TAR-PAMLICO NUTRIENT STRATEGY RULES

This Table lists the rules adopted by the EMC for the Tar-Pamlico Basin with links to the individual rule subjects.

Rule Subject	Rule Number 15A NCAC 2B	Date Adopted <u>by EMC</u>
1. Agriculture		
Nutrient Goals	.0255	Sept. 1, 2001**
Agriculture Strategy	.0256	Sept. 1, 2001
Ag Rule Modifications	S.L. 2001-355	Aug. 10, 2001
2. Nutrient Management	.0257	April 1, 2001
3. Urban Stormwater	.0258	April 1, 2001
4. Riparian Buffers (Add Link)		
Buffer Protection	.0259	Aug. 1, 2000
Buffer Mitigation	.0260	Aug. 1, 2000
Program Delegation	.0261	Aug. 1, 2000
5. Point Source Nutrient Offset	.0229	April 1, 1997

^{**} House Bill 570, signed into law by Governor Easley Aug. 10, 2001 as Session Law 2001-355, established this effective date.

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

All persons engaging in agricultural operations in the Tar-Pamlico River Basin, including those related to crops, horticulture, livestock, and poultry, shall collectively achieve and maintain certain nutrient loading levels. A management strategy to achieve this reduction is specified in Rule .0256 of this Rule. These Rules apply to livestock and poultry operations above certain size thresholds in the Tar-Pamlico River Basin, in addition to requirements for animal operations set forth in general permits issued pursuant to G.S. 143-215.10C. The nutrient loading goals to be met collectively by the persons specified here are as follows:

- (1) a 30 percent total nitrogen net loading reduction from 1991 loading from agriculture to the basin; and
- (2) no net increase in total phosphorus loading over 1991 levels.

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

15A NCAC 02B .0256 TAR-PAMLICO RIVER BASIN-NUTRIENT SENSITIVE WATERS MANAGEMENT STRATEGY: AGRICULTURAL NUTRIENT CONTROL STRATEGY

- (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.
 - (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. For the purposes of this Rule, agricultural operations are activities that relate to any of the following pursuits:
 - (1) The commercial production of crops or horticultural products other than trees. As used in this Rule, commercial shall mean activities conducted primarily for financial profit.
 - (2) Research activities in support of such commercial production.
 - (3) The production or management of any of the following number of livestock or poultry at any time, excluding nursing young:
 - (A) 20 or more horses;
 - (B) 20 or more cattle;
 - (C) 150 or more swine;
 - (D) 120 or more sheep;
 - (E) 130 or more goats;
 - (F) 650 or more turkeys;
 - (G) 3,500 or more chickens; or
 - (H) A number of any single species or combination of species of livestock or poultry that exceeds 20,000 pounds of live weight at any time.
 - (4) Certain tree-harvesting activities described and defined as follows.
 - (A) The one-time harvest of trees on land within a riparian buffer described in 15A NCAC 02B .0259 that was open farmland on September 1, 2001. This one-time harvest of trees may be conducted within one tree cropping interval only under a verifiable farm plan that received final approval from a local agricultural agency on or after September 1, 2001 and that expressly allowed the harvest of trees no earlier than 10 years after the trees are established and the return of the land to another agricultural pursuit.
 - (B) The one-time harvest of trees on land within a riparian buffer described in 15A NCAC 02B .0259 that had trees established under an agricultural incentive program as of September 1, 2001.
 - (C) All tree harvesting described in Subparagraphs (b)(4)(A) and (b)(4)(B) of this Rule shall comply with Forest Practices Guidelines Related to Water Quality codified at 15A NCAC 01I. The nutrient removal functions that were provided by trees prior to their harvest shall be replaced by other measures that are implemented by the owner of the land from which the trees are harvested.
 - (D) The following definitions shall apply to terms used in Subparagraphs (b)(4)(A) through (b)(4)(C) of this Rule.

- (i) "Agricultural incentive program" means any of the following programs and any predecessor program to any of the following programs:
 - (I) Agriculture Cost Share Program for Nonpoint Source Pollution Control established by G.S. 143-215.74.
 - (II) Conservation Reserve Enhancement Program established by 7 C.F.R. Part 1410 (January 1, 2001 Edition) and 15A NCAC 06G .0101 through 15A NCAC 06G .0106.
 - (III) Conservation Reserve Program established by 7 C.F.R. Part 1410 (January 1, 2001 Edition).
 - (IV) Environmental Quality Incentives Program established by 7 C.F.R. Part 1466 (January 1, 2001 Edition).
 - (V) Wetlands Reserve Program established by 7 C.F.R. Part 1467 (January 1, 2001 Edition).
 - (VI) Wildlife Habitat Incentives Program established by 7 C.F.R. Part 636 (January 1, 2001 Edition).
- (ii) "Local agricultural agency" means the North Carolina Cooperative Extension Service, the Farm Services Agency of the United States Department of Agriculture, the Natural Resources Conservation Service of the United States Department of Agriculture, a Soil and Water Conservation District created pursuant to G.S. 139-5, or their successor agencies.
- (iii) "Open farmland" means the footprint of land used for pasture or for crops or horticultural products other than trees. Open farmland may contain scattered trees if an open canopy existed on September 1, 2001 as determined from the most recent aerial photographs taken prior to September 1, 2001 for the Farm Services Agency of the United States Department of Agriculture.
- (iv) "Tree" means a woody plant with a diameter equal to or greater than five inches when measured at a height of four and one-half feet above the ground.
- (v) "Tree cropping interval" means the time required to establish and grow trees that are suitable for harvesting. The tree-cropping interval shall be set out in the farm plan and shall be no less than 10 years after the trees are established.
- (c) METHOD FOR RULE IMPLEMENTATION. This Rule shall be implemented through a cooperative effort between a Basin Oversight Committee and Local Advisory Committees in each county or watershed. 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:
 - (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.
- (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.
- 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) BASIN OVERSIGHT COMMITTEE. The Basin Oversight Committee shall have the following membership, role and responsibilities:
 - (1) MEMBERSHIP. The Commission shall delegate to the Secretary the responsibility of forming a Basin Oversight Committee within two months of the effective date of this Rule. Members shall be appointed for five-year terms and shall serve at the pleasure of the Secretary. Until such time as the Commission determines that long-term maintenance of the nutrient loads is assured, the Secretary shall either reappoint members or replace members every five years. The Secretary shall solicit nominations for membership on this Committee to represent each of the following interests, and shall appoint one nominee to represent each interest. The Secretary may appoint a replacement at any time for an interest in Parts (f)(1)(F) through (f)(1)(J) of this Rule upon request of representatives of that interest:
 - (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;
 - (F) Environmental interests;
 - (G) Basinwide farming interests;
 - (H) Pasture-based livestock interests;
 - (I) Cropland farming interests; and
 - (J) The scientific community with experience related to water quality problems in the Tar-Pamlico River Basin.
 - (2) ROLE. The Basin Oversight Committee shall:

- (A) Develop a tracking and accounting methodology pursuant to Subparagraph (f)(3) of this Rule. A final nitrogen methodology shall be submitted to the Commission for approval within one year after the effective date of this Rule. A final methodology for phosphorus shall be submitted at the earliest date possible as determined by the Basin Oversight Committee with input from the technical advisory committee described in Part (f)(2)(D) of this Rule.
- (B) Identify and implement future refinements to the accounting methodology as needed to reflect advances in scientific understanding, including establishment of nutrient reduction efficiencies for BMPs.
- (C) Appoint a technical advisory committee within 6 months of the effective date of this Rule to inform the Basin Oversight Committee on rule-related issues. The Basin Oversight Committee shall direct the committee to take the following actions at a minimum: monitor advances in scientific understanding related to phosphorus loading, evaluate the need for additional management action to meet the phosphorus loading goal, and report its findings to the Basin Oversight Committee on an annual basis. The Basin Oversight Committee shall in turn report these findings and its recommendations to the Commission on an annual basis following the effective date of this Rule, until such time as the Commission, with input from the Basin Oversight Committee, determines that the technical advisory committee has fulfilled its purpose. The Basin Oversight Committee shall solicit nominations for this committee from the Division of Soil and Water Conservation, United States Department of Agriculture-Natural Resources Conservation Service, North Carolina Department of Agriculture and Consumer Services, North Carolina Cooperative Extension Service, Division of Water Quality, environmental interests, agricultural interests, and the scientific community with experience related to the committee's charge.
- (D) Review, approve and summarize county or watershed local strategies and present these strategies to the Commission for approval within two years after the effective date of this Rule.
- (E) Establish minimum requirements for, review, approve and summarize local nitrogen and phosphorus loading annual reports as described under Subparagraph (g)(5) of this Rule, and present these reports to the Commission each October, until such time as the Commission determines that annual reports are no longer needed to assure long-term maintenance of the nutrient goals.
- (3) ACCOUNTING METHODOLOGY. The Basin Oversight Committee shall develop an accounting methodology that meets the following requirements:
 - (A) The methodology shall quantify baseline total nitrogen and phosphorus loadings from agricultural operations in each county and for the entire basin.
 - (B) The methodology shall include a means of tracking implementation of BMPs, including number, type, and area affected.
 - (C) The methodology shall include a means of estimating incremental nitrogen and phosphorus reductions from actual BMP implementation and of evaluating progress toward the nutrient goals from BMP implementation. The methodology shall include nutrient reduction efficiencies for individual BMPs and combinations of BMPs that can be implemented toward the nitrogen and phosphorus goals.
 - (D) The methodology shall allow for future refinements to the nutrient baseline loading determinations, and to the load reduction accounting methodology.
 - (E) The methodology shall provide for quantification of changes in nutrient loading due to changes in agricultural land use, modifications in agricultural activity, or changes in atmospheric nitrogen loading to the extent allowed by advances in technical understanding.
 - (F) The methodology shall include a method to track maintenance of the nutrient net loads after the initial eight years of this Rule, including tracking of changes in BMPs and additional BMPs to offset new or increased sources of nutrients from agricultural operations.
- (g) LOCAL ADVISORY COMMITTEES. The Local Advisory Committees shall have the following membership, roles, and responsibilities:
 - (1) MEMBERSHIP. A Local Advisory Committee shall be appointed as provided in this Paragraph in each county (or watershed as specified by the Basin Oversight Committee) within the Tar-Pamlico River Basin. As directed by S.L. 2001, c. 355, the Local Advisory Committees shall be appointed

on or before November 1, 2001. They shall terminate upon a finding by the Environmental Management Commission that the long-term maintenance of nutrient loads in the Tar-Pamlico River Basin is assured. Each Local Advisory Committee shall consist of:

