

RRC STAFF OPINION

Please Note: This communication is either 1) only the recommendation of an RRC staff attorney as to action that the attorney believes the Commission should take on the cited rule at its next meeting, or 2) an opinion of that attorney as to some matter concerning that rule. The agency and members of the public are invited to submit their own comments and recommendations (according to RRC rules) to the Commission.

AGENCY: Environmental Management Commission

RULE CITATION: 15A NCAC 02B .0733

RECOMMENDATION DATE: June 20, 2025

RECOMMENDED ACTION:

- ☐ Approve, but note staff's comment
- ☒ Object, based on:
 - ☒ Lack of statutory authority
 - ☐ Unclear or ambiguous
 - ☒ Unnecessary
 - ☒ Failure to comply with the APA
 - ☐ Extend the period of review

COMMENT:

This rule amendment adds existing individual facility permit limitations to the text of a rule. Because individual facility permit limitations are not of "general applicability", and in light of the language of G.S. 150B-2(8a) and a recent Court of Appeals opinion interpreting that language, I recommend objection for the reasons outlined below.

Factual Background

This rule relates to a system of water quality regulation involving federal law, EPA action, state law, and state regulation. In short, pursuant to the federal Clean Water Act and EPA action, the State of North Carolina is under an obligation to improve specific elements of water quality in the Tar-Pamlico River basin (primarily around chlorophyll-a in this case). State law has created administrative processes to address that obligation. The EMC has rulemaking authority relevant to this issue and has determined what wastewater elements (phosphorous and nitrogen) to limit in order to address this obligation. The EMC and the Division of Water Resources (DEQ) are involved in the permitting process related to these limitations, with some oversight by the EPA.

Seth Ascher
Commission Counsel

Currently, there is an association permit that establishes discharge limits distributed between 15 wastewater treatment facilities. As a practical matter, EMC and DEQ take the values established in that permit into account when considering new or altered permits. In significant part, the amendment before the RRC codifies the limits established by that permit into the rule.

Legal Background

G.S. 150B-19.1(a)(1) states, “An agency may adopt only **rules** that are expressly authorized by federal and State law and that are necessary to serve the public interest.” **(Emphasis added)**

Pursuant to G.S. 150B-2(8a) a “rule” is defined as:

“Any agency regulation, standard, or statement of **general applicability** that implements or interprets an enactment of the General Assembly or Congress or a regulation adopted by a federal agency or that describes the procedure or practice requirements of an agency...” **(Emphasis added)**

A recent Court of Appeals case has elaborated that “a ‘regulation’ must have ‘general applicability’ to be a ‘rule’.” NC DEQ v. N.C. Farm Bureau, 291 N.C. App. 188, 194 (2023). That case goes on to point out that the phrase “general applicability” is not defined and must be given its ordinary meaning, which the Court summarizes as “A rule is generally applicable if it applies to most situations.” *Id.* at 195.¹ See also, Wal-Mart Stores East v. Hinton, 197 N.C. App. 30, 56 (2009) (noting that in a taxation context, “the Secretary’s decision to combine plaintiff’s financial results with its related corporations is not and could not have been a standard of ‘general applicability’ as described in the APA, and is therefore by definition not a ‘Rule.’ ”

Here, an individual permit limit only applies to a specific facility. So, it does not apply to “most situations.” So, while the processes outlined in this rule may be appropriate as generally applicable, I do not believe the individual facility values fall within the definition of a rule. These permit values are explicitly included in items 4 and 5 on page 2, but the entirety of the rule as written is interconnected with those items.

Practical Consequences of Including Individual Permits in Rule

I do note, that although this Commission is not called upon to consider this issue and I have not thoroughly researched the question, I have no reason to believe that the agency has acted outside of its **permitting** authority in establishing these facility specific values. But that does not mean they have the authority to set these values by **rule**.²

¹ While this case is currently valid law, the case was appealed and is currently awaiting an opinion from the NC Supreme Court. I cannot speculate how and if that will alter the reasoning applied here.

