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Dear Mr. Huisman:

The North Carolina Farm Bureau Federation (NCFB) is the largest general farm organization in the State, representing the interests of farm and rural people. This letter is to comment on the proposed Falls Lake Nutrient Management Strategy, and on the proposed regulations published in the June 15, 2010, NC Register. NCFB presented comments at the public hearing in Durham on the rules. These written comments are submitted in addition to those comments.

Farm Bureau has a tremendous amount of experience with basinwide regulations, and our comments are based on many years of being involved with the development of nutrient reduction strategies and rules dating back to the development of NC's first 208 Plan in the late 1970's and the Chowan River Restoration (CHORE) plan in the early 1980's. Of course, the EMC is aware of NCFB's role in the development and implementation of the agriculture strategy and rules in the Neuse and Tar-Pamlico River Basins as well as the Jordan Lake watershed. An NCFB staff member has served on the two river basins' Basin Oversight Committees and the Watershed Oversight Committee for the Jordan Lake since their inception.

We are providing this history in order for you to understand that we are approaching the Falls Lake Strategy and proposed rules with a tremendous amount of experience over many years of being directly involved with assisting the agricultural community to meet, and even to exceed, nutrient reduction targets. We feel that we can offer valuable insights based on success in dealing with water quality issues from nonpoint sources and experience with the particular challenges posed with meeting agricultural nutrient targets in the piedmont.

NCFB has been involved in the Falls Lake nutrient issues for many years. Farm Bureau staff served on the stakeholder group that met to advise the Division of Water Quality regarding the nutrient strategy and the proposed rules. We appreciate the opportunity we were given to participate in that process.

Frankly, on the stakeholder group those of us representing agriculture and forestry were seriously outnumbered by representatives of cities and counties with concerns about the impact of a Falls Lake Nutrient Management Strategy on the operation of their wastewater treatment plants, existing development, and on their ability to grow in light of new development regulations. Only when the group split up into subgroups by interest area – when we were able to meet with the DWQ staff as an agricultural and forestry

subgroup -- did we feel that the legitimate concerns that we were trying to express for the agriculture and forestry community received the necessary attention to the unique aspects of farming and forestry in the Falls Lake Basin. We greatly appreciate the Division making substantial and much needed changes to the proposed agriculture rule at that time.

**Support Additional Comments Being Submitted Under a Cover Letter from the NC Division of Soil and Water Conservation** – Staff of the NC Division of Soil and Water Conservation is submitting a set of comments and proposed wording changes contained in a full copy of all of the regulations in MS Word format. These comments and proposed wording changes were developed by several people interested in the rules from the perspective of agriculture. We participated in that process, have reviewed those comments and support them. That document is 71 pages long and in the interest of reducing the volume of the hearing record, we are incorporating them by reference into these comments.

**Equity Issues** -- We realize that you have heard from many of the representatives of the development and local government communities that agriculture is not being regulated to the extent that other land uses are being regulated. First, agriculture has to meet the existing Neuse rules. Further, until the Jordan Lake regulations were adopted, agriculture was the only existing land use that had to retrofit its ongoing existing activities in basin regulations. By proposing existing development retrofit rules, we feel that one equity issue is being addressed, in that existing development will have to meet some nutrient reduction goals that they have not had to meet in the Neuse rules.

**Agriculture's Proven Track Record and Success under the Neuse Rule** – The agriculture rule in this proposal tracks the successful collective compliance implementation patterns already used in the Chowan Basin (voluntary) and the Neuse and Tar-Pamlico Basins (regulatory) and that are beginning to be implemented in the Jordan Lake watershed (regulatory.) The agricultural efforts in the Chowan Basin were a substantial contribution to the success achieved there with very significant water quality improvement from the time when the Chowan River was pea soup green. In the Neuse and Tar-Pamlico, agriculture has not only met its reduction goals, but far exceeded them. The proof of this is in the annual reports required to be submitted to the EMC on the compliance status of the agricultural community's efforts under the agriculture rules in these basins.

**Federal requirements on agricultural land activities to control erosion and associated sediment and to protect water quality** -- Agriculture has had ongoing federal mandatory compliance requirements in the conservation compliance provisions, first adopted in federal 1985 Farm Bill and in force since that time. The enforcement mechanism for these requirements is highly effective. The farmer cannot participate in or receive any money from any federal farm programs including, but not limited to, disaster payments, crop insurance, farm and crop loan programs, commodity programs, and many other federal programs, if the farmer is out of compliance with the provisions of the federal farm legislation and rules. These federal laws and rules required the installation

of retrofits on existing farms to control erosion and maintain sheet flow, and those best management practices must be maintained in order to continue to receive any farm program funds.