- (A) One representative of the local Soil and Water Conservation District;
- (B) One local representative of the United States Department of Agriculture- Natural Resources Conservation Service;
- (C) One local representative of the North Carolina Department of Agriculture and Consumer Services;
- (D) One local representative of the North Carolina Cooperative Extension Service;
- (E) One local representative of the North Carolina Division of Soil and Water Conservation; and
- (F) At least five, but not more than 10 farmers who reside in the county or watershed.
- APPOINTMENT OF MEMBERS. The Director of the Division of Water Quality and the Director of the Division of Soil and Water Conservation of the Department of Environment and Natural Resources shall jointly appoint members described in Subparagraphs (g)(1)(A), (g)(1)(B), (g)(1)(D), and (g)(1)(E) of this Rule. As directed by S.L. 2001, c. 355, the Commissioner of Agriculture shall appoint the members described in Subparagraphs (g)(1)(C) and (g)(1)(F) of this Rule from persons nominated by nongovernmental organizations whose members produce or manage significant agricultural commodities in each county or watershed. Members of the Local Advisory Committees shall serve at the pleasure of their appointing authority.
- (3) ROLE. The Local Advisory Committees shall:
 - (A) Conduct a registration process for persons subject to this Rule. This registration process shall be completed within one year after the effective date of this Rule. It shall obtain information that shall allow Local Advisory Committees to develop local strategies in accordance with Subparagraph (g)(4) of this Rule. At minimum, the registration process shall request the type and acreage of agricultural operations, nutrient-reducing BMPs implemented since January 1, 1992 and their operational status, and the acres affected by those BMPs. It shall provide persons with information on requirements and options under this Rule, and on available technical assistance and cost share options;
 - (B) Designate a member agency to compile and retain copies of all individual plans produced to comply with this Rule;
 - (C) Develop local nutrient control strategies for agricultural operations, pursuant to Subparagraph (g)(4) of this Rule, to meet the nitrogen and phosphorus goals assigned by the Basin Oversight Committee. The nitrogen component of the control strategy shall be submitted to the Basin Oversight Committee no later than twenty-three months from the effective date of this Rule. The phosphorus component of the control strategy shall be submitted within one year of the date that the Commission approves a phosphorus accounting methodology as described in Part (f)(2)(A) of this Rule;
 - (D) Ensure that any changes to the design of the local strategy will continue to meet the nutrient goals of this Rule; and
 - (E) Submit annual reports to the Basin Oversight Committee, pursuant to Subparagraph (g)(5) of this Rule, each May until such time as the Commission determines that annual reports are no longer needed to assure long-term maintenance of the nutrient goals.
- (4) LOCAL NUTRIENT CONTROL STRATEGIES. The Local Advisory Committees shall be responsible for developing county or watershed nutrient control strategies that meet the following requirements. If a Local Advisory Committee fails to submit a nutrient control strategy as required in Part (g)(3)(C) of this Rule, the Commission may develop one based on the accounting methodology that it approves pursuant to Part (f)(2)(A) of this Rule.
 - (A) Local nutrient control strategies shall be designed to achieve the required nitrogen reduction goals within five years after the effective date of this Rule, and to maintain those reductions in perpetuity or until such time as this Rule is revised to modify this requirement. Strategies shall be designed to meet the phosphorus loading goals within four years of the date that the Commission approves a phosphorus accounting methodology as described in Part (f)(2)(A) of this Rule.
 - (B) Local nutrient control strategies shall specify the numbers and types of all agricultural operations within their areas, numbers of BMPs that will be implemented by enrolled

- operations and acres to be affected by those BMPs, estimated nitrogen and phosphorus reductions, schedule for BMP implementation, and operation and maintenance requirements.
- (C) Local nutrient control strategies may prioritize BMP implementation to establish the most efficient and effective means of achieving the nutrient goals.
- (5) ANNUAL REPORTS. The Local Advisory Committees shall be responsible for submitting annual reports for their counties or watersheds. Annual reports shall be submitted to the Basin Oversight Committee each May until such time as the Commission determines that annual reports are no longer needed to assure long-term maintenance of the nutrient goals. Annual reports shall quantify progress toward the nutrient goals with sufficient detail to allow for compliance monitoring at the farm level. The Basin Oversight Committee shall determine reporting requirements to meet these objectives. Those requirements may include information on BMPs implemented by individual farms, proper BMP operation and maintenance, BMPs discontinued, changes in agricultural land use or activity, and resultant net nutrient loading changes.

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

143-215.6C; S.L. 2001-355;

Eff. September 1, 2000;

Temporary Amendment Eff. January 1, 2002 (exempt from 270 day requirement-

S.L. 2001-355).

GENERAL ASSEMBLY OF NORTH CAROLINA SESSION 2001

SESSION LAW 2001-355 HOUSE BILL 570

AN ACT TO PROVIDE FOR THE IMPLEMENTATION OF THE ADMINISTRATIVE RULE ENTITLED "TAR-PAMLICO RIVER BASIN-NUTRIENT SENSITIVE WATERS MANAGEMENT STRATEGY: AGRICULTURAL NUTRIENT CONTROL STRATEGY" WITH CERTAIN MODIFICATIONS, TO AUTHORIZE THE ENVIRONMENTAL MANAGEMENT COMMISSION TO INCORPORATE THESE MODIFICATIONS INTO A REVISED ADMINISTRATIVE RULE, AND TO DIRECT THE SOIL AND WATER CONSERVATION COMMISSION TO APPROVE BEST MANAGEMENT PRACTICES AND A NUTRIENT LOADING POINT SYSTEM FOR PASTURE-BASED PRODUCTION AND MANAGEMENT OF LIVESTOCK.

The General Assembly of North Carolina enacts:

SECTION 1. Notwithstanding G.S. 150B-21.3(b), 15A NCAC 2B .0256, (Tar-Pamlico River Basin-Nutrient Sensitive Waters Management Strategy: Agricultural Nutrient Control Strategy), as adopted by the Environmental Management Commission on 12 October 2000 and approved by the Rules Review Commission on 20 November 2000, shall become effective on 1 September 2001 and shall be implemented as provided in Sections 2 through 4 of this act.

SECTION 2. (a) On or before 1 November 2001, a Local Advisory Committee shall be appointed as provided in this section in each county or watershed, as specified by the Basin Oversight Committee, within the Tar-Pamlico River Basin. The Local Advisory Committees shall terminate upon a finding by the Environmental Management Commission that the long-term maintenance of nutrient loads in the Tar-Pamlico River Basin is assured.

SECTION 2. (b) Each Local Advisory Committee shall consist of:

- (1) One representative of the local Soil and Water Conservation District.
- (2) One local representative of the Natural Resources Conservation Service of the United States Department of Agriculture.
- (3) One local representative of the North Carolina Cooperative Extension Service.
- (4) One local representative of the North Carolina Division of Soil and Water Conservation.
- (5) One local representative of the North Carolina Department of Agriculture and Consumer Services.
- (6) At least five, but not more than 10 farmers who reside in the county or watershed.

SECTION 2. (c) The Director of the Division of Water Quality and the Director of the Division of Soil and Water Conservation of the Department of Environment and Natural Resources shall jointly appoint members described in subdivisions (1) through (4) of subsection (b) of this section. The Commissioner of Agriculture shall appoint the members described in subdivisions (5) and (6) of subsection (b) of this section. The Commissioner of Agriculture shall appoint the members described in subdivision (6) of subsection (b) of this section from persons nominated by non-governmental organizations whose members produce or manage significant agricultural commodities in each county or watershed.

SECTION 2. (d) Members of the Local Advisory Committees serve at the pleasure of their appointing authority.

SECTION 3. (a) For purposes of 15A NCAC 2B .0256 and this act, "agricultural operation" is an activity that relates to any of the following pursuits:

- (1) The commercial production of crops or horticultural products other than trees.
- (2) Research activities in support of the commercial production of crops or horticultural products other than trees.
- (3) The production or management of any of the following number of livestock or poultry, excluding nursing young:

- a. 20 or more horses.
- b. 20 or more cattle.
- c. 150 or more swine.
- d. 120 or more sheep.
- e. 130 or more goats.
- f. 650 or more turkeys.
- g. 3,500 or more chickens.
- h. A number of any single species or combination of species of livestock or poultry that exceeds 20,000 pounds of live weight at any time.
- (4) The onetime harvest of trees on land within a riparian buffer described in 15A NCAC 2B .0259 that is open farmland on 1 September 2001. This onetime harvest of trees may be conducted within one tree cropping interval only under a verifiable farm plan that (i) receives final approval on or after 1 September 2001 by a local agricultural agency and (ii) expressly allows the harvest of trees no earlier than 10 years after the trees are established and the return of the land to another agricultural pursuit.
- (5) The onetime harvest of trees on land within a riparian buffer described in 15A NCAC 2B .0259 that has trees established under an agricultural incentive program as of 1 September 2001. SECTION 3.(b) All harvesting of trees shall comply with Forest Practices Guidelines Related to Water Quality codified at 15A NCAC 1I. The nutrient removal functions that were provided by trees prior to their harvest shall be replaced by other measures that are implemented by the owner of the land from which the trees are harvested.

SECTION 3. (c) As used in 15A NCAC 2B .0256 and this act:

- (1) "Agricultural incentive program" means any of the following programs and any predecessor program to any of the following programs:
 - Agriculture Cost Share Program for Nonpoint Source Pollution Control established by G.S. 143-215.74.
 - Conservation Reserve Enhancement Program established by 7 Code of Federal Regulations Part 1410 (1 January 2001 Edition) and 15A NCAC 6G .0101 through 15A NCAC 6G .0106.
 - c. Conservation Reserve Program established by 7 Code of Federal Regulations Part 1410 (1 January 2001 Edition).
 - d. Environmental Quality Incentives Program established by 7 Code of Federal Regulations Part 1466 (1 January 2001 Edition).
 - e. Wetlands Reserve Program established by 7 Code of Federal Regulations Part 1467 (1 January 2001 Edition).
 - f. Wildlife Habitat Incentives Program established by 7 Code of Federal Regulations Part 636 (1 January 2001 Edition).
- (2) "Commercial" means a pursuit conducted primarily for financial gain or profit.
- (3) "Local agricultural agency" means the North Carolina Cooperative Extension Service, the Farm Services Agency of the United States Department of Agriculture, the Natural Resources Conservation Service of the United States Department of Agriculture, a Soil and Water Conservation District created pursuant to G.S. 139-5, or their successor agencies.
- (4) "Open farmland" means the footprint of land used for pasture or for crops or horticultural products other than trees. Open farmland may contain scattered trees if an open canopy exists on 1 September 2001 as determined by the most recent aerial photographs taken for the Farm Services Agency of the United States Department of Agriculture.
- (5) "Tree" means a woody plant with a diameter equal to or greater than five inches when measured at a height of four and one-half feet above the ground.
- (6) "Tree cropping interval" means the time required to establish and grow trees that are suitable for harvesting. The tree-cropping interval shall be set out in the farm plan and shall be no less than 10 years after the trees are established.

SECTION 4. (a) No person who is subject to 15A NCAC 2B .0256 shall be required to implement a best management practice for pasture-based production or management of livestock until the Soil and Water Conservation Commission has approved best management practices for pasture-based production or

management of livestock and until the Environmental Management Commission approves a nutrient loading accounting methodology that includes credit for reductions in nutrient loading that have been achieved since 1 January 1992.

SECTION 4. (b) The Soil and Water Conservation Commission shall approve initial best management practices for pasture-based production or management of livestock no later than 1 September 2002. The Soil and Water Conservation Commission shall involve persons engaged in pasture-based production or management of livestock and organizations that represent these persons in the development of best management practices.

SECTION 4. (c) The Soil and Water Conservation Commission shall approve a point system applicable to pasture management practices no later than 1 September 2002. The Soil and Water Conservation Commission shall approve the point system based on recommendations from the Technical Review Committee established by G.S. 143-215.74B. The Technical Review Committee shall involve persons engaged in pasture-based production or management of livestock and organizations that represent these persons in the development of recommendations to the Soil and Water Conservation Commission regarding the point system. The Soil and Water Conservation Commission may make subsequent additions or amendments to the point system only by following the process outlined in this section. The objectives of the point system shall be to identify pasture management practices that either individually or in combination represent the best reasonable approximation of a thirty percent (30%) reduction in nitrogen loading and no increase in phosphorus loading as compared to the nutrient loading that would occur in the absence of those practices and to determine the target number of points that would reasonably best approximate that loading. The point system shall identify a range of pasture management practice types that provides point values both greater than and less than this target number. An individual who accumulates and maintains the target number of points shall not be subject to any additional requirement applicable to that individual's pasture-based production or management of livestock under 15A NCAC 2B

SECTION 4. (d) The Basin Oversight Committee shall incorporate the point system into the accounting methodology described in 15A NCAC 2B .0256(f)(3), and Local Advisory Committees shall account for progress by pasture operations using the point system, together with the percentage nitrogen reductions accomplished by non-pasture agricultural operations, as part of its annual reporting required by 15A NCAC 2B .0256(g)(4). In applying the accounting methodology, Local Advisory Committees shall credit only pasture management practices implemented after 1 January 1992 toward achievement of nitrogen and phosphorus goals.

SECTION 4. (e) The Basin Oversight Committee shall involve persons engaged in pasture-based production or management of livestock and organizations that represent these persons in the development of the nutrient loading accounting methodology described in 15A NCAC 2B .0256(f) (3). The Environmental Management Commission shall approve the nutrient loading accounting methodology no later than 1 March 2003.