² The agency has pointed out to me that similarly structured rules are already in the Code. However, this Commission must consider the legality of each rule on its own merits, not with reference to what is

While this may seem like a technical distinction, it has practical implications for the quality of the administrative code. Permitting and rulemaking have distinct procedural requirements, and modifications via one method do not automatically modify the other. By its own text, this rule contemplates that the agency would need to waive or modify the individual values codified in rule in circumstances where permitting decisions alter these numbers. The APA contemplates agencies waiving or modifying a rule when the “rule established specific guidelines that the agency must follow in determining whether to waive or modify the requirement.” G.S. 150B-19(6). However, such a waiver or modification does not change the text of the administrative code. Meaning, if the agency went through their permitting process to change the values of an individual permit that was codified in this rule and waived the values to do so in this rule, the numbers in the rule would be rendered inaccurate and misleading to the public.

Practically, the text of the APA as well as the overall scheme of rulemaking laid out by the General Assembly leads me to the conclusion that the General Assembly did not intend for individualized permit values to be rules under the APA. Instead, the rules should be confined to the processes and standards for the issuance of permits, while the substance of the permits themselves exist in separate agency material.

Conclusion

As discussed above, it is my opinion that the individualized permitting values that are core to this rule do not meet the definition of a rule under the Administrative Procedure Act. Therefore, 15A NCAC 02B .0733 is not a “Rule” and the agency lacks statutory authority to adopt it. Further, the adoption of 15A NCAC 02B .0733 was not in accordance with Article 2A of G.S.150B as only “Rules” can be adopted. Lastly, as 15A NCAC 02B .0733 is not a “Rule” it cannot be “reasonably necessary” pursuant to G.S. 150B-21.9(a)(3) as only “Rules” can be reasonably necessary. For those reasons, I am recommending that the RRC object to 15A NCAC 02B .0733.

already in the code. Additionally, it appears to me that at least some of these rules were reviewed by this Commission prior to at least one appellate case informing this opinion. If the RRC objects to this rule and the agency believes other rules would suffer from similar issues, my unsolicited advice would be for the agency to update those rules, either independently or through readoption.

Seth Ascher
Commission Counsel

1 15A NCAC 02B .0733 IS AMENDED AS PUBLISHED IN 39:13 NCR 784 WITH CHANGES AS FOLLOWS:

2
3 15A NCAC 02B .0733 TAR-PAMLICO NUTRIENT STRATEGY: WASTEWATER DISCHARGE
4 REQUIREMENTS ~~NEW AND EXPANDING WASTEWATER DISCHARGER~~
5 REQUIREMENTS

6 The following is the National Pollutant Discharge Elimination System (NPDES) wastewater discharge management
7 strategy for new and expanding wastewater dischargers in the Tar-Pamlico River basin:

- 8 (1) Purpose. The purpose of this Rule is to establish minimum nutrient control requirements for ~~new~~
9 ~~and expanding~~ point source discharges in the Tar-Pamlico River Basin in order to maintain or restore
10 water quality in the Pamlico Estuary and protect its designated uses.
- 11 (2) Applicability. This Rule applies to all discharges from wastewater treatment facilities in the Tar-
12 Pamlico River Basin that receive nitrogen- or phosphorus-bearing wastewater and are required to
13 obtain individual NPDES permits. ~~This Rule applies to Tar Pamlico Basin Association member~~
14 ~~facilities on or after June 1, 2025. This Rule applies to other facilities upon this Rule's effective date.~~
- 15 (3) Definitions. The terms used in this Rule, in regard to point source dischargers, treatment facilities,
16 wastewater flows or discharges, or like matters, shall be as defined in Rule .0701 of this Section and
17 as ~~follows:~~ follows; except that if the terms conflict, the terms in this Rule shall control:
- 18 (a) ["Active Allocation"] "Tar-Pamlico Active Allocation" means that portion of an allocation
19 that has been applied toward and is expressed as a nutrient [limit] Tar-Pamlico limit in an
20 individual NPDES [permit.] permit for a discharger in the Tar-Pamlico River Basin;
- 21 (b) "Association" means the Tar-Pamlico Basin Association, a not-for-profit corporation
22 consisting of NPDES-permitted dischargers in the Tar-Pamlico River Basin; established
23 voluntarily by its members to work cooperatively to meet the aggregate Total Nitrogen
24 [TN] (TN) and Total Phosphorus [TP] (TP) allocations originally established in the Tar-
25 Pamlico Nutrient TMDL and subsequently in the group permit.
- 26 (c) "Commission" means the North Carolina Environmental Management Commission.
- 27 ~~(a)(d)~~ "Existing" means that which obtained an NPDES permit on or before December 8, 1994.
- 28 ~~(b)(e)~~ "Expanding" means that which increases beyond its permitted flow as defined in Sub-Item
29 (4)(h) Item (4) of this Rule.
- 30 (f) ["Limit"] "Tar-Pamlico Limit" means the mass quantity of nitrogen or phosphorus that a
31 discharger or group of dischargers is authorized through an NPDES permit to release into
32 surface waters of the Tar-Pamlico River Basin.
- 33 ~~(e)(g)~~ "New" means ~~that~~ a facility which had not obtained an NPDES permit on or before
34 December 8, 1994.
- 35 ~~(4)~~ (h) "Permitted flow" means the maximum monthly average flow authorized in a facility's
36 NPDES permit as of December 8, 1994.

(i) ~~["Reserve Allocation"]~~ "Tar-Pamlico Reserve Allocation" means allocation that is held by a permittee or other person but that has not been applied toward and is not expressed as a nutrient ~~limit~~ Tar-Pamlico limits in an individual NPDES ~~permit~~ permit of a discharger in the Tar-Pamlico River Basin:

(4) This Item specifies the total combined end of pipe nitrogen and phosphorus discharge allocation for existing Association point source dischargers.

(a) Unless revised as provided for in Items (7) through (9) of this Rule, in accordance with the Nitrogen and Phosphorus TMDL for the Tar-Pamlico River Estuary, approved in 1995 by the US Environmental Protection Agency (EPA), the total ~~active~~ Tar-Pamlico active allocations for nitrogen and phosphorus discharge ~~allocations~~ for Association point source dischargers shall not exceed 891,271 in pounds of nitrogen and 161,070 pounds of phosphorus per calendar year. The nutrient loads discharged annually by these point sources shall not exceed these nitrogen and phosphorus discharge allocations plus any nutrient offset credits obtained in accordance with G.S. 143-214.26 and Rule .0703 of this Section. In the event the Association's allocations are revised as provided for in Items (7) through (9) of this Rule, the NPDES group permit shall be modified to reflect those changes to the ~~active~~ Tar-Pamlico active allocations for nitrogen and phosphorus discharge mass allocations and ~~limits~~ Tar-Pamlico limits set forth in this Rule.

(b) The Commission shall ~~order future revisions in~~ revise the Nitrogen and Phosphorus TMDL and nitrogen and phosphorus discharge allocations whenever necessary to ensure that water quality in the estuary meets all applicable standards in 15A NCAC 02B .0200 or to conform with applicable State or federal requirements.

(5) This Item specifies the individual nitrogen and phosphorus discharge allocations for existing Association point source dischargers in accordance with the 1995 TMDL.

