duties accepted by the
23		perpetual steward.
24	<u>(3)</u>	For projects utilizing conservation easements, the provider shall acquire and then transfer a
25		conservation easement to a perpetual steward in accordance with 16 U.S.C. 170(h) and the
26		Conservation and Historic Preservation Agreements Act, G.S. 121-34 et seq. The terms of the
27		conservation easement shall be consistent with a Division-approved template or be approved by the
28		<u>Division</u> . Non-governmental perpetual stewards shall be accredited by the Land Trust Accreditation
29		Commission or approved by the Division.
30	<u>(4)</u>	For projects utilizing stormwater control measures (SCMs), SCMs shall be placed in and protected
31		by recorded drainage easements with recorded access easements to the nearest public right-of-way
32		for purposes of operation and maintenance. These easements shall be granted in favor of the person
33		or entity responsible for operating and maintaining the structures, with a note as to the responsible
34		person or entity. [Structure operation and maintenance shall be the responsibility of the landowner
35		or easement holder unless the Division gives written approval for another person or entity.]
36		Easements shall be of sufficient width for inspection and maintenance of the project.

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1	[(4)]	The Division may temporarily or permanently invalidate permanent credits generated by an SCM 11
2		it determines that the [bank or project] SCM has been impacted due to failure to comply with the
3		terms of an associated project plan, nutrient offset banking instrument, easement, maintenance
4		agreement, [er] other protective agreement, or this Rule.
5	<u>(5)</u>	[Notwithstanding the other requirements of this Paragraph, a permanent project] Projects designed
6		to restore a natural ecological community at the project site, which are completed and then damaged
7		by natural causes, may be passively restored exclusively through natural ecological processes.
8		[processes after project completion if:
9		(A) it is damaged by natural causes that could not have been prevented by the exercise of
10		foresight or caution, and
11		(B) the practice employed is designed to restore a natural ecological community at the project
12		<mark>site.</mark>]
13	(h) RENEWING	G TERM NUTRIENT OFFSET CREDITS. Expiring term nutrient offset credits may be renewed by
14	the pro	vider upon providing documentation to the Division that the project meets the basic credit approval
15	standar	d set forth in Paragraph (c) of this Rule for the duration of the renewal period.
16	(i) ADDITION	AL PROVISIONS REGARDING THE DIVISION OF MITIGATION SERVICES.
17	(1)	DMS shall establish and revise nutrient offset rates as set out in 15A NCAC 02R .0602. Offset
18		payments accepted by DMS shall be placed into the Riparian Buffer Restoration Fund administered
19		by the Department pursuant to G.S. 143-214.21.
20	<u>(2)</u>	On or before November 30 of each year, DMS shall provide an annual report to the Division
21		concerning the nutrient in-lieu fee program that includes a requirement ledger. The requirement
22		ledger shall include all nutrient offset credit requirements paid by 8-digit service area or for each
23		geographic area identified in Paragraph (b), Paragraph (b) of this Rule, the date by which the
24		requirement shall be satisfied by a project, [the requirement due date,] and the projects and credits
25		that have been applied to all requirements.
26	<u>(3)</u>	Subject to the geographic restrictions in Paragraph (b), Paragraph (b) of this Rule, DMS may accept
27		payments for nutrient offset credits prior to initiating projects. After accepting payment, DMS shall
28		construct projects that, upon completion as described in the approved project plan, will generate
29		nutrient offset credits sufficient to fulfill all new requirements generated by these payments. Such
30		projects shall be instituted before the end of the first full state fiscal year after DMS receives
31		payment and constructed before the end of the third full state fiscal year after DMS receives
32		payment. DMS may also acquire credits from another provider to apply toward its requirements.
33	<u>(4)</u>	If DMS fails to meet deadlines associated with project institution or construction as specified in
34		Subparagraph [(i)(3) of this Rule,] (3) of this Paragraph, then DMS shall develop an action strategy
35		to include in the annual report specified in Subparagraph [(i)(2) of this Rule.] (3) of this Paragraph.
36		Action strategies shall include all of the following:

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1		<u>(A)</u>	a fist of factors resulting in delays or deficiencies in procurement, project implementation	
2			and/or construction,	
3		<u>(B)</u>	specific actions and a timeline planned by DMS to satisfy outstanding credit requirements	
4			such that a project will be instituted before the end of the first full state fiscal year after the	
5			action strategy is submitted to the Division in the annual report and constructed before the	
6			end of the third full state fiscal year after the action strategy is submitted to the Division in	
7			the annual report, unless otherwise specified in the action strategy,	
8		<u>(C)</u>	the anticipated date by which all outstanding nutrient offset credit requirements will be	
9			satisfied, and	
10		<u>(D)</u>	an evaluation of current progress in relation to prior action strategies if applicable.	
11	(j) NUTRIENT	OFFSET	CREDIT TRANSACTIONS. Parties who seek to acquire nutrient offset credits under rules	
12	of this Subchap	pter shall do so in compliance with such rules, the requirements of Paragraph (b) of this [rule,] Rule,		
13	G.S. 143-214.26	6, and the	following:	
14	<u>(1)</u>	Offset 1	payments made to DMS shall be contingent upon acceptance of the payment by DMS. DMS	
15		shall c	onsider its financial, temporal and technical ability to satisfy the request to make its	
16		determ	ination.	
17	<u>(2)</u>	Where	persons seek to satisfy regulatory obligations for more than one nutrient type, they shall	
18		acquire	nutrient reduction credits to address each type.	
19	<u>(3)</u>	Project	s shall be approved and the associated offset credits released by the Division before they may	
20		be utiliz	zed for NPDES wastewater permit compliance purposes.	
21	<u>(4)</u>	For offs	set credits used to meet [the] NPDES wastewater discharge requirements, the applicant shall	
22		provide	e [40] 50 percent additional credits to address the uncertainty factor for using unmonitored	
23		nonpoi	nt source reductions to meet point source discharge limits. [For offset credits used to meet	
24		the dis	charge requirements, the applicant shall provide no additional credits to address the	
25		uncerta	inty factor for using monitored nonpoint source reductions to meet point source discharge	
26		limits.]	Application of this ratio is in addition to other ratios that may be applied, including delivery	
27		or trans	sport factors where applicable.	
28	<u>(5)</u>	<u>Deliver</u>	y factors shall be applied to estimate nutrient reductions to an impaired water body subject	
29		to a nut	trient strategy if required under rules of this Subchapter for that strategy.	
30	<u>(6)</u>	Term c	redits may be utilized for compliance only during the year in which they are generated as	
31		describ	ed in Subparagraph (d)(2) of this Rule. They may not be cumulatively banked for future	
32		years.		
33	(k) DEVELOP	ER-RESI	PONSIBLE NUTRIENT OFFSET PROJECTS. A developer subject to new development	
34	stormwater requirements of this Subchapter may satisfy its nutrient reduction obligations by generating its own offsite			
35	credits. It may do so by establishing a nutrient offset bank and generating credits in accordance with this [rule.] Rule.			
36	Alternatively, th	<u>ie develoj</u>	per shall comply with all provisions of this [rule] Rule governing the generation of nutrient	
37	offset credits by	offset credits by a provider with the following modifications:		

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1	<u>(1)</u>	Instead of a credit release schedule, credit for the project may be assigned upon construction of the		
2		project and submission of the as-built report as described in the project plan;		
3	<u>(2)</u>	Credit shall be assigned at a 50 percent rate based on the design specifications of the fully completed		
4		project(s); and		
5	<u>(3)</u>	Liability for the generation of credits as described in the project plan remains with the developer		
6		until the completion of all milestones associated with the project.		
7	(l) NPDES V	WASTEWATER PERMITTEE-RESPONSIBLE NUTRIENT OFFSET PROJECTS. A locality,		
8	authority, utility	authority, utility, or sanitation district operating a permitted wastewater facility subject to wastewater rules of this		
9	Subchapter may	ubchapter may generate nutrient offset credits by installing projects in accordance with this rule. Any credits		
10	generated may t	then be utilized for compliance purposes as if acquired from another provider.		
11				
12	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.		
13		438; S.L. 2009, c. 337; S.L. 2009, c. 484; S.L. 2009, c. 486;		
14		Eff. August 1, 1998;		
15		Amended Eff. August 1, 2006;		
16		Amended Eff. September 1, 2010.		
17		Readopted Eff. November 1, 2019.		

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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?

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.

1	15A NCAC 02B	.0232 is readop	ted with changes as published in 33:16 NCR 1671-1717 as follows:
2	454 NG 4 G 00D	0000 0510	NEWS AND SERVICE OF A PROPERTY AND SERVICE
3	15A NCAC 02B	.0232 <u>.0710</u>	NEUSE NUTRIENT STRATEGY: PURPOSE AND SCOPE NEUSE
4			RIVER BASIN NUTRIENT SENSITIVE WATERS MANAGEMENT
5	() NURBOGE I	71 0.1	STRATEGY: BASIN NUTRIENT REDUCTION GOAL
6	` ´		his Rule and Rules .0711 through .0715 of this Section is to attain the designated uses
7		· ·	ith respect to meeting nutrient-related water quality standards pursuant to the
8		•	emmission's authority under the Clean Water Responsibility and Environmentally
9	•	· ·	e North Carolina General Assembly in 1997 and other authorities. All waters of the
10			entally classified as Nutrient Sensitive Waters (NSW) pursuant to 15A NCAC 02B
11			Paragraph (d) of this Rule together constitute the Neuse nutrient strategy, and shall be
12	•		15A NCAC 02B .0223. This Rule establishes the framework of the Neuse nutrient
13	strategy. Pursuan	t to 1995 (Reg.)	Sess., 1996) N.C. Session Laws, c. 572, the Environmental Management Commission
14	hereby establishe	es the goal of rec	lucing the average annual load of nitrogen delivered to the Neuse River Estuary from
15	point and nonpoi	nt sources by a	minimum of 30 percent of the average annual load for the period 1991 through 1995
16	by the year 2001	. All waters of	the Neuse River Basin have been supplementally classified as Nutrient Sensitive
17	Waters (NSW) p	ursuant to 15A	NCAC 2B .0223. The following rules shall be implemented in accordance with 15A
18	NCAC 2B .0223	in all waters of	the Neuse River Basin:
19	(b) SCOPE AN	D LIMITATIO	N. The Neuse nutrient strategy rules require controls to reduce nitrogen loads from
20	significant source	es of this nutrier	nt throughout the Neuse Basin. These Rules do not address sources for which there is
21	insufficient scien	tific knowledge	e to base regulation. The Commission may undertake additional rulemaking in the
22	future or make r	ecommendation	s to other rulemaking bodies as deemed appropriate to more fully address nutrient
23	sources to the Ne	euse River Estua	ary.
24	(c) GOAL. To a	chieve the purp	ose of the Neuse nutrient strategy, the Commission established in the initial Neuse
25	nutrient strategy	rules, enacted in	n August 1998, the goal of reducing the average annual load of nitrogen delivered to
26	the Neuse estuary	y from point and	I nonpoint sources by a minimum of 30 percent below the average annual load for the
27	period 1991 thro	ugh 1995 and tl	nereafter maintaining it at or below that level. This amended strategy continues that
28	goal.		
29	(d) RULES ENU	JMERATED. T	he rules of the Neuse nutrient strategy, in addition to this one, are titled as follows:
30	(1)	Rule .0233 for	protection and maintenance of riparian areas,
31	(2)	Rule .0234 for	wastewater discharges,
32	(3)	Rule .0235 for	urban stormwater management,
33	(4)		ad .0238 for agricultural nitrogen reduction,
34	(5)		nutrient management, and
35	(6)		nitrogen offset fees.
36	<u>(1)</u>	Rule .0711 for	-
37	(2)	Rule 0712 for	

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1	<u>(3)</u>	Rule .0713 for wastewater discharges,
2	<u>(4)</u>	Rule .0714 for riparian buffer protection, and
3	<u>(5)</u>	Rule .0715 for riparian buffer program delegation
4	(e) ADAPTIVE	MANAGEMENT. Given ongoing impairment of the Neuse estuary more than a decade after full
5	implementation of	of the above rules, the Division is pursuing fuller evaluation of the basin's nutrient dynamics to inform
6	and guide adapt	ive management. Evaluation shall seek to utilize all sources of available information, including
7	stakeholder input	t, and shall consider drivers, character and shifts in the impairment with time, trends and character of
8	loading delivered	d to the estuary, and distribution and character of loading inputs to the basin and changes to those
9	inputs over time.	Evaluation shall address the extent to which the reduction goals identified above have been achieved
10	and shall, based	on its findings, provide recommendations on management needs. The Division shall [seek to]
11	complete an eval	uation within three years of the effective date of this rule and shall distribute its findings, which may
12	recommend regu	latory and non-regulatory actions, upon completion. The Division shall also report biannually to the
13	Water Quality Co	ommittee of the Commission on implementation progress and reductions achieved by sources subject
14	to the Neuse nutr	ient strategy. The adaptive management approach is based on defined goals, knowledge of resources
15	and impacts to th	ose resources, appropriate technology and inventory. These inputs are used to plan, act, monitor and
16	evaluate. The pro	ocess is iterative and the goal is continuous environmental quality improvement.
17	(f) GEOGRAPH	IIC APPLICABILITY. The Neuse nutrient strategy shall apply in all areas draining to NSW waters
18	within the Neuse	River Basin unless individual Neuse strategy rules describe other boundaries.
19	(b)(g) PENALT	IES Failure to meet requirements of the Neuse Nutrient Strategy Rules .0233, .0234, .0235, .0236,
20	.0238, .0239, and	1.0240 of this Section may result in imposition of enforcement measures as authorized by G.S. 143-
21	215.6A (civil per	nalties), G.S. 143-215.6B (criminal penalties), and G.S. 143-215.6C (injunctive relief).
22		
23	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;
24		143-215.6C;
25		Eff. August 1, 1998.
26		Readopted Eff. November 1, 2019.

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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?

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.

1	15A NCAC 02B	.0235 is 1	readopted	with chan	ges as publisl	hed in 33:1	6 NCR 1671-17	17 as follows:	
2									
3	15A NCAC 02B	<u>.0235</u> .07	<u>'11</u>	NEUSE	RIVER	BASIN-	NUTRIENT	SENSITIVE	-WATERS
4	MANAGEMEN	T STRA	TEGY: I	BASINWII	DE STORM	WATER F	REQUIREMEN	TS	
5	The following is	the -urban	stormwa	iter manage	ement strateg	y for the No	euse River Basii	n:	
6	<u>(1)</u>	<u>PURPO</u>	SE. The p	ourpose of t	his Rule is to	achieve ar	nd maintain the i	nitrogen loading re	eduction goal
7		establish	ned for the	e Neuse Riv	er Estuary in	Rule .0710	of this Section	from an undevelop	ped condition
8		on land	s in the	Neuse Riv	er Basin on	which [ne	<mark>w]</mark> development	occurs. Nothing	in this Rule
9		preempt	s the req	uirements (of 15A NCA	C 02B .02	77 for projects	subject to the Fa	lls Reservoir
10		Nutrient	Strategy	or preven	ts local gove	ernments fr	om implementii	ng requirements t	hat are more
11		restrictiv	ve than th	ose set fort	h in this Rule	<u>e.</u>			
12	(1) (2)	<u>APPLIC</u>	CABILIT	Y. The follo	owing local g	overnments	s are designated	based on populat	ion and other
13		factors,	as parties	responsible	e for implem e	enting storn	nwater manager	nent requirements	as part of the
14		Neuse I	River Nu	trient Sens	itive Waters	stormwate	r management	strategy: shall in	nplement the
15		stormwa	iter mana	gement rec	uirements of	f this <mark>[Rule</mark>	.] Rule, except	as noted in Sub-I	tem (3)(a) of
16		<u>this Rul</u>	e where 1	the Departi	<mark>nent shall in</mark>	<mark>nplement th</mark>	<mark>ıem.</mark> Municipali	ties shall implem	ent this Rule
17		through	out their	corporate 1	imits and ext	raterritoria	l jurisdictions w	ithin the basin, w	hile counties
18		shall im	plement 1	<u>throughout</u>	their territor	ial jurisdict	tions within the	basin. Counties r	named in this
19		Item ma	y implem	ent this Ru	le within mu	nicipalities	not named in the	s Item in accordar	nce with G.S.
20		160A-36	<u>60(d).</u>						
21		<u>(a)</u>	Local go	overnments	designated	under the o	original version	of this Rule effe	ctive August
22			<u>1998:</u>						
23			<u>(a)(i)</u>	Cary,					
24			(b) (ii)	Durham,					
25			(c)(iii)	Garner,					
26			(d)(iv)	Goldsboro),				
27			<u>(e)(v)</u>	Havelock,					
28			<u>(f)(vi)</u>	Kinston,					
29			<u>(g)(vii)</u>	New Bern	,				
30			(h)(viii)	Raleigh,					
31			<u>(i)(ix)</u>	Smithfield	l ,				
32			(j)(x)	Wilson,					
33			<u>(k)(xi)</u>	Durham C	ounty,				
34			<u>(1)(xii)</u>	Johnston (County,				
35			(m)(xiii)	Orange Co	ounty,				
36			<u>(n)(xiv)</u>	Wake Cou	inty, and				
37			(o)(xv)	Wayne Co	ounty.				