SECTION 4. (f) As used in this section, the phrase "shall involve persons engaged in pasture-based production or management of livestock and organizations that represent these persons" means involving those persons and organizations in a manner consistent with the procedures set out in the memorandum dated 16 November 1994 that appears as Page III-12 of the North Carolina Agriculture Cost Share Program Manual (July 1998 Edition) prepared by the Division of Soil and Water Conservation of the Department of Environment and Natural Resources.

SECTION 5. (a) This act constitutes a recent act of the General Assembly within the meaning of G.S. 150B-21.1(a).

SECTION 5. (b) The Environmental Management Commission may adopt a temporary rule that incorporates the provisions of Sections 2 and 3 of this act. Notwithstanding G.S. 150B-21.1(d), a temporary rule adopted in accordance with this section shall remain in effect until a temporary or permanent rule adopted to replace the temporary rule becomes effective.

SECTION 5. (c) If the Environmental Management Commission adopts a temporary rule as provided in subsection (b) of this section, the Commission may thereafter amend the temporary rule to revise the number of livestock or poultry that constitutes an agricultural operation by adopting a temporary rule. In revising the number of livestock or poultry that constitutes an agricultural operation, the Commission shall consider the behavioral characteristics of each species, equivalent nutrient production of each species, and other relevant factors. Prior to the adoption of a temporary rule under this subsection, the Commission

shall publish a notice of intent to adopt a temporary rule in the North Carolina Register. The notice shall set out the text of the proposed temporary rule and include the name of the person to whom questions and written comment on the proposed temporary rule may be addressed. The Commission shall accept written comment on the proposed temporary rule for at least 30 days after the notice of intent to adopt a temporary rule is published in the North Carolina Register.

SECTION 6. Except as provided by Sections 2 and 3 of this act, this act does not limit the authority of the Environmental Management Commission to adopt rules to improve water quality and to limit nutrient loading from agricultural operations pursuant to Article 21 of Chapter 143 of the General Statutes.

SECTION 7. This act is effective when it becomes law. If the Environmental Management Commission adopts a temporary rule as provided in subsection (b) of Section 5 of this act, Sections 2 and 3 of this act expire when the temporary rule becomes effective. Section 4 of this act expires upon a finding by the Environmental Management Commission that the long-term maintenance of nutrient loads in the Tar-Pamlico River Basin is assured.

In the General Assembly read three times and ratified this the 1st day of August, 2001.

- s/ Beverly E. Perdue President of the Senate
- s/ James B. Black Speaker of the House of Representatives
- s/ Michael F. Easley Governor

Approved 11:42 a.m. this 10th day of August, 2001

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

- (a) PURPOSE. The purposes of this Rule are as follows, and are to be achieved within five years from the effective date of this Rule.
 - (1) To contribute to a 30 percent reduction in nitrogen loading to the Pamlico estuary from nutrient application (both inorganic fertilizer and organic nutrients) in the Tar-Pamlico basin, based on 1991 levels.
 - (2) To contribute to a capping of phosphorus loading to the estuary at 1991 levels from nutrient application (both inorganic fertilizer and organic nutrients) in the basin.
- (b) DEFINITIONS. The following definitions shall apply to terms used in this Rule.
 - (1) Applicator means a person who applies fertilizer to the land or the immediate supervisor of such person.
 - (2) Consultant means a person who is hired to provide professional advice to another person.
- (c) APPLICABILITY. This Rule shall apply as follows.
 - (1) This Rule shall apply to the following persons:
 - (A) Persons who own or manage cropland areas in the Tar-Pamlico River Basin for commercial purposes who have not developed a nutrient management plan for their property pursuant to 15A NCAC 02B .0256.
 - (B) Persons who own or manage commercial ornamental and floriculture areas and greenhouse production areas in the Tar-Pamlico River Basin.
 - (C) Persons who own or manage golf courses, grassed public recreational lands, grassed road or utility rights-of-way, or other turfgrass areas in the Tar-Pamlico River Basin.
 - (D) Persons who own or manage lawn and garden areas in residential, commercial, or industrial developments in the Tar-Pamlico River Basin except for residential landowners who apply fertilizer to their own property.
 - (2) This Rule, particularly Subparagraphs (d)(1) and (d)(2) of this Rule, shall apply to applicators hired by the persons listed in Subparagraph (c)(1) of this Rule to apply fertilizer to lands in the Tar-Pamlico River Basin.
 - (3) This Rule, particularly Subparagraph (d)(1) of this Rule, shall apply to applicators hired by residential landowners in the Tar-Pamlico basin.
 - (4) This Rule, particularly Subparagraph (d)(1) of this Rule, shall apply to nutrient management consultants hired by persons listed in this Paragraph to provide nutrient management advice for lands in the Tar-Pamlico River Basin.
- (d) REQUIREMENTS. Subject persons shall meet the following requirements:
 - (1) Persons responsible for applying nutrients to their own land or land that they manage in the Tar-Pamlico basin, applicators hired by residential landowners in the Tar-Pamlico basin, and consultants who prepare nutrient management plans for persons who own or manage land in the Tar-Pamlico basin shall either:
 - (A) Attend and complete nutrient management training pursuant to Paragraph (e) of this Rule; or
 - (B) Complete a nutrient management plan for all lands to which they apply or manage the application of nutrients, or for which they provide nutrient management advice, pursuant to Paragraph (f) of this Rule.
 - (2) Persons who hire an applicator to apply nutrients to the land that they own or manage shall either:
 - (A) Ensure that the applicator they hire has attended and completed nutrient management training pursuant to Paragraph (e) of this Rule; or
 - (B) Ensure that the applicator they hire has completed a nutrient management plan for the land that they own or manage pursuant to Paragraph (f) of this Rule; or
 - (C) Complete a nutrient management plan for the land that they own or manage pursuant to Paragraph (f) of this Rule and ensure that the applicator they hire follows this plan.
- (e) NUTRIENT MANAGEMENT TRAINING. Persons who choose to meet this Rule's requirements by completing nutrient management training shall meet the following requirements.

- (1) Persons subject to this Rule as of its effective date shall sign up with the Cooperative Extension Service or the Division within one year of the effective date to take the nutrient management training. Such persons shall obtain a certificate from Extension or the Division within five years from the effective date of this Rule verifying completion of training that addresses, at minimum, proper management of nitrogen and phosphorus.
- (2) Persons who become subject to this Rule after its effective date shall obtain a certificate from Extension or the Division within one year from the date that they become subject verifying completion of training that addresses, at minimum, proper management of nitrogen and phosphorus.
- (3) Persons who fail to sign up or to obtain the nutrient management certificate within the required timeframes or who are found by the Director to have knowingly failed to follow nutrient management requirements as referenced in Subparagraphs (f)(1)(A) (f)(1)(C) of this Rule shall be required to develop and properly implement nutrient management plans pursuant to Paragraph (f) of this Rule.
- (4) Training certificates must be kept on-site or be produced within 24 hours of a request by the Division.
- (f) NUTRIENT MANAGEMENT PLANS. Persons who choose to meet this Rule's requirements by completing a nutrient management plan shall meet the following requirements.
 - (1) Persons who are subject to this Rule as of its effective date and persons who become subject to this Rule after its effective date shall develop a nutrient management plan that meets the following standards within five years of the effective date or within 6 months from the date that they become subject, whichever is later.
 - (A) Nutrient management plans for cropland shall meet the standards and specifications adopted by the NC Soil and Water Conservation Commission, including those found in 15A NCAC 06E .0104 and 15A NCAC 06F .0104, which are incorporated herein by reference, including any subsequent amendments and additions to such rules that are in place at the time that plans are approved by a technical specialist as required under Subparagraph (f)(2) of this Rule.
 - (B) Nutrient management plans for turfgrass shall follow the North Carolina Cooperative Extension Service guidelines in "Water Quality and Professional Lawn Care" (NCCES publication number WQMM-155), "Water Quality and Home Lawn Care" (NCCES publication number WQMM-151), or guidelines distributed by land-grant universities. Copies may be obtained from the Division of Water Quality, 512 North Salisbury Street, Raleigh, North Carolina 27626 at no cost.
 - (C) Nutrient management plans for nursery crops and greenhouse production shall follow the Southern Nurserymen's Association guidelines promulgated in "Best Management Practices Guide For Producing Container-Grown Plants" or guidelines distributed by land-grant universities. Copies may be obtained from the Southern Nurserymen's Association, 1000 Johnson Ferry Road, Suite E-130, Marietta, GA 30068-2100 at a cost of thirty-five dollars (\$35.00). The materials related to nutrient management plans for turfgrass, nursery crops and greenhouse production are hereby incorporated by reference including any subsequent amendments and editions and are available for inspection at the Department of Environment and Natural Resources Library, 512 North Salisbury Street, Raleigh, North Carolina.
 - (2) The person who writes the nutrient management plan shall have the plan approved in writing by a technical specialist. Appropriate technical specialists shall be as follows.
 - (A) Nutrient management plans for cropland using either inorganic fertilizer or organic nutrients shall be approved by a technical specialist designated pursuant to the process and criteria specified in Rules adopted by the Soil and Water Conservation Commission for nutrient management planning, including 15A NCAC 06F .0105, excepting Subparagraph (a)(2) of that Rule.
 - (B) Nutrient management plans for turfgrass and nursery crops and greenhouse production shall be approved by a technical specialist designated by the Soil and

Water Conservation Commission pursuant to the process and criteria specified in 15A NCAC 06F .0105, excepting Subparagraph (a)(2) of that Rule. If the Soil and Water Conservation Commission does not designate such specialists, then the Environmental Management Commission shall do so using the same process and criteria.

- (3) Nutrient management plans and supporting documents must be kept on-site or be produced within 24 hours of a request by the Division.
- (4) The Division shall develop model nutrient management plans in consultation with the Cooperative Extension Service. The model plans shall address both nitrogen and phosphorus, and shall address the source of nutrients, the amount of nutrient applied, the placement of nutrients, and the timing of nutrient applications.
- (g) COMPLIANCE. Persons who fail to comply with this Rule are subject to enforcement measures authorized in G.S. 143-215.6A (civil penalties), G.S. 143-215.6B (criminal penalties), and G.S. 143-215.6C (injunctive relief).
- (h) BASINWIDE EDUCATION. The Division shall be responsible for developing and implementing an education program that informs homeowners in the basin on proper residential nutrient management. The program shall be designed to reach as much of the residential population of the basin as practical on an ongoing basis. At a minimum, it shall emphasize fundamental nutrient management principles as well as measures for reducing stormwater runoff from residential properties. The Division shall begin implementation of the program within three years of the effective date of this Rule.

History Note: Authority G. S. 143-214.1; 143-214.7; 143-215.3(a)(1); 143-215.6A; 143-215.6B; 143-215.6C; 143B-282(d); Eff. April 1, 2001.