(a) Unless revised ~~through permit modifications~~ as provided for in Items (7) through (9) of this Rule, the following individual discharge mass allocations for total nitrogen and total phosphorus shall apply in conformance with the values in Item (4) of this Rule:

Facility Name	NPDES No.	Mass Allocations (pounds/year)	
		Total Nitrogen	Total Phosphorus
Belhaven Wastewater Treatment Plant (WWTP)	NC0026492	14,261	2,577
Bunn WWTP	NC0042269	4,278	773
Enfield WWTP	NC0025402	14,261	2,577
Franklin County WWTP	NC0069311	42,784	7,732
Greenville Greenville Utilities Commission WWTP	NC0023931	249,576	45,103
Louisburg WWTP	NC0020231	19,538	3,531
Oxford WWTP	NC0025054	49,915	9,021

Pinetops WWTP	NC0020435	4,278	773
Robersonville WWTP	NC0026042	25,671	4,639
[Rocky Mount] Tar River Regional WWTP	NC0030317	299,491	54,124
Scotland Neck WWTP	NC0023337	9,626	1,740
Spring Hope WWTP	NC0020061	5,705	1,031
Tarboro WWTP	NC0020605	71,307	12,887
Warrenton WWTP	NC0020834	28,523	5,155
Washington WWTP	NC0020648	52,054	9,407
Association Total WWTP			
[Active Allocation] Tar-Pamlico Active Allocation		891,271	161,070
[Allocation in Reserve] Tar-Pamlico Reserve Allocation		59,798	3,898

(b) In the event that the nitrogen and phosphorus TMDL and their discharge allocations for point sources are revised, as provided in ~~[Item (4)]~~ Sub-Item (4)(b) of this Rule, the Commission shall apportion the revised load among the existing facilities and shall revise discharge ~~allocations~~ ~~[allocations as needed]~~. The Commission ~~[may]~~ shall consider ~~[such factors as]~~ ~~[factors, including:~~

- (i) fate and transport of nitrogen and phosphorus in the river basin;
- (ii) technical feasibility and economic reasonableness of source reduction and treatment methods;
- (iii) economies of scale;
- (iv) nitrogen and phosphorus control measures already implemented;
- (v) probable need for growth and expansion; and
- (vi) incentives for nutrient management planning, utilities management, resource protection, and cooperative efforts among dischargers.

~~(5)(6)~~ This Item specifies nutrient controls for new facilities.

(a) ~~Proposed new wastewater dischargers~~ New facilities proposing to discharge wastewater shall evaluate all practical alternatives to surface water discharge pursuant to 15A NCAC 02H .0105(c)(2) prior to submitting an application to discharge.

(b) New facilities shall document in their permit application that they have acquired some combination of the following allocations and offsets sufficient to meet the annual ~~[limits]~~ Tar-Pamlico limits required elsewhere in this Item for the proposed discharge:

- (i) nitrogen and phosphorus allocations from existing dischargers;
- (ii) ~~[reserve allocation]~~ Tar-Pamlico reserve allocation pursuant to Sub-Item (c) of this Item; and
- (iii) nitrogen and phosphorus offset credits pursuant to Rule .0703 of this Section.

