15A NCAC 02B .0240 is proposed for amendment as follows:

15A NCAC 02B .0240 NUTRIENT OFFSET PAYMENTS

(a) The purpose of this Rule is to establish procedures for the optional payment of nutrient offset fees to ~~partially offset nutrient loading requirements. This Rule may apply to any area of the State as directed by the Environmental Management Commission (EMC).~~ the NC Ecosystem Enhancement Program, subsequently referred to as the Program, or to other public or private parties where the Program or such parties implement projects for nutrient offset purposes and accept payments for those purposes, and where either of the following applies:

(1) The following rules of this Section allow offsite options or nutrient offset payments toward fulfillment of nutrient reduction requirements: .0234 and .0235 of the Neuse nutrient strategy, .0258 of the Tar-Pamlico nutrient strategy, and applicable rules of the Jordan nutrient strategy, which is described in Rule .0262.

(2) Other rules adopted by the Commission allow this option toward fulfillment of nutrient load reduction requirements.

(b) ~~Monies paid to this fund pursuant to this Rule shall be targeted toward the same river basin in which the nutrient reduction credits have been purchased.~~ Offset fees paid pursuant to this Rule shall be used to achieve nutrient load reductions subject to the following geographic restrictions:

(1) Load reductions shall be located within the same 8-digit cataloguing unit as the loading activity that is being offset.

(2) Fees paid to offset loading activities that occur in the watershed of Falls Lake in the upper Neuse River Basin shall be used to achieve offsetting reductions in the same watershed, while fees paid for loading activities in the Neuse 01 8-digit cataloguing unit below the Falls watershed shall be used to achieve offsetting reductions in that same lower watershed.

(3) Restrictions established in the Jordan nutrient strategy, which is described in Rule 15A NCAC 2B .0262.

(4) Any further restrictions established by the Commission.

(c) The Program and other parties shall obtain Division approval of proposed nutrient offset projects prior to construction. Other parties shall sell credits in compliance with approved credit release schedules and with the requirements of this Rule.

(d) ~~(b) For the Neuse and Tar-Pamlico River Basins this Rule authorizes the partial offsetting of the nitrogen loading requirements specified in 15A NCAC 02B .0234 and 02B .0235 and the partial offsetting of the nitrogen and phosphorous loading requirements specified in 15A NCAC 02B .0258 by payment into the Riparian Buffer Restoration Fund administered by the North Carolina Department of Environment and Natural Resources according to the equations presented in this Rule.~~ The Program shall establish and revise nutrient offset rates as set out in Rule .0274 of this Section. Offset payments accepted by the Program shall be placed into the Riparian Buffer Restoration Fund administered by the Department pursuant to G.S. 143-214.21

(e) Persons who seek to pay nutrient offset fees under rules of this Section shall do so in compliance with such rules, the requirements of paragraph (b) of this Rule, and the following:

(1) A non-governmental entity shall purchase nutrient offset credit from a party other than the Program if such credit is available in compliance with the criteria of this Rule at the time credit is sought, and shall otherwise demonstrate to the permitting authority that such credit is not available before seeking to make payment to the Program.

(2) Where persons seek to offset more than one nutrient type, they shall make payment to address each type.

(3) Persons who seek offsets to meet new development stormwater permitting requirements shall provide proof of offset credit purchase to the permitting authority prior to approval of the development plan.

(4) Wastewater dischargers that propose to make offset payments toward fulfillment of nutrient load reduction requirements shall make payment prior to National Pollutant Discharge Elimination System (NPDES) permit issuance or shall make incremental payments for additional nutrient allocations, contingent upon receiving a letter of commitment from the Program to provide the offset credit needed for permit issuance. In the event that a discharger seeking a NPDES Permit for a new or expanded wastewater discharge chooses to purchase some or all of the requisite allocation through this Rule and to make incremental payments for this allocation, the Division may issue or modify that permit accordingly, and shall condition any flow increase associated with that incremental purchase payment in full for the total cost of the additional allocation. Offset responsibility for nutrient increases covered under this Paragraph shall be transferred to the Program when it has received the entire payment.

~~(c) Payments to offset nitrogen loading shall be calculated by using the following equation:~~

~~N Payment = [($/lb)(# of lbs/year)(30 years) + (Land Cost $/Ac)(1 Ac / 35 Ac)(Devel. in Ac)]~~
~~X (1.1 Ad Costs)~~

~~Where,~~

~~$/lb = The cost of mitigation in dollars per pound of nitrogen mitigation. For stormwater offsets required under 15A NCAC 02B .0235 and 02B .0258, this factor will be initially established at $57/lb for calendar year 2006 and thereafter adjusted on an annual basis (in January of every year) based upon the construction cost index factor published every December in the *Engineering News Record (ENR)*. For group compliance association wastewater discharge offsets required under 15A NCAC 02B .0234(9), this factor will be initially established at $57/lb for calendar year 2006 and thereafter adjusted on an annual basis (in January of every year)~~