**Support Collective Compliance Approach, Not Individual Farm Mandates** -- If regulations must be adopted on agriculture in the Falls Lake watershed that are in addition to the Neuse agriculture rules, the implementation mechanism should be the collective compliance approach, and that approach solely. There should be no requirement in either Stage 1 or Stage 2 for mandatory buffers and livestock exclusion (expensive fencing, alternative water supplies, etc.) or other mandatory practices to be installed on all farms in the Falls Lake watershed. In the current proposal, these mandatory requirements on all farms would be triggered in Stage 2 if agriculture does not meet a specified reduction goal in Stage 1.

We oppose these mandatory requirements on every farm in the watershed in the current proposal and urge the hearing officers to remove these mandates on individual farmers from the rule. This is farming by prescription from the state level. Farm decisions need to be made by farmers with technical assistance from local agencies familiar with farming practices in a county. Mandating practices on individual farms in a state rule will not work. Farming, and the lay of the land on each individual farm, is just too variable to prescribe the same thing for every farm. The collective compliance approach should be the mechanism for compliance, if rules are adopted on agriculture in the Falls Lake.

**Important Information in the Comments Submitted on the Rules by Dr. Deanna Osmond of the Soil Science Department at North Carolina State University** -- The data presented in Dr. Osmond's comments point to an important issue regarding agriculture in the Falls Lake watershed.

The estimates of agriculture's nutrient contributions to the watershed generated by the Falls Lake model greatly influenced whether there needed to be an agriculture rule proposed for the Falls Lake watershed. The model's estimates for agriculture's contributions to the nutrient load in Falls Lake were based on all pasture land and hay land being fertilized, and most cropland being fertilized at higher rates than it is in actuality.

It is obvious from the scientifically designed study done by Dr. Osmond that almost all of the crop, pasture, and hay land in the Falls Lake watershed is either not fertilized or under-fertilized. Further, only one county did not have well over 50 percent of its agricultural fields (both cropland and pasture/hay) buffered. That county was Durham County, where 48 percent of the agricultural fields are buffered. The buffer width averages on agricultural fields exceeded 50 feet in the Falls Lake watershed. Those buffers are covered by the Neuse buffer rule for existing buffers, and those buffers cannot be removed except for the uses that are specified in the Neuse buffer rule tables.

The facts brought out by Dr. Osmond's study bring into question whether an agriculture rule in the Falls Lake watershed, other than the existing Neuse Basin agriculture rule, is even needed. There would be little benefit and could be severe consequences. There is tremendous development pressure on the remaining undeveloped land in this watershed. This makes it quite possible that additional rules on agricultural land would have the unintended consequence of changing those lands from agriculture to more intensive land uses. This is most particularly true in Stage 2, when under this proposal all farms would have mandatory practice and buffer requirements placed upon them if the Stage 1 goals cannot be met. We oppose the mandatory land use restrictions on farmland in Stage 2, and feel that if there is an agriculture rule, it should not have mandatory land use restrictions included. If a Falls Lake watershed agriculture rule is adopted, we support the cooperative compliance for all stages of rule implementation.

**Strategy Should Support Agriculture Because It Is a Lower Intensity Land Use** – As we testified at the public hearing, farmers as a group, and farmland as a land use, are decreasing in this basin. Efforts should be made to assist farmers in installing BMPs where needed, to continue to comply with the existing Neuse agriculture rule, and to support farming as a way to maintain working lands. Farming is a far less intensive land use than the development that is gobbling up the land in the Falls Lake watershed. Agricultural land has far less impervious surface. Maintaining agriculture and forestry in the watershed really is part of the solution to the water quality problems being experienced in the Falls Lake watershed.

This is most obvious when the maps showing impairment in the Falls Lake watershed are examined. The most severely impaired subwatershed is Ellerbe Creek, which has one percent of its land in agriculture and one percent in forestry. Adding unrealistic regulatory burdens on the small number of farmers in the Falls Lake watershed is likely to have the adverse impact of tipping many of those farmers into selling their land for development, thereby losing the water quality benefits and other environmental services provided by those farms in the subwatersheds that have not already been built out.