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1		<u>(b)</u>	The following additional local governments are subject to this Rule: governments:
2		9	(i) Apex,
3		9	(ii) Clayton,
4		9	(iii) Fuquay Varina,
5		9	(iv) Greenville,
6		9	(v) Holly Springs.
7		9	(vi) Knightdale,
8		9	(vii) Morrisville,
9		<u> </u>	(viii) Rolesville,
10		<u>!</u>	(viii) Wake Forest,
11		<u> </u>	(ix) Wendell,
12		<u> </u>	(x) Winterville,
13		<u> </u>	(xi) Craven County,
14		<u>!</u>	(xii) [Greene] Nash County,
15		İ	[(xii) Nash County,]
16		İ	[(xiv)] (xiii) Pitt County, and
17		İ	[(xv)](xiv) Wilson County.
18	(2)	Other inc	corporated areas and other counties, not listed under Item (1) of this Rule, may seek to
19		implemen	nt their own local stormwater management plan by complying with the requirements
20		specified	in Items (5) and (6) of this Rule.
21	[(3)		FION. A stormwater management plan is not required for new development on an
22		individua	I single family lot if the new development meets the following criteria:
23		` ′	I t is not part of a larger common plan of development or sale; and
24		(b) 	The project does not result in greater than five percent built upon area on the lot or it is for
25		i	purposes of a single-family residence on a lot five acres in size or greater.
26	(3)	The Env	ironmental Management Commission may designate additional local governments by
27		amending	s this Rule based on their potential to contribute significant nutrient loads to the Neuse
28			t a minimum, the Commission shall review the need for additional designations to the
29		stormwat	er management program as part of the basinwide planning process for the Neuse River
30		Basin. At	ny local governments that are designated at a later date under the Neuse Nutrient Sensitive
31		Waters S	tormwater Program shall meet the requirements under Items (5) and (6) of this Rule.
32	[(4)] <u>(3)</u>	LOCAL	PROGRAM IMPLEMENTATION REQUIREMENTS. All local governments subject to
33		this rule s	shall implement stormwater management programs approved by the Commission pursuant
34		to the tin	neframes set out in Item (6) of this Rule, or any subsequent modifications to those plans
35		approved	by the Director, according to the following requirements and the standards contained in
36			of this Rule: Local stormwater programs shall address nitrogen reductions for both existing
37		and new	development and include the following elements:

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1	(a)	Review and approval of stormwater management plans for new developments to ensure
2		that: The requirement for local government approval of a stormwater plan for all proposed
3		[new development projects disturbing one acre or more for single family and duplex
4		residential property and recreational facilities, and one half acre or more for commercial,
5		industrial, institutional, multifamily residential, or local government property. Where
6		proposed new development on an existing developed lot not part of a larger common plan
7		of development results in built upon area exceeding 24 percent, a stormwater plan
8		addressing the new project area shall be required.] development projects not excluded
9		under Item (4) of this Rule. To the extent permitted by federal law, including Chapter 26
10		of Title 33 of the United States Code and where pursuant to G.S. 153A-454 and G.S. 160A-
11		459 a local government program does not review a development project proposed by a state
12		or federal entity for the requirements of this Rule, the entity shall obtain Department review
13		and approval.
14	<u>(b)</u>	A plan to ensure maintenance of stormwater control measures (SCMs) implemented to
15		comply with this Rule for the life of the development;
16	<u>(c)</u>	A plan to ensure enforcement and compliance with the provisions in Item (5) of this Rule
17		for the life of the development;
18	<u>(d)</u>	A public education program to inform citizens how to reduce nutrient pollution and to
19		inform developers about the nutrient requirements set forth in Item (5) of this Rule;
20	<u>(e)</u>	A mapping program that includes major components of the municipal separate storm sewer
21		system, waters of the State, land use types, and location of sanitary sewers; and
22	<u>(f)</u>	A program to identify and remove illegal discharges.
23 <u>(4</u>	<u>DEVE</u>	LOPMENT EXCLUDED. The following development activities shall not be subject to this
24	Rule:	
25	<u>(a)</u>	Projects disturbing less than:
26		(i) one acre for single family and duplex residential property and recreational
27		facilities; and
28		(ii) one-half acre for commercial, industrial, institutional, multifamily residential, or
29		local government land uses with the following exception. Such below half-acre
30		projects that would replace or expand existing structures on a parcel, resulting in
31		a cumulative built-upon area for the parcel exceeding twenty-four percent, would
32		be subject to the requirements of Item (5) of this Rule;
33	<u>(b)</u>	Development of an individual single-family or duplex residential lot that:
34		(i) Is not part of a larger common plan of development or sale; and
35		(ii) Does not result in greater than five percent built upon area on the lot;
36	<u>(c)</u>	Projects subject to requirements of the Falls Nutrient Strategy New Development
37		Stormwater rule, 15A NCAC 02B .0277;

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1		<u>(d)</u>	Existing development as defined in 15A NCAC 02H .1002;
2		<u>(e)</u>	Redevelopment as defined in G.S. 143-214.7(a1)(2); and
3		<u>(f)</u>	Activities subject to requirements of the Neuse Agriculture Rule, 15A NCAC 02B .0712.
4	<u>(5)</u>	<u>DEVE</u>	LOPMENT PROJECT REQUIREMENTS. A proposed development project not excluded
5		under]	Item (4) of this Rule shall be approved by a subject local government for the purpose of this
6		Rule w	when the applicable requirements of Item [(4)](3) of this Rule and the following criteria are
7		met.	
8		(i)(a)	The project area, project, as defined in state stormwater rule 15A NCAC 02H .1002, shal
9			meet either a nitrogen loading rate target of 3.6 pounds/acre/year or the definition of runof
10			volume match found in [15A NCAC 02H .1002. Except as otherwise stated in this Item
11			the project may meet the loading rate target through use of permanent nutrient offset credi
12			pursuant to Rule .0703 of this Section. Persons who seek nutrient offset credit to these
13			requirements shall provide proof of nutrient offset credit acquisition to the permitting
14			authority prior to approval of the development plan; that rule. Proposed developmen
15			projects that would replace or expand existing structures and would result in a net increase
16			in built-upon area shall meet one of these options for the project less any existing built-
17			upon area. the nitrogen load contributed by new development activities is held at 70 percen
18			of the average nitrogen load contributed by the 1995 land uses of the non urban areas of
19			the Neuse River Basin. The local governments shall use a nitrogen export standard of 3.6
20			pounds/acre/year, determined by the Environmental Management Commission as 70
21			percent of the average collective nitrogen load for the 1995 non urban land uses in the
22			basin above New Bern. The EMC may periodically update the design standard based or
23			the availability of new scientific information; Developers shall have the option of offsetting
24			part of their nitrogen load by funding offsite management measures by making payment to
25			the NC Ecosystem Enhancement Program or to another seller of offset credits approved by
26			the Division or may implement other offset measures contingent upon approval by the
27			Division. Offset payments shall meet the requirements of Rule .0240 of this Section, which
28			establishes procedural requirements for nutrient offset payments. However, before using
29			offset payments, the development must attain, at a minimum, a nitrogen export that does
30			not exceed 6 pounds/acre/year for residential development and 10 pounds/acre/year for
31			commercial or industrial development;
32		(;;)	For the following local governments and any additional local governments identified in
33		(ii)	
			rule by the Commission, the post construction requirements of 15 NCAC 02B .0277 shall
34			supersede the requirements in this Sub item for areas within their jurisdiction within the
35			watershed of the Falls of the Neuse Reservoir: Durham, Raleigh, Durham County, Orange
36			County, and Wake County; and

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1	<u>(b)</u>	Regardi	ng stormwater treatment and other onsite post-construction elements, projects no
2		subject :	to more stringent standards under one of the following state stormwater rules or a
3		local or	dinance shall meet state stormwater rule 15A NCAC 02H .1003, which includes
4		specific	ations for low- and high-density designs, vegetated setbacks and stormwater outlets
5		for all p	rojects. Such projects shall use a high-density treatment threshold of twenty four
6		percent	or greater built-upon area and a storm depth of one inch for SCM design:
7		<u>(i)</u>	Water Supply Watershed Protection rules, 15A NCAC 02B .0620 through .0624
8		(ii)	Coastal Counties stormwater rule 15A NCAC 02H .1019; or
9		(iii)	Non-Coastal County HWQs and ORWs rule 15A NCAC 02H .1021.
10	<u>(c)</u>	The foll	owing are exceptions to the onsite requirements of Sub-Item (5)(b) of this Rule:
11		<u>(i)</u>	Proposed development projects may utilize an offsite SCM that is dedicated to
12			treating an area encompassing the project provided the SCM is designed to mee
13			all applicable requirements identified in Sub-Item (b) of this Item; and
14		(ii)	Proposed development undertaken by a local government solely as a public road
15			expansion or public sidewalk project, or proposed development subject to the
16			jurisdiction of the Surface Transportation Board, may meet the loading rate targe
17			of this Item entirely through use of permanent nutrient offset credit pursuant to
18			Rule .0703 of this Section.
19	<u>(d)</u>	Where i	n satisfying the onsite requirements of Sub-Item (b) of this Item, a project does no
20		meet the	e loading rate target of this Item, it may do so through use of permanent nutrien
21		offset ci	redit pursuant to Rule .0703 of this Section. Persons doing so shall provide proof
22		of credit	t acquisition to the permitting authority prior to approval of the development plan.
23	[(b)](e)	Untreate	ed nutrient loading rates from the project area shall be determined through the use
24		of the to	ool most recently approved by the Division to have met the following criteria, or
25		through	an alternative method that meets the following criteria at least as well, as
26		determin	ned by the Division:
27			
20		<u>(i)</u>	Provides [project] site-scale estimates of annual precipitation-driven total
28			Provides [project] site-scale estimates of annual precipitation-driven total nitrogen [and total phosphorus] load;
28 29			
		<u>(i)</u>	nitrogen [and total phosphorus] load;
29		(<u>i</u>) (<u>ii</u>)	nitrogen [and total phosphorus] load; From all land cover types on a project site at build-out;
29 30		(<u>i</u>) (<u>ii</u>)	nitrogen [and total phosphorus] load; From all land cover types on a project site at build-out; Based on land-cover-specific nitrogen and phosphorus loading coefficients and
29 30 31		(i) (ii) (iii)	nitrogen [and total phosphorus] load; From all land cover types on a project site at build-out; Based on land-cover-specific nitrogen and phosphorus loading coefficients and annual runoff volume; and
29 30 31 32	[(e)](<u>f</u>)	(i) (ii) (iii) (iv)	nitrogen [and total phosphorus] load; From all land cover types on a project site at build-out; Based on land-cover-specific nitrogen and phosphorus loading coefficients and annual runoff volume; and Is supported by the weight of evidence from available, current, and applicable
29 30 31 32 33	[(e)](<u>f</u>)	(i) (ii) (iii) (iv) Nutrient	nitrogen [and total phosphorus] load; From all land cover types on a project site at build-out; Based on land-cover-specific nitrogen and phosphorus loading coefficients and annual runoff volume; and Is supported by the weight of evidence from available, current, and applicable research.
29 30 31 32 33 34	[(e)](<u>f</u>)	(i) (ii) (iii) (iv) Nutrient through	nitrogen [and total phosphorus] load; From all land cover types on a project site at build-out; Based on land-cover-specific nitrogen and phosphorus loading coefficients and annual runoff volume; and Is supported by the weight of evidence from available, current, and applicable research.
29 30 31 32 33 34 35	[(e)](<u>f</u>)	(i) (ii) (iii) (iv) Nutrient through following	nitrogen [and total phosphorus] load; From all land cover types on a project site at build-out; Based on land-cover-specific nitrogen and phosphorus loading coefficients and annual runoff volume; and Is supported by the weight of evidence from available, current, and applicable research. Is loading rate reductions resulting from the use of SCMs shall be determined the use of the tool most recently approved by the Division to have met the

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1		<u>(i)</u>	Provides project site loading reduction estimates from the installation of DEMLR-
2			approved SCMs;
3		<u>(ii)</u>	Reductions apply to the portion of the project area's project's runoff volume that
4			is directed to the SCMs;
5		<u>(iii)</u>	The method partitions the runoff volume processed by the SCM among
6			hydrologic fates and assigns nutrient concentrations to each of those fates; and
7		<u>(iv)</u>	The method is supported by the weight of evidence from available, current, and
8			applicable research.
9	[(d)	Project	s shall meet the requirements set forth in 15A NCAC 02H .1003. Projects that use
10		SCMs	to treat stormwater shall use the required storm depths and meet the SCM and
11		density	requirements set forth in the stormwater programs to which they are subject
12		pursua :	nt to 15A NCAC 02H .1017, .1019, and .1021. Projects not subject to any of these
13		Rules s	shall be considered high density if they contain twenty four percent or greater built
14		<mark>upon a</mark>	rea or have greater than two dwelling units per acre, and shall use a storm depth of
15		one inc	ch for SCM design.]
16	[(e)	Propos	ed new development undertaken by a local government solely as a public road
17		expans	ion or public sidewalk project or proposed new development subject to the
18		jurisdic	ction of the Surface Transportation Board shall be exempt from the requirements of
19		Sub Ite	em (5)(d) of this Rule and may meet the loading rate targets through use of
20		permar	nent nutrient offset credit pursuant to Rule .0703 of this Section;
21	[(f)	Propos	ed development projects that would replace or expand existing structures and would
22		result i	n a net increase in built upon area shall be responsible for nitrogen loading from the
23		area of	disturbance less any preexisting built upon area located therein. The developer shall
24		<mark>have tl</mark>	ne option to either achieve the percent loading reduction goal established in Rule
25		.0710 c	of this Section or meet the loading rate target of this Item;
26	[(g)	Propos	ed new development projects may utilize an offsite SCM that is dedicated to treating
27		<mark>an are</mark>	a encompassing the project provided the SCM complies with the applicable
28		require	ments of this Item for the area that it treats;
29	[(h)	Where	pursuant to G.S. 153A 454 and G.S. 160A 459 a local government program does
30		not rev	iew a development project proposed by a state or federal entity for the requirements
31			Rule, the entity shall obtain Department review and approval; and
32	[(i)](g)	Propos	ed development projects shall demonstrate compliance with the riparian buffer
33		_	ion requirements of Rule .0714 of this Section.
34		(iii)	there is no net increase in peak flow leaving the site from the predevelopment
35		. /	conditions for the 1 year, 24 hour storm.
36	(b)	Review	of new development plans for compliance with requirements for protecting and
37	. /		ining existing riparian areas as specified in 15A NCAC 02B .0233:

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1		(c)	Implementation of public education programs;
2		(d)	Identification and removal of illegal discharges;
3		(e)	Identification of suitable locations for potential stormwater retrofits (such as riparian areas)
4			that could be funded by various sources; and
5		(f)	Submittal of an annual report on October 30 to the Division documenting progress on and
6			net changes to nitrogen load from the local government's planning jurisdiction.
7	(5)	Local	governments shall implement stormwater management programs according to their plans
8		appro	ved by the Commission as of March 2001. Local governments administering a stormwater
9		manag	gement program shall submit annual reports to the Division documenting their progress and
10		net ch	anges to nitrogen load by October 30 of each year.
11	(6)	If a lo	cal government fails to properly implement an approved plan, then stormwater management
12		requir	ements for existing and new urban areas within its jurisdiction shall be administered through
13		the NI	PDES municipal stormwater permitting program per 15A NCAC 02H .0126:
14		(a)	Subject local governments shall develop and implement comprehensive stormwater
15			management programs, tailored toward nitrogen reduction, for both existing and new
16			development.
17		(b)	These stormwater management programs shall provide all components that are required of
18			local government stormwater programs in Sub-items (4)(a) through (f) of this Rule.
19		(c)	Local governments that are subject to an NPDES permit shall be covered by the permit for
20			at least one permitting cycle (five years) before they are eligible to submit a local
21			stormwater management program for consideration and approval by the EMC.
22	<u>(6)</u>	RULE	EIMPLEMENTATION
23		<u>(a)</u>	Within [four] eight months of the effective date of this Rule, the Division shall submit a
24			model local stormwater program embodying the elements in Items [(4) and (3) through
25			(5) of this Rule to the Commission for approval. The Division shall work in cooperation
26			with subject local governments in developing this model program.
27		<u>(b)</u>	Local governments designated under the original version of this Rule effective August
28			1998 and additional local governments designated herein shall submit a local stormwater
29			program for approval by the Commission within six months and 12 months, respectively,
30			of the Commission's approval of the model local program. These local programs shall meet
31			or exceed the requirements in Items [(4) and] (3) through (5) of this Rule.
32		<u>(c)</u>	The Division shall provide recommendations to the Commission regarding proposed local
33			programs. The Commission shall approve programs or require changes based on the
34			standards set out in Items [(4) and] (3) through (5) of this Rule. Should the Commission
35			require changes, the applicable local government shall have three months to submit
36			revisions, and the Division shall provide follow-up recommendations to the Commission
37			within two months after receiving revisions;

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1		<u>(d)</u>	Within six months after the Commission's approval of a local program, the affected local
2			government shall complete adoption of and implement its local stormwater program.
3		<u>(e)</u>	Local governments administering a stormwater program shall submit annual reports in
4			electronic format to the Division documenting their progress regarding each
5			implementation requirement in Item [(4)](3) of this Rule and net changes to nitrogen load
6			by October 30th of each year. Annual reports shall also include as appendices all data
7			utilized by nutrient calculation tools for each development stormwater plan approved in
8			accordance with this Rule.
9		<u>(f)</u>	Any significant modifications to a local program subsequent to its approval pursuant to the
10			requirements of this item shall be submitted to the Director for approval.
11	<u>(7)</u>	COMI	PLIANCE. A local government's authority to approve [new] development stormwater plans
12		for cor	mpliance with this Rule pursuant to Item (5) of this Rule shall be contingent upon maintaining
13		its ow	n compliance with this Rule. A local government that fails to submit an acceptable local
14		stormy	water program within the timeframe established in this Rule, fails to implement an approved
15		progra	m, or fails to comply with annual reporting requirements shall be in violation of this Rule.
16			
17	History Note:	Author	rity G.S. 143-214.1; 143-214.7; <u>143-214.26;</u> 143-215.1; 143-215.3(a)(1); 143-215.8B; 143B-
18		282; S	S.L. 1995, c. 572; <u>S.L. 1997-458; S.L. 2006-246;</u>
19		Eff. Aı	ugust 1, 1998;
20		Amena	ded Eff. January 15, 2011 (this permanent rule replaces the temporary rule approved by the
21		RRC o	on December 16, 2010).
22		Reado	pted Eff. November 1, 2019.

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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)"?

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.

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

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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.