~~based upon the construction cost index factor published every December in the *Engineering News Record (ENR)*. For new and expanding wastewater discharge offsets required under 15A NCAC 02B .0234(7) and (8), this factor will be initially established at $28.50/lb for calendar year 2006 and thereafter adjusted on an annual basis (in January of every year) based upon the construction cost index factor published every December in the *Engineering News Record (ENR)*. The annual updating of these costs will be performed by the In-Lieu Fee Program Coordinator in the Ecosystem Enhancement Program.~~

~~# of lbs/year = The number of pounds of nitrogen exported or discharged each year for which mitigation is being requested.~~

~~Land Cost $/Ac = The current property value, in dollars per acre, of the property being developed, based upon the most recent county tax assessment.~~

~~1 Ac / 35 Ac = An adjustment factor, indicating that one acre of mitigation is required for every 35 acres of development.~~

~~Devel in Ac = The overall size of the development, for which the mitigation is requested, in acres.~~

~~(1.1 Ad Costs) = An adjustment factor, necessary to cover the administrative costs associated with the requested mitigation.~~

~~(d) Payments to offset phosphorous loading shall be calculated by using the following equation:~~

~~P Payment = [($/0.1 lb)(# of 0.1 lbs/year)(30 yrs) + (Land Cost $/Ac)(1 Ac/35 Ac)(Devel in Ac)] X (1.1 Ad Costs)~~

~~Where,~~

~~$/0.1 lb = The cost of mitigation in dollars per tenth of a pound of phosphorous mitigation. This factor will be initially established at $45/0.1 lb for calendar year 2006 and thereafter adjusted on an annual basis (in January of every year) based upon the construction cost index factor published every December in the *Engineering News Record (ENR)*. The annual updating of this cost will be performed by the In-Lieu Fee Program Coordinator in the Ecosystem Enhancement Program.~~

~~# of 0.1 lbs/year = The number of tenths of a pound of phosphorous exported or discharged each year for which mitigation is being requested.~~

~~Land Cost $/Ac = The current property value, in dollars per acre, of the property being developed, based upon the most recent county tax assessment.~~

~~1 Ac / 35 Ac = An adjustment factor, indicating that one acre of mitigation is required for every 35 acres of development.~~

~~Devel in Ac = The overall size of the development, for which the mitigation is requested, in acres.~~

~~(1.1 Ad Costs) = An adjustment factor, necessary to cover the administrative costs associated with the requested mitigation.~~

~~(e) In those cases where offset reductions are required for both nitrogen and phosphorous, the appropriate calculations shall be performed for both the nitrogen and phosphorous offset payments, as detailed in Paragraphs (c) and (d) of this Rule. In these cases, only the greater value of the two payments shall be required to satisfy the offset reductions for both the nitrogen and phosphorous limits.~~

~~(f) For loading offset in the Neuse River Basin in wastewater discharge found in 15A NCAC 02B .0234, payment shall be made prior to permit issuance or as provided in Paragraph (i) of this Rule. For loading offset in the Neuse River Basin in stormwater discharge as specified in 15A NCAC 02B .0235, payment shall be made prior to approval of the development plan.~~

~~(g) For loading offset in the Tar-Pamlico River Basin in stormwater discharge as specified in 15A NCAC 02B .0258, payment shall be made prior to approval of the development plan.~~

(f) ~~(h) The nitrogen and phosphorous reduction credits~~ Credits associated with ~~restored wetlands and riparian areas~~ load reducing activities funded under this Rule shall be awarded exclusively to the person, municipality, discharger, or group of dischargers who paid the offset fee.

~~(i) Wastewater dischargers subject to the nutrient requirements in 15A NCAC 02B .0234 shall be provided the option of making incremental payments for additional nutrient allocations. In the event that a discharger seeking a National Pollutant Discharge Elimination System (NPDES) Permit for a new or expanded wastewater discharge chooses to purchase some or all of the requisite allocation through this Nutrient Offset Payments Rule and to make incremental payments for this allocation, the Division of Water Quality may issue or modify the affected NPDES Permit to authorize the increased discharge, provided that the Division conditions any increase associated with that incremental purchase to notification that the total cost of the additional allocation has been paid in full. Mitigation responsibility for nutrient increases covered under this Paragraph shall not be transferred to the Ecosystem Enhancement Program of the Department of Environment and Natural Resources until the entire payment has been made to the Riparian Buffer Restoration Fund; provided, however, that the Ecosystem Enhancement Program shall provide a letter of commitment to~~

~~provide the mitigation as necessary for issuance of the NPDES Permit for a discharger covered under the provisions of this Paragraph.~~

History Note: *Authority G.S. 143-214.1; 143-214.20; 143-214.21; S.L. 1995, c. 572; S.L. 2007, c. 438; S.L. 2009, c. 337; S.L. 2009, c. 484; S.L. 2009, c. 486;*
Eff. August 1, 1998;
Amended Eff. August 1, 2006;
~~*See Session Law 2007-438,*~~
Amended Eff. September 1, 2010.