- Allocation and offset credits shall be sufficient for no less than 10 subsequent years of discharge at the proposed design flow rate in accordance with 15A NCAC 02H .0112(c).
- (c) New facilities proposing to use any portion of the reserve allocation Tar-Pamlico reserve allocation described in Sub-Item (5)(a) of this Rule shall submit a written request to the Division for approval of the proposed use. The request shall include concurrence for its use by the Association.
- ~~(b)(d)~~ New facilities shall meet ~~The~~ technology-based nitrogen and phosphorus discharge limits Tar-Pamlico limits that shall not exceed the following: ~~for a new facility shall not exceed:~~
- (i) For facilities treating municipal or domestic wastewater, the mass load equivalent to a concentration of 3.5 mg/L TN and 0.5 mg/L TP at the monthly average flow limit in the facility's NPDES permit; and
 - (ii) For facilities treating industrial wastewater, the mass load equivalent to the best available technology economically achievable, calculated at the monthly average flow limit in the facility's NPDES permit.
- ~~(e)~~ ~~Proposed new dischargers submitting an application shall acquire nutrient allocation from existing dischargers or nutrient offset credits pursuant to Rule .0703 of this Section for the mass load dictated by this Item. The allocation and offset credits shall be sufficient for any partial calendar year in which the permit becomes effective plus 10 subsequent years of discharge at the proposed design flow rate in accordance with 15A NCAC 02H .0112(e).~~
- ~~(d)~~ ~~The Director shall not issue a permit authorizing discharge from a new facility unless the applicant has satisfied the requirements of Sub Items (a), (e), and (e) of this Item. If a facility's permit contains tiered flow limits for expansion, the Director shall not authorize an increased discharge unless the applicant has satisfied the requirements of Sub Items (a), (e), and (e) of this Item.~~
- (e) Subsequent applications for permit renewal ~~or, where an existing permit will contain tiered~~ limits Tar-Pamlico limits requests to discharge at an increased flow, shall demonstrate that the facility has sufficient nitrogen and phosphorus allocation or offset credits to meet its effluent nutrient limitations Tar-Pamlico limitations for any partial calendar year in which the permit becomes effective plus 10 subsequent years of discharge at ~~the proposed~~ an increased design flow rate in accordance with 15A NCAC 02H .0112(c).
- ~~(f)~~ ~~The Director shall not issue a permit authorizing discharge from a new facility unless the applicant has satisfied the requirements of Sub-Items (a) through (d) of this Item. If a facility's permit contains tiered flow~~ limits Tar-Pamlico limits ~~for expansion, the Director shall not authorize an increased discharge unless the applicant has satisfied the same requirements of this Item.~~

- 1 ~~(f)~~(g) The Director shall establish more stringent ~~[limits]~~ Tar-Pamlico limits for nitrogen or
2 phosphorus upon finding that such ~~[limits]~~ Tar-Pamlico limits are necessary to protect
3 water quality standards in localized ~~[areas]~~ areas, in accordance with G.S. 143-215.1
- 4 ~~(6)~~(7) This Item specifies nutrient controls for expanding facilities.
- 5 (a) Expanding facilities shall evaluate all practical alternatives to surface water discharge
6 pursuant to 15A NCAC 02H .0105(c)(2) prior to submitting an application to discharge.
- 7 (b) The nitrogen and phosphorus discharge ~~[limits]~~ Tar-Pamlico limits for expanding non-
8 Association facilities shall be assigned in accordance with the following:
- 9 (i) Expanding non-Association municipal or domestic wastewater facilities
10 requesting permitted flows greater or equal to 0.1 MGD shall be assigned the mass
11 equivalent to a concentration of 3.5 mg/L TN and 0.5 mg/L TP at the monthly
12 average flow limit in the facility's NPDES permit; and
- 13 (ii) Expanding non-Association facilities treating industrial wastewater shall be
14 assigned the mass load equivalent to the best available technology economically
15 achievable, calculated at the monthly average flow limit in the facility's NPDES
16 permit.
- 17 (c) An expanding facility that is a member of the Association, as defined in Sub-Item (3)(b)
18 of this Rule, shall not exceed the nitrogen and phosphorus loads equivalent to its ~~[active~~
19 allocations] Tar-Pamlico active allocations unless they receive Division approval for an
20 increase in their discharge as described in this Item.
- 21 (d) Facilities submitting application for increased discharge or, where an existing permit will
22 contain tiered ~~[limits]~~ Tar-Pamlico limits for authorization to discharge at an increased
23 flow, may acquire nitrogen and phosphorus allocations from existing dischargers or
24 nitrogen and phosphorus offset credits pursuant to Rule .0703 of this Section, or may
25 acquire ~~[reserve allocation]~~ Tar-Pamlico reserve allocation in compliance with Sub-Item
26 (e) of this Item for the proposed discharge. The acquired allocations and offset credits,
27 combined with any preexisting allocations, shall be sufficient to meet its effluent nutrient
28 ~~[limits]~~ Tar-Pamlico limits as established in this item for any partial calendar year in which
29 the permit becomes effective plus 10 subsequent years of discharge at an increased design
30 flow rate in accordance with 15A NCAC 02H .0112(c).
- 31 (e) A facility that submits an application to increase its discharge may request approval from
32 the Division to use a portion of the ~~[reserve allocation]~~ Tar-Pamlico reserve allocation
33 described in Sub-Item (5)(a) of this Rule. Approval shall be based on the following criteria:
- 34 (i) The expanding facility demonstrates that upon expansion their nitrogen and
35 phosphorus discharge would not exceed the mass load equivalent to a
36 concentration of 3.5 mg/L TN and 0.5 mg/L TP, calculated at the monthly average
37 flow limit in the facility's NPDES permit;