- All persons engaging in agricultural operations in the Neuse River Basin shall collectively achieve (1) 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) <u>APPLICABILITY. This Rule shall apply to all persons engaging in agricultural operations,</u> including those related to crops, horticulture, livestock, and poultry, in the geographic area subject

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1		to the	Neuse n	utrient strategy as described in Rule .0710 of this Section. This Rule applies to				
2		livesto	livestock and poultry operations above the size thresholds in this Item in addition to requirements					
3		for ani	for animal operations set forth in general permits issued pursuant to G.S. 143-215.10C. Nothing in					
4		this Ru	this Rule shall be deemed to allow the violation of any assigned surface water, groundwater, or air					
5		quality	quality standard by any agricultural operation, including any livestock or poultry operation below					
6		the siz	e thresho	lds in this Item. For the purposes of this Rule, agricultural operations are activities				
7		that re	that relate to any of the following pursuits:					
8		<u>(a)</u>	The co	mmercial production of crops or horticultural products other than trees. As used in				
9			this Ru	tle, commercial shall mean activities conducted primarily for financial profit.				
10		<u>(b)</u>	Resear	ch activities in support of such commercial production.				
11		<u>(c)</u>	The pr	oduction or management of any of the following number of livestock or poultry at				
12			any tin	ne, excluding nursing young:				
13			<u>(i)</u>	5 or more horses;				
14			<u>(ii)</u>	20 or more cattle;				
15			<u>(iii)</u>	20 or more swine not kept in a feedlot, or 150 or more swine kept in a feedlot;				
16			<u>(iv)</u>	120 or more sheep;				
17			<u>(v)</u>	130 or more goats;				
18			<u>(vi)</u>	650 or more turkeys;				
19			(vii)	3,500 or more chickens; or				
20			(viii)	Any single species of any other livestock or poultry, or any combination of species				
21				of livestock or poultry that exceeds 20,000 pounds of live weight at any time.				
22	<u>(3)</u>	<u>IMPL1</u>	EMENTA	ATION PROCESS. A Basin Oversight Committee and county-level Local Advisory				
23		Comm	ittees sh	all coordinate activities and account for progress. The membership, roles and				
24		respon	sibilities	of these committees are set forth in Items (4) and (6) of this Rule. Accounting for				
25		nitroge	en load-re	educing actions on agricultural lands within the basin shall follow requirements set				
26		forth in	n Item (5)	of this Rule. Producers may be eligible to obtain cost share and technical assistance				
27		from t	he NC A	griculture Cost Share Program and similar federal programs to contribute to their				
28		counti	es' ongoir	ng nitrogen reductions. Committee activity shall be guided by the following:				
29		<u>(a)</u>	<u>OPTIC</u>	ONS FOR INDIVIDUAL OPERATIONS. Persons subject to this Rule may elect to				
30			<u>implen</u>	nent practices meeting the standards identified in Item (7) of this Rule that contribute				
31			to main	ntenance of collective local compliance with the goal identified in Item (1) of this				
32			Rule,	but are not required to implement any specific practices provided their basin				
33			collect	ively maintains compliance with the goal.				
34		<u>(b)</u>	MAIN	TENANCE OF GOAL. Accounting shall annually demonstrate maintenance or				
35			exceed	ence of the nitrogen reduction goal on a basin basis. Where three sequential annual				
36			reports	show that the Basin did not meet its nitrogen reduction goal, the Basin Oversight				
37			Comm	ittee shall work with the Division of Soil and Water Conservation and Local				

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1			Adviso	ry Committees to seek reduction actions by operations to bring agriculture
2			collecti	vely back into compliance, and shall report on their efforts in subsequent annual
3			reports.	. Should subsequent annual reports not reverse the trend of noncompliance, the
4			Commi	ssion may seek a more specific implementation plan from the Basin Oversight
5			Commi	ttee, which may include an assessment of need for specific action by the
6			Commi	ssion.
7	(2) (4)	BASIN	OVERS	SIGHT COMMITTEE. The Basin Oversight Committee shall have the following
8		members	ship, ro	ole and responsibilities: Formation and membership of the Basin Oversight
9		Committ	ee. The	Environmental Management Commission shall delegate to the Secretary of the
10		Departm	ent of E	environment and Natural Resources the responsibility of forming a Basin Oversight
11		Committ	tee.	
12		(a)	The Se	cretary shall solicit one nomination for membership on this Committee from each
13			of the	following agencies: MEMBERSHIP. The Director of the Division of Water
14			Resour	ces shall be responsible for maintaining the following membership composition.
15			Until sı	ach time as the Commission determines that long-term compliance with this rule is
16			assured	, the Director shall solicit one nomination for membership on this Committee from
17			each ag	<u>ency in Sub-Items <mark>(a)(i) through (a)(v) of this Item. [(4)(a)(i) through (4)(a)(v) of</mark></u>
18			<mark>this Ru</mark>	le.] The Director may appoint a replacement at any time for an interest in Sub-Items
19			(a)(vi)	through (a)(viii) of this Item [(4)(a)(vi) through (4)(a)(viii) of this Rule] upon
20			request	of representatives of that interest or by the request of the Commissioner of
21			Agricu	lture:
22			(i)	Division of Soil and Water Conservation,
23			(ii)	United States Department of Agriculture- Natural Resources Conservation
24				Service, Service (shall serve in an "ex-officio" non-voting capacity and shall
25				function as a technical program advisor to the Committee),
26			(iii)	North Carolina Department of Agriculture, Agriculture and Consumer Services,
27			(iv)	North Carolina Cooperative Extension Service, and
28			(v)	Division of Water Quality. Resources,
29			<u>(vi)</u>	<u>Up to two environmental interests</u> ,
30			(vii)	Up to two general farming interest, and
31			(viii)	Scientific community with experience related to water quality problems in the
32				Neuse River Basin.
33		(b)	The Se	eretary shall also solicit one nomination that represents environmental interests, one
34			nomina	tion that represents agricultural interests, and one from the scientific community
35			with ex	perience related to water quality problems in the Neuse River Basin.
36		(c)	The Se	cretary, Department of Environment and Natural Resources, shall appoint members
37			of the	Basin Oversight Committee from the nominees provided in Sub Items (2)(a) and

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1		(2)(b) of this Rule. Members shall be appointed for a term not to exceed five years and
2		shall serve at the pleasure of the Secretary. The United States Department of Agriculture
3		Natural Resources Conservation Service member shall serve in an "ex-officio" non-voting
4		capacity and shall function as a technical program advisor to the Committee.
5	(3) Role	of the Basin Oversight Committee. The Environmental Management Commission shall
6	deleg	gate the following responsibilities to the Basin Oversight Committee.
7	(a)	Develop a tracking and accounting methodology, as described below, for evaluating total
8		nitrogen loading from agricultural operations and progress toward reaching the total
9		nitrogen net loading reduction from the implementation BMPs within the Neuse River
10		Basin. The accountability methodology must demonstrate how the nitrogen loading
11		reduction can be met collectively by implementing best management practices approved
12		by the Soil and Water Conservation Commission that include, but are not limited to, water
13		control structures, riparian area establishment, and nutrient management.
14	(b)	Submit a draft accountability process in accordance with the requirements in Sub-Items
15		(3)(a) and (3)(c) of this Rule to the Environmental Management Commission for review
16		within six months after the effective date of the rule and the final accountability process to
17		the Environmental Management Commission for approval within one year after the
18		effective date of the rule. The Environmental Management Commission shall approve the
19		accountability process if it meets requirements in Sub Items (3)(a) and (3)(c) of this Rule.
20		If the Basin Oversight Committee fails to submit an approvable accountability process to
21		the Environmental Management Commission, then the Environmental Management
22		Commission may accept alternative accountability process proposals within 15 months of
23		the effective date of this Rule. If the Environmental Management Commission fails to
24		receive an approvable accountability process, then the Environmental Management
25		Commission may require all agricultural operations to follow the standard Best
26		Management Practices option as specified in Item (8) of this Rule.
27	(e)	Include in the accountability process a method to accurately track implementation of
28		BMPs, including location and type of BMPs; to estimate nitrogen reductions from BMP
29		implementation; to quantify increases or decreases in nitrogen loading due to changes in
30		land use, modified agricultural activity, or atmospheric nitrogen loading, based on the best
31		available scientific information; to ensure operation and maintenance of BMPs, including
32		year round management for water control structures; to address life expectancy of BMPs;
33		and a method to ensure maintenance of the nitrogen net loading reduction after the initial
34		five years of this Rule, including substitute BMPs to replace expired practices and
35		additional BMPs to offset new sources of nitrogen.
36	(d)	Calculate a separate total nitrogen loading for agricultural lands in the Neuse River Basin
37		above and below New Bern based on the average of 1991-1995 conditions. Based on this

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1			loading,	calculate a separate 30 percent net reduction. Loading calculations must include
2			atmosph	neric emissions and deposition of nitrogen from agricultural lands based on the best
3			availabl	e scientific information. Allocate to counties or watersheds, as allowed in Sub-Item
4			(4)(a) o	f this Rule, within the Neuse River Basin their portion of the calculated nitrogen
5			loading	reduction from agricultural operations, including any division of the reduction
6			between	specific categories of agricultural operations. Each county or watershed may not
7			have to	reduce individually its nitrogen loading by 30 percent; however, the nitrogen
8			loading	reduction from all counties or watershed above New Bern shall collectively meet
9			their to	tal nitrogen reduction and all counties or watersheds below New Bern shall
10			collectiv	vely meet their total nitrogen reduction. If the Basin Oversight Committee fails to
11			allocate	the nitrogen loading reductions from agricultural operations to counties or
12			watersh	eds within the Neuse River Basin, the Environmental Management Commission
13			may ass	sign the agricultural nitrogen reductions based on the approved accountability
14			process	as described in Sub-Items (3)(a) and (3)(c) of this Rule.
15		(e)	Review,	approve and summarize county nitrogen reduction strategies and present these
16			strategie	es to the Environmental Management Commission for approval within two years
17			from the	effective date of this Rule.
18		(f)	Review,	approve and summarize local nitrogen reduction annual reports and present these
19			reports 1	to the Environmental Management Commission each October. Information to be
20			included	I in the Annual Report is described in Item (5)(d) of this Rule.
21		<u>(b)</u>	ROLE.	The Basin Oversight Committee shall:
22			<u>(i)</u>	Continue to review, approve and summarize local nitrogen loss annual reports to
23				ensure ongoing implementation of the accounting method approved by the
24				Commission under the original version of this Rule effective August 1998, as
25				conforming to the requirements of Item (5) of this Rule. Continue to submit these
26				reports as initiated in 2002, to the Director annually;
27			<u>(ii)</u>	Take actions called for under Sub-Item (3)(b) of this Rule as needed to address
28				maintenance of the nitrogen reduction goal; and
29			<u>(iii)</u>	Identify and implement refinements to the accounting method as needed to reflect
30				advances in scientific understanding, including establishment or refinement of
31				nutrient reduction efficiencies for BMPs.
32	<u>(5)</u>	ACCOL	JNTING	METHODOLOGY. Success in meeting this Rule's purpose will be gauged by
33		estimati	ng percer	ntage changes in nitrogen loss from agricultural lands in the Neuse Basin. The Basin
34		Oversig	ht Comn	nittee shall develop maintain, and update as indicated elsewhere in this Item,
35		account	ing metho	ods that meet the following requirements:
36		<u>(a)</u>	The nit	rogen method shall estimate baseline and annual total nitrogen losses from
37			agricult	ural operations in each county and for the entire Neuse Basin;[Basin. Baseline

1			losses	and relative loss reduction progress shall be adjusted as frequently as can be
2			<mark>suppor</mark>	ted by available data to account for lands permanently removed from agricultural
3			<mark>control</mark>	through development;
4		<u>(b)</u>	The nit	rogen method shall include a means of tracking implementation of BMPs, including
5			numbe	r, type, and area affected;
6		<u>(c)</u>	The ni	trogen method shall include a means of estimating incremental nitrogen loss
7			reducti	ons from implementation of BMPs that conform to requirements of Item (7) of this
8			Rule ar	nd of evaluating progress toward and maintenance of the nutrient goal from changes
9			in BMI	P implementation, fertilization, and changes in individual crop acres; and
10		<u>(d)</u>	The nit	rogen method shall be refined as research and technical advances allow.
11	(4) (6)	Format	ion and	membership of the Local Advisory Committees. LOCAL ADVISORY
12		COMN	<u>IITTEES</u>	. The Environmental Management Commission shall delegate to the Directors of
13		the Div	vision of	f Water Quality Resources and Division of Soil and Water Conservation the
14		respons	sibility c	of forming shall maintain Local Advisory Committees. Committees initially
15		establis	hed in F	ebruary and March, 1999, as follows:
16		(a)	The Di	rectors shall form Local Advisory Committees in MEMBERSHIP. For each county
17			(or or v	vatershed specified by the Basin Oversight Committee) Committee within the Neuse
18			River	Basin. The Basin, the Directors shall solicit nominations for jointly maintain
19			membe	ership on the Local Advisory Committee from each of the following local agencies:
20			entities	s, whose appointees shall serve at the pleasure of the Directors:
21			(i)	Soil and Water Conservation District,
22			(ii)	United States Department of Agriculture- Natural Resources Conservation
23				Service,
24			(iii)	North Carolina Department of Agriculture,
25			(iv)	North Carolina Cooperative Extension Service,
26			(v)	North Carolina Division of Soil and Water Conservation, and
27			(vi)	The Directors shall also solicit at least two nominations that represents a local
28				farmer in the county watershed. At least two farmers that reside in the county.
29			The So	oil and Water Conservation District may be designated by the Basin Oversight
30			Comm	ittee as the lead agency on the Local Advisory Committee.
31		<u>(b)</u>	ROLE.	Local Advisory Committees shall:
32			<u>(i)</u>	Continue to submit annual reports to the Basin Oversight Committee estimating
33				total crop production on agricultural operations for the preceding calendar year,
34				summarizing land use changes in the county and making recommendations to the
35				Basin Oversight Committee on the need for updates to the accounting
36				methodology. Reports shall include documentation on the BMPs implemented,

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1			including type and location, that satisfy the requirements identified in Item (6) o
2			this Rule and documentation of any expired contracts for BMPs; and
3		<u>(ii)</u>	Take actions called for under Sub-Item (3)(b) of this Rule to address maintenance
4			of the nitrogen reduction goal.
5	<u>(7)</u>	PRACTICE S	TANDARDS. To receive nutrient reduction credit under the accounting methods
6		described elsev	where in this Rule, a BMP shall be included in the accounting method approved by
7		the Commission	on under the original version of this Rule effective August 1998, or in a subsequen
8		revision to that	method identified in annual reporting, and it shall be implemented according to the
9		applicable nut	rient-related standards identified by the BOC and established by the NC Soil and
10		Water Conserv	vation Commission or the USDA-Natural Resources Conservation Service in North
11		Carolina.	
12		(b) The	Environmental Management Commission and Soil and Water Conservation
13		Comr	nission shall appoint members of Local Advisory Committee from the nomineed
14		provid	led in Sub Item (4)(a) of this Rule and shall be appointed for a term not to exceed
15		five y	ears and shall serve at the pleasure of the Commissions.
16	(5)	Role of the L	ocal Advisory Committees. The Environmental Management Commission shal
17		delegate the fo	ollowing responsibilities to employees of the Department who are members of the
18		Local Advisor	y Committees and employees of the Division of Soil and Water Conservation or its
19		designee. Thes	e employees shall act with advice from the Local Advisory Committees.
20		(a) Cond	uct a sign up process for persons wishing to voluntarily implement the local nitroger
21		reduc	tion strategy as specified in Item (7) of this Rule. This sign up process shall be
22		comp	leted within one year following the effective date of this Rule.
23		(b) Devel	op local nitrogen reduction strategies that meet the nitrogen loading reduction goa
24		for ag	ricultural operations assigned by the Basin Oversight Committee. The local strategies
25		shall l	se designed to achieve the required nitrogen loading reduction within five years from
26		the ef	fective date of this Rule. A matrix of best management practice options, which
27		accou	nt for stream order, floodplain width, and regional variations in soil types and
28		topog	raphy, may be used in developing the local nitrogen reduction strategies. Loca
29		nitrog	en reduction strategies must specify the name and location of participant agricultura
30		farmi	ng operations, BMPs which will be required as part of the plan, estimated nitroger
31		reduc	tion, schedule for BMP implementation, and operation and maintenance
32		requir	rements. If the Local Advisory Committee fails to develop the local nitrogen reduction
33		strate	gy, the Environmental Management Commission may develop the strategy based or
34		the ti	racking and accounting method approved by the Environmental Managemen
35		Comr	nission.
36		(e) Subm	it an annual report to the Basin Oversight Committee each May on net total nitroger
27		laadir	as reductions from a cricultural anarotions, the implementation of DMDs for nitroces

1 control, and progress towards the total nitrogen loading reduction requirements in the 2 Neuse River Basin above and below New Bern. 3 (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 4 BMPs, estimated nitrogen net loading reductions achieved as a result of those BMPs, any 5 increases or decreases in nitrogen loading resulting from changes in land use or modified 6 agricultural related activity, discussion of operation and maintenance of BMPs, and a 7 8 summary of the estimated load from agricultural operations for the previous year, and any 9 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 10 agricultural operations within the Neuse River Basin in each county or watershed. The 11 annual report shall also be summarized separately for cropland, livestock and poultry 12 13 activities. 14 (6) 15 16 17 18

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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.

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.

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.

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- (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

1			(E)	Removal of dead trees and other timber cutting techniques necessary to
2				prevent extensive pest or disease infestation if recommended by th
3				Director, Division of Forest Resources and approved by the Director
4				Division of Water Quality.
5		(ii)	Zone	2: begins at the outer edge of Zone 1 and extends landward a minimum o
6			20 fee	et as measured horizontally on a line perpendicular to the waterbody. Th
7			combi	ined minimum width of Zones 1 and 2 shall be 50 feet on all sides of th
8			water	body. Vegetation in Zone 2 shall consist of a dense ground cover compose
9			of her	baceous or woody species which provides for diffusion and infiltration o
10			runof	f and filtering of pollutants. The following practices and activities ar
11			allow	ed in Zone 2 in addition to those allowed in Zone 1: Periodic mowing and
12			remov	val of plant products such as timber, nuts, and fruit is allowed on a periodi
13			basis	provided the intended purpose of the riparian area is not compromised by
14			harves	sting, disturbance, or loss of forest or herbaceous ground cover. Forest
15			vegeta	ntion in Zone 2 may be managed to minimize shading on adjacent land
16			outsid	le the riparian area if the water quality function of the riparian area is no
17			compi	romised.
18		(iii)	The fo	ollowing practices and activities are not allowed in Zone 1 and Zone 2:
19			(A)	Land disturbing activities and placement of fill and other materials, other
20				than those allowed in Items (8)(a)(i) and (8)(b) of this Rule;
21			(B)	New development;
22			(C)	New on site sanitary sewage systems which use ground absorptions;
23			(D)	Any activity that threatens the health and function of the vegetation
24				including, but not limited to, application of fertilizer or chemicals is
25				amounts exceeding the manufacturer's recommended rate, uncontrolled
26				sediment sources on adjacent lands, and the creation of any areas with
27				bare soil.
28		(iv)	Timbe	er removal and skidding of trees in the riparian area shall be directed away
29			from	the water course or water body. Skidding shall be done in a manner to
30			preve	nt creation of ephemeral channels perpendicular to the water body. Any tre
31			remov	val must be performed in a manner that does not compromise the intende
32			purpo	se of the riparian area and is in accordance with the Forest Practice
33			Guide	clines Related to Water Quality (15A NCAC 1J.0201.0209).
34	(b)	The fol	lowing	waterbodies and land uses are exempt from the riparian area requirement:
35		(i)	Ditche	es and manmade conveyances, other than modified natural streams, which
36			under	normal conditions do not receive drainage waters from any tributary

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1		ditches	s, canals, or streams, unless the ditch or manmade conveyance delivers
2		runoff	directly to waters classified in accordance with 15A NCAC 2B .0100;
3	(ii)	Ditche	s and manmade conveyances other than modified natural streams which are
4		used ex	xclusively for drainage of silvicultural land or naturally forested areas. All
5		forest l	harvesting operations shall be in compliance with North Carolina's Forest
6		Practic	es Guidelines Related to Water Quality;
7	(iii)	Areas 1	mapped as perennial streams, intermittent streams, lakes, ponds or estuaries
8		on the	most recent versions of United States Geological Survey 1:24,000 scale
9		(7.5 m	ninute quadrangle) topographic maps where no perennial, intermittent
10		waterb	ody, or lakes, ponds or estuaries exists on the ground;
11	(iv)	Ponds	and lakes created for animal watering, irrigation, or other agricultural uses
12		that ar	e not part of a natural drainage way that is classified in accordance with
13		15A N	CAC 2B .0100;
14	(v)	Water	dependent structures as defined in 15A NCAC 2B .0202 provided that they
15		are loc	ated, designed, constructed and maintained to provide maximum nutrient
16		remove	al, to have the least adverse effects on aquatic life habitat and to protect
17		water c	quality;
18	(vi)	The fo	llowing uses may be allowed where no practical alternative exists. A lack
19		of prac	etical alternatives may be shown by demonstrating that, considering the
20		potenti	al for a reduction in size, configuration or density of the proposed activity
21		and al	l alternative designs, the basic project purpose cannot be practically
22		accom	plished in a manner which would avoid or result in less adverse impact to
23		surface	waters. Also, these structures shall be located, designed, constructed, and
24		mainta	ined to have minimal disturbance, to provide maximum nutrient removal
25		and ere	osion protection, to have the least adverse effects on aquatic life and habitat,
26		and to	protect water quality to the maximum extent practical through the use of
27		best m	anagement practices:
28		(A)	Road crossings, railroad crossings, bridges, airport facilities, and utility
29			crossings may be allowed if conditions specified in Sub Item (8)(b)(vi)
30			of this Rule are met;
31		(B)	Stormwater management facilities and ponds, and utility construction
32			and maintenance corridors for utilities such as water, sewer or gas, may
33			be allowed in Zone 2 of the riparian area as long as the conditions
34			specified in Sub-Item (8)(b)(vi) of this Rule are met and they are located
35			at least 30 feet from the top of bank or mean high water line. Additional
36			requirements for utility construction and maintenance corridors are listed
37			in Sub Item (8)(b)(vi) of this Rule.

1	(vii)	A corridor for the construction and maintenance of utility lines, such as water,
2		sewer or gas, (including access roads and stockpiling of materials) may run
3		parallel to the stream and may be located within Zone 2 of the riparian area, as
4		long as no practical alternative exists and they are located at least 30 feet from the
5		top of bank or mean high water line and best management practices are installed
6		to minimize runoff and maximize water quality protection to the maximum extent
7		practicable. Permanent, maintained access corridors shall be restricted to the
8		minimum width practicable and shall not exceed 10 feet in width except at
9		manhole locations. A 10 feet by 10 feet perpendicular vehicle turnaround is
10		allowed provided they are spaced at least 500 feet apart along the riparian area;
11	(viii)	Stream restoration projects, scientific studies, stream gauging, water wells,
12		passive recreation facilities such as boardwalks, trails, pathways, historic
13		preservation and archaeological activities are allowed; provided that they are
14		located in Zone 2 and are at least 30 feet from the top of bank or mean high water
15		line and are designed, constructed and maintained to provide the maximum
16		nutrient removal and erosion protection, to have the least adverse effects on
17		aquatic life and habitat, and to protect water quality to maximum extent practical
18		through the use of best management practices. Activities that must cross the
19		stream or be located within Zone 1 are allowed as long as all other requirements
20		of this Item are met;
21	(ix)	Stream crossings associated with timber harvesting are allowed if performed in
22		accordance with the Forest Practices Guidelines Related to Water Quality (15A
23		NCAC 1J.0201 .0209); and
24	(x)	In addition to exceptions included in Sub Item (8)(b)(i) (ix), canals, ditches, and
25		other drainage conveyances are exempt from the riparian area requirement if both
26		water control structures with a water control structure management plan and a
27		nutrient management plan, are implemented on the adjacent agricultural land
28		according to the standards and specifications of the USDA Natural Resources
29		Conservation Service or the standards and specifications adopted by the NC Soil
30		and Water Conservation Commission. The water control structures and nutrient
31		management practices must provide equivalent protection and directly affect the
32		land and waterbodies draining into the waterbody exempted from the riparian area
33		requirement. To the maximum extent practical, water control structures shall be
34		managed to maximize nitrogen removal throughout the year. A technical
35		specialist designated pursuant to rules adopted by the Soil and Water
36		Conservation Commission must provide written approval that the nutrient
37		management and water management plans meet the standards and specifications

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1			of the USDA Natural Resources Conservation Service or the standards and
2			specifications adopted by the NC Soil and Water Conservation Commission. If
3			the nutrient management plans and water management plans are not implemented,
4			then a riparian area pursuant to this Section is required.
5	(c)	The fo	llowing are modifications to the riparian area requirements.
6		(i)	On agricultural land where either water control structures with a water control
7			structure management plan, or a nutrient management plan is implemented
8			according to the standards and specifications of the USDA Natural Resources
9			Conservation Service or the standards and specifications adopted by the NC Soil
10			and Water Conservation Commission, then a 20 ft forested or a 30 ft vegetated
11			buffer is required. The water control structures or nutrient management practices
12			must provide equivalent protection and directly affect the land and waterbodies
13			draining into the waterbody with a modified buffer requirement. To the maximum
14			extent practical, water control structures shall be managed to maximize nitrogen
15			removal throughout the year. A technical specialist designated pursuant to rules
16			adopted by the Soil and Water Conservation Commission must provide written
17			approval that the nutrient management plan meets the standards and specifications
18			of the USDA Natural Resources Conservation Service or the standards and
19			specifications adopted by the NC Soil and Water Conservation Commission.
20		(ii)	A vegetated riparian area may be substituted for an equivalent width of forested
21			riparian area within 100 feet of tile drainage.
22		(iii)	Where the riparian area requirements would result in an unavoidable loss of
23			tobacco allotments [(7 CFR 723.220(c)] and the BMPs of controlled drainage or
24			nutrient management are not in place, forest cover is required only in the first 20
25			feet of the riparian area.
26	(d)	Maint	enance of Zones 1 and 2 is required in accordance with this Rule.
27		(i)	Sheet flow must be maintained to the maximum extent practical through
28			dispersing concentrated flow and re establishment of vegetation to maintain the
29			effectiveness of the riparian area.
30		(ii)	Concentrated runoff from new ditches or manmade conveyances must be
31			dispersed into sheetflow before the runoff enters Zone 2 of the riparian area.
32			Existing ditches and manmade conveyances, as specified in Sub Item (8)(b)(ii) of
33			this Rule, are exempt from this requirement; however, care shall be taken to
34			minimize pollutant loading through these existing ditches and manmade
35			conveyances from fertilizer application or erosion.

1		(iii) Periodic corrective action to restore sheet flow shall be taken by the landowner if
2			necessary to impede the formation of erosion gullies which allow concentrated
3			flow to bypass treatment in the riparian area.
4		(e) F	Periodic maintenance of modified natural streams such as canals is allowed provided that
5		é	listurbance is minimized and the structure and function of the riparian area is not
6		e	ompromised. A grassed travelway is allowed on one side of the waterbody when
7		a	lternative forms of maintenance access are not practical. The width and specifications of
8		ŧ	he travelway shall be only that needed for equipment access and operation. The travelway
9		S	hall be located to maximize stream shading.
10		(f) ¥	Where the standards and management requirements for riparian areas are in conflict with
11		e	ther laws, regulations, and permits regarding streams, steep slopes, erodible soils,
12		¥	vetlands, floodplains, forest harvesting, surface mining, land disturbance activities,
13		é	levelopment in Coastal Area Management Act Areas of Environmental Concern, or other
14		e	nvironmental protection areas, the more protective shall apply.
15		(g) I	The Environmental Management Commission acknowledges that best management
16		ŧ	ractices under the standard management practice option of this Rule do not fully address
17		Ħ	itrogen loading, including atmospheric emissions and deposition, from animal operations.
18		4	As information becomes available on nitrogen loadings from animal operations and best
19		Ħ	nanagement practices to control these loadings, other best management practices from
20		a	nimal operations may be required by the Commission as necessary to achieve equivalent
21		r	eduction in nitrogen loadings therefrom. These additional best management practices shall
22		ŧ	be required if deemed necessary to achieve a net total nitrogen loading reduction from the
23		a	nimal operations based on average 1991–1995 conditions.
24			
25	History Note:	Authority	G.S. 143-214.1; 143-214.7; 143-215.3(a)(1); <u>S.L. 1997-458;</u>
26		Eff. Augus	st 1, 1998.
27		<u>Readopted</u>	d Eff. November 1, 2019.

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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.

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.

1	15A NCAC 02B	.0234 is re	eadopte	ed with char	nges as pub	lished in 33	3:16 N	NCR 1671-1717	as follows:	
2										
3	15A NCAC 02B			NEUSE	RIVER	BASIN		NUTRIENT	SENSITIVE	WATERS
4									IARGE REQUI	
5	The following is				narge Elimi	nation Syst	iem (]	NPDES) waste	water discharge	management
6	strategy for the N									
7	(1)	•	•	•					ontrol requirem	
8		-		•					or restore <mark>the</mark> wa	ter quality in
9				Estuary and	-					
10	(2)		•	•	•	_	_		astewater treatn	
11								•	and are requir	
12				-		-	_		ake watershed a	
13					•				Nutrient [Strate	gy, per Rule
14				bchapter.] <u>S</u>						
15	(3)					•			terms	s used in this
16								and as follows:		
17		` ´	_	-	source disc	hargers, tre	atmei	nt facilities, wa	stewater flows o	r discharges,
18				matters:						
19			(i)	_		it which obt	taineo	d <u>aan</u> NPDES p	ermit on or befo	re December
20				31, 1995.						
21			(ii)	-		that which	incre	ases beyond its	permitted flow	as defined in
22				this Rule.						
23			(iii)			which had	not	obtained a an N	NPDES permit	on or before
24					r 31, 1995.					
25				" means mil	_	-				
26							-		euse River nitre	
27									the basin and re	•
28					ble load o	f total niti	rogen	to the estua	y from these	point source
29			dischar							
30		,		•					s the mass load	
31			_		-				or group of di	
32							is eq t	<mark>aivalent to its di</mark>	<mark>scharge allocati</mark>	on multiplied
33				<mark>ssigned trar</mark>	_					
34			-	_			_		ans the mass lo	
35				_		_			arger or group o	
36					-	_	ation	is equivalent to	<mark>its estuary alloc</mark>	ation divided
37			by its a	<mark>ssigned trar</mark>	<mark>rsport facte</mark>	er.				

1		(1)	"Nitrogen TMDL," o	r "IMDL," means	the total nitrogen load to the Neu	se Kiver estuary
2			that is predicted to n	<mark>naintain adequate v</mark>	<mark>vater quality to support all desig</mark> i	nated uses in the
3			estuary and is appr	oved by the Unit	ed States Environmental Protec	tion Agency in
4			accordance with the	federal Clean Wate	r Act.	
5		(g)	"Nonpoint source lo	ad allocation" is t	hat portion of the Neuse River	<mark>nitrogen TMDL</mark>
6			assigned to all othe	r nitrogen sources	in the basin other than individ	lually permitted
7			wastewater facilities	and represents the	maximum allowable load of tota	l nitrogen to the
8			estuary from these no	onpoint sources.		
9		[(h)]	<mark>b)</mark> "Permitted flow" me	ans the maximum	monthly average flow authorize	ed in a facility's
10			NPDES permit as of	December 31, 199	5, with the following exceptions:	
11						
12			Facility Name	NPDES No.	Permitted Flow (MGD)	
13			Benson	NC0020389	3.00	
14			Goldsboro	NC0023949	16.80	
15			Kenly	NC0064891	0.63	
16			Snow Hill	NC0020842	0.50	
17			Wilson	NC0023906	14.00	
18						
19		[(i) 	"Total nitrogen" med	ans the sum of the	e organic, nitrate, nitrite, and an	ı monia forms of
20			nitrogen.			
21		(j)	"Transport factor" is	the fraction of the	e total nitrogen in a discharge the	ı t is predicted to
22			reach the estuary.			
23	(4)	This It	tem specifies the nitroge	n wasteload alloca	tion for point sources.	
24		(a)	Beginning In accorda	nce with the calenc	lar year 2003, <u>Nitrog</u>en TMDL for	the Neuse River
25			Estuary, approved in	[2001] <u>1999</u> by t	he USEPA, the nitrogen wastelo	ad allocation for
26			point sources shall	not exceed 1.64 i	million pounds per calendar yea	ır. <u>The nitrogen</u>
27			wasteload allowance	for point sources	shall not exceed the nitrogen was	teload allocation
28			<u>plus</u> any portion of the	ne nonpoint source	load allocation purchased in acco	ordance with the
29			provisions in Items (7) and (8) of this R	ule and 15A NCAC 02B .0240. [1	utrient] <u>nutrient</u>
30			offset credits obtaine	d in accordance w	<u>ith G.S.</u> [143-214.26.] <u>143-214.26</u>	and Rule .0703
31			of this Section.			
32		(b)	The Commission sh	nall order future	revisions in the <u>Nitrogen TMD</u>	<u>L and</u> nitrogen
33			wasteload allocation	whenever [chan	ges to the TMDL establish re	ductions in the
34			allocations to point se	ources are] necessa	ry to ensure that water quality in t	he estuary meets
35			all applicable standar	rds in 15A NCAC	02B .0200 or to conform with ap	plicable state or
36			federal requirements.			
37	(5)	This It	tem specifies the initial	distribution of nitro	ogen discharge allocations for poin	nt sources.

1	(a)	Upon ac	loption of this Rule and until Until revised as provided elsewhere in this Rule, the
2		followin	ng group and individual discharge allocations for total nitrogen shall apply in order
3		to comp	ly with the nitrogen wasteload allocation for point sources in Item (4) of this Rule:
4		(i)	Dischargers with permitted flows less than 0.5 MGD shall be assigned
5			collectively an annual discharge allocation of 138,000 pounds of total nitrogen.
6		(ii)	Dischargers upstream of Falls Lake Dam and with permitted flows greater than or
7			equal to 0.5 MGD shall be assigned collectively an annual discharge allocation of
8			443,700 pounds of total nitrogen.
9		(iii)	Municipal dischargers downstream of Falls Lake Dam and with permitted flows
10			greater than or equal to 0.5 MGD shall be assigned collectively an annual
11			discharge allocation of 2,021,400 pounds of total nitrogen.
12		(iv)	Industrial dischargers downstream of Falls Lake Dam and with permitted flows
13			greater than or equal to 0.5 MGD shall be assigned collectively an annual
14			discharge allocation of 396,900 pounds of total nitrogen.
15		(v)	Within each group in Sub-Items (i) - (iv) of this Item, each individual discharger
16			shall be assigned an individual discharge allocation and the equivalent estuary
17			allocation. Each discharger's discharge allocation shall be calculated as its
18			permitted flow divided by the total permitted flow of the group, multiplied by the
19			group discharge allocation.
20	(b)	In the e	vent that the nitrogen <u>TMDL and its</u> wasteload allocation for point sources <mark>is</mark> are
21		revised,	as provided in Item (4) of this Rule, the Commission shall apportion the revised
22		load am	ong the existing facilities and shall revise discharge allocations as needed. The
23		Commis	ssion may consider such factors as:
24		(i)	fate and transport of nitrogen in the river basin;
25		(ii)	technical feasibility and economic reasonableness of source reduction and
26			treatment methods;
27		(iii)	economies of scale;
28		(iv)	nitrogen control measures already implemented;
29		(v)	probable need for growth and expansion;
30		(vi)	incentives for responsible planning, utilities management, resource protection,
31			and cooperative efforts among dischargers; and
32		(vii)	other factors the Commission deems relevant.

1	(6)	This I	Item specifies nutrient controls for existing facilities.
2		(a)	Beginning with calendar year 2003, each discharger with a permitted flow equal to or
3			greater than 0.5 MGD shall be subject to a total nitrogen permit limit equal to the sum of
4			its active individual discharge allocation, pursuant to Item (5) of this Rule. [Rule, adjusted
5			to reflect any subsequent transfer of Rule and any active allocation or nutrient offset
6			credits acquired pursuant to [the rules of the Neuse River nutrient management strategy.]
7			Rules .0703 and .0710 of this Section.
8		(b <u>)</u>	Effective January 1, 2003, dischargers shall be subject to the following limits for total
9			phosphorus: [All] all existing facilities below Falls Lake Dam with permitted flows greater
10			than or equal to 0.5 MGD shall meet a quarterly average total phosphorus limit of 2 mg/L.
11			(i) All existing facilities above Falls Lake Dam with permitted flows greater than or
12			equal to 0.05 MGD shall meet a quarterly average total phosphorus limit of 2
13			mg/L.
14			(ii) All existing facilities below Falls Lake Dam with permitted flows greater than or
15			equal to 0.5 MGD shall meet a quarterly average total phosphorus limit of 2 mg/L.
16		(c)	The director Director shall establish more stringent limits for nitrogen or phosphorus upon
17			finding that such limits are necessary to protect water quality standards in localized areas.
18	(7)	This I	Item specifies nutrient controls for new facilities.
19		(a)	New facilities proposing to discharge wastewater shall evaluate all practical alternatives to
20			surface water discharge [discharge and report its findings] pursuant to 15A NCAC 02H
21			.0105(c)(2) prior to submitting an application to discharge. [.0105(e)(2).
22		(b)	New facilities submitting an application shall make every reasonable effort to obtain
23			acquire, or demonstrate contractual agreement to [acquire,] acquire prior to authorization
24			to discharge, nitrogen estuary allocation for the proposed wastewater discharge from
25			existing dischargers. If estuary allocation cannot be obtained from the existing facilities,
26			new facilities may or purchase a portion of the nonpoint source load allocation for a period
27			of 30 years from existing dischargers or nitrogen offset credits pursuant to [G.S. 143-
28			214.26, or Rule .0703 of this Section, or both, for the proposed discharge. The allocation
29			and offset [eredit] credits shall be sufficient for a period of 30 [no less than 10] years at a
30			rate of 200 percent of the cost as set in 15A NCAC 02B .0240 to implement practices
31			designed to offset the loading created by the new facility. any partial calendar year in which
32			the permit becomes effective plus ten subsequent years of discharge at the proposed design
33			flow [rate.] rate in accordance with 15A NCAC 02H .0112(c). Payment for each 30 year
34			portion of the nonpoint source load [No less than 10 years'] allocation [and credits] shall
35			be made [in full] prior to the ensuing permit issuance. [issuance, except that the Director
36			may allow up to 20 years for payment if the applicant provides sufficient financial
37			assurance that it can make such payment per G.S. 143-215.1(b)(4)(b). For offset credits

1		used to meet the discharge requirements, the applicant shall provide 10 percent additional
2		credits to address the uncertainty factor for using unmonitored nonpoint source reductions
3		to meet point source discharge limits. For credits used to meet the discharge requirements,
4		the applicant shall provide no additional credits to address the uncertainty factor for using
5		monitored nonpoint source reductions to meet point source discharge limits.
6	(c)	No application for a new discharge shall be made or accepted without written
7		documentation demonstrating that the requirements of Sub Items (a) and (b) of this Item
8		have been met. The Director shall not issue a permit authorizing discharge from a new
9		facility unless the applicant has satisfied the requirements of Sub-Items (a) through (d) and
10		(g) of this Item. If a new facility's permit contains tiered flow limits for expansion, the
11		Director shall not authorize an increased discharge unless the applicant has satisfied the
12		requirements of Sub-Items (a) through (d) and (g) of this Item for that discharge.
13	(d)	The [technology based] nitrogen discharge allocation limit for a new facility treating shall
14		not exceed the nitrogen load equivalent to its active allocation and offset credits, or the
15		[applicable] following technology-based mass limit, whichever is less. [Technology based
16		limits are as follows: municipal or domestic wastewaters shall not exceed the mass
17		equivalent to a concentration of 3.5 mg/L at the maximum monthly average flow limit in
18		the facility's NPDES permit.
19		(i) For facilities treating municipal or domestic wastewaters, the mass load
20		equivalent to a concentration of 3.5 mg/L at the monthly average flow limit in the
21		facility's NPDES permit; and
22		(ii) For facilities treating industrial wastewaters, the mass load equivalent to [either]
23		the best available technology economically [achievable or a discharge
24		concentration of 3.2 mg/L achievable, calculated at the monthly average flow
25		limit in the facility's NPDES permit, whichever is less.
26	(e)	The nitrogen discharge allocation for a new facility treating industrial wastewaters shall
27		not exceed the mass equivalent of either the best available technology economically
28		achievable or a discharge concentration of 3.2 mg/L at the maximum monthly average flow
29		limit in the facility's NPDES permit, whichever is less. Subsequent applications for permit
30		renewal or, where an existing permit contains tiered limits, requests to discharge at an
31		increased flow shall demonstrate that the facility has sufficient nitrogen allocation or offset
32		credits to meet its effluent nutrient limitations for [at least 10 years beyond the requested
33		renewal. pursuant to renewal, in accordance with 15A NCAC 02H .0112(c). any partial
34		calendar year in which the permit becomes effective plus ten subsequent years of discharge
35		at the proposed design flow rate.
36	(f)	New dischargers $\frac{1.0}{1.0}$ meet a monthly average total phosphorous limit of $\frac{1.0}{1.0}$ mg/L.

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- (g) The <u>director Director</u> 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 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) [(e)] (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 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.

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1	[(d)] [No application for an expanding facility shall be made or accepted without writt
2	documentation demonstrating that the requirements of Sub Items (a) through (c) of the
3	Item have been met.
4	[(e)] (c) The [director]Director shall not issue a permit authorizing [expansion of] increas
5	discharge from an existing facility unless the applicant has satisfied the requirements
6	[Sub-Item (d)] Sub-Items (a) through (d) and (g) of this Item. If a facility's permit contain
7	tiered flow limits for expansion, the [director]Director shall not [issue an authorization to
8	authorize discharge at an increased flow unless the applicant has satisfied the requirement
9	of [Sub-Item (d)] Sub-Items (a) through (d) and (g) of this Item.
10	(e) [f] (d) The nitrogen discharge allocation limit for an expanded facility shall not exceed t
11	nitrogen load equivalent to its active allocation and offset credits, or the [applicable]
12	following technology-based mass limit, whichever is less. [Technology based limits are
13	follows: I treating municipal or domestic wastewaters shall not exceed the mass equivale
14	to a concentration of 3.5 mg/L at the maximum monthly average flow limit in the facility
15	NPDES permit, or its existing limit, allocation, whichever is greater.
16	(i) For facilities treating municipal or domestic wastewaters, the mass equivalent
17	a concentration of 3.5 mg/L at the monthly average flow limit in the facility
18	modified NPDES [permit;] permit, except that the limit shall be no less than t
19	facility's original allocation per Item (5) of this Rule; and
20	(ii) For facilities of an industrial nature, the mass equivalent to the best available
21	technology economically [achievable or a concentration of 3.2 mg/L] achievab
22	calculated at the monthly average flow limit in the facility's modified NPDI
23	permit, whichever is less. If the resulting mass value is less than the facility
24	existing discharge allocation, the existing discharge allocation shall not
25	reduced.] <u>permit.</u>
26	(f) [(g)] (c) The nitrogen discharge allocation limit for expanding facilities of an industrial natu
27	shall not exceed the mass equivalent to the best available technology economical
28	achievable or a concentration of 3.2 mg/L at the maximum monthly average flow limit
29	the facility's modified NPDES permit, whichever is less. If the resulting mass is less th
30	the facility's existing discharge allocation, the existing discharge allocation shall not
31	reduced. Subsequent applications for permit renewal or, where an existing permit contain
32	tiered limits, requests to discharge at an increased flow, shall [further] demonstrate that t
33	facility has sufficient [means] allocation or offset credits to meet its effluent nutrie
34	limitations for [at least 10 years beyond the requested renewal, pursuant to renewal,
35	accordance with 15A NCAC 02H .0112(e). any partial calendar year in which the pern
36	becomes effective plus ten subsequent years of discharge at the proposed design flow ra

1		(g) [(h)] (f) Expanding facilities must shall meet a monthly average total phosphorous limit	it of 1
2		1.0 mg/L unless they are a co-permittee member in good standing of a group comp	liance
3		association described in Item (9) of this Rule, in which case they must shall meet a qua	arterly
4		average total phosphorus limit of $2 \underline{2.0}$ mg/L.	
5		(h) [(i)] (g) The director Director shall establish more stringent limits for nitrogen or phosp	horus
6		upon finding that such limits are necessary to protect water quality standards in loc	alized
7		areas.	
8	(9)	This Item describes the option for dischargers to join a group compliance association to collect	tively
9		meet nutrient load allocations. limits.	
10		(a) Any or all facilities within the basin may form a group compliance association to	meet
11		nitrogen estuary allocations <u>limits</u> collectively. Any such association must shall app	oly for
12		and shall be subject to an NPDES group permit that establishes the effective total nit	rogen
13		allocations limits, expressed as loads delivered to the estuary, for the association as	nd for
14		its members. More than one group compliance association may be established. No fa	acility
15		may belong to more than one association formed pursuant to this Rule at a any given	time.
16		(b) No later than 180 days prior to <u>coverage under a new NPDES group permit, or</u> expi	ration
17		of the association an existing NPDES group permit, the association and its members	s shall
18		submit an application for-a an NPDES permit for the discharge of total nitrogen	to the
19		surface waters of the Neuse River Basin. The NPDES group permit shall be issued	to the
20		association and its members as co permittees ("association NPDES permit"). It	shall
21		contain the association's estuary allocation and individual estuary allocations for ea	ach of
22		the members. co-permittees.	
23		(c) An association's estuary allocation <u>limit</u> of total nitrogen shall be the sum of its mer	nbers'
24		individual estuary allocations and nutrient offset credits plus any other estuary allocations	cation
25		and offset credits obtained by the association or its members. members pursuant t	o this
26		strategy.	
27		(d) An association and its members may reapportion the their individual estuary alloc	ations
28		and nutrient offset credits of its members on an annual basis. The association NPDES	group
29		permit shall be modified to reflect the revised individual estuary allocations. alloc	ations
30		and limits.	
31		(e) Beginning in calendar year 2003, if If an association does not meet its estuary alloc	ation,
32		limit in any year, it shall make offset payments for nonpoint source controls obtain nu	ıtrient
33		offset credits in accordance with G.S. 143-214.26 to offset its mass exceedance no	alater
34		than May 1 of the following year at the rate set in 15A NCAC 02B .0240. year.	
35		(f) Association members shall be exempted from deemed compliant with the permit lim	its for
36		total nitrogen contained in their individually issued NPDES permits so long as while	e they
37		remain are members in an association. Association members shall be exempted	from

1		deemed compliant with their individual estuary allocations limits in the association NPDES
2		group permit as long as in any year in which the association is in compliance with its
3		estuary allocation. limit. If the association fails to meet its estuary allocation, exceeds its
4		group limit, the association and the any members that have failed to meet exceed their
5		individual estuary allocations limits in the association NPDES group permit will shall be
6		deemed to be out of compliance with the association NPDES group permit.
7	(10)	Regional Facilities. In the event that an existing If an NPDES-permitted discharger or group of
8		dischargers accepts wastewater from another NPDES-permitted treatment facility in the Neuse
9		River Basin and that acceptance results in the elimination of the discharge from the treatment
10		facility, the eliminated facility's total nitrogen estuary allocation shall be transferred and added to
11		the accepting discharger's estuary allocation.
12		
13	History Note:	Authority G.S. 143-214.1; 143-215; 143-215.1; 143-215.3(a)(1); S.L. 1995, c. 572;
14		Temporary Adoption Eff. January 22, 1998;
15		Eff. August 1, 1998;
16		Temporary Amendment Eff. March 15, 2000;
17		Temporary Amendment Expired on December 10, 2000;
18		Amended Eff. April 1, 2003.
19		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?

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.

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

nutrient strategy:

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
 - (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
 - (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;

nutrient sources to the Pamlico River Estuary.

- (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

1		over time. Evaluation shall address the extent to which the reduction goals identified in Item (2) of
2		this Rule have been achieved and shall, based on its findings, provide recommendations on
3		management needs. The Division shall seek to complete an evaluation within three years of the
4		effective date of this Rule and shall distribute its findings, which may recommend regulatory and
5		non-regulatory actions, upon completion. The Division shall also report biannually to the Water
6		Quality Committee of the Commission on implementation progress and reductions achieved by
7		sources subject to the Tar-Pamlico nutrient strategy. The adaptive management approach is based
8		on defined goals, knowledge of resources and impacts to those resources, appropriate technology
9		and inventory. These inputs are used to plan, act, monitor and evaluate. The process is iterative and
10		the goal is continuous environmental quality improvement.
11	(5)	GEOGRAPHIC APPLICABILITY. The Tar-Pamlico nutrient strategy shall apply in all areas
12		draining to waters within hydrologic units 03020101, 03020102, 03020103, 03020104, and portions
13		of 03020105 located on the Albemarle-Pamlico peninsula unless individual Tar-Pamlico strategy
14		rules describe other boundaries.
15	(6)	PENALTIES. Failure to meet requirements of Rules the Tar-Pamlico nutrient strategy may result in
16		imposition of enforcement measures as authorized by G.S. 143-215.6A, G.S. 143-215.6B, and G.S.
17		143-215.6C.
18		
19	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;
20		<u>143215.8B; 143B-282</u> ; S.L. 1997-458;
21		Fff November 1 2019

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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?

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.

1	15A NCAC 02B	.0258 is	readopted with changes as	published in 33:16 NO	CR 1671-1717 as	s follows:
2						
3	15A NCAC 02E	3 .0258 .0	731 TAR-PAMLIC	O RIVER BASIN-	NUTRIENT	SENSITIVE WATERS
4			MANAGEMEN	STRATEGY:	BASINWII	DE STORMWATER
5			REQUIREMEN	VTS		
6	(a) PURPOSE.	The purp	pose of this Rule are as fo	llows. is to achieve a	nd maintain the	nitrogen and phosphorus
7	loading reduction	n goals fo	or the Tar-Pamlico River E	stuary set out in Rule	.0730 of this Sec	tion from an undeveloped
8	condition on land	ds in the	Tar-Pamlico River Basin or	ı which <mark>[new]</mark> developı	nent occurs. Not	hing in this Rule preempts
9	local governmen	ıts from i	mplementing requirements	that are more restrictive	ve than those set	forth in this Rule.
10	(1)	To achi	ieve and maintain a reduct	on in nitrogen loading	g to the Pamlico	estuary from lands in the
11		Tar Par	mlico River Basin on whic	ı new development oc	curs. The goal o	of this Rule is to achieve a
12		30 perc	ent reduction relative to pr	e development levels;		
13	(2)	To limi	it phosphorus loading from	n these lands to the	estuary. The goo	al of this Rule is to limit
14		phosph	orus loading to pre develor	ment levels;		
15	(3)	To pro	vide control for peak stor	mwater flows from n	ew developmen	t lands to ensure that the
16		nutrient	t processing functions of	existing riparian buffe	ers and streams	are not compromised by
17		channel	l erosion; and			
18	(4)	To min	imize, to the greatest extent	practicable, nitrogen	and phosphorus l	oading to the estuary from
19		existing	g developed areas in the bas	in.		
20	(b) APPLICAB	ILITY. <u>T</u>	The following local government	nents shall implement	the stormwater	management requirements
21	of this [Rule.] R	<u>ule, exce</u> p	pt as noted in Subparagrapl	(c)(1) of this Rule wh	nere the Departm	ent shall implement them.
22	Municipalities sl	hall imple	ement this Rule throughout	their corporate limits	and extraterritor	ial jurisdictions within the
23	basin, while cour	nties shal	l implement throughout the	<u>ir territorial jurisdictio</u>	ns within the bas	sin. Counties named in this
24	Paragraph may i	<u>mplemen</u>	nt this Rule within municipa	lities not named in acc	ordance with G.	S. 160A-360(d). This Rule
25	shall apply to lo	cal gover	nments in the Tar Pamlico	basin according to the	following criter	ia.
26	(1)	Local g	governments designated un	der the original version	on of this Rule 6	effective April 2001: This
27		Rule sh	nall apply to the following r	nunicipal areas:		
28		(A)	Greenville			
29		(B)	Henderson			
30		(C)	Oxford			
31		(D)	Rocky Mount			
32		(E)	Tarboro			
33		(F)	Washington			
34		<u>(G)</u>	Beaufort County			
35		<u>(H)</u>	Edgecombe County			
36		<u>(I)</u>	Franklin County			
37		<u>(J)</u>	Nash County			

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1			<u>(K)</u>	Pitt County
2		(2)	The [Fo	llowing]following additional local [governments are subject to this Rule:]government:
3			(A)	- <mark>[Granville County</mark>]-Beaufort
4			(B)	[Vance County] Edgecombe
5			(C) (A)	Wilson County Franklin
6			(D)	Nash
7			(E)	Pitt
8	(3)	The E	nvironmen	tal Management Commission may designate additional local governments as subject to this
9		Rule b	y amendir	ng this Rule based on the potential of those jurisdictions to contribute significant nutrient
10		loads	to the Tar	Pamlico River. At a minimum, the Commission shall review the need for additional
11		design	ations as	part of the Basinwide process for the Tar Pamlico River Basin. The Commission shall
12		consid	er, at a m	inimum, the following criteria related to local governments: population within the basin,
13		popula	tion densi	ty, past and projected growth rates, proximity to the estuary, and the designation status of
14		munic	ipalities wi	ithin candidate counties.
15	[(3)	EXEM	IPTION. A	stormwater management plan is not required for new development on an individual single
16		family	lot if the r	new development meets the following criteria:
17		(a)	It is not	part of a larger common plan of development or sale; and
18		(b)	The pro	ject does not result in greater than five percent built upon area on the lot or it is for purposes
19			of a sing	gle family residence on a lot five acres in size or greater.]
20	(c) <u>LO</u>	CAL PR	ROGRAM	IMPLEMENTATION REQUIREMENTS. All local governments subject to this Rule shall
21	develor	stormy	vater mana	agement programs for submission to and approval by the Commission according to the
22	followi	ng miniı	num stand	ards: implement stormwater management programs approved by the Commission pursuant
23	to the ti	mefram	es set out i	n Paragraph (e) of this Rule, or any subsequent modification to those plans approved by the
24	Directo	r, accord	ding to the	following requirements and the standards contained in Paragraph (d) of this Rule:
25		(1)	A The	requirement that a stormwater management plan for local government approval of a
26			stormwa	ater plan for all <u>proposed</u> [new development projects disturbing one acre or more for single
27			family (and duplex residential property and recreational facilities, and one half acre or more for
28			comme i	rcial, industrial, institutional, multifamily residential, or local government property. Where
29			propose	d new development on an existing developed lot not part of a larger common plan of
30			develop	ment results in built upon area exceeding 24 percent, a stormwater plan addressing the new
31			project (area shall be required.] <u>development projects not excluded under Paragraph (d) of this Rule.</u>
32			These st	cormwater plans shall not be approved by the subject local governments unless the following
33			criteria	are met: To the extent permitted by federal law, including Chapter 26 of Title 33 of the
34			United S	States Code and where pursuant to G.S. 153A-454 and G.S. 160A-459 a local government
35			<u>progran</u>	does not review a development project proposed by a state or federal entity for the
36			<u>requirer</u>	nents of this Rule, the entity shall obtain Department review and approval.

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I		<u>(2)</u>	A plan t	o ensure maintenance of stormwater control measures (SCMs) implemented to comply with
2			this rule	for the life of the development;
3		<u>(3)</u>	A plan t	o ensure enforcement and compliance with the provisions in Paragraph (e) of this Rule for
4			the life	of the development;
5		<u>(4)</u>	A publi	c education program to inform citizens how to reduce nutrient pollution and to inform
6			develop	ers about the nutrient requirements set forth in Paragraph (e) of this Rule;
7		<u>(5)</u>	A mapp	ing program that includes major components of the municipal separate storm sewer system,
8			waters o	of the State, land use types, and location of sanitary sewers; and
9		<u>(6)</u>	A progr	am to identify and remove illegal discharges.
10	<u>(d)</u>	DEVEL	<u>OPMEN</u>	T EXCLUDED. The following development activities shall not be subject to this Rule:
11		<u>(1)</u>	Projects	disturbing less than:
12			(A) one	acre for single family and duplex residential property and recreational facilities; and
13			(B) one	-half acre for commercial, industrial, institutional, multifamily residential, or local
14				government land usese with the following exception. Such below half-acre projects that
15				would replace or expand existing structures on a parcel, resulting in a cumulative built-
16				upon area for the parcel exceeding twenty-four percent, would be subject to the
17				requirements of Paragraph (e) of this Rule;
18		(2)	Develor	oment of an individual single-family or duplex residential lot that:
19			<u>(A)</u>	Is not part of a larger common plan of development or sale; and
20			<u>(B)</u>	Does not result in greater than five percent built upon area on the lot:
21		<u>(3)</u>	Existing	development as defined in rule 15A NCAC 02H .1002;
22		<u>(4)</u>	Redevel	opment as defined in G.S. 143-214.7(a1)(2); and
23		<u>(5)</u>	Activiti	es subject to requirements of the Tar-Pamlico Agriculture rule, 15A NCAC 02B .0732.
24	[(d)](e)	DEVE	LOPMEN	IT PROJECT REQUIREMENTS. A proposed development project not excluded under
25	<u>Paragra</u>	<u>oh (d) of</u>	this Rul	shall be approved by a subject local government for the purpose of this Rule when the
26	applicab	le requir	ements o	f Paragraph (c) of this Rule and the following criteria are met:
27			(A)	The nitrogen load contributed by the proposed new development activity shall not exceed
28				70 percent of the average nitrogen load contributed by the non urban areas in the Tar-
29				Pamlico River basin based on land use data and nitrogen export research data. Based on
30				1995 land use data and available research, the nitrogen load value shall be 4.0 pounds per
31				acre per year;
32			(B)	The phosphorus load contributed by the proposed new development activity shall not
33				exceed the average phosphorus load contributed by the non-urban areas in the Tar Pamlico
34				River basin based on land use data and phosphorus export research data. Based on 1995
35				land use data and available research, the phosphorus load value shall be 0.4 pounds per
36				acre per year;

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1		(C) The new development shall not cause erosion of surface water conveyances. At a
2		minimum, the new development shall not result in a net increase in peak flow leaving the
3		site from pre development conditions for the 1-year, 24 hour storm event; and
4	<u>(1)</u>	The project area, project, as defined in state stormwater rule 15A NCAC 02H .1002, shall meet
5		either a nitrogen loading rate target of 4.0 pounds/acre/year and a phosphorus loading rate target of
6		0.8 pounds/acre/year, or the definition of runoff volume match found in [15A NCAC 02H .1002.
7		Except as otherwise stated in this Item, the project may meet the loading rate target through use of
8		permanent nutrient offset credit pursuant to Rule .0703 of this Section. Persons who seek nutrient
9		offset credit to these requirements shall provide proof of nutrient offset credit acquisition to the
10		permitting authority prior to approval of the development plan;] that rule. Proposed development
11		projects that would replace or expand existing structures and would result in a net increase in built-
12		upon area shall meet one of these options for the project less any existing built-upon area.
13	<u>(2)</u>	Regarding stormwater treatment and other onsite post-construction elements, projects not subject to
14		more stringent standards under one of the following state stormwater rules or a local ordinance shall
15		meet state stormwater rule 15A NCAC 02H .1003, which includes specifications for low- and high-
16		density designs, vegetated setbacks and stormwater outlets for all projects. Such projects shall use
17		a high-density treatment threshold of twenty four percent or greater built-upon area and a storm
18		depth of one inch for SCM design:
19		(A) Water Supply Watershed Protection rules, 15A NCAC 02B .0620 through .0624;
20		(B) Coastal Counties stormwater rule 15A NCAC 02H .1019; or
21		(C) Non-Coastal County HWQs and ORWs rule 15A NCAC 02H .1021.
22	(3)	The following are exceptions to the onsite requirements of Subparagraph (2) of this Paragraph:
23		(A) Proposed development projects may utilize an offsite SCM that is dedicated to
24		treating an area encompassing the project provided the SCM is designed to meet
25		all applicable requirements identified in Subparagraph (2) of this Paragraph; and
26		(B) Proposed development undertaken by a local government solely as a public road
27		expansion or public sidewalk project, or proposed development subject to the
28		jurisdiction of the Surface Transportation Board, may meet the loading rate target
29		of this Paragraph entirely through use of permanent nutrient offset credit pursuant
30		to Rule .0703 of this Section; and
31	<u>(4)</u>	Where in satisfying the onsite requirements of Subparagraph (2) of this Paragraph, a project does
32		not meet the loading rate target of this Paragraph, it may do so through use of permanent nutrient
33		offset credit pursuant to Rule .0703 of this Section. Persons doing so shall provide proof of credit
34		acquisition to the permitting authority prior to approval of the development plan;
35	[(2)] <u>(5)</u>	Untreated nutrient loading rates from the project area shall be determined through the use of the tool
36		most recently approved by the Division to have met the following criteria, or through an alternative
37		method that meets the following criteria at least as well, as determined by the Division:

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1		<u>(A)</u>	Provides project site-scale estimates of annual precipitation-driven total nitrogen and total
2			phosphorus load;
3		<u>(B)</u>	From all land cover types on a project site at build-out;
4		<u>(C)</u>	Based on land-cover-specific nitrogen and phosphorus loading coefficients and annual
5			runoff volume; and
6		<u>(D)</u>	Is supported by the weight of evidence from available, current, and applicable research.
7	[(3)](6)	Nutrien	t loading rate reductions resulting from the use of SCMs shall be determined through the use
8		of the to	ool most recently approved by the Division to have met the following criteria, or through an
9		alternati	ive method that meets the following criteria at least as well, as determined by the Division:
10 11		<u>(A)</u>	Provides project site loading reduction estimates from the installation of DEMLR-approved SCMs;
12		<u>(B)</u>	Reductions apply to the portion of the [project area's]project's runoff volume that is
13		\	directed to the SCMs;
14		(C)	The method partitions the runoff volume processed by the SCM among hydrologic fates
15		* *	and assigns nutrient concentrations to each of those fates; and
16		(D)	The method is supported by the weight of evidence from available, current, and applicable
17			research.
18	[(4)	Projects	shall meet the requirements set forth in 15A NCAC 02H .1003. Projects that use SCMs to
19		treat sto	rmwater shall use the required storm depths and meet the SCM and density requirements set
20		forth in	the stormwater programs to which they are subject pursuant to Rules 15A NCAC 02H .1017,
21		.1019, a	nd .1021. Projects not subject to any of these rules shall be considered high density if they
22		contain	twenty four percent or greater built upon area or have greater than two dwelling units per
23		<mark>acre anc</mark>	shall use a storm depth of one inch for SCM design.
24	[(5)	Propose	d new development undertaken by a local government solely as a public road expansion or
25		public s	idewalk project or proposed new development subject to the jurisdiction of the Surface
26		Transpe	rtation Board shall be exempt from the requirements of Subparagraph (d)(4) of this Rule
27		and may	y meet the loading rate targets through use of permanent nutrient offset credit pursuant to
28		Rule .07	703 of this Section;
29	[(6)	Propose	d development projects that would replace or expand existing structures and would result in
30		<mark>a net inc</mark>	rease in built upon area shall be responsible for nutrient loading from the area of disturbance
31		less any	preexisting built upon area located in the disturbance area. The developer shall have the
32		option to	o either achieve the percent loading reduction goals established in Rule .0730 of this Section
33		or meet	the loading rate targets of this Paragraph;]
34	[(7)	- Propose	d new development projects may utilize an offsite SCM that is dedicated to treating an area
35		encomp	assing the project provided the SCM complies with the applicable requirements of this
36		Paragra	ph for the area that it treats;]

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1	<u>(7)</u>	Proposed development projects shall demonstrate compliance with the riparian buffer protection		
2		requirements of Rule .0734 of this Section.		
3		(D) Developers shall have the option of partially offsetting their nitrogen and phosphorus loads		
4		by providing treatment of off site developed areas. The off site area must drain to the same		
5		classified surface water, as defined in the Schedule of Classifications, 15A NCAC 2B		
6		.0316, that the development site drains to most directly. The developer must provide legal		
7		assurance of the dedicated use of the off site area for the purposes described here, including		
8		achievement of specified nutrient load reductions and provision for regular operation and		
9		maintenance activities, in perpetuity. The legal assurance shall include an instrument, such		
10		as a conservation easement, that maintains this restriction upon change of ownership or		
11		modification of the off site property. Before using off site treatment, the new development		
12		must attain a maximum nitrogen export of six pounds/acre/year for residential development		
13		and 10 pounds/acre/year for commercial or industrial development.		
14	[(8)	Where pursuant to G.S. 153A 454 and G.S. 160A 459 a local government program does not review		
15		a development project proposed by a state or federal entity for the requirements of this Rule, the		
16		entity shall obtain Department review and approval; and]		
17	[(9)	Proposed new development shall demonstrate compliance with the riparian buffer protection		
18		requirements of Rule .0734 of this Section or subsequent amendments or replacement to those		
19		<mark>requirements.</mark>]		
20	(2)	A public education program to inform citizens of how to reduce nutrient pollution and to inform		
21		developers about the nutrient and flow control requirements set forth in Part (c)(1).		
22	(3)	A mapping program that includes major components of the municipal separate storm sewer system,		
23		waters of the State, land use types, and location of sanitary sewers.		
24	(4)	A program to identify and remove illegal discharges.		
25	(5)	A program to identify and prioritize opportunities to achieve nutrient reductions from existing		
26		developed areas.		
27	(6)	A program to ensure maintenance of BMPs implemented as a result of the provisions in		
28		Subparagraphs (c)(1) and (c)(5).		
29	(7)	A program to ensure enforcement and compliance with the provisions in Subparagraph (c)(1).		
30	(8)	Local governments may include regional or jurisdiction wide strategies within their stormwater		
31		programs as alternative means of achieving partial nutrient removal or flow control. At a minimum,		
32		such strategies shall include demonstration that any proposed measures will not contribute to		
33		degradation of surface water quality, degradation of aquatic or wetland habitat or biota, or		
34		destabilization of conveyance structure of involved surface waters. Such local governments shall		
35		also be responsible for including appropriate supporting information to quantify nutrient and flow		

such strategies.

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reductions provided by these measures and describing the administrative process for implementing

1	[(e)](1) RULE I	MPLEMENTATION
2	<u>(1)</u>	Within [four] eight months of the effective date of this Rule, the Division shall submit a model local
3		stormwater program embodying the elements in Paragraphs (c) [and (d)] through (e) of this Rule to
4		the Commission for approval. The Division shall work in cooperation with subject local
5		governments in developing this model program.
6	<u>(2)</u>	Local governments designated under the original version of this Rule effective April 2001 and
7		additional local governments designated herein shall submit a local stormwater program for
8		approval by the Commission within six months and 12 months, respectively, of the Commission's
9		approval of the model local program. These local programs shall meet or exceed the requirements
10		in Paragraphs (c) [and (d)] through (e) of this Rule.
11	<u>(3)</u>	The Division shall provide recommendations to the Commission regarding proposed local
12		programs. The Commission shall approve programs or require changes based on the standards set
13		out in Paragraphs (c) [and (d)] through (e) of this Rule. Should the Commission require changes,
14		the applicable local government shall have three months to submit revisions, and the Division shall
15		provide follow-up recommendations to the Commission within two months after receiving
16		revisions;
17	<u>(4)</u>	Within six months after the Commission's approval of a local program, the affected local
18		government shall complete adoption of and implement its local stormwater program.
19	<u>(5)</u>	Local governments administering a stormwater program shall submit annual reports in electronic
20		format to the Division documenting their progress regarding each implementation requirement in
21		Paragraph (c) of this Rule and net changes to nitrogen load by October 30 of each year. Annual
22		reports shall also include as appendices all data utilized by nutrient calculation tools for each
23		development stormwater plan approved in accordance with this Rule.
24	<u>(6)</u>	Any significant modifications to a local government's program shall be submitted to the Director
25		for approval.
26	(d) TIMEFRA	ME FOR IMPLEMENTATION. The timeframe for implementing the stormwater management
27	program shall be	e as follows:
28	(1)	Within 12 months of the effective date of this Rule, the Division shall submit a model local
29		stormwater program that embodies the minimum criteria described in Paragraph (c) of this Rule to
30		the Commission for approval. The Division shall work in cooperation with subject local
31		governments in developing this model program.
32	(2)	Within 12 months of the Commission's approval of the model local stormwater program or within
33		12 months of a local government's later designation pursuant to Subparagraph (b)(3), subject local
34		governments shall submit their local stormwater management programs to the Commission for
35		review and approval. These local programs shall meet or exceed the requirements in Paragraph (c)
36		of this Rule.

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I	(3)	Within 18 months of the Commission's approval of the model local stormwater program or within
2		18 months of a local government's later designation pursuant to Subparagraph (b)(3), subject local
3		governments shall adopt and implement their approved local stormwater management program.
4	(4)	Local governments administering a stormwater management program shall submit annual reports to
5		the Division documenting their progress and net changes to nitrogen load by October 30 of each
6		year.
7	[(f)](g) COMP	LIANCE. <u>A local government's authority to approve [new]</u> development stormwater plans for
8	compliance with	h this Rule pursuant to Paragraph [(d)] (e) of this Rule shall be contingent upon maintaining its own
9	compliance wit	h this Rule. A local government that fails to submit an acceptable local stormwater management
10	program within	the timeframe established in this Rule, or fails to implement an approved program, or fails to comply
11	with annual rep	porting requirements shall be in violation of this Rule. In this case, the stormwater management
12	requirements for	r its jurisdiction shall be administered through the NPDES municipal stormwater permitting program
13	per 15A NCAC	2H .0126. Any local government that is subject to an NPDES municipal stormwater permit pursuant
14	to this Rule shal	ll:
15	(1)	Develop and implement comprehensive stormwater management program to reduce nutrients from
16		both existing and new development. This stormwater management program shall meet the
17		requirements of Paragraph (c) of this Rule for new and existing development.
18	(2)	Be subject to the NPDES permit for at least one permitting cycle (five years) before it is eligible to
19		submit a local stormwater management program to the Commission for consideration and approval.
20		
21	History Note:	Authority G.S. 143-214.1; 143-214.7; <u>143-214.26</u> ; <u>143-215.1</u> ; <u>143-215.3</u> (a)(1); 143-215.6A; 143-
22		215.6B; 143-215.6C; 143 B -282(d); 143-215.8B; <u>S.L. 1997-458; S.L. 2006-246;</u>
23		Eff. April 1, 2001.
24		Readopted Eff. November 1, 2019.

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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"

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.

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"

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.

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

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1	standard by any	agricultu	ural operation, including any livestock or poultry operation below the size thresholds in this	
2	Paragraph. Nothing in this Rule shall be deemed to allow the violation of any assigned surface water, groundwater, or			
3	air quality standard by any agricultural operation, including any livestock or poultry operation below the size			
4	thresholds in thi	s Paragra	aph. For the purposes of this Rule, agricultural operations are activities that relate to any of	
5	the following pu	ırsuits:		
6	(1)	The co	mmercial production of crops or horticultural products other than trees. As used in this Rule,	
7		comme	ercial shall mean activities conducted primarily for financial profit.	
8	(2)	Resear	ch activities in support of such commercial production.	
9	(3)	The pr	oduction or management of any of the following number of livestock or poultry at any time,	
10		exclud	ing nursing young:	
11		(A)	20 or more horses;	
12		(B)	20 or more cattle;	
13		(C)	150 or more swine;	
14		(D)	120 or more sheep;	
15		(E)	130 or more goats;	
16		(F)	650 or more turkeys;	
17		(G)	3,500 or more chickens; or	
18		(H)	A number of any Any single species of any other livestock or poultry, or any combination	
19			of species of livestock or poultry that exceeds 20,000 pounds of live weight at any time.	
20	(4)	Certair	tree-harvesting activities described and defined as follows.	
21		(A)	The one-time harvest of trees on land within a riparian buffer described in 15A NCAC 02B	
22			Rule .0259 .0734 of this Section that was open farmland on September 1, 2001. This one-	
23			time harvest of trees may be conducted within one tree cropping interval only under a	
24			verifiable farm plan that received final approval from a local agricultural agency on or after	
25			September 1, 2001 and that expressly allowed the harvest of trees no earlier than 10 years	
26			after the trees are established and the return of the land to another agricultural pursuit.	
27		(B)	The one-time harvest of trees on land within a riparian buffer described in 15A NCAC 02B	
28			0259 .0734 that had trees established under an agricultural incentive program as of	
29			September 1, 2001.	
30		(C)	All tree harvesting described in Subparagraphs Parts (b)(4)(A) and (b)(4)(B) of this Rule	
31			Parts (A) and (B) of this Subparagraph_shall comply with Forest Practices Guidelines	
32			Related to Water Quality codified at 15A NCAC 011. 02 NCAC 60C. The nutrient removal	
33			functions that were provided by trees prior to their harvest shall be replaced by other	
34			measures that are implemented by the owner of the land from which the trees are harvested.	
35		(D)	The following definitions shall apply to terms used in Subparagraphs Parts (b)(4)(A)	
36			through (b)(4)(C) of this Rule. (A) through (C) of this Subparagraph	

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1	(i)	"Agricultural incentive program" means any of the following programs and any
2		predecessor program to any of the following programs:
3		(I) Agriculture Cost Share Program for Nonpoint Source Pollution Contro
4		established by G.S. 143-215.74.
5		(II) Conservation Reserve Enhancement Program established by 7 C.F.R
6		Part 1410 (January 1, 2001 Edition) and 15A NCAC 06G .0101 through
7		15A NCAC 06G .0106.
8		(III) Conservation Reserve Program established by 7 C.F.R. Part 1410
9		(January 1, 2001 Edition).
10		(IV) Environmental Quality Incentives Program established by 7 C.F.R. Par
11		1466 (January 1, 2001 Edition).
12		(V) Wetlands Reserve Program established by 7 C.F.R. Part 1467 (January
13		1, 2001 Edition).
14		(VI) Wildlife Habitat Incentives Program established by 7 C.F.R. Part 636
15		(January 1, 2001 Edition).
16	(ii)	"Local agricultural agency" means the North Carolina Cooperative Extension
17		Service, the Farm Services Agency of the United States Department o
18		Agriculture, the Natural Resources Conservation Service of the United State
19		Department of Agriculture, a Soil and Water Conservation District created
20		pursuant to G.S. 139-5, or their successor agencies.
21	(iii)	"Open farmland" means the footprint of land used for pasture or for crops o
22		horticultural products other than trees. Open farmland may contain scattered tree
23		if an open canopy existed on September 1, 2001 as determined from the most
24		recent aerial photographs taken prior to September 1, 2001 for the Farm Service
25		Agency of the United States Department of Agriculture.
26	(iv)	"Tree" means a woody plant with a diameter equal to or greater than five inche
27		when measured at a height of four and one-half feet above the ground.
28	(v)	"Tree cropping interval" means the time required to establish and grow trees that
29		are suitable for harvesting. The tree-cropping interval shall be set out in the farm
30		plan and shall be no less than 10 years after the trees are established.
31	(c) IMPLEMENTATION PROCE	ESS. This Rule shall be implemented through a cooperative effort between a Basin
32	Oversight Committee and Local A	Advisory Committees in each county or watershed. A Basin Oversight Committee
33	and county-level Local Advisory	Committees shall coordinate activities and account for progress. The membership
34	roles and responsibilities of these	committees are set forth in Paragraphs $(f)(\underline{d})$ and $(g)(\underline{e})$ of this Rule. Committees
35	activities shall be guided by the fo	bllowing constraints: Accounting for nutrient-reducing actions on agricultural land
36	within the basin shall follow requi	rements set forth in Subparagraph (d)(3) of this Rule. Producers may be eligible to

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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

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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 (c) 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 2

- (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

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1		appoi i	nted for five year terms and shall serve at the pleasure of the Secretary. Until such time as the
2		Comn	nission determines that long term maintenance of the nutrient loads is assured, the Secretary
3		shall (either reappoint members or replace members every five years. The Secretary shall solicit
4		nomir	nations for membership on this Committee to represent each of the following interests, and
5		shall a	appoint one nominee to represent each interest. The Secretary may appoint a replacement at
6		any t	ime for an interest in Parts (f)(1)(F) through (f)(1)(J) of this Rule upon request of
7		repres	rentatives of that interest: The Director of the Division of Water Resources shall be responsible
8		for m	aintaining the following membership composition. Until such time as the Commission
9		detern	nines that long-term compliance with this Rule is assured, the Director shall solicit one
10		nomin	nation for membership on this Committee from each agency in Parts (A) through (E) of this
1		Subpa	aragraph. The Director may appoint a replacement at any time for an interest in Parts (F)
12		throug	gh (I) of this Subparagraph upon request of representatives of that interest or by the request of
13		the Co	ommissioner of Agriculture:
4		(A)	Division of Soil and Water Conservation;
15		(B)	United States Department of Agriculture-Natural Resources Conservation Service (shall
16			serve in an "ex-officio" non-voting capacity and shall function as a technical program
17			advisor to the Committee);
18		(C)	North Carolina Department of Agriculture and Consumer Services;
19		(D)	North Carolina Cooperative Extension Service;
20		(E)	Division of Water Quality; Resources.
21		(F)	Up to two Environmental environmental interests;
22		(G)	Basinwide farming interests;
23		(H)	Pasture-based livestock interests; and
24		(I)	Cropland farming interests; and General farming interests; and
25		(J)	The scientific community with experience related to water quality problems in the Tar-
26			Pamlico River Basin.
27	(2)	ROLE	E. The Basin Oversight Committee shall:
28		(A)	Develop a tracking and accounting methodology pursuant to Subparagraph (f)(3) of this
29			Rule. A final nitrogen methodology shall be submitted to the Commission for approval
30			within one year after the effective date of this Rule. A final methodology for phosphorus
31			shall be submitted at the earliest date possible as determined by the Basin Oversight
32			Committee with input from the technical advisory committee described in Part (f)(2)(D) of
33			this Rule.
34		<u>(A)</u>	Continue to review, approve and summarize local nitrogen and phosphorus reduction
35			annual reports to ensure ongoing implementation of the accounting methods approved by
36			the Commission under the original version of this Rule in October 2002 for nitrogen and
37			November 2005 for phosphorus as conforming to the requirements of Subparagraph (d)(3)

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1			Subparagraph (3) of this Paragraph. Lot this Rule. Continue to present these reports as
2			initiated in 2002, to the Director annually;
3		<u>(B)</u>	Take actions called for under Subparagraphs (c)(2) of this Rule as needed to address
4			maintenance of the nitrogen and phosphorus reductions goals;
5		<u>(C)</u>	Identify and implement future refinements to the accounting methodology as needed to
6			reflect advances in scientific understanding, including establishment of nutrient reduction
7			efficiencies for BMPs.
8		(D)	Appoint a Reassemble as needed a phosphorus technical advisory committee within 6
9			months of the effective date of this Rule to update the qualitative phosphorus method
10			approved by the Commission in October 2005, titled Accounting Method for Tracking
11			Relative Changes in Agricultural Phosphorus Loading to the Tar-Pamlico River, in order
12			to revise phosphorus baseline values and annual changes in factors affecting agricultural
13			phosphorus loss. to inform the Basin Oversight Committee on rule related issues. The
14			Basin Oversight Committee shall direct the committee to take the following actions at a
15			minimum: monitor advances in scientific understanding related to phosphorus loading,
16			evaluate the need for additional management action to meet the phosphorus loading goal,
17			and report its findings to the Basin Oversight Committee on an annual basis. The Basin
18			Oversight Committee shall in turn report these findings and its recommendations to the
19			Commission on an annual basis following the effective date of this Rule, until such time
20			as the Commission, with input from the Basin Oversight Committee, determines that the
21			technical advisory committee has fulfilled its purpose. The Basin Oversight Committee
22			shall solicit nominations for this committee from the Division of Soil and Water
23			Conservation, United States Department of Agriculture Natural Resources Conservation
24			Service, North Carolina Department of Agriculture and Consumer Services, North
25			Carolina Cooperative Extension Service, Division of Water Quality, environmental
26			interests, agricultural interests, and the scientific community with experience related to the
27			committee's charge.
28		(D)	Review, approve and summarize county or watershed local strategies and present these
29			strategies to the Commission for approval within two years after the effective date of this
30			Rule.
31		(E)	Establish minimum requirements for, review, approve and summarize local nitrogen and
32			phosphorus loading annual reports as described under Subparagraph (g)(5) of this Rule,
33			and present these reports to the Commission each October, until such time as the
34			Commission determines that annual reports are no longer needed to assure long term
35			maintenance of the nutrient goals.
36	(3)	ACCC	DUNTING METHODOLOGY. The Basin Oversight Committee shall develop an accounting
37		metho	dology that meets the following requirements:

1	(A)	the methodology shall quantify baseline total nurogen and phosphorus loadings from
2		agricultural operations in each county and for the entire basin.
3	(B)	The methodology shall include a means of tracking implementation of BMPs, including
4		number, type, and area affected.
5	(C)	The methodology shall include a means of estimating incremental nitrogen and phosphorus
6		reductions from actual BMP implementation and of evaluating progress toward the nutrient
7		goals from BMP implementation. The methodology shall include nutrient reduction
8		efficiencies for individual BMPs and combinations of BMPs that can be implemented
9		toward the nitrogen and phosphorus goals.
10	(D)	The methodology shall allow for future refinements to the nutrient baseline loading
11		determinations, and to the load reduction accounting methodology.
12	(E)	The methodology shall provide for quantification of changes in nutrient loading due to
13		changes in agricultural land use, modifications in agricultural activity, or changes in
14		atmospheric nitrogen loading to the extent allowed by advances in technical understanding.
15	(F)	The methodology shall include a method to track maintenance of the nutrient net loads
16		after the initial eight years of this Rule, including tracking of changes in BMPs and
17		additional BMPs to offset new or increased sources of nutrients from agricultural
18		operations.
19	Succes	ss in meeting this Rule's purpose will be gauged by estimating percentage changes in nitrogen
20	loss fr	om agricultural lands in the Tar-Pamlico Basin and by evaluating broader trends in indicators
21	of pho	osphorus loss from agricultural lands in the Tar-Pamlico Basin. The Basin Oversight
22	Comm	nittee shall develop maintain, and update as indicated elsewhere in this Paragraph, accounting
23	metho	ds that meet the following requirements:
24	<u>(A)</u>	The nitrogen method shall estimate baseline and annual total nitrogen losses from
25		agricultural operations in each county and for the entire Tar-Pamlico Basin; Basin.
26		Baseline losses and relative loss reduction progress shall be adjusted as frequently as can
27		be supported by available data to account for lands permanently removed from agricultural
28		control through development;]
29	<u>(B)</u>	The nitrogen and phosphorus methods shall include a means of tracking implementation of
30		BMPs, including number, type, and area affected;
31	<u>(C)</u>	The nitrogen method shall include a means of estimating incremental nitrogen loss
32		reductions from implementation of BMPs that conform to requirements of Paragraph (g)
33		of this Rule and of evaluating progress toward and maintenance of the nutrient objectives
34		from changes in BMP implementation, fertilization, and changes in individual crop acres;
35	<u>(D)</u>	The nitrogen and phosphorus methods shall be refined as research and technical advances
36		allow; and

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1		<u>(E)</u>	The phosphorus method shall quantify baseline values for and annual changes in factors
2			affecting agricultural phosphorus loss as identified in the report by the phosphorus
3			technical advisory committee described elsewhere in this Paragraph.
4	(g)(e) LOCAL A	DVISO	RY COMMITTEES. The Local Advisory Committees shall have the following membership,
5	roles, and respon	sibilitie	s:
6	(1)	MEMI	BERSHIP. A [Per S.L. 2001, c. 355, a] Per S.L. 2001-355 a Local Advisory Committee shall
7		be app	ointed maintained as provided in this Paragraph in each county (or or watershed as specified
8		by the	Basin Oversight Committee) <u>Committee,</u> within the Tar-Pamlico River Basin. As directed by
9		S.L. 20	001, c. 355, the Local Advisory Committees shall be appointed on or before November 1,
10		2001. 7	They shall terminate upon a finding by the Environmental Management Commission that the
11		long-te	erm maintenance of nutrient loads in the Tar-Pamlico River Basin is assured. Each Local
12		Adviso	ory Committee shall consist of:
13		(A)	One representative of the local Soil and Water Conservation District;
14		(B)	One local representative of the United States Department of Agriculture- Natural
15			Resources Conservation Service;
16		(C)	One local representative of the North Carolina Department of Agriculture and Consumer
17			Services;
18		(D)	One local representative of the North Carolina Cooperative Extension Service;
19		(E)	One local representative of the North Carolina Division of Soil and Water Conservation;
20			and
21		(F)	At least five, but not more than 10 farmers who reside in the county or watershed. At least
22			two farmers that reside in the county.
23	(2)	APPO	INTMENT OF MEMBERS. The <mark>[Per S.L. 2001, c. 355,] <mark>Per S.L. 2001-355</mark>the Director of</mark>
24		the Di	vision of Water Quality Resources and the Director of the Division of Soil and Water
25		Conse	vation of the Department of Environment and Natural Resources Agriculture and Consumer
26		Service	<u>es</u> shall jointly appoint members described in Subparagraphs Parts (1)(A), (1)(B), (1)(D), and
27		(1)(E)	of this Subparagraph. [(e)(1)(A), (e)(1)(B), (e)(1)(D), and (e)(1)(E) of this Rule.] As directed
28		by <mark>S.L</mark>	. 2001, c. 355, S.L. 2001-355, the Commissioner of Agriculture shall appoint the members
29		describ	oed in Subparagraphs <u>Parts</u> [(e)(1)(C) and (e)(1)(F) of this Rule] <u>(1)(C) and (1)(F) of this</u>
30		<u>Subpar</u>	ragraph from persons nominated by nongovernmental organizations whose members produce
31		or man	age significant agricultural commodities in each county or watershed. Members of the Local
32		Adviso	ory Committees shall serve at the pleasure of their appointing authority.
33	<u>(3)</u>	ROLE	. The Local Advisory Committees shall:
34		<u>(A)</u>	Continue to submit annual reports to the Basin Oversight Committee estimating total crop
35			production on agricultural operations for the preceding calendar year, summarizing land
36			use changes in the county and making recommendations to the Basin Oversight Committee
37			on the need for updates to the accounting methodology. Reports shall include

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1			documentation on the BMPs implemented, including type and location, that satisfy the
2			requirements identified in Paragraph (f) of this Rule and documentation of any expired
3			contracts for BMPs; and
4		<u>(B)</u>	Take actions called for under Subparagraph (c)(2) of this Rule as needed to address
5			maintenance of the nitrogen and phosphorus reduction goals.
6		(A)	Conduct a registration process for persons subject to this Rule. This registration process
7			shall be completed within one year after the effective date of this Rule. It shall obtain
8			information that shall allow Local Advisory Committees to develop local strategies in
9			accordance with Subparagraph (g)(4) of this Rule. At minimum, the registration process
10			shall request the type and acreage of agricultural operations, nutrient reducing BMPs
11			implemented since January 1, 1992 and their operational status, and the acres affected by
12			those BMPs. It shall provide persons with information on requirements and options under
13			this Rule, and on available technical assistance and cost share options;
14		(B)	Designate a member agency to compile and retain copies of all individual plans produced
15			to comply with this Rule;
16		(C)	Develop local nutrient control strategies for agricultural operations, pursuant to
17			Subparagraph (g)(4) of this Rule, to meet the nitrogen and phosphorus goals assigned by
18			the Basin Oversight Committee. The nitrogen component of the control strategy shall be
19			submitted to the Basin Oversight Committee no later than twenty three months from the
20			effective date of this Rule. The phosphorus component of the control strategy shall be
21			submitted within one year of the date that the Commission approves a phosphorus
22			accounting methodology as described in Part (f)(2)(A) of this Rule;
23		(D)	Ensure that any changes to the design of the local strategy will continue to meet the nutrient
24			goals of this Rule; and
25		(E)	Submit annual reports to the Basin Oversight Committee, pursuant to Subparagraph (g)(5)
26			of this Rule, each May until such time as the Commission determines that annual reports
27			are no longer needed to assure long term maintenance of the nutrient goals.
28	(4)	LOCA	AL NUTRIENT CONTROL STRATEGIES. The Local Advisory Committees shall be
29		respor	nsible for developing county or watershed nutrient control strategies that meet the following
30		requir	ements. If a Local Advisory Committee fails to submit a nutrient control strategy as required
31		in Pa r	rt (g)(3)(C) of this Rule, the Commission may develop one based on the accounting
32		metho	dology that it approves pursuant to Part (f)(2)(A) of this Rule.
33		(A)	Local nutrient control strategies shall be designed to achieve the required nitrogen
34			reduction goals within five years after the effective date of this Rule, and to maintain those
35			reductions in perpetuity or until such time as this Rule is revised to modify this
36			requirement. Strategies shall be designed to meet the phosphorus loading goals within four

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1		years of the date that the Commission approves a phosphorus accounting methodology as
2		described in Part (f)(2)(A) of this Rule.
3		(B) Local nutrient control strategies shall specify the numbers and types of all agricultural
4		operations within their areas, numbers of BMPs that will be implemented by enrolled
5		operations and acres to be affected by those BMPs, estimated nitrogen and phosphorus
6		reductions, schedule for BMP implementation, and operation and maintenance
7		requirements.
8		(C) Local nutrient control strategies may prioritize BMP implementation to establish the most
9		efficient and effective means of achieving the nutrient goals.
10	(5)	ANNUAL REPORTS. The Local Advisory Committees be responsible for submitting annual
11		reports for their counties or watersheds. Annual reports shall be submitted to the Basin Oversight
12		Committee each May until such time as the Commission determines that annual reports are no longer
13		needed to assure long term maintenance of the nutrient goals. Annual reports shall quantify progress
14		toward the nutrient goals with sufficient detail to allow for compliance monitoring at the farm level.
15		The Basin Oversight Committee shall determine reporting requirements to meet these objectives.
16		Those requirements may include information on BMPs implemented by individual farms, proper
17		BMP operation and maintenance, BMPs discontinued, changes in agricultural land use or activity,
18		and resultant net nutrient loss changes.
19	(f) PRACTICE	STANDARDS. To receive nutrient reduction credit under the accounting methods described
20	elsewhere in this	s Rule, a BMP shall be included in the accounting method approved by the Commission under the
21	original version	of this Rule effective September 2001, or in a subsequent revision to that method identified in annual
22	reporting, and it	shall be implemented according to applicable nutrient-related standards identified by the BOC and
23	established by t	he NC Soil and Water Conservation Commission or the USDA-Natural Resources Conservation
24	Service in North	Carolina.
25		
26	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.
27		2001-355; S.L. 1997-458;
28		Eff. September 1, 2001;
29		Temporary Amendment Eff. January 1, 2002 (exempt from 270 day requirement-S.L. 2001-355).
30		Readonted Eff. November 1, 2019.

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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.

1	15A NCAC 02B	.0229 is readopted with changes as published in 33:16 NCR 1671-1717 as follows:
2		
3	15A NCAC 02B	3.0229.0733 TAR-PAMLICO <u>NUTRIENT STRATEGY: NEW AND EXPANDING</u>
4		WASTEWATER DISCHARGER REQUIREMENTS RIVER BASIN
5		NUTRIENT SENSITIVE WATERS MANAGEMENT STRATEGY:
6		NUTRIENT OFFSET PAYMENTS FOR NON-TAR-PAMLICO BASIN
7		ASSOCIATION MEMBERS
8	The following is	the management strategy for new and expanding wastewater dischargers in the Tar-Pamlico River
9	basin:	
10	<u>(1)</u>	Purpose. The purpose of this Rule is to establish minimum nutrient control requirements for new
11		and expanding point source discharges in the Tar-Pamlico River Basin in order to maintain or restore
12		water quality in the Pamlico Estuary and protect its designated uses.
13	(a) All waters o	f the Tar Pamlico River Basin have been supplementally classified nutrient sensitive waters (NSW)
14	pursuant to 15A	NCAC 2B .0223. The following procedures are to be implemented in accordance with 15A NCAC
15	2B .0223 in all v	vaters of the Tar Pamlico River Basin for those wastewater dischargers who are not members of the
16	Tar Pamlico Bas	vin Association;
17	(b) Existing wa	astewater dischargers expanding to greater than 0.5 million gallons per day (MGD), who are not
18	members of the	Tar Pamlico Basin Association, shall be required to offset their additional nutrient loads by funding
19	nonpoint source	control programs approved by the Division of Water Quality prior to the issuance of their NPDES
20	permit and at ea	ch renewal. Nitrogen and phosphorus loads shall be offset at the rate of 110 percent of the cost to
21	implement BMP	s designed to reduce that same load created by expanding the discharge above 0.5 MGD. Equations
22	for calculating th	ne offset costs are:
23	<u>(2)</u>	Applicability. This Rule applies to all discharges from wastewater treatment facilities in the Tar-
24		Pamlico River Basin that receive nitrogen- or phosphorus-bearing wastewater and are required to
25		obtain individual NPDES permits. This Rule applies to Tar-Pamlico Basin Association member
26		facilities on or after June 1, 2025. This Rule applies to other facilities upon this rule's effective date.
27	<u>(3)</u>	Definitions. The terms used in this Rule, in regard to point source dischargers, treatment facilities,
28		wastewater flows or discharges, or like matters shall be as defined in Rule .0701 of this Section and
29		as follows:
30		(a) "Existing" means that which obtained an NPDES permit on or before December 8, 1994.
31		(b) "Expanding" means that which increases beyond its permitted flow as defined in this Rule.
32		(c) "New" means that which had not obtained an NPDES permit on or before December 8,
33		<u>1994.</u>
34	(1)	For an existing facility with permitted flow of less than or equal to 0.5 MGD as of December 8,
35		1994 expanding to greater than 0.5 MGD who is not a member of the Tar Pamlico Basin
36		Association:
37		Payment=((PF _e x (TN+TP) x 1384) (0.5 x (TN+TP) x 1384)) x (BMP _e x 1.1) where:

1		Paymer	nt = the	nutrient offset payment (\$);					
2		$\frac{PF_e - P}{P}$	ermitte	1 Flow including expansion (MGD);					
3		TN = 6	TN = 6 mg/l total nitrogen for domestic discharges or BAT for industrial discharges;						
4		TP = 1	TP = 1 mg/l total phosphorus for domestic discharges or BAT for industrial discharges;						
5		1384 =	1384 = conversion factor;						
6		0.5 = th	e permi	tted flow (MGD) above which payment for additional nutrient loading is required;					
7		$BMP_e =$	Best N	Anagement Practice cost effectiveness rate in \$/kg as set in 15A NCAC 2B .0237 of					
8		this Sec	tion;						
9		1.1 = 11	10 perce	ent of the cost for the nonpoint source controls.					
10	<u>(4)</u>	This Ite	m speci	fies nutrient controls for new facilities.					
11		<u>(a)</u>	Propo	sed new wastewater dischargers shall evaluate all practical alternatives to surface					
12			water	discharge and report their findings pursuant to 15A NCAC 02H .0105(c)(2).					
13		<u>(b)</u>	The te	chnology-based nitrogen and phosphorus discharge limits for a new facility shall not					
14			[<mark>excec</mark>	ed loads equivalent to its active allocation and offset credit, or the applicable					
15			techno	ology based mass limit, whichever are less, for each nutrient. Technology based					
16			limits	are as follows:] exceed:					
17			<u>(i)</u>	[for facilities treating municipal or domestic wastewater, the mass load					
18				equivalent to a concentration of [3.0] 3.5 mg/L TN and 0.5 mg/L TP at the					
19				monthly average flow limit in the facility's NPDES permit; and					
20			<u>(ii)</u>	[for facilities treating industrial wastewater, the mass load equivalent to the					
21				best available technology economically [achievable or a discharge concentration					
22				of 3.2 mg/L TN and 0.5 mg/L TP] achievable, calculated at the monthly average					
23				flow limit in the facility's NPDES [permit, whichever is less.] permit.					
24		<u>(c)</u>	Propo	sed new dischargers submitting an application shall acquire nutrient allocation from					
25			existin	ng dischargers or nutrient offset credits pursuant to Rule .0703 of this Section,					
26			[<mark>Nutri</mark>	ent Offset Trading Program, or both, for the mass load dictated by this Item. The					
27			alloca	tion and offset credits shall be sufficient for [a period of no less than 10 years of					
28			discha	rge at the proposed design flow rate. Payment for no less than 10 years' allocation					
29			and c	redits shall be made in full prior to the ensuing permit issuance, except that the					
30			Direct	or may allow up to 20 years for payment if the applicant provides sufficient financial					
31			assura	nce that it can make such payment per G.S. 143-215.1(b)(4)(b).] any partial calendar					
32			year i	n which the permit becomes effective plus ten subsequent years of discharge at the					
33			propo	sed design flow rate in accordance with 15A NCAC 02H .0112(c).					
34		<u>(d)</u>	[No-a	application for a new discharge shall be made or accepted without written					
35			<mark>docun</mark>	nentation demonstrating that the requirements of Sub-Items (b) and (c) of this Item					
36			<mark>have l</mark>	been met.] The director shall not issue a permit authorizing discharge from a new					
37			<u>facilit</u>	y unless the applicant has satisfied the requirements of Sub-Items (a), (c), and (e) of					

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1			<u>this Ite</u>	em. If a facility's permit contains tiered flow limits for expansion, the director shall
2			<u>not aut</u>	horize an increased discharge unless the applicant has satisfied the requirements of
3			Sub-Ite	ems (a), (c), and (e) of this Item.
4		<u>(e)</u>	Subsec	quent applications for permit renewal shall demonstrate that the facility has sufficient
5			nitroge	en allocation or offset credits to meet its effluent nutrient limitations for [at least 10]
6			<mark>years t</mark>	peyond the requested renewal pursuant to] <u>any partial calendar year in which the</u>
7			<u>permit</u>	becomes effective plus ten subsequent years of discharge at the proposed design
8			flow ra	te in accordance with 15A NCAC 02H .0112(c).
9		<u>(f)</u>	The di	rector shall establish more stringent limits for nitrogen or phosphorus upon finding
10			that su	ch limits are necessary to protect water quality standards in localized areas.
11	<u>(5)</u>	This Ite	em speci	fies nutrient controls for expanding facilities.
12		<u>(a)</u>	[Facili	t ies proposing expansion] <u>Expanding facilities</u> shall evaluate all practical
13			alterna	tives to surface water discharge [and report its findings] pursuant to 15A NCAC
14			02Н <u>.0</u>	105(c)(2) prior to submitting an application to discharge. [.0105(e)(2).
15		<u>(b)</u>	The ni	trogen and phosphorus discharge limits for an [expanded] expanding facility shall
16			not exc	ceed the greater of loads equivalent to its active allocation and offset credit, or the
17			[<mark>applic</mark>	table following technology-based mass [limit, whichever is less, for each nutrient.
18			Techno	o <mark>logy based limits are as follows:</mark>]
19			<u>(i)</u>	[for facilities treating municipal or domestic [wastewaters,] wastewater, the
20				mass equivalent to a concentration of [3.0] 3.5 mg/L TN and 0.5 mg/L TP at the
21				monthly average flow limit in the NPDES permit; and
22			<u>(ii)</u>	[for facilities treating industrial wastewater, the mass load equivalent to the
23				best available technology economically [achievable or a discharge concentration
24				of 3.2 mg/L TN and 0.5 mg/L TP] achievable, calculated at the monthly average
25				flow limit in the facility's NPDES [permit, whichever is less.] permit.
26		<u>(c)</u>	<u>Faciliti</u>	ies submitting application for increased discharge or, where an existing permit
27			contair	ns tiered flow limits, for authorization to operate at an increased flow, shall acquire
28			or dem	onstrate contractual agreement to acquire, prior to authorization to discharge at the
29			<u>increas</u>	sed flow, nutrient [estuary] allocation from existing dischargers or [purchase]
30			nutrien	nt offset credits pursuant to Rule .0703 of this Section, [Nutrient Offset Trading
31			Progra	m, or both, for the proposed discharge above 0.5 million gallons per day (MGD).
32			The all	ocation and offset credits shall be sufficient to meet its effluent nutrient limitations
33			<u>for</u> [no	less than 10 any partial calendar year in which the permit becomes effective plus
34			ten sub	osequent years of discharge at the proposed design flow [rate.] rate in accordance
35			with 1:	5A NCAC 02H .0112(c). [Payment for no less than 10 years' allocation and credits
36			<mark>shall-b</mark>	e made in full prior to the ensuing permit issuance, except that the Director may

1			allow	up to 20 years for payment if the applicant provides sufficient financial assurance
2			that it	can make such payment per G.S. 143-215.1(b)(4)(b).
3		<u>(d)</u>	[<mark>No-a</mark>	pplication for an expanding facility shall be made or accepted without written
4			docun	nentation demonstrating that the requirements of Sub Items (a) through (c) of this
5			Item 1	nave been met.] The director shall not issue a permit authorizing [expansion of]
6			<u>increa</u>	sed discharge from an existing facility unless the applicant has satisfied the
7			requir	ements of [Sub-Item (d)] Sub-Items (a), (c), and (e) of this Item. If a facility's permit
8			contai	ns tiered flow limits for expansion, the director shall not [issue an authorization to
9			operat	ee] authorize discharge at an increased flow unless the applicant has satisfied the
10			requir	ements of [Sub-Item (d)] Sub-Items (a), (c), and (e) of this Item.
11		<u>(e)</u>	Subse	quent applications for permit renewal shall [further] demonstrate that the facility has
12			suffic	ient [means] nitrogen allocation or offset credits to meet its effluent nutrient
13			limita	tions for [at least] any partial calendar year in which the permit becomes effective
14			<mark>plus</mark> te	en <mark>subsequent</mark> years [beyond renewal. See] of discharge at the proposed design flow
15			rate in	accordance with 15A NCAC 02H .0112(c).
16		<u>(f)</u>	The d	irector shall establish more stringent limits for nitrogen or phosphorus upon finding
17			that su	ach limits are necessary to protect water quality standards in localized areas.
18		<u>(g)</u>	Existi	ng wastewater dischargers expanding to greater than 0.5 MGD design capacity may
19			petitic	on the Commission or its designee for an exemption from Sub-Items [(a) through (g)]
20			(a) thi	rough (c) and (e) of this Item upon meeting and maintaining all of the following
21			condit	ions:
22			<u>(i)</u>	The facility has reduced its annual average TN and TP loading by 30 percent from
23				its annual average 1991 TN and TP loading. Industrial facilities may alternatively
24				demonstrate that nitrogen and phosphorus are not part of the waste stream above
25				background levels.
26			<u>(ii)</u>	The expansion does not result in annual average TN or TP loading greater than 70
27				percent of the 1991 annual average TN or TP load. Permit limits may be
28				established to ensure that the 70 percent load is not exceeded.
29	(2)	For an	expandi	ng facility with a permitted flow of greater than or equal to 0.5 MGD as of December
30		8, 199	4 who is	not a member of the Tar Pamlico Basin Association:
31		Payme	ent=((PF	. x (TN+TP) x 1384) (PF x (TN+TP) x 1384)) x (BMP_e x 1.1) where:
32		Payme	ent = the	nutrient offset payment (\$);
33		PFe =	Permitte	d Flow including expansion (MGD);
34		PF = I	Permitted	Flow as of December 8, 1994 (MGD);
35		TN=	6 mg/l to	tal nitrogen for domestic discharges or BAT for industrial discharges;
36		TP = 1	l-mg/l-tot	tal phosphorus for domestic discharges or BAT for industrial discharges;
37		1384 =	- convers	vion factor;

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1		BMP _e = Best Management Practice cost effectiveness rate in \$/kg as set in 15A NCAC 2B .023/ of
2		this Section;
3		1.1 = 110 percent of the cost for the nonpoint source controls.
4	(c) New waste	water dischargers with permitted flows greater than or equal to 0.05 MGD, who are not members of
5	the Tar Pamlic	o Basin Association, shall be required to offset their nutrient loads by funding nonpoint source control
6	programs appro	oved by the Division of Water Quality prior to the issuance of their NPDES permit and at each renewal.
7	Nitrogen and p	hosphorus loads shall be offset at the rate of 110 percent of the cost to implement BMPs designed to
8	reduce that san	ne loading created by the new discharge above 0.05 MGD. The equation for calculating the offset costs
9	1S:	
10		Payment = PF x (TN+TP) x 1384 x (BMP _e x 1.1) where:
11		Payment = the nutrient offset payment (\$);
12		PF = Permitted Flow (MGD);
13		TN = 6 mg/l total nitrogen for domestic discharges or BAT for industrial discharges;
14		TP = 1 mg/l total phosphorus for domestic discharges or BAT for industrial discharges;
15		1384 = conversion factor;
16		BMP _e = Best Management Practice cost effectiveness rate in \$/kg as set in 15A NCAC 2B .0237 of
17		this Section;
18		1.1 = 110 percent of the cost for the nonpoint source controls.
19	(d) Existing w	rastewater dischargers expanding to greater than 0.5 MGD, who are not members of the Tar Pamlico
20	Basin Associat	ion, may petition the Commission or its designee for an exemption from Paragraph (b) of this Rule
21	upon meeting a	all of the following conditions:
22	(1)	For industrial facilities:
23		(A) The facility has reduced its annual average TN loading by 30 percent from its annual
24		average 1991 TN loading or nitrogen is not part of the waste stream above background
25		levels;
26		(B) The facility has reduced its annual average TP loading by 30 percent from its annual
27		average 1991 TP loading or phosphorus is not part of the waste stream above background
28		levels;
29		(C) The expansion does not result in annual average TN loading greater than 70 percent of the
30		1991 annual average TN load. Permit limits may be established to insure that the 70 percent
31		load is not exceeded;
32		(D) The expansion does not result in annual average TP loading greater than 70 percent of the
33		1991 annual average TP load. Permit limits may be established to insure that the 70 percent
34		load is not exceeded;
35		(E) To maintain its exemption from Paragraph (b) of this Rule, a facility must continue to meet
36		the requirements of Subparagraph (d)(1) Parts (A) through (D) of this Rule.
37	(2)	For municipal facilities:

1		(A)	The facility has reduced its annual average TN loading by 30 percent from its annual
2			average 1991 TN loading;
3		(B)	The facility has reduced its annual average TP loading by 30 percent from its annual
4			average 1991 TP loading;
5		(C)	The expansion does not result in annual average TN loading greater than 70 percent of the
6			1991 annual average TN load. Permit limits may be established to insure that the 70 percent
7			load is not exceeded;
8		(D)	The expansion does not result in annual average TP loading greater than 70 percent of the
9			1991 annual average TP load. Permit limits may be established to insure that the 70 percent
10			load is not exceeded;
11		(E)	To maintain its exemption from Paragraph (b) of this Rule, a facility must continue to meet
12			the requirements of Subparagraph (d)(2) Parts (A) through (D) of this Rule.
13			
14	History Note:	Author	ity G.S. 143-214.1; 143-215.1; 143-215.3(a)(1); 143B-282(a)-(d); S.L. 1997-458;
15		Eff. Ap	ril 1, 1997.
16		<u>Reado</u> j	oted Eff. November 1, 2019.

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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

<u>.0255:</u> 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.

1	15A NCAC 02I	B .0236 is	repealed th	rough rea	adoption as published	in 33:16 NCR 10	671-1717 as i	follows:	
2									
3	15A NCAC 02	В .0236	NEUSE	RIVER	BASIN-NUTRIEN	T SENSITIVE	WATERS	MANAGEMEN'	Т
4			STRATI	EGY: AG	RICULTURAL NIT	TROGEN LOAI	DING REDU	CTION	
5									
6	History Note:	Authori	ty G.S. 143	3.214.1; 1	43.214.7; 143.215.3(a)(1).			
7		Eff. Aug	gust 1, 199	8.					
8		Repeale	ed Eff. Nov	ember 1.	2019. (This rule has h	peen recodified to	15A NCAC	02B .0712)	

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1	15A NCAC 02E	3 .0237 is	repealed through readoption as published in 33:16 NCR 1671-1717 as follows:
2			
3	15A NCAC 021	3 .0237	BEST MANAGEMENT PRACTICE COST-EFFECTIVENESS RATE
4			
5	History Note:	Author	ity G.S. 143-214.1;
6		Eff. Ap	ril 1, 1997.
7		Reneal	ed Eff November 1 2019

1	15A NCAC 02I	B .0249 is repealed through readoption as published in 33:16 NCR 1671-1717 as follows:							
2									
3	15A NCAC 021	B .0239	NEUSE	RIVER	BASIN:	NUTRIENT	SENSITIVE	WATERS	MANAGEMENT
4			STRATI	EGY: NU	TRIENT	MANAGEM	ENT		
5									
6	History Note:	Author	ity G.S. 14.	3-214.1; 1	143-214.7,	: 143-215.3(a)	(1);		
7		Eff. Au	gust 1, 199	98.					
8		Repeal	ed Eff. Nov	ember 1.	2019.				

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1	15A NCAC 02E	3 .0255is	repealed through read	loption as p	publishe	d in 33	:16 NCR 1671-	1717 as follows:	:
2									
3	15A NCAC 021	3 .0255	TAR-PAMLICO	RIVER	BASI	N -	NUTRIENT	SENSITIVE	WATERS
4			MANAGEMENT	STRAT	EGY:	AGRI	CULTURAL	NUTRIENT	LOADING
5			GOALS						
6									
7	History Note:	Author	ity G.S. 143-214.1; 14	43-214.7; 1	43-215.	3(a)(1)	; 143-215.6A;	143-215.6B; 143	-215.6C;
8		Eff. Ap	ril 1, 2001.						
9		Repeal	ed Eff. November 1, 2	019. (This	rule ha	s been r	ecodified to 15	A NCAC 02B .03	732)

1	15A NCAC 02B	0257 is repealed through readoption as published in 33:16 NCR 1671-1717 as follows:
2		
3	15A NCAC 02B	0257 TAR-PAMLICO RIVER BASIN - NUTRIENT SENSITIVE WATERS
4		MANAGEMENT STRATEGY: NUTRIENT MANAGEMENT
5		
6	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;
7		143B-282(d);
8		Eff. April 1, 2001.
9		Repealed Eff. November 1, 2019.

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