Farmland programs that offer incentives for farmers to maintain their land in farming and forestry should be considered important water quality management tools in the Falls Lake watershed. There are farmers who wish to stay in farming, but need to recoup the development value of their property through selling development rights and placing farmland protection easements on their property. The farmland's value is their collateral for loans, their retirement funds, their long term care funds, and their investment portfolio. Forestland tracts frequently represent their children's or grand children's college money. Funding for farmland protection programs and easement programs like the Farmland Preservation Trust Fund and the Conservation Reserve Enhancement Program is an important mechanism to assist such farmers to maintain farmland in farming and forestry in the watershed. Some local governments may want to consider funding such programs as well, similar to the local program in Forsyth County, NC.

**Fertilizer Management Rule** – Based on Dr. Osmond's scientific survey of the Falls Lake watershed, and information from sources such as the NC Department of Agriculture

and Consumer Services' (NCDA&CS) Regional Agronomists, the watershed's pastureland, hay land and cropland are not over-fertilized. In fact, such land is almost always under-fertilized. The hearing officers should carefully consider this before requiring agricultural operations in the Falls Lake watershed to comply with the fertilizer management rule.

It takes significant financial and staff resources to conduct nutrient/fertilizer management training. The hearing officers should thoroughly consider (a) this history of under-fertilization of farmland in the watershed, and (b) the fact that farmers have already taken this training as a part of the Neuse rule, before requiring farmers to comply with the Falls Lake fertilizer rule. Further, farmers attending this training or having plans prepared in the Falls Lake watershed, were they to follow the recommendations, most likely would increase their fertilizer application on these farmlands -- probably a consequence not desired under the Strategy. This increased fertilization could also occur without the commensurate changes in other cultural practices to increase the ability of the vegetation to absorb more nutrients (such as liming, reseeded pastures, etc.)

Please carefully consider eliminating agriculture from the Falls Lake fertilizer management rule. This will mean a better use of resources for nutrient/fertilizer management training, and allow more focus on training other categories of fertilizer users, especially those who have had no such training under the Neuse nutrient management (fertilizer) rule.

**Financial Support for BMP Education, Technical Assistance and Implementation, and Underestimation of Costs to Farmers and Agricultural Agencies** – Implementing these rules will be even more challenging than in the past, because local, state and federal budgets have not kept up with the increasing demands on the agricultural professional community that provides the training and technical services to assist farmers with implementation of practices. In fact, federal, state, and county technical assistance staff continues to be reduced due to budget cuts.

The NC Agriculture Cost Share Program for Nonpoint Source Pollution has slipped further behind in meeting ever-increasing demands for cost-sharing of best management practices. These funds were cut again in the most recent budget. Assuming, as is done in the Fiscal Analysis, that there will be adequate money for every farmer that requests cost share to get it, and that the cost share will be seventy five percent of the cost of BMPs is totally unrealistic (page 128 of Fiscal Analysis). That amount of funds is not available now in NC from either federal, state or local sources, nor is it likely to be. Also, farmers who actually are fortunate enough to be the one-in-five who receive NC Agriculture Cost Share Funds when requested frequently do not receive the full seventy-five percent. This is due to District and applicant caps, or the required use of the average cost tables that can underestimate the actual cost of labor and supplies.

Therefore, the Fiscal Analysis significantly underestimates the cost of implementing these rules on farmers. Farmers cannot pass on the cost of their environmental improvements to their customers, because most commodities are traded in highly

competitive world and national markets, and many of their competitors do not have to meet similar requirements. Unless a concerted effort is made to find adequate funds from many sources it will be very challenging for farmers to put in the best management practices needed to attempt to reach the high nutrient reduction targets proposed for Falls Lake.

**Implementation Schedule for Agriculture** – We appreciate that DWQ staff was responsive to agriculture’s requests for more realistic deadlines for the specific tasks assigned to the Watershed Oversight Committee and farmers under the agriculture rule. We feel strongly that the implementation schedule for Stage 1 should remain at least 10 years and the full implementation schedule should not be moved up to 2018. As Dr. Osmond’s information shows, it may be difficult to reach the reduction goals specified for Stage 1 in 10 years. We oppose changing this to seven years or any number fewer than ten. The opportunities for farmers to meet the high nutrient reduction goals in any collective compliance strategy will be few, leaving compliance options very limited. These farmers have already met high reduction goals in the Neuse rules.

**Horse Numbers in the Agriculture Rule** -- Horse pastures and barns that are not commercial operations (boarding, exhibiting, breeding, or raising horses for sale or for commercial purposes) should not be included in the agriculture rule. The Commission should reexamine the five horse mandate in the agriculture rule and exclude horse operations that are not commercial operations in the agriculture rule. The five horse rule, without a commercial exclusion, captures horse owners that have horses solely as companion animals, and we do not think this should be the intention of the agriculture rule.