15A NCAC 02B .0258 TAR-PAMLICO RIVER BASIN-NUTRIENT SENSITIVE WATERS MANAGEMENT STRATEGY: BASINWIDE STORMWATER REQUIREMENTS

- (a) PURPOSE. The purposes of this Rule are as follows.
 - (1) To achieve and maintain a reduction in nitrogen loading to the Pamlico estuary from lands in the Tar-Pamlico River Basin on which new development occurs. The goal of this Rule is to achieve a 30 percent reduction relative to pre-development levels;
 - (2) To limit phosphorus loading from these lands to the estuary. The goal of this Rule is to limit phosphorus loading to pre-development levels;
 - (3) To provide control for peak stormwater flows from new development lands to ensure that the nutrient processing functions of existing riparian buffers and streams are not compromised by channel erosion; and
 - (4) To minimize, to the greatest extent practicable, nitrogen and phosphorus loading to the estuary from existing developed areas in the basin.
- (b) APPLICABILITY. This Rule shall apply to local governments in the Tar-Pamlico basin according to the following criteria.
 - (1) This Rule shall apply to the following municipal areas:
 - (A) Greenville
 - (B) Henderson
 - (C) Oxford
 - (D) Rocky Mount
 - (E) Tarboro
 - (F) Washington
 - (2) This Rule shall apply to the following counties:
 - (A) Beaufort
 - (B) Edgecombe
 - (C) Franklin
 - (D) Nash
 - (E) Pitt
 - (3) The Environmental Management Commission may designate additional local governments as subject to this Rule by amending this Rule based on the potential of those jurisdictions to contribute significant nutrient loads to the Tar-Pamlico River. At a minimum, the Commission shall review the need for additional designations as part of the Basinwide process for the Tar-Pamlico River Basin. The Commission shall consider, at a minimum, the following criteria related to local governments: population within the basin, population density, past and projected growth rates, proximity to the estuary, and the designation status of municipalities within candidate counties.
- (c) REQUIREMENTS. All local governments subject to this Rule shall develop stormwater management programs for submission to and approval by the Commission according to the following minimum standards:
 - (1) A requirement that developers submit a stormwater management plan for all new developments proposed within their jurisdictions. These stormwater plans shall not be approved by the subject local governments unless the following criteria are met:
 - (A) The nitrogen load contributed by the proposed new development activity shall not exceed 70 percent of the average nitrogen load contributed by the non-urban areas in the Tar-Pamlico River basin based on land use data and nitrogen export research data. Based on 1995 land use data and available research, the nitrogen load value shall be 4.0 pounds per acre per year;
 - (B) The phosphorus load contributed by the proposed new development activity shall not exceed the average phosphorus load contributed by the non-urban areas in the Tar-Pamlico River basin based on land use data and phosphorus export research data. Based on 1995 land use data and available research, the phosphorus load value shall be 0.4 pounds per acre per year;
 - (C) The new development shall not cause erosion of surface water conveyances. At a minimum, the new development shall not result in a net increase in peak flow leaving the site from predevelopment conditions for the 1-year, 24-hour storm event; and
 - (D) Developers shall have the option of partially offsetting their nitrogen and phosphorus loads by providing treatment of off-site developed areas. The off-site area must drain to the same classified surface water, as defined in the Schedule of Classifications, 15A NCAC 2B .0316, that the development site drains to most directly. The developer must provide legal assurance of the dedicated use of the off-site area for the purposes described here, including achievement of specified nutrient load reductions and provision for regular operation and

maintenance activities, in perpetuity. The legal assurance shall include an instrument, such as a conservation easement, that maintains this restriction upon change of ownership or modification of the off-site property. Before using off-site treatment, the new development must attain a maximum nitrogen export of six pounds/acre/year for residential development and 10 pounds/acre/year for commercial or industrial development.

- (2) A public education program to inform citizens of how to reduce nutrient pollution and to inform developers about the nutrient and flow control requirements set forth in Part (c)(1).
- (3) A mapping program that includes major components of the municipal separate storm sewer system, waters of the State, land use types, and location of sanitary sewers.
- (4) A program to identify and remove illegal discharges.
- (5) A program to identify and prioritize opportunities to achieve nutrient reductions from existing developed areas.
- (6) A program to ensure maintenance of BMPs implemented as a result of the provisions in Subparagraphs (c)(1) and (c)(5).
- (7) A program to ensure enforcement and compliance with the provisions in Subparagraph (c)(1).
- (8) Local governments may include regional or jurisdiction-wide strategies within their stormwater programs as alternative means of achieving partial nutrient removal or flow control. At a minimum, such strategies shall include demonstration that any proposed measures will not contribute to degradation of surface water quality, degradation of aquatic or wetland habitat or biota, or destabilization of conveyance structure of involved surface waters. Such local governments shall also be responsible for including appropriate supporting information to quantify nutrient and flow reductions provided by these measures and describing the administrative process for implementing such strategies.
- (d) TIMEFRAME FOR IMPLEMENTATION. The timeframe for implementing the stormwater management program shall be as follows:
 - (1) Within 12 months of the effective date of this Rule, the Division shall submit a model local stormwater program that embodies the minimum criteria described in Paragraph (c) of this Rule to the Commission for approval. The Division shall work in cooperation with subject local governments in developing this model program.
 - (2) Within 12 months of the Commission's approval of the model local stormwater program or within 12 months of a local government's later designation pursuant to Subparagraph (b)(3), subject local governments shall submit their local stormwater management programs to the Commission for review and approval. These local programs shall meet or exceed the requirements in Paragraph (c) of this Rule.
 - (3) Within 18 months of the Commission's approval of the model local stormwater program or within 18 months of a local government's later designation pursuant to Subparagraph (b)(3), subject local governments shall adopt and implement their approved local stormwater management program.
 - (4) Local governments administering a stormwater management program shall submit annual reports to the Division documenting their progress and net changes to nitrogen load by October 30 of each year.
- (e) COMPLIANCE. A local government that fails to submit an acceptable local stormwater management program within the timeframe established in this Rule or fails to implement an approved program shall be in violation of this Rule. In this case, the stormwater management requirements for its jurisdiction shall be administered through the NPDES municipal stormwater permitting program per 15A NCAC 2H .0126. Any local government that is subject to an NPDES municipal stormwater permit pursuant to this Rule shall:
 - (1) Develop and implement comprehensive stormwater management program to reduce nutrients from both existing and new development. This stormwater management program shall meet the requirements of Paragraph (c) of this Rule for new and existing development.
 - (2) Be subject to the NPDES permit for at least one permitting cycle (five years) before it is eligible to submit a local stormwater management program to the Commission for consideration and approval.

History Note: Authority G.S. 143-214.1; 143-214.7; 143-215.3(a)(1); 143-215.6A; 143-215.6B; 143-215.6C; 143-282(d); Eff. April 1, 2001.

15A NCAC 02B .0259 TAR-PAMLICO RIVER BASIN: NUTRIENT SENSITIVE WATERS MANAGEMENT STRATEGY: PROTECTION AND MAINTENANCE OF EXISTING RIPARIAN BUFFERS

The following is the management strategy for maintaining and protecting existing riparian buffers in the Tar-Pamlico River Basin.

- (1) PURPOSE. The purpose of this Rule shall be to protect and preserve existing riparian buffers to maintain their nutrient removal functions, in the entire Tar-Pamlico River Basin, whose surface waters are described in the Schedule of Classifications, 15A NCAC 2B .0316.
- (2) DEFINITIONS. For the purpose of this Rule, these terms shall be defined as follows:
 - (a) 'Channel' means a natural water-carrying trough cut vertically into low areas of the land surface by erosive action of concentrated flowing water or a ditch or canal excavated for the flow of water. (current definition in Forest Practice Guidelines Related to Water Quality, 15A NCAC 1I .0102)
 - (b) 'DBH' means Diameter at Breast Height of a tree, which is measured at 4.5 feet above ground surface level.
 - (c) 'Ditch or canal' means a man-made channel other than a modified natural stream constructed for drainage purposes that is typically dug through inter-stream divide areas. A ditch or canal may have flows that are perennial, intermittent, or ephemeral and may exhibit hydrological and biological characteristics similar to perennial or intermittent streams.
 - (d) 'Ephemeral (stormwater) stream' means a feature that carries only stormwater in direct response to precipitation with water flowing only during and shortly after large precipitation events. An ephemeral stream may or may not have a well-defined channel, the aquatic bed is always above the water table, and stormwater runoff is the primary source of water. An ephemeral stream typically lacks the biological, hydrological, and physical characteristics commonly associated with the continuous or intermittent conveyance of water.
 - (e) 'Forest plantation' means an area of planted trees that may be conifers (pines) or hardwoods. On a plantation, the intended crop trees are planted rather than naturally regenerated from seed on the site, coppice (sprouting), or seed that is blown or carried into the site.
 - (f) 'High Value Tree' means a tree that meets or exceeds the following standards: for pine species, 14-inch DBH or greater or 18-inch or greater stump diameter; and, for hardwoods and wetland species, 16-inch DBH or greater or 24-inch or greater stump diameter.
 - (g) 'Intermittent stream' means a well-defined channel that contains water for only part of the year, typically during winter and spring when the aquatic bed is below the water table. The flow may be heavily supplemented by stormwater runoff. An intermittent stream often lacks the biological and hydrological characteristics commonly associated with the conveyance of water.
 - (h) 'Modified natural stream' means an on-site channelization or relocation of a stream channel and subsequent relocation of the intermittent or perennial flow as evidenced by topographic alterations in the immediate watershed. A modified natural stream must have the typical biological, hydrological, and physical characteristics commonly associated with the continuous conveyance of water.
 - (i) 'Perennial stream' means a well-defined channel that contains water year round during a year of normal rainfall with the aquatic bed located below the water table for most of the year. Groundwater is the primary source of water for a perennial stream, but it also carries stormwater runoff. A perennial stream exhibits the typical biological, hydrological, and physical characteristics commonly associated with the continuous conveyance of water.
 - (j) 'Perennial waterbody' means a natural or man-made basin that stores surface water permanently at depths sufficient to preclude growth of rooted plants, including lakes, ponds, sounds, non-stream estuaries and ocean. For the purpose of the State's riparian buffer protection program, the waterbody must be part of a natural drainageway (i.e., connected by surface flow to a stream).

- (k) 'Stream' means a body of concentrated flowing water in a natural low area or natural channel on the land surface.
- (l) 'Surface waters' means all waters of the state as defined in G.S. 143-212 except underground waters.
- (m) 'Tree' means a woody plant with a DBH equal to or exceeding five inches.
- (3) APPLICABILITY. This Rule shall apply to 50-foot wide riparian buffers directly adjacent to surface waters in the Tar-Pamlico River Basin (intermittent streams, perennial streams, lakes, ponds, and estuaries), excluding wetlands. Except as described in (4)(a)(iii), wetlands adjacent to surface waters or within 50 feet of surface waters shall be considered as part of the riparian buffer but are regulated pursuant to 15A NCAC 2H .0506. The riparian buffers protected by this Rule shall be measured pursuant to Item (4) of this Paragraph. For the purpose of this Rule, a surface water shall be present if the feature is approximately shown on either the most recent version of the soil survey map prepared by the Natural Resources Conservation Service of the United States Department of Agriculture or the most recent version of the 1:24,000 scale (7.5 minute) quadrangle topographic maps prepared by the United States Geologic Survey (USGS). Riparian buffers adjacent to surface waters that do not appear on either of the maps shall not be subject to this Rule. Riparian buffers adjacent to surface waters that appear on the maps shall be subject to this Rule unless one of the following applies.
 - (a) EXEMPTION WHEN AN ON-SITE DETERMINATION SHOWS THAT SURFACE WATERS ARE NOT PRESENT. When a landowner or other affected party believes that the maps have inaccurately depicted surface waters, he or she shall consult the Division or the appropriate delegated local authority. Upon request, the Division or delegated local authority shall make on-site determinations. Any disputes over on-site determinations shall be referred to the Director in writing. A determination of the Director as to the accuracy or application of the maps is subject to review as provided in Articles 3 and 4 of G. S. 150B. Surface waters that appear on the maps shall not be subject to this Rule if an on-site determination shows that they fall into one of the following categories.
 - (i) Ditches and manmade conveyances other than modified natural streams unless constructed for navigation or boat access.
 - (ii) Manmade ponds and lakes that are located outside natural drainage ways.
 - (iii) Ephemeral (stormwater) streams.
 - (b) EXEMPTION WHEN EXISTING USES ARE PRESENT AND ONGOING. This Rule shall not apply to portions of the riparian buffer where a use is existing and ongoing according to the following:
 - (i) A use shall be considered existing if it was present within the riparian buffer as of January 1, 2000. Existing uses shall include, but not be limited to, agriculture, buildings, industrial facilities, commercial areas, transportation facilities, maintained lawns, utility lines and on-site sanitary sewage systems. Only the portion of the riparian buffer that contains the footprint of the existing use is exempt from this Rule. Activities necessary to maintain uses are allowed provided that no additional vegetation is removed from Zone 1, except that grazed or trampled by livestock, and existing diffuse flow is maintained. Grading and revegetating Zone 2 is allowed provided that the health of the vegetation in Zone 1 is not compromised, the ground is stabilized and existing diffuse flow is maintained.
 - (ii) At the time an existing use is proposed to be converted to another use, this Rule shall apply. An existing use shall be considered to be converted to another use if any of the following applies:
 - (A) Impervious surface is added to the riparian buffer in locations where it did not exist previously.
 - (B) An agricultural operation within the riparian buffer is converted to a non-agricultural use.
 - (C) A lawn within the riparian buffer ceases to be maintained.
- (4) ZONES OF THE RIPARIAN BUFFER. The protected riparian buffer shall have two zones as follows:

- (a) Zone 1 shall consist of a vegetated area that is undisturbed except for uses provided for in Item (6) of this Paragraph. The location of Zone 1 shall be as follows:
 - (i) For intermittent and perennial streams, Zone 1 shall begin at the most landward limit of the top of bank or the rooted herbaceous vegetation and extend landward a distance of 30 feet on all sides of the surface water, measured horizontally on a line perpendicular to the surface water.
 - (ii) For ponds, lakes and reservoirs located within a natural drainage way, Zone 1 shall begin at the most landward limit of the normal water level or the rooted herbaceous vegetation and extend landward a distance of 30 feet, measured horizontally on a line perpendicular to the surface water.
 - (iii) For surface waters within the 20 Coastal Counties (defined in 15A NCAC 2B .0202) within the jurisdiction of the Division of Coastal Management, Zone 1 shall begin at the most landward limit of:
 - (a) the normal high water level;
 - (b) the normal water level; or
 - (c) the landward limit of coastal wetlands as defined by the Division of Coastal Management;

and extend landward a distance of 30 feet, measured horizontally on a line perpendicular to the surface water, whichever is more restrictive.

- (b) Zone 2 shall consist of a stable, vegetated area that is undisturbed except for activities and uses provided for in Item (6) of this Paragraph. Grading and revegetating Zone 2 is allowed provided that the health of the vegetation in Zone 1 is not compromised. Zone 2 shall begin at the outer edge of Zone 1 and extend landward 20 feet as measured horizontally on a line perpendicular to the surface water. The combined width of Zones 1 and 2 shall be 50 feet on all sides of the surface water.
- (5) DIFFUSE FLOW REQUIREMENT. Diffuse flow of runoff shall be maintained in the riparian buffer by dispersing concentrated flow and reestablishing vegetation.
 - (a) Concentrated runoff from new ditches or manmade conveyances shall be converted to diffuse flow before the runoff enters Zone 2 of the riparian buffer.
 - (b) Periodic corrective action to restore diffuse flow shall be taken if necessary to impede the formation of erosion gullies.
- (6) TABLE OF USES. The following chart sets out the uses and their designation under this Rule as exempt, allowable, allowable with mitigation, or prohibited. The requirements for each category are given in Item (7) of this Paragraph.

	Exempt	Allowable	Allowable with Mitigation	Prohibited
Airport facilities:				
• Airport facilities that impact equal to or less than 150		X		
linear feet or one-third of an acre of riparian buffer				
• Airport facilities that impact greater than 150 linear feet			X	
or one-third of an acre of riparian buffer				
Archaeological activities	X			
Bridges		X		
Dam maintenance activities	X			

	Exempt	Allowable	Allowable with Mitigation	Prohibited
Drainage ditches, roadside ditches and stormwater outfalls through riparian buffers: • Existing drainage ditches, roadside ditches, and stormwater outfalls provided that they are managed to minimize the sediment, nutrients and other pollution that convey to waterbodies	X			
New drainage ditches, roadside ditches and stormwater outfalls provided that a stormwater management facility is installed to control nitrogen and attenuate flow before the conveyance discharges through the riparian buffer		X		
 New drainage ditches, roadside ditches and stormwater outfalls that do not provide control for nitrogen before discharging through the riparian buffer 				X
• Excavation of the streambed in order to bring it to the same elevation as the invert of a ditch				X
Drainage of a pond in a natural drainage way provided that a new riparian buffer that meets the requirements of Items (4) and (5) is established adjacent to the new channel	X			
Driveway crossings of streams and other surface waters subject to this Rule:				
Driveway crossings on single family residential lots that disturb equal to or less than 25 linear feet or 2,500 square feet of riparian buffer	X			
 Driveway crossings on single family residential lots that disturb greater than 25 linear feet or 2,500 square feet of riparian buffer 		X		
• In a subdivision that cumulatively disturb equal to or less than 150 linear feet or one-third of an acre of riparian buffer		X		
In a subdivision that cumulatively disturb greater than 150 linear feet or one-third of an acre of riparian buffer			X	
Fences provided that disturbance is minimized and installation does not result in removal of forest vegetation	X			
Forest harvesting - see Item (11) of this Rule				
Fertilizer application: One-time fertilizer application to establish replanted vegetation Ongoing fertilizer application	X			X
Grading and revegetation in Zone 2 only provided that diffuse flow and the health of existing vegetation in Zone 1 is not compromised and disturbed areas are stabilized	X			
Greenway / hiking trails		X		
Historic preservation	X			**
Landfills as defined by G.S 130A-290.				X

	Exempt	Allowable	Allowable with Mitigation	Prohibited
Mining activities: • Mining activities that are covered by the Mining Act provided that new riparian buffers that meet the requirements of Items (4) and (5) are established adjacent to the relocated channels		X		
• Mining activities that are not covered by the Mining Act OR where new riparian buffers that meet the requirements or Items (4) and (5) are not established adjacent to the relocated channels			X	
Wastewater or mining dewatering wells with approved NPDES permit	X			
Non-electric utility lines: • Impacts other than perpendicular crossings in Zone 2 only ³		X		
• Impacts other than perpendicular crossings in Zone 1 ³			X	
Non-electric utility line perpendicular crossings of streams				
and other surface waters subject to this Rule ³ :				
Perpendicular crossings that disturb equal to or less than 40 linear feet of riparian buffer with a maintenance corridor equal to or less than 10 feet in width	X			
• Perpendicular crossings that disturb equal to or less than 40 linear feet of riparian buffer with a maintenance		X		
 corridor greater than 10 feet in width Perpendicular crossings that disturb greater than 40 linear feet but equal to or less than 150 linear feet of riparian buffer with a maintenance corridor equal to or less than 10 feet in width 		X		
Perpendicular crossings that disturb greater than 40 linear feet but equal to or less than 150 linear feet of riparian buffer with a maintenance corridor greater than 10 feet in width			X	
Perpendicular crossings that disturb greater than 150 linear feet of riparian buffer			X	
On-site sanitary sewage systems - new ones that use ground				X
absorption				
Overhead electric utility lines: • Impacts other than perpendicular crossings in Zone 2 only ³	X			
• Impacts other than perpendicular crossings in Zone 1 ^{1,2,3}	X			

	Exempt	Allowable	Allowable with Mitigation	Prohibited
Overhead electric utility line perpendicular crossings of streams and other surface waters subject to this Rule ³ : • Perpendicular crossings that disturb equal to or less than 150 linear feet of riparian buffer ¹ • Perpendicular crossings that disturb greater than 150 linear feet of riparian buffer ^{1,2}	X	X		
Periodic maintenance of modified natural streams such as canals and a grassed travelway on one side of the surface water when alternative forms of maintenance access are not practical		X		
Playground equipment: Playground equipment on single family lots provided that installation and use does not result in removal of vegetation	X			
Playground equipment installed on lands other than single-family lots or that requires removal of vegetation		X		
Ponds in natural drainage ways, excluding dry ponds: • New ponds provided that a riparian buffer that meets the requirements of Items (4) and (5) is established adjacent to the pond		X		
• New ponds where a riparian buffer that meets the requirements of Items (4) and (5) is NOT established adjacent to the pond			X	
Protection of existing structures, facilities and streambanks when this requires additional disturbance of the riparian buffer or the stream channel		X		
Railroad impacts other than crossings of streams and other surface waters subject to this Rule.			X	
Railroad crossings of streams and other surface waters subject to this Rule: • Railroad crossings that impact equal to or less than 40 linear feet of riparian buffer • Railroad crossings that impact greater than 40 linear feet	X	X		
 but equal to or less than 150 linear feet or one-third of an acre of riparian buffer Railroad crossings that impact greater than 150 linear feet or one-third of an acre of riparian buffer 			X	
Removal of previous fill or debris provided that diffuse flow is maintained and any vegetation removed is restored	X			
Road impacts other than crossings of streams and other surface waters subject to this Rule			X	

	Exempt	Allowable	Allowable with Mitigation	Prohibited
 Road crossings of streams and other surface waters subject to this Rule: Road crossings that impact equal to or less than 40 linear feet of riparian buffer Road crossings that impact greater than 40 linear feet but equal to or less than 150 linear feet or one-third of an acre of riparian buffer Road crossings that impact greater than 150 linear feet or one-third of an acre of riparian buffer 	X	X	X	
Scientific studies and stream gauging	X			
Stormwater management ponds excluding dry ponds: New stormwater management ponds provided that a riparian buffer that meets the requirements of Items (4) and (5) is established adjacent to the pond New stormwater management ponds where a riparian buffer that meets the requirements of Items (4) and (5) is NOT established adjacent to the pond		X	X	
Stream restoration	X			
Streambank stabilization		X		
Temporary roads: • Temporary roads that disturb less than or equal to 2,500 square feet provided that vegetation is restored within six months of initial disturbance • Temporary roads that disturb greater than 2,500 square feet provided that vegetation is restored within six	X	X		
months of initial disturbance • Temporary roads used for bridge construction or replacement provided that restoration activities, such as soil stabilization and revegetation, occur immediately after construction		X		
Temporary sediment and erosion control devices: In Zone 2 only provided that the vegetation in Zone 1 is not compromised and that discharge is released as diffuse flow in accordance with Item (5) In Zones 1 and 2 to control impacts associated with uses approved by the Division or that have received a variance provided that sediment and erosion control for upland areas is addressed to the maximum extent practical outside the buffer	X	X		
In-stream temporary erosion and sediment control measures for work within a stream channel	X			
 Underground electric utility lines: Impacts other than perpendicular crossings in Zone 2 only 	X			
• Impacts other than perpendicular crossings in Zone 1 ⁴	X			

	Exempt	Allowable	Allowable with Mitigation	Prohibited
 Underground electric utility line perpendicular crossings of streams and other surface waters subject to this Rule: Perpendicular crossings that disturb less than or equal to 40 linear feet of riparian buffer^{3, 4} Perpendicular crossings that disturb greater than 40 linear feet of riparian buffer^{3, 4} 	X	X		
Vegetation management:				
Emergency fire control measures provided that topography is restored	X			
Periodic mowing and harvesting of plant products in Zone 2 only	X			
Planting vegetation to enhance the riparian buffer	X			
• Pruning forest vegetation provided that the health and function of the forest vegetation is not compromised	X			
Removal of individual trees which are in danger of causing damage to dwellings, other structures or human life	X			
Removal of poison ivy	X			
 Removal of understory nuisance vegetation as defined in: Smith, Cherri L. 1998. Exotic Plant Guidelines. Dept. of Environment and Natural Resources. Division of Parks and Recreation. Raleigh, NC. Guideline #30 	X			
Water dependent structures as defined in 15A NCAC 2B .0202		X		
 Water supply reservoirs: New reservoirs provided that a riparian buffer that meets the requirements of Items (4) and (5) is established adjacent to the reservoir 		X		
• New reservoirs where a riparian buffer that meets the requirements of Items (4) and (5) is NOT established adjacent to the reservoir			X	
Water wells	X			
Wetland restoration	X			

Provided that, in Zone 1, all of the following BMPs for overhead utility lines are used. If all of these BMPs are not used, then the overhead utility lines shall require a no practical alternative evaluation by the Division.

- A minimum zone of 10 feet wide immediately adjacent to the water body shall be managed such that
 only vegetation that poses a hazard or has the potential to grow tall enough to interfere with the line is
 removed
- Woody vegetation shall be cleared by hand. No land grubbing or grading is allowed.
- Vegetative root systems shall be left intact to maintain the integrity of the soil. Stumps shall remain where trees are cut.
- Riprap shall not be used unless it is necessary to stabilize a tower.
- No fertilizer shall be used other than a one-time application to re-establish vegetation.
- Construction activities shall minimize the removal of woody vegetation, the extent of the disturbed area, and the time in which areas remain in a disturbed state.
- Active measures shall be taken after construction and during routine maintenance to ensure diffuse flow of stormwater through the buffer.
- In wetlands, mats shall be utilized to minimize soil disturbance.

³ Perpendicular crossings are those that intersect the surface water at an angle between 75° and 105°.

- Woody vegetation shall be cleared by hand. No land grubbing or grading is allowed.
- Vegetative root systems shall be left intact to maintain the integrity of the soil. Stumps shall remain, except in the trench, where trees are cut.
- Underground cables shall be installed by vibratory plow or trenching.
- The trench shall be backfilled with the excavated soil material immediately following cable installation.
- No fertilizer shall be used other than a one-time application to re-establish vegetation.
- Construction activities shall minimize the removal of woody vegetation, the extent of the disturbed area, and the time in which areas remain in a disturbed state.
- Active measures shall be taken after construction and during routine maintenance to ensure diffuse flow of stormwater through the buffer.
- In wetlands, mats shall be utilized to minimize soil disturbance.
 - (7) REQUIREMENTS FOR CATEGORIES OF USES. Uses designated as exempt, allowable, allowable with mitigation and prohibited in Item (6) of this Paragraph shall have the following requirements:
 - (a) EXEMPT. Uses designated as exempt are allowed within the riparian buffer. Exempt uses shall be designed, constructed and maintained to minimize soil disturbance and to provide the maximum water quality protection practicable. In addition, exempt uses shall meet requirements listed in Item (6) of this Paragraph for the specific use.
 - (b) ALLOWABLE. Uses designated as allowable may proceed within the riparian buffer provided that there are no practical alternatives to the requested use pursuant to Item (8) of this Paragraph. These uses require written authorization from the Division or the delegated local authority.
 - (c) ALLOWABLE WITH MITIGATION. Uses designated as allowable with mitigation may proceed within the riparian buffer provided that there are no practical alternatives to the requested use pursuant to Item (8) of this Paragraph and an appropriate mitigation strategy has been approved pursuant to Item (10) of this Paragraph. These uses require written authorization from the Division or the delegated local authority.
 - (d) PROHIBITED. Uses designated as prohibited may not proceed within the riparian buffer unless a variance is granted pursuant to Item (9) of this Paragraph. Mitigation may be required as one condition of a variance approval.
 - (8) DETERMINATION OF "NO PRACTICAL ALTERNATIVES." Persons who wish to undertake uses designated as allowable or allowable with mitigation shall submit a request for a "no practical alternatives" determination to the Division or to the delegated local authority. The applicant shall certify that the criteria identified in Sub-Item (8)(a) of this Paragraph are met. The Division or the delegated local authority shall grant an Authorization Certificate upon a "no practical alternatives" determination. The procedure for making an Authorization Certificate shall be as follows:
 - (a) For any request for an Authorization Certificate, the Division or the delegated local authority shall review the entire project and make a finding of fact as to whether the following requirements have been met in support of a "no practical alternatives" determination:
 - (i) The basic project purpose cannot be practically accomplished in a manner that would better minimize disturbance, preserve aquatic life and habitat, and protect water quality.
 - (ii) The use cannot practically be reduced in size or density, reconfigured or redesigned to better minimize disturbance, preserve aquatic life and habitat, and protect water quality.

² Provided that poles or towers shall not be installed within 10 feet of a water body unless the Division completes a no practical alternative evaluation.

⁴ Provided that, in Zone 1, all of the following BMPs for underground utility lines are used. If all of these BMPs are not used, then the underground utility line shall require a no practical alternative evaluation by the Division.

- (iii) Best management practices shall be used if necessary to minimize disturbance, preserve aquatic life and habitat, and protect water quality.
- (b) Requests for an Authorization Certificate shall be reviewed and either approved or denied within 60 days of receipt of a complete submission based on the criteria in Sub-Item (8)(a) of this Paragraph by either the Division or the delegated local authority. Failure to issue an approval or denial within 60 days shall constitute that the applicant has demonstrated "no practical alternatives." The Division or the delegated local authority may attach conditions to the Authorization Certificate that support the purpose, spirit and intent of the riparian buffer protection program. Complete submissions shall include the following:
 - (i) The name, address and phone number of the applicant;
 - (ii) The nature of the activity to be conducted by the applicant;
 - (iii) The location of the activity, including the jurisdiction;
 - (iv) A map of sufficient detail to accurately delineate the boundaries of the land to be utilized in carrying out the activity, the location and dimensions of any disturbance in riparian buffers associated with the activity, and the extent of riparian buffers on the land;
 - (v) An explanation of why this plan for the activity cannot be practically accomplished, reduced or reconfigured to better minimize disturbance to the riparian buffer, preserve aquatic life and habitat and protect water quality; and
 - (vi) Plans for any best management practices proposed to be used to control the impacts associated with the activity.
- (c) Any disputes over determinations regarding Authorization Certificates shall be referred to the Director for a decision. The Director's decision is subject to review as provided in Articles 3 and 4 of G. S. 150B.
- (9) VARIANCES. Persons who wish to undertake uses designated as prohibited may pursue a variance. The Division or the appropriate delegated local authority may grant minor variances. The variance request procedure shall be as follows:
 - (a) For any variance request, the Division or the delegated local authority shall make a finding of fact as to whether the following requirements have been met:
 - (i) There are practical difficulties or unnecessary hardships that prevent compliance with the strict letter of the riparian buffer protection requirements. Practical difficulties or unnecessary hardships shall be evaluated in accordance with the following:
 - (A) If the applicant complies with the provisions of this Rule, he/she can secure no reasonable return from, nor make reasonable use of, his/her property. Merely proving that the variance would permit a greater profit from the property shall not be considered adequate justification for a variance. Moreover, the Division or delegated local authority shall consider whether the variance is the minimum possible deviation from the terms of this Rule that shall make reasonable use of the property possible.
 - (B) The hardship results from application of this Rule to the property rather than from other factors such as deed restrictions or other hardship.
 - (C) The hardship is due to the physical nature of the applicant's property, such as its size, shape, or topography, which is different from that of neighboring property.
 - (D) The applicant did not cause the hardship by knowingly or unknowingly violating this Rule.
 - (E) The applicant did not purchase the property after the effective date of this Rule, and then request an appeal.
 - (F) The hardship is unique to the applicant's property, rather than the result of conditions that are widespread. If other properties are equally subject to the hardship created in the restriction, then granting a variance would be a special privilege denied to others, and would not promote equal justice.
 - (ii) The variance is in harmony with the general purpose and intent of the State's riparian buffer protection requirements and preserves its spirit; and

- (iii) In granting the variance, the public safety and welfare have been assured, water quality has been protected, and substantial justice has been done.
- (b) MINOR VARIANCES. A minor variance request pertains to activities that are proposed only to impact any portion of Zone 2 of the riparian buffer. Minor variance requests shall be reviewed and approved based on the criteria in Sub-Item (9)(a) of this Paragraph by the either the Division or the delegated local authority pursuant to G.S. 153A-Article 18, or G.S. 160A-Article 19. The Division or the delegated local authority may attach conditions to the variance approval that support the purpose, spirit and intent of the riparian buffer protection program. Requests for appeals of decisions made by the Division shall be made to the Office of Administrative Hearings. Request for appeals made by the delegated local authority shall be made to the appropriate Board of Adjustment under G.S. 160A-388 or G.S. 153A-345.
- (c) MAJOR VARIANCES. A major variance request pertains to activities that are proposed to impact any portion of Zone 1 or any portion of both Zones 1 and 2 of the riparian buffer. If the Division or the delegated local authority has determined that a major variance request meets the requirements in Sub-Item (9)(a) of this Paragraph, then it shall prepare a preliminary finding and submit it to the Commission. Preliminary findings on major variance requests shall be reviewed by the Commission within 90 days after receipt by the Director. Requests for appeals of determinations that the requirements of Sub-Item (9)(a) of this Paragraph have not been met shall be made to the Office of Administrative Hearings for determinations made by the Division or the appropriate Board of Adjustments under G.S. 160A-388 or G.S. 153A-345 for determinations made by the delegated local authority. The purpose of the Commission's review is to determine if it agrees that the requirements in Sub-Item (9)(a) of this Paragraph have been met. Requests for appeals of decisions made by the Commission shall be made to the Office of Administrative Hearings. The following actions shall be taken depending on the Commission's decision on the major variance request:
 - (i) Upon the Commission's approval, the Division or the delegated local authority shall issue a final decision granting the major variance.
 - (ii) Upon the Commission's approval with conditions or stipulations, the Division or the delegated local authority shall issue a final decision, which includes these conditions or stipulations.
 - (iii) Upon the Commission's denial, the Division or the delegated local authority shall issue a final decision denying the major variance.
- (10) MITIGATION. Persons who wish to undertake uses designated as allowable with mitigation shall meet the following requirements in order to proceed with their proposed use.
 - (a) Obtain a determination of "no practical alternatives" to the proposed use pursuant to Item (8) of this Paragraph.
 - (b) Obtain approval for a mitigation proposal pursuant to 15A NCAC 2B .0260.
- (11) REQUIREMENTS SPECIFIC TO FOREST HARVESTING. The following requirements shall apply for forest harvesting operations and practices.
 - (a) The following measures shall apply in the entire riparian buffer:
 - (i) Logging decks and sawmill sites shall not be placed in the riparian buffer.
 - (ii) Access roads and skid trails shall be prohibited except for temporary and permanent stream crossings established in accordance with 15A NCAC 1I .0203. Temporary stream crossings shall be permanently stabilized after any site disturbing activity is completed.
 - (iii) Timber felling shall be directed away from the stream or water body.
 - (iv) Skidding shall be directed away from the stream or water body and shall be done in a manner that minimizes soil disturbance and prevents the creation of channels or ruts.
 - (v) Individual trees may be treated to maintain or improve their health, form or vigor.
 - (vi) Harvesting of dead or infected trees or application of pesticides necessary to prevent or control extensive tree pest and disease infestation shall be allowed. These

- practices must be approved by the Division of Forest Resources for a specific site. The Division of Forest Resources must notify the Division of all approvals.
- (vii) Removal of individual trees that are in danger of causing damage to structures or human life shall be allowed.
- (viii) Natural regeneration of forest vegetation and planting of trees, shrubs, or ground cover plants to enhance the riparian buffer shall be allowed provided that soil disturbance is minimized. Plantings shall consist primarily of native species.
- (ix) High intensity prescribed burns shall not be allowed.
- (x) Application of fertilizer shall not be allowed except as necessary for permanent stabilization. Broadcast application of fertilizer or herbicides to the adjacent forest stand shall be conducted so that the chemicals are not applied directly to or allowed to drift into the riparian buffer.
- (b) In Zone 1, forest vegetation shall be protected and maintained. Selective harvest as provided for below is allowed on forest lands that have a deferment for use value under forestry in accordance with G.S. 105-277.2 through 277.6 or on forest lands that have a forest management plan prepared or approved by a registered professional forester. Copies of either the approval of the deferment for use value under forestry or the forest management plan shall be produced upon request. For such forest lands, selective harvest is allowed in accordance with the following:
 - (i) Tracked or wheeled vehicles are not permitted except at stream crossings designed, constructed and maintained in accordance with 15A NCAC 1I .0203.
 - (ii) Soil disturbing site preparation activities are not allowed.
 - (iii) Trees shall be removed with the minimum disturbance to the soil and residual vegetation.
 - (iv) The following provisions for selective harvesting shall be met:
 - (A) The first 10 feet of Zone 1 directly adjacent to the stream or waterbody shall be undisturbed except for the removal of individual high value trees as defined provided that no trees with exposed primary roots visible in the streambank be cut.
 - (B) In the outer 20 feet of Zone 1, a maximum of 50 percent of the trees greater than five inches dbh may be cut and removed. The reentry time for harvest shall be no more frequent than every 15 years, except on forest plantations where the reentry time shall be no more frequent than every five years. In either case, the trees remaining after harvest shall be as evenly spaced as possible.
 - (C) In Zone 2, harvesting and regeneration of the forest stand shall be allowed provided that sufficient ground cover is maintained to provide for diffusion and infiltration of surface runoff.
- (12) REQUIREMENTS SPECIFIC TO LOCAL GOVERNMENTS WITH STORMWATER PROGRAMS FOR NITROGEN CONTROL. Local governments in the Tar-Pamlico River Basin that are required to have local stormwater programs to control nitrogen loading shall have two options for ensuring protection of riparian buffers on new developments within their jurisdictions as follows.
 - (a) Obtain authority to implement a local riparian buffer protection program pursuant to 15A NCAC 2B .0261.
 - (b) Refrain from issuing local approvals for new development projects unless either:
 - (i) The person requesting the approval does not propose to impact the riparian buffer of a surface water that appears on either the most recent versions of the soil survey maps prepared by the Natural Resources Conservation Service of the United States Department of Agriculture or the most recent versions of the 1:24,000 scale (7.5 minute quadrangle) topographic maps prepared by the United States Geologic Survey (USGS).
 - (ii) The person requesting the approval proposes to impact the riparian buffer of a surface water that appears on the maps described in Sub-Item (12)(b)(i) of this Paragraph and either:

- (A) Has received an on-site determination from the Division pursuant to Sub-Item (3)(a) of this Paragraph that surface waters are not present;
- (B) Has received an Authorization Certificate from the Division pursuant to Item (8) of this Paragraph for uses designated as Allowable under this Rule;
- (C) Has received an Authorization Certificate from the Division pursuant to Item (8) of this Paragraph and obtained the Division's approval on a mitigation plan pursuant to Item (10) of this Paragraph for uses designated as Allowable with Mitigation under this Rule; or
- (D) Has received a variance from the Commission pursuant to Item (9) of this Paragraph.
- (13) OTHER LAWS, REGULATIONS AND PERMITS. In all cases, compliance with this Rule does not preclude the requirement to comply with all federal, state and local regulations and laws.

History Note: Authority 143-214.1; 143-214.7; 143-215.3(a)(1); 143-215.6A; 143-215.6B; 143-215.6C; 143B-282(d); S.L. 1999-329, s. 7.1.

Temporary Adoption Eff. January 1, 2000.

Eff. August 1, 2000.

15A NCAC 02B .0260 TAR-PAMLICO RIVER BASIN - NUTRIENT SENSITIVE WATERS MANAGEMENT STRATEGY: MITIGATION PROGRAM FOR PROTECTION AND MAINTENANCE OF RIPARIAN BUFFERS

The following are requirements for the Riparian Buffer Mitigation Program for the Tar-Pamlico Basin:

- (1) PURPOSE. The purpose of this Rule is to set forth the mitigation requirements that apply to the riparian buffer protection program in the Tar-Pamlico Basin, as described in Rule 15A NCAC 2B .0259, and whose surface waters are described in the Schedule of Classifications, 15A NCAC 2B .0316.
- (2) APPLICABILITY. This Rule applies to persons who wish to impact a riparian buffer in the Tar-Pamlico Basin when one of the following applies:
 - (a) A person has received an Authorization Certificate pursuant to 15A NCAC 2B .0259 for a proposed use that is designated as "allowable with mitigation."
 - (b) A person has received a variance pursuant to 15A NCAC 2B .0259 and is required to perform mitigation as a condition of a variance approval.
- (3) THE AREA OF MITIGATION. The required area of mitigation shall be determined by either the Division or the delegated local authority according to the following:
 - (a) The impacts in square feet to each zone of the riparian buffer shall be determined by the Division or the delegated local authority by adding the following:
 - (i) The area of the footprint of the use causing the impact to the riparian buffer.
 - (ii) The area of the boundary of any clearing and grading activities within the riparian buffer necessary to accommodate the use.
 - (iii) The area of any ongoing maintenance corridors within the riparian buffer associated with the use.
 - (b) The required area of mitigation shall be determined by applying the following multipliers to the impacts determined in Sub-item (3)(a) of this Paragraph to each zone of the riparian buffer:
 - (i) Impacts to Zone 1 of the riparian buffer shall be multiplied by 3.
 - (ii) Impacts to Zone 2 of the riparian buffer shall be multiplied by 1.5.
 - (iii) Impacts to wetlands within Zones 1 and 2 of the riparian buffer that are subject to mitigation under 15A NCAC 2H .0506 shall comply with the mitigation ratios in 15A NCAC 2H .0506.
- (4) THE LOCATION OF MITIGATION. The mitigation effort shall be located the same distance from the Pamlico River estuary as the proposed impact, or closer to the estuary than the impact, and as close to the location of the impact as feasible.
- (5) ISSUANCE OF THE MITIGATION DETERMINATION. The Division or the delegated local authority shall issue a mitigation determination that specifies the required area and location of mitigation pursuant to Items (3) and (4) of this Paragraph.
- (6) OPTIONS FOR MEETING THE MITIGATION DETERMINATION. The mitigation determination made pursuant to Item (5) of this Paragraph may be met through one of the following options:
 - (a) Payment of a compensatory mitigation fee to the Riparian Buffer Restoration Fund pursuant to Item (7) of this Paragraph.
 - (b) Donation of real property or of an interest in real property pursuant to Item (8) of this Paragraph.
 - (c) Restoration or enhancement of a non-forested riparian buffer. This shall be accomplished by the applicant after submittal and approval of a restoration plan pursuant to Item (9) of this Paragraph.
- (7) PAYMENT TO THE RIPARIAN BUFFER RESTORATION FUND. Persons who choose to satisfy their mitigation determination by paying a compensatory mitigation fee to the Riparian Buffer Restoration Fund shall meet the following requirements:
 - (a) SCHEDULE OF FEES: The amount of payment into the Fund shall be determined by multiplying the acres or square feet of mitigation determination made pursuant to Item (5) of this Paragraph by ninety-six cents per square foot or forty-one thousand, six hundred and twenty-five dollars per acre.

- (b) The required fee shall be submitted to the Division of Water Quality, Wetlands Restoration Program, 1619 Mail Service Center, Raleigh, NC 27699-1619 prior to any activity that results in the removal or degradation of the protected riparian buffer for which a "no practical alternatives" determination has been made.
- (c) The payment of a compensatory mitigation fee may be fully or partially satisfied by donation of real property interests pursuant to Item (8) of this Paragraph.
- (d) The Division of Water Quality shall review the fee outlined in Sub-item (7)(a) of this Paragraph every two years and shall compare it to the actual cost of restoration activities conducted by the Department, including site identification, planning, implementation, monitoring and maintenance costs. Based upon this biennial review, the Division of Water Quality shall recommend revisions to Sub-item (7)(a) of this Paragraph when adjustments to this Schedule of Fees are deemed necessary.
- (8) DONATION OF PROPERTY. Persons who choose to satisfy their mitigation determination by donating real property or an interest in real property shall meet the following requirements:
 - (a) The donation of real property interests may be used to either partially or fully satisfy the payment of a compensatory mitigation fee to the Riparian Buffer Restoration Fund pursuant to Item (7) of this Paragraph. The value of the property interest shall be determined by an appraisal performed in accordance with Sub-item (8)(d)(iv) of this Paragraph. The donation shall satisfy the mitigation determination if the appraised value of the donated property interest is equal to or greater than the required fee. If the appraised value of the donated property interest is less than the required fee calculated pursuant to Sub-item (7)(a) of this Paragraph, the applicant shall pay the remaining balance due.
 - (b) The donation of conservation easements to satisfy compensatory mitigation requirements shall be accepted only if the conservation easement is granted in perpetuity.
 - (c) Donation of real property interests to satisfy the mitigation determination shall be accepted only if such property meets all of the following requirements:
 - (i) The property shall be located within an area that is identified as a priority for restoration in the Basinwide Wetlands and Riparian Restoration Plan developed by the Department pursuant to G.S. 143-214.10 or shall be located at a site that is otherwise consistent with the goals outlined in the Basinwide Wetlands and Riparian Restoration Plan.
 - (ii) The property shall contain riparian buffers not currently protected by the State's riparian buffer protection program that are in need of restoration.
 - (iii) The restorable riparian buffer on the property shall have a minimum length of 1000 linear feet along a surface water and a minimum width of 50 feet as measured horizontally on a line perpendicular to the surface water.
 - (iv) The size of the restorable riparian buffer on the property to be donated shall equal or exceed the acreage of riparian buffer required to be mitigated under the mitigation responsibility determined pursuant to Item (3) of this Paragraph.
 - (v) The property shall not require excessive measures for successful restoration, such as removal of structures or infrastructure. Restoration of the property shall be capable of fully offsetting the adverse impacts of the requested use;
 - (vi) The property shall be suitable to be successfully restored, based on existing hydrology, soils, and vegetation;
 - (vii) The estimated cost of restoring and maintaining the property shall not exceed the value of the property minus site identification and land acquisition costs.
 - (ix) The property shall not contain any building, structure, object, site, or district that is listed in the National Register of Historic Places established pursuant to Public Law 89-665, 16 U.S.C. 470 as amended.
 - (x) The property shall not contain any hazardous substance or solid waste.
 - (xi) The property shall not contain structures or materials that present health or safety problems to the general public. If wells, septic, water or sewer connections exist, they shall be filled, remediated or closed at owner's expense in accordance with state and local health and safety regulations.

- (xii) The property and adjacent properties shall not have prior, current, and known future land use that would inhibit the function of the restoration effort.
- (xiii) The property shall not have any encumbrances or conditions on the transfer of the property interests.
- (d) At the expense of the applicant or donor, the following information shall be submitted to the Division with any proposal for donations or dedications of interest in real property:
 - (i) Documentation that the property meets the requirements laid out in Sub-Item (8)(c) of this Paragraph.
 - (ii) US Geological Survey 1:24,000 (7.5 minute) scale topographic map, county tax map, USDA Natural Resource Conservation Service County Soil Survey Map, and county road map showing the location of the property to be donated along with information on existing site conditions, vegetation types, presence of existing structures and easements.
 - (iii) A current property survey performed in accordance with the procedures of the North Carolina Department of Administration, State Property Office as identified by the State Board of Registration for Professional Engineers and Land Surveyors in "Standards of Practice for Land Surveying in North Carolina." Copies may be obtained from the North Carolina State Board of Registration for Professional Engineers and Land Surveyors, 3620 Six Forks Road, Suite 300, Raleigh, North Carolina 27609.
 - (iv) A current appraisal of the value of the property performed in accordance with the procedures of the North Carolina Department of Administration, State Property Office as identified by the Appraisal Board in the "Uniform Standards of Professional North Carolina Appraisal Practice." Copies may be obtained from the Appraisal Foundation, Publications Department, P.O. Box 96734, Washington, D.C. 20090-6734.
 - (v) A title certificate.
- (9) RIPARIAN BUFFER RESTORATION OR ENHANCEMENT. Persons who choose to meet their mitigation requirement through riparian buffer restoration or enhancement shall meet the following requirements:
 - (a) The applicant may restore or enhance a non-forested riparian buffer if either of the following applies:
 - (i) The area of riparian buffer restoration is equal to the required area of mitigation determined pursuant to Item (3) of this Paragraph.
 - (ii) The area of riparian buffer enhancement is three times larger than the required area of mitigation determined pursuant to Item (3) of this Paragraph.
 - (b) The location of the riparian buffer restoration or enhancement shall comply with the requirements in Item (4) of this Paragraph.
 - (c) The riparian buffer restoration or enhancement site shall have a minimum width of 50 feet as measured horizontally on a line perpendicular to the surface water.
 - (d) The applicant shall first receive an Authorization Certificate for the proposed use according to the requirements of 15A NCAC 2B .0259. After receiving this determination, the applicant shall submit a restoration or enhancement plan for approval by the Division. The restoration or enhancement plan shall contain the following.
 - (i) A map of the proposed restoration or enhancement site.
 - (ii) A vegetation plan. The vegetation plan shall include a minimum of at least two native hardwood tree species planted at a density sufficient to provide 320 trees per acre at maturity.
 - (iii) A grading plan. The site shall be graded in a manner to ensure diffuse flow through the riparian buffer.
 - (iv) A fertilization plan.
 - (v) A schedule for implementation.
 - (e) Within one year after the Division has approved the restoration or enhancement plan, the applicant shall present proof to the Division that the riparian buffer has been restored or enhanced. If proof is not presented within this timeframe, then the person shall be in

- violation of the State's or the delegated local authority's riparian buffer protection program.
- (f) The mitigation area shall be placed under a perpetual conservation easement that will provide for protection of the property's nutrient removal functions.
- (g) The applicant shall submit annual reports for a period of five years after the restoration or enhancement showing that the trees planted have survived and that diffuse flow through the riparian buffer has been maintained. The applicant shall replace trees that do not survive and restore diffuse flow if needed during that five-year period.

History Note: Authority 143-214.1; 143-214.7; 143-215.3(a)(1); 143-215.6A; 143-215.6B; 143-215.6C; 143B-282(d); S.L. 1999-329, s. 7.1.

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Eff. August 1, 2000.

15A NCAC 02B .0261 TAR-PAMLICO RIVER BASIN - NUTRIENT SENSITIVE WATERS MANAGEMENT STRATEGY: DELEGATION OF AUTHORITY FOR THE PROTECTION AND MAINTENANCE OF EXISTING RIPARIAN BUFFERS

This Rule sets out the following requirements for delegation of the responsibility for implementing and enforcing the Tar-Pamlico Basin riparian buffer protection program, as described in Rule 15A NCAC 2B .0259, to local governments:

- (1) PROCEDURES FOR GRANTING AND RESCINDING DELEGATION. The Commission shall grant and rescind local government delegation of the Tar-Pamlico River Basin Riparian Buffer Protection requirements, as described in Rule 15A NCAC 2B. 0259, according to the following procedures.
 - (a) Local governments within the Tar-Pamlico River Basin may submit a written request to the Commission for authority to implement and enforce the Tar-Pamlico Basin riparian buffer protection requirements within their jurisdiction. The written request shall be accompanied by information which shows:
 - (i) The local government has land use jurisdiction for the riparian buffer demonstrated by delineating the local land use jurisdictional boundary on USGS 1:24,000 topographical map(s) or other finer scale map(s);
 - (ii) The local government has the administrative organization, staff, legal authority, financial and other resources necessary to implement and enforce the Tar-Pamlico Basin riparian buffer protection requirements based on its size and projected amount of development;
 - (iii) The local government has adopted ordinances, resolutions, or regulations necessary to establish and maintain the Tar-Pamlico Basin riparian buffer protection requirements; and
 - (iv) The local government has provided a plan to address violations with appropriate remedies and actions including, but not limited to, civil or criminal remedies that shall restore buffer nutrient removal functions on violation sites and provide a deterrent against the occurrence of future violations.
 - (b) Within 90 days after the Commission has received the request for delegation, the Commission shall notify the local government whether it has been approved, approved with modifications, or denied.
 - (c) The Commission, upon determination that a delegated local authority is failing to implement or enforce the Tar-Pamlico Basin riparian buffer protection requirements in keeping with a request approved under Sub-item (1)(b) of this Rule, shall notify the delegated local authority in writing of the local program's inadequacies. If the delegated local authority has not corrected the deficiencies within 90 days of receipt of the written notification, then the Commission shall rescind the delegation of authority to the local government and shall implement and enforce the Tar-Pamlico Basin riparian buffer protection requirements.
 - (d) The Commission may delegate its duties and powers for granting and rescinding local government delegation of the Tar-Pamlico Basin riparian buffer protection requirements, in whole or in part, to the Director.
- (2) APPOINTMENT OF A RIPARIAN BUFFER PROTECTION ADMINISTRATOR. Upon receiving delegation, local governments shall appoint a Riparian Buffer Protection Administrator who shall coordinate the implementation and enforcement of the program. The Administrator shall attend an initial training session by the Division and subsequent annual training sessions. The Administrator shall ensure that local government staff working directly with the program receive training to understand, implement and enforce the program.
- (3) PROCEDURES FOR USES WITHIN RIPARIAN BUFFERS THAT ARE ALLOWABLE AND ALLOWABLE WITH MITIGATION. Upon receiving delegation, local authorities shall review proposed uses within the riparian buffer and issue approvals if the uses meet the Tar-Pamlico Basin riparian buffer protection requirements. Delegated local authorities shall issue an Authorization Certificate for uses if the proposed use meets the Tar-Pamlico Basin riparian buffer protection requirements, or provides for appropriate mitigated provisions to the Tar-Pamlico Basin riparian buffer protection requirements. The Division may challenge a decision made by a delegated local authority for a period of 30 days after the Authorization Certificate is issued. If the Division does not

- challenge an Authorization Certificate within 30 days of issuance, then the delegated local authority's decision shall stand.
- (4) VARIANCES. After receiving delegation, local governments shall review variance requests, provide approvals for minor variance requests and make recommendations to the Commission for major variance requests pursuant to the Tar-Pamlico Basin riparian buffer protection program.
- (5) LIMITS OF DELEGATED LOCAL AUTHORITY. The Commission shall have jurisdiction to the exclusion of local governments to implement the Tar-Pamlico Basin riparian buffer protection requirements for the following types of activities:
 - (a) Activities conducted under the authority of the State;
 - (b) Activities conducted under the authority of the United States;
 - (c) Activities conducted under the authority of multiple jurisdictions;
 - (d) Activities conducted under the authority of local units of government.
- (6) RECORD-KEEPING REQUIREMENTS. Delegated local authorities shall maintain on-site records for a minimum of 5 years. Delegated local authorities must furnish a copy of these records to the Director within 30 days of receipt of a written request for the records. The Division shall inspect local riparian buffer protection programs to ensure that the programs are being implemented and enforced in keeping with a request approved under Sub-item (1)(b) of this Rule. Each delegated local authority's records shall include the following:
 - (a) A copy of variance requests;
 - (b) The variance request's finding of fact;
 - (c) The result of the variance proceedings;
 - (d) A record of complaints and action taken as a result of the complaint;
 - (e) Records for stream origin calls and stream ratings; and
 - (f) Copies of request for authorization, records approving authorization and Authorization Certificates.

History Note: Authority G S. 143-214.1; 143-214.7; 143-215.3(a)(1); 143-215.6A; 143-215.6B; 143-215.6C; 143B-282(d); S.L. 1999; c. 329, s. 7.1;

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15A NCAC 02B .0229 TAR-PAMLICO RIVER BASIN - NUTRIENT SENSITIVE WATERS MANAGEMENT STRATEGY: NUTRIENT OFFSET PAYMENTS FOR NON-TAR-PAMLICO BASIN ASSOCIATION MEMBERS

- (a) All waters of the Tar-Pamlico River Basin have been supplementally classified nutrient sensitive waters (NSW) pursuant to 15A NCAC 2B .0223. The following procedures are to be implemented in accordance with 15A NCAC 2B .0223 in all waters of the Tar-Pamlico River Basin for those wastewater dischargers who are not members of the Tar-Pamlico Basin Association;
- (b) Existing wastewater dischargers expanding to greater than 0.5 million gallons per day (MGD), who are not members of the Tar-Pamlico Basin Association, shall be required to offset their additional nutrient loads by funding nonpoint source control programs approved by the Division of Water Quality prior to the issuance of their NPDES permit and at each renewal. Nitrogen and phosphorus loads shall be offset at the rate of 110 percent of the cost to implement BMPs designed to reduce that same load created by expanding the discharge above 0.5 MGD. Equations for calculating the offset costs are:
 - (1) For an existing facility with permitted flow of less than or equal to 0.5 MGD as of December 8, 1994 expanding to greater than 0.5 MGD who is not a member of the Tar-Pamlico Basin Association:

Payment=((PF_e x (TN+TP) x 1384)-(0.5 x (TN+TP) x 1384)) x (BMP_c x 1.1) where:

Payment = the nutrient offset payment (\$);

PF_e = Permitted Flow including expansion (MGD);

TN = 6 mg/l total nitrogen for domestic discharges or BAT for industrial discharges;

TP = 1 mg/l total phosphorus for domestic discharges or BAT for industrial discharges;

1384 = conversion factor;

0.5 = the permitted flow (MGD) above which payment for additional nutrient loading is required;

 BMP_c = Best Management Practice cost-effectiveness rate in \$/kg as set in 15A NCAC 2B .0237 of this Section;

1.1 = 110 percent of the cost for the nonpoint source controls.

(2) For an expanding facility with a permitted flow of greater than or equal to 0.5 MGD as of December 8, 1994 who is not a member of the Tar-Pamlico Basin Association:

Payment=((PF_e x (TN+TP) x 1384)-(PF x (TN+TP) x 1384)) x (BMP_e x 1.1) where:

Payment = the nutrient offset payment (\$);

PF_e = Permitted Flow including expansion (MGD);

PF = Permitted Flow as of December 8, 1994 (MGD);

TN = 6 mg/l total nitrogen for domestic discharges or BAT for industrial discharges;

TP = 1 mg/l total phosphorus for domestic discharges or BAT for industrial discharges;

1384 = conversion factor;

BMP_c = Best Management Practice cost-effectiveness rate in \$/kg as set in 15A NCAC 2B .0237 of this Section;

1.1 = 110 percent of the cost for the nonpoint source controls.

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

Payment = PF x (TN+TP) x 1384 x (BMP_c x 1.1) where:

Payment = the nutrient offset payment (\$);

PF = Permitted Flow (MGD);

TN = 6 mg/l total nitrogen for domestic discharges or BAT for industrial discharges;

TP = 1 mg/l total phosphorus for domestic discharges or BAT for industrial discharges;

1384 = conversion factor;

BMP_c = Best Management Practice cost-effectiveness rate in \$/kg as set in 15A NCAC 2B .0237 of this Section;

1.1 = 110 percent of the cost for the nonpoint source controls.

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

- (A) The facility has reduced its annual average TN loading by 30 percent from its annual average 1991 TN loading or nitrogen is not part of the waste stream above background levels;
- (B) The facility has reduced its annual average TP loading by 30 percent from its annual average 1991 TP loading or phosphorus is not part of the waste stream above background levels;
- (C) The expansion does not result in annual average TN loading greater than 70 percent of the 1991 annual average TN load. Permit limits may be established to insure that the 70 percent load is not exceeded;
- (D) The expansion does not result in annual average TP loading greater than 70 percent of the 1991 annual average TP load. Permit limits may be established to insure that the 70 percent load is not exceeded:
- (E) To maintain its exemption from Paragraph (b) of this Rule, a facility must continue to meet the requirements of Subparagraph (d)(1) Parts (A) through (D) of this Rule.
- (2) For municipal facilities:
 - (A) The facility has reduced its annual average TN loading by 30 percent from its annual average 1991 TN loading;
 - (B) The facility has reduced its annual average TP loading by 30 percent from its annual average 1991 TP loading;
 - (C) The expansion does not result in annual average TN loading greater than 70 percent of the 1991 annual average TN load. Permit limits may be established to insure that the 70 percent load is not exceeded;
 - (D) The expansion does not result in annual average TP loading greater than 70 percent of the 1991 annual average TP load. Permit limits may be established to insure that the 70 percent load is not exceeded:
 - (E) To maintain its exemption from Paragraph (b) of this Rule, a facility must continue to meet the requirements of Subparagraph (d)(2) Parts (A) through (D) of this Rule.

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