15A NCAC 02B .0282 FALLS WATER SUPPLY NUTRIENT STRATEGY: OPTIONS FOR OFFSETTING NUTRIENT LOADS

PURPOSE. This Rule provides parties subject to other rules within the Falls nutrient strategy with options for meeting rule requirements by obtaining or buying credit for nutrient load-reducing activities conducted by others (sellers). It provides the potential for parties who achieve excess load reductions under the Falls nutrient strategy to recover certain costs by selling such credits, and it provides opportunity for third parties to produce reductions and sell credits. Overall it provides the potential for more cost-effective achievement of strategy reduction objectives. Accounting is required to ensure and track the availability and use of trading credits. This accounting will be compared against compliance accounting required under other rules of the Falls nutrient strategy to ensure that crediting is properly accounted for. This Rule furthers the adaptive management intent of the strategy to protect the water supply, aquatic life, and recreational uses of Falls Reservoir. The minimum requirements for the exchange of load reduction credits are:

(1) PREREQUISITES. The following buyers shall meet applicable criteria identified here and in rules imposing reduction requirements on them before utilizing the option outlined in this Rule:

(a) Agriculture Rule .0280: Owners of agricultural land shall receive approval from the Watershed Oversight Committee to obtain offsite credit pursuant to the conditions of Sub-Item (7)(b)(vii) of Rule .0280;

(b) New Development Rule .0277: Developers shall meet onsite reduction requirements enumerated in Sub-Item (4)(b) of Rule .0277 before obtaining offsite credit;

(c) Wastewater Rule .0279: New and expanding dischargers shall first make all reasonable efforts to obtain allocation from existing dischargers as stated in Sub-Items (7)(a)(ii) and (8)(a)(ii), respectively of Rule .0279; and

(d) State and Federal Entities Stormwater Rule .0281:

(i) Non-DOT entities shall meet onsite new development reduction requirements enumerated in Sub-Item (4)(b) of Rule .0281; and

(ii) NC DOT shall meet onsite non-road new development reduction requirements enumerated in Sub-Item (9)(c) of Rule .0281 before obtaining offsite credit.

(2) The party seeking approval to sell load reduction credits pursuant to this Rule shall demonstrate to the Division that such reductions meet the following criteria:

(a) Load reductions eligible for credit shall not include reductions that result from actions required to mitigate nutrient load-increasing actions under any regulation, except where a rule in this Section expressly allows such credit; and

(b) The party seeking to sell credits shall define the nature of the activities that would produce reductions and define the magnitude and duration of those reductions to the Division, including addressing the following items:

(i) Quantify and account for the relative uncertainties in reduction need estimates and load reduction estimates;

(ii) Ensure that load reductions shall take place at the time and for the duration in which the reduction need occurs; and

(iii) Demonstrate means adequate for assuring the achievement and claimed duration of load reduction, including the cooperative involvement of any other involved parties;

(c) Geographic Restrictions. Eligibility to use load reductions as credit is based on the following geographic criteria:

(i) Impacts in the upper Falls watershed as defined in Item (19) of 15A NCAC 02B .0276 may be offset only by load reductions achieved in the upper Falls watershed; and

(ii) Impacts in the lower Falls watershed as defined in Item (20) of 15A NCAC 02B .0276 shall be offset by load reductions achieved anywhere within the Falls watershed.

(3) The party seeking approval to sell load reduction credits shall provide for accounting and tracking methods that ensure genuine, accurate, and verifiable achievement of the purposes of this Rule, and shall otherwise meet the requirements of Rule .0240 of this Section, which establishes procedural requirements for nutrient offset payments. The Division shall work cooperatively with interested parties at their request to develop such accounting and tracking methods to support the requirements of Item (2) of this Rule.

(4) Local governments have the option of combining their reduction needs from NPDES dischargers assigned allocations in 15A NCAC 02B .0279 and existing development as described in 15A NCAC 02B .0278, including loads from properly functioning and malfunctioning septic systems and discharging sand filters, into one reduction and allocation requirement and meet them jointly.

(5) Proposals for use of offsetting actions as described in this Rule shall become effective after determination by the Director that the proposal contains adequate scientific or engineering standards or procedures necessary to achieve and account for load reductions as required under Items (2) and (3) of this Rule, and that specific accounting tools required for these purposes in individual rules have been adequately established. In making this determination, the Director shall also evaluate the potential for load offset elsewhere that results in localized adverse water quality impacts that contribute to impairment of classified uses of the affected waters.

(6) A party seeking to purchase nutrient offset credit from the NC Ecosystem Enhancement Program or from a public or private seller of reduction credit shall meet the applicable requirements of Rule .0240 of this Section, which establishes procedural requirements for nutrient offset payments, in addition to applicable requirements of this Rule. Requirements of Rule .0240 include, but are not limited to, the requirement for non-governmental entities to purchase credit from a provider other than the NC Ecosystem Enhancement Program if such credit is available.

(7) The Watershed Oversight Committee under Rule 15A NCAC 02B .0280 may satisfy the seller requirements of Items (2) and (3) of this Rule and the trading provisions of Rule .0280 for individual agricultural land owners by submitting to the Division for approval a trading program, or revisions to such a program, that demonstrates how individual trades shall meet the requirements of this Rule and Rule .0280, and by subsequently including in annual reports required under Rule .0280 separate tracking and accounting for such trades.

History Note: *Authority G S. 143-214.1; 1432-214.3;143-214.5; 143-214.7; 143-215.1; 1432-15.3; 143-215.3(a)(1); 143-215.6A; 143-215.6B; 143-215.6C; 143-215.8B; 143B-282(c); 143B-282(d); S.L. 2005-190; S.L. 2006-259; S.L. 2009-337; S.L. 2009-486;*
Eff. January 15, 2011 (this permanent rule replaces the temporary rule approved by the RRC on December 16, 2010).