Agenda Item: 10-09 Request Approval for Notice of Text and Hearing for a Proposed Nutrient Offset Actual Cost Rate Rule for EEP 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 reaction in both 2006 and 2007, the General Assembly enacted session law replacing these rates with sequential temporary rates. The 2007 enactment, SL 2007-438, also directed DENR to establish a program based on the actual costs of nutrient reductions. In the most recent session, SL 2009-484 set a deadline of September 2010 to establish this program.

To address this mandate, the EEP and DWQ have worked together and 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 to clarify associated procedural requirements. The Actual Cost Method accounts for all EEP costs associated with achieving nutrient reductions inclusive of contracts with private entities to design and build restoration projects, expenditures for land acquisition and program administrative costs. Three attachments are: a summary of the history, process, and content of the proposed rules; and the text of both rules.

Recommendation: Staff recommend that the Commission grant approval to publish the attached rules in the North Carolina Register and conduct public hearings.