**Reporting Requirements for All Sources** - We would like to point out that nutrient reduction progress and status reports were only required from one land use in the Neuse and Tar-Pamlico – agriculture. We appreciate that some of the reporting requirements for agriculture have been revised in this rule. We also strongly support reporting requirements for other land uses. This is a very important aspect of this rule. We are hopeful that the other land uses will be reporting their reductions using substantiated scientific methods of determining reductions.

Agriculture has invested over 15 years, and over \$ 1 million, in developing and revising scientifically-based nutrient reduction estimation tools for agricultural land units, those tools being the Nitrogen Loss Estimation Worksheet (NLEW) and the Phosphorous Loss Evaluation Tool (PLAT.) The estimates of nutrient reductions produced by these tools are frequently revised when new scientific information is developed. When NLEW changes occur, the annual Neuse and Tar-Pamlico agriculture reports have been revised to reflect the most recent scientific information. An example would be the lowering of the amount of reductions achieved from buffer installation based in new science. The elements of PLAT are constantly reevaluated and revised using up-to-date scientific information as well. We feel it is important that other sources, such as development, use scientifically-based tools and that they frequently revise their reduction estimation tools as new science is developed on nutrient reductions.

**Requiring Local Governments to Adopt, Implement, Enforce and Pay for These Rules** – We continue to be concerned about the costs that are shifted to local governments of writing ordinances, implementing ordinances and enforcing ordinances under these rules. The local governments did not have to shoulder these burdens in the Neuse and Tar-Pamlico rules, and they should not have to do so in these rules either. It is hard to imagine how the already stressed local governments can be expected to take on these additional burdens.

If there are shifts to local government, they should only be to the local governments that are already staffed and capable, and where they are already implementing similar ordinances. If local governments are going to be charged with adopting ordinances and enforcing these rules, we propose the lists of local governments in 15A NCAC 2B .0275 (7) (a) and (b) be revised after a comprehensive review to remove local governments that do not have this capability already. Further, the comments being submitted by the DSWC include a new (d) that further specifies the areas of responsibility that are to be retained by the State under these rules.

**Specific Questions Raised in the Proposal** -- The proposal asked for comments on specific questions. We would like to comment on some of these questions that may not already have been addressed above or in the comments provided by the staff of the NC Division of Soil and Water Conservation which we have included by reference.

**“Hobby Farms”** -- We oppose “hobby farms” being called farms of any kind. They are not farms. The comments sent in by DSWC propose the term “lifestyle acres” as an alternative. Agriculture is a commercial endeavor, and the agriculture rule captures commercial farms. Dogs are companion animals and dog kennels are not agriculture. If lifestyle acres are to be regulated, these lifestyle acres should be under existing development – not under agriculture.

**Implementation Schedule** -- We feel strongly that the implementation schedule for Stage 1 should remain at least 10 years and the full implementation schedule should not be moved up to 2018.

**Revaluation During and After Stage 1** – The proposed regulation states that “a party” may develop and submit a “supplemental model” for Commission approval in order to trigger possible reevaluation of the Stage 2 requirements. In fact, some “party” should not have to submit a “supplemental model” to trigger what should happen anyway – an assessment and reevaluation of the need for and requirements of Stage 2 as Stage 1 nears the end of the ten years. We oppose the language as it is currently written. The rules should require the Commission to evaluate scientifically sound supplemental models submitted by parties, but that should not be the sole trigger for reevaluating whether Stage 2 goes into effect. The Commission and the Division of Water Quality should be mandated to do this whether at party submits a supplemental model or not.

These rules are very expensive, and the costs rise tremendously in Stage 2. The Division of Water Quality should be evaluating data and working on its own models continuously, based on the data and other information it is gathering during the implementation of Stage 1. The Environmental Management Commission and DWQ need to make a full and reasoned assessment, perhaps starting at the beginning of year 9, of the achieved and anticipated results, rather than allowing automatic Stage 2 requirements to go into place that may be excessive or not needed. Our concern regarding Stage 2 mandates in agriculture have been stated above, and is an example of a situation requiring such a reexamination. One of the factors that might be considered at that time would be how many farms are left in the watershed, and what they have achieved, or reasonably could be expected to achieve, through additional collective compliance, along with the negative impacts on the remaining farms of mandatory practices on every farm.

We appreciate the opportunity to comment on these proposed regulations. If you have questions regarding these comments, please do not hesitate to contact us.

Sincerely,

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