

## **Summary of Comments and Responses**

### **Neuse & Tar-Pamlico Nutrient Strategy Rules**

### **15A NCAC 02B .0701 - .0735**

*(Note: Comments submitted to Division of Water Resources (DWR) staff following the October 18, 2017 stakeholder meeting are summarized below. DWR responses are provided in **blue**. Rule revisions based on these comments are reflected in the revised rule drafts submitted to the January 10, 2018 meeting of the Water Quality Committee of the Environmental Management Commission.)*

#### **Definitions Rule Comments - .0701**

.0701 This rule sets out a set of definitions to be applied in the Section, i.e. .0700 only. It does not incorporate by reference the definitions in 2B .0202. Those definitions have applied to all of the nutrient strategy rules as they were developed. It would seem useful to adopt by reference the 2B .0202 definitions as a part of this new Section. In addition, the Neuse and Falls Nutrient Strategy rules will remain in Section .0200 and the terms that are defined are used in those rules.

**Please advise if specific definitions are of concern. A new definitions rules has been created for the .0700 section, and staff has made painstaking efforts to include or transfer all applicable definitions from .0202 to .0701.**

0701(28) "Existing utility line maintenance corridor." This definition is not a part of the Neuse Estuary Buffer rule. The new rule limits the definition to "the portion of the right of way in which the vegetation has been mowed, cut or otherwise maintained in the last 10 years." This becomes important in new rule .0714 which regulates riparian buffers in the Neuse Estuary. That rule allows replacement and repair of sewer lines so long as no land grubbing or grading occurs within the 10 feet immediately adjacent to the water, with authorization. However, any deviation from that requires mitigation with authorization.

**This definition is codifying existing clarification memos that were agreed upon by DEQ and various local governments. The table of uses has been reworked to address comments related to utility lines.**

.0701(57) "Pruning" (i) restricts pruning after storm events to hurricanes and ice storms. This should also be allowed whenever an issue of public safety is caused by a natural event, regardless of the storm intensity. Isolated events can be greatly destructive and yet not be part of any significant area wide storm, much less a hurricane or named storm.

**The definition does not limit pruning to only after hurricanes and ice storms. The term "such as" is analogous to "for example" not "limited to".**

.0701 (30), Forest Management Plan. Please confirm the G.S. referenced in this statement. I believe the correct GS citation should be 160A-458.5 (in other words, remove the "(4)" that is tacked on at the end).

**Updated with correct GS citation.**

## **Nutrient Offset Rule Comments - .0703**

Substantially similar comments regarding the nutrient offset rule were provided by NRCA on Sept. 7, 2017 and responses similar to those below were provided by DWR on Sept. 28, 2017. Meetings held with NRCA representatives on Oct. 11th, Oct. 18th, and Dec. 7 did not renew most of these specific concerns, and DWR has provided rule revisions consistent with those described in these comment responses.

In a box insert on page 2 and in the accompanying "Discussion Draft," DWR staff acknowledged that other forms for trading already exist under other rules of the EMC, in particular under the Falls rules and the Neuse Estuary rule for the bubble permit association, the Neuse River Compliance Association. Similar provisions appear in other rules regarding nutrient compliance by waste water treatment facilities. Having so acknowledged, the draft rules make no reference to or declare any exception from its broad, sweeping and all-encompassing opening rule, "(a) PURPOSE. The purpose of this Rule is to establish standards and procedures for approval of nutrient offset credits and associated nutrient reduction projects." The definition of "Nutrient offset credit" at (b)(4) of the rule further confirms that the rule applies to any credit "that is generated in compliance with this rule." It applies to any credit used to "satisfy other nutrient load reduction requirements as described in this Section." The Section will include the nutrient reduction strategies for every nutrient impaired waterbody in the State including the Neuse Estuary and Falls Lake. So the suggestion in the box is a fiction as the rule will apply to both the identified programs since they are in the same Section as 2B .0703. The Neuse Estuary rules are found at .0710-.0715. In rule .0703(j), the Falls rules are incorporated and made subject to this rule for nutrient credits approved under .0703.

The (a) PURPOSE rule should be revised to exclude the credit recognition, management, and implementation procedures authorized by the Falls Lake rules with the present designations of 15A NCAC 2B .0278, .0279, .0280, and .0284. In addition, it should be amended to expressly exclude the bubble permit under the Neuse Estuary rules with the present designation 15A NCAC 2B .0234.

Clarifying language has been proposed in the purpose statement to address the concerns raised.

This comment indicated concerns that the nutrient offset rule might be used as the standard to approve existing development credits under the Falls Lake strategy, or that it might interfere with the allocation trading that occurs within wastewater compliance associations. Neither interpretation was intended by DWR. In response to those concerns, DWR sees opportunities to better distinguish nutrient offset credits from compliance credit in rule and in guidance.