- (ii) The expanding facility requesting use of [reserve allocation] Tar-Pamlico reserve allocation has received written approval from the Association.
- (iii) Should the facility cease to discharge, the portion of the [reserve allocation] Tar-Pamlico reserve allocation that was activated shall revert back to [reserve allocation] Tar-Pamlico reserve allocation; and
- (f) The Director shall not issue an NPDES permit authorizing increased discharge from an existing facility unless the applicant has satisfied the requirements of Sub-Items (a) through (e) of this Item. If a facility's permit contains tiered flow limits for expansion, the Director shall not authorize discharge at an increased flow unless the applicant has satisfied the same requirements of this Item.
- (f)(g) The Director shall modify an expanding facility's permit to establish more stringent [limits] Tar-Pamlico limits for nitrogen or phosphorus upon finding that such [limits] Tar-Pamlico limits are necessary to protect water quality standards in localized areas.
- ~~(b) The nitrogen and phosphorus discharge limits for an expanding facility shall not exceed the greater of loads equivalent to its active allocation and offset credit, or the following technology-based mass limits:~~
- ~~(i) For facilities treating municipal or domestic wastewater, the mass equivalent to a concentration of 3.5 mg/L TN and 0.5 mg/L TP at the monthly average flow limit in the NPDES permit; and~~
- ~~(ii) For facilities treating industrial wastewater, the mass load equivalent to the best available technology economically achievable, calculated at the monthly average flow limit in the facility's NPDES permit.~~
- ~~(c) Facilities submitting application for increased discharge or, where an existing permit contains tiered flow limits, for authorization to discharge at an increased flow, shall acquire or demonstrate contractual agreement to acquire, prior to authorization to discharge at the increased flow, nutrient allocation from existing dischargers or nutrient offset credits pursuant to Rule .0703 of this Section for the proposed discharge above 0.5 million gallons per day (MGD). The allocation and offset credits shall be sufficient to meet its effluent nutrient limitations for any partial calendar year in which the permit becomes effective plus 10 subsequent years of discharge at the proposed design flow rate in accordance with 15A NCAC 02H .0112(e).~~
- ~~(d) The Director shall not issue a permit authorizing increased discharge from an existing facility unless the applicant has satisfied the requirements of Sub-Items (a), (c), and (e) of this Item. If a facility's permit contains tiered flow limits for expansion, the Director shall not authorize discharge at an increased flow unless the applicant has satisfied the requirements of Sub-Items (a), (c), and (e) of this Item.~~

- (e) Subsequent applications for permit renewal shall demonstrate that the facility has sufficient nitrogen allocation or offset credits to meet its effluent nutrient limitations for any partial calendar year in which the permit becomes effective plus 10 subsequent years of discharge at the proposed design flow rate in accordance with 15A NCAC 02H .0112(e).
- (g) Existing wastewater dischargers expanding to greater than 0.5 MGD design capacity may petition the Director for an exemption from Sub Items (a) through (e) and (e) (a), (b), (d), and (e) of this Item upon meeting and maintaining all of the following conditions:
- (i) The facility has reduced its annual average TN and TP loading by 30 percent from its annual average 1991 TN and TP loading. Industrial facilities may alternatively demonstrate that nitrogen and phosphorus are not part of the waste stream above background levels.
- (ii) The expansion does not result in annual average TN or TP loading greater than 70 percent of the 1991 annual average TN or TP load. Permit limits shall be established to ensure that the 70 percent load is not exceeded.
- (8) This Item describes the option for dischargers to form a group compliance association or join an existing group compliance association, to collectively meet nitrogen and phosphorus load [limits] Tar-Pamlico limits.
- (a) Any or all facilities within the basin may form a group compliance association or join an existing group compliance association, to meet nitrogen and phosphorus [limits] Tar-Pamlico limits collectively. Any new association formed shall apply for and shall be subject to an NPDES group permit that establishes the effective total nitrogen and phosphorus [limits] Tar-Pamlico limits for the association and for its members. More than one group compliance association may be established. No facility may be a co-permittee member of more than one association formed pursuant to this Rule at any given time.
- (b) An association may modify its membership at any time upon notification to the Division. The Division shall adjust the nitrogen and phosphorus allocations and [limits] Tar-Pamlico limits in the NPDES group permit to reflect the change in membership.
- (c) No later than 180 days prior to coverage under a new NPDES group permit, or expiration of an existing group permit, the association and its members shall submit an application for an NPDES permit for the discharge of total nitrogen and total phosphorus to the surface waters of the Tar-Pamlico River Basin. The NPDES group permit shall be issued to the association and its members as co-permittees.
- (d) An association's [limit] Tar-Pamlico limit of total nitrogen and total phosphorus shall be the sum of its members' individual allocations and nutrient offset credits plus any other allocation and offset credits obtained by the association or its members pursuant to this Rule.

- 1 (e) An association and its members may reapportion their individual allocations and nutrient
2 offset credits on an annual basis. The NPDES group permit shall be modified to reflect the
3 revised individual allocations and ~~limits,~~ Tar-Pamlico limits.
- 4 (f) If an association does not meet its ~~limits~~ Tar-Pamlico limits in any year, it shall obtain or
5 use existing nutrient offset credits in accordance with G.S. 143-214.26 and Rule .0703 of
6 this Section to offset its mass exceedance no later than July 1 of the following year.
- 7 (g) An association's members shall be deemed compliant with the permit ~~limits~~ Tar-Pamlico
8 limits for total nitrogen and total phosphorus contained in their individually issued NPDES
9 permits while they are members in an association. An association's members shall be
10 deemed compliant with their individual ~~limits~~ Tar-Pamlico limits in the NPDES group
11 permit in any year in which the association is in compliance with its ~~limits~~ Tar-Pamlico
12 limits. If the association exceeds its group ~~limit,~~ Tar-Pamlico limit, the association and
13 any members that exceed their individual ~~limits~~ Tar-Pamlico limits in the NPDES group
14 permit shall be deemed to be out of compliance with the group permit.
- 15 (h) Upon the termination of a group compliance association, members of the association shall
16 be subject to the ~~limits~~ Tar-Pamlico limits and other nutrient requirements of their
17 individual NPDES permits.
- 18 (9) If an NPDES-permitted discharger or association of dischargers accepts wastewater from another
19 NPDES-permitted treatment facility in the Tar-Pamlico River Basin and that acceptance results in
20 the elimination of the discharge from that other treatment facility, the eliminated facility's total
21 nitrogen and phosphorus allocations shall be transferred into the receiving facility's NPDES permit
22 and added to its allocations.

23
24 *History Note: Authority G.S. 143-214.1; 143-215.1; 143-215.3(a)(1); 143-215.8B; 143B-282;*
25 *Eff. April 1, 1997;*
26 *Recodified from 15A NCAC 02B .0229 Eff. April 1, 2020;*
27 *Readopted April 1, 2020.*
28 *Amended Eff. July 1, 2025.*