

Agenda Item: 10-36 Hearing Officers' Report on the Proposed Nutrient Offset Actual Cost Rate Rule for the Ecosystem Enhancement Program and Amendment of the Nutrient Offset Payment Rule

Explanation:

Under Neuse, Tar-Pamlico, and Jordan nutrient strategies, developers and wastewater dischargers have the ability to achieve partial load reductions under certain conditions through offset payments to EEP. In 2006, the EMC amended the Neuse Nutrient Offset Payment rule, 15A NCAC 2B .0240, increasing the nitrogen offset rate, establishing a phosphorus rate, and broadening applicability to all nutrient strategies. In both 2006 and 2007 the General Assembly enacted session laws replacing these rates with sequential temporary rates. The 2007 action, SL 2007-438, also directed DENR to establish a program based on the actual costs of nutrient reductions. Most recently, SL 2009-484 set a deadline of September 2010 to establish this approach.

To address this mandate, the EEP and DWQ have worked together with stakeholders to develop a new rule that establishes an actual cost method - 15A NCAC 2B .0274 - and to amend the original offset payment rule (2B .0240) to clarify associated procedural requirements. In January, the EMC gave staff permission to proceed to public notice and hearing on these rules. Hearings were held in March (in Greenville and Raleigh) and the comment period closed in mid-April. A total of 24 people attended both of the hearings. Two attendees provided verbal comments. Four written comments were also received.

Recommendation:

The Hearing Officers have reviewed all the comments received and recommend the adoption of both proposed rules with some modifications. Most revisions have been made to add clarity and to gain consistency with other nutrient management rules that have recently been adopted (such as those for Falls Lake and Jordan Lake). Additionally, revisions were made to provisions for wastewater dischargers to respond to comments received. With respect to geographic restrictions for load reduction projects for which public input was solicited on two different options (an 8-digit hydrologic unit restriction or a 10-digit (smaller) watershed restriction), the Hearing Officers recommend a requirement for location within the same 8-digit catalog unit as the impact with provisions for tracking impacts by the 10-digit watershed and giving preference for the implementation of load reduction projects in smaller watersheds with a concentration of impacts.