G.S. 143-214.26 starts with the phrase "Nutrient offset credits may be purchased to partially offset nutrient loadings..." (emphasis added), indicating their purpose as being used for trading only. Thus, its applicability is already relatively narrow, and DWR's intent was not to change the scope of the existing nutrient offset rule. Calculation of "nutrient loadings" for compliance with individual rules (wastewater, agriculture, new development, and existing development) are accounted for according to those rules and associated guidance (e.g. DMRs, NLEW, JFSAT).

Regarding the trading underway between wastewater facilities, this involves the trading of nutrient allocation and not nutrient offset credits. Neither the existing nutrient offset rule nor the proposed

**nutrient offset rule govern this activity, which is generally authorized by nutrient wastewater rules and policy.**

**Opportunities for joint compliance are also identified in the Falls Lake strategy, either for a single jurisdiction's wastewater and existing development requirements, or for multiple jurisdictions' existing development requirements. While guidance is under development, DWR does not anticipate that these joint compliance strategies will require the transfer of nutrient offset credits.**

The proposed rules, by way of the definition for "Nutrient offset credit," seek a major change in the program as it has previously been implemented. It limits the recognition of credits to those which provide "permanent nutrient load reductions."

That limitation is not supported by the enabling legislation at NC Gen. Stat. §143-214.26. In addition, DWR acknowledges its "Discussion Draft" that there is a need and purpose for a temporary credit program. Thus, the limitation violates NC Gen. Stat. §150B-21.9 as it is not reasonably necessary to implement the enabling legislation.

**From DWR's perspective, the proposed change to permanent credits provides two major benefits for members of the regulated community. First, more valuable permanent credits will be awarded using the same nutrient reduction practices that are now only granted temporary (30 years) credit. Further, the change opens an avenue to develop a more efficient and decentralized approval mechanism for truly temporary credits. DWR staff does not necessarily agree with the legal interpretations provided, and in fact G.S. 143-214.26(a)(1) explicitly invites the EMC to describe the manner in which nutrient offset credits may be created and utilized.<sup>1</sup>**

**Credits generated in the existing nutrient offset market are almost exclusively protected by permanent conservation easements, but their life is presently limited to 30 years. Recognizing these credits as permanent is projected to be a major benefit for point sources and local governments who may wish to acquire and redeem them in perpetuity. Further, it is projected to have little if any financial impact to the new development market. The only short-term downside might be the ability for point sources to buy one year of credit for nutrient allocation exceedances. To DWR's knowledge, the likelihood of this occurring in nutrient strategy watersheds is small at present. However, to address this concern, DWR's latest draft of this rule does allow for the conversion of permanent credits to annual credits at a ratio of 1:30.**

**This proposed change also carves out room to work with stakeholders to develop a more efficient approach to approving short term tradable credits. At present, all nutrient offset credits must be approved by DWR per rule. Such an arrangement will almost certainly create a procedural bottleneck in the creation of temporary, tradeable nutrient offset credits.**

**This permanency concept was fleshed out more fully in stakeholder meetings held on Oct. 11th and Oct. 18th. Several stakeholders expressed support for this approach, and DWR is not presently aware of any outstanding concerns regarding this adjustment.**

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<sup>1</sup> "(a) Nutrient offset credits may be purchased to partially offset nutrient loadings to surface waters as required by the Environmental Management Commission. Nutrient offset projects authorized under this section shall be all of the following: (1) Consistent with rules adopted by the Commission for implementation of nutrient management strategies."

The requirement for a “permanent” nutrient credit is illusory. Later in the rule at (g)(5), the rule excuses a “permanent” nutrient credit from being restored under certain listed conditions. The rule makes no mention of what will be done with the non-wasting endowment funds if that situation occurs. The rule does not address how the loss of the nutrient credit project impacts the person who relies on the nutrient credit to satisfy their regulatory requirement. For Existing Development and for new or expanding WWTPs, the credits must remain active and functioning to meet the regulatory requirements.

**The “certain listed conditions” describe a natural disaster occurring in a restored forest. Should such an event occur now, no restoration would be required by the permanent steward and natural ecological succession would be left to take its course. This approach recognizes the natural resilience of forest systems, reduces financial risks to the permanent steward, and reduces the amount of non-wasting endowment funds that must be set aside by the provider to sustain the project. The credit would remain active in these circumstances, also reducing risk for the credit purchaser.**

A “permanent” nutrient credit source may also be the subject of condemnation. The conservation easement supporting the credit source can be condemned by state or local government. See NC Gen. Stat. §40A-80, et seq. The rule makes no provision for what action must be taken by the entity responsible for the nutrient credit source when it is taken and destroyed as a result of condemnation. There is likewise no provision for a refund of monies paid for a permanent credit, when it is not required to be replaced, to the person who purchased the nutrient credit.

**This issue is not directly addressed in our current rules nor in the proposed rules and we agree it merits inclusion. As newly proposed, the permanent steward would be responsible for installing a replacement project in cases of condemnation. It is expected that fair market value received through the condemnation action would include payment for the property’s nutrient reducing functions, and thus a replacement project could be financed.**

Subsection (c) NUTRIENT CREDIT APPROVAL STANDARD uses vague and ambiguous language likely to be rejected by the Rules Review Commission. The specific terms are “sustained in perpetuity” and “reasonably certain to generate an estimated nutrient load reduction.”

**The language within this rule was designed to provide a general standard for credit approval (paragraph c) along with more specific criteria to address it (paragraphs d and e). At this time staff believes the rule as a whole provides adequate specificity, but it is acknowledged that refinement would be necessary should the RRC express concerns. DWR intends to engage RRC attorneys in pre-review, at which time DWR will address any concerns that arise.**

Subsection (c)(2) establishes the means of calculating delivery factors for the credit reductions. It applies to the Section only, so it has no application to the Falls rules which remain in Section .0200 unless it deemed applicable by way of .0703(j).

**Subsection (d)(2) does refer to the section only, potentially omitting the Jordan and Falls watersheds temporarily due to the legislatively-mandated delay in readopting them. Amended language was proposed to ensure coverage for all nutrient strategies.**

Subsection (c)(4) allows the temporary use of reductions implemented for mitigation purposes to satisfy other program requirements until the credit is needed for its design purpose. That temporary use of a credit is inconsistent with the definition of “nutrient offset credit” as it is not permanent. For that

reason, the two rule provisions are inconsistent and the rule fails to meet the requirement of NC Gen. Stat. §150B-21.9 that the rule be clear and unambiguous.

**This comment was interpreted differently by members of DWR staff, with the terms “program requirements” and “design purpose” being read ambiguously. Further clarification may be necessary to adequately address this comment.**

**Projects eligible to create two types or more types of credits are presently transferrable between ledgers until they are utilized for compliance purposes, and this language is intended to codify this existing flexibility. DWR is aware of no substantive mathematical obstacles barring the conversion between a permanently conserved square foot of buffer credit to an equivalent estimate of lbs./year of nutrient reductions.**

**The temporary redemption of compensatory mitigation credit before conversion to nutrient offset credit is not the intent of this language. As written, once a credit is used to “satisfy a mitigation requirement,” it may no longer be converted to nutrient offset credit. Once the comment is better understood, DWR will consider restructuring this language to eliminate any perceived ambiguity.**

Subsection (e) applies to “providers” which is not a defined term. It appears that the term extends to include every provider of a credit, except the Division of Mitigation Services. If so, then the term also applies to local governments which build their own nutrient credit projects to meet regulations applicable to them, e.g. existing development reductions under the Falls rules. Under (1) of the subsection, a provider must establish a nutrient offset bank before a project plan can be approved. Absent approval under this rule, local governments cannot meet their regulatory obligations. In Comment A 27, DWR suggests that local governments are governed by another rule, however no such rule is referenced.

**“Provider” is explicitly defined. Local governments would be a provider only if establishing a nutrient offset bank to sell excess credits. However, establishing a bank is not necessary for compliance purposes as was described in earlier comments.**

Subsection (e)(2)(E) is confusing in the second sentence. The term “will meet this requirement” appears to mean “will be approved.” In addition, this provision ignores recent legislation requiring that credits be approved for Chesapeake approved credits of the same subject. See Session Law 2016-94§14.13(i).

**The terminology used was chosen to identify preapproved practices for nutrient offset credit generation. The second sentence references the first. However, approval of the project plan would occur as described in (e)(4).**

**The first sentence of (e)(2)(E) retains adequate flexibility for projects to be approved pursuant to 2016-94 §14.13(i).**

Subsection (f)(3) forbids the approval of a nutrient offset credit “if the project is financed in whole or in part by state or federal grant funding.” This limitation is in excess of the authority conferred by NC Gen. Stat. §143-214.26. In addition, the limitation violates NC Gen. Stat. §150B-21.9 as it is not reasonably necessary to implement the enabling legislation. The federal government has established substantial funding through various programs to stimulate this type of nutrient reduction. This limitation is contrary to the purpose of that federal legislation and will frustrate it being carried forward.

**The EMC has additional authority beyond that provided in §143-214.26, and stakeholder engagement to date has reflected consistent concerns that the allowing the use of state and federal grant money to generate tradable credits will frustrate the purpose of those funds. In short, the concern is that funds intended for net environmental improvement will instead be used to offset environmental impacts while the provider is paid twice. Our research to date indicates that state and federal grant sources have diverging rules and policies on this topic, and that a proactive approach can avoid controversy related to “double dipping.”**

**To address what appears to be the major concern, this issue is different than the use of state and federal grant funds for compliance purposes. Again, this topic is not covered as part of the proposed rule.**

Subsection (g) uses the undefined term “perpetual steward.” In addition, it fails to provide any means for the responsibilities assumed by the “perpetual steward” to be transferred to another entity. The concept that the entity first identified to perform the functions of stewardship for a nutrient credit project will be permanent is even more difficult to conceive in reality than the idea that the nutrient credit project itself will be “permanent.” A means should be established for transfer as appropriate subject to the approval by DMS/ DWR of the proposed new steward.

**DWR has further defined the requirements for qualifying as a permanent steward in a manner consistent with that currently enforced through mitigation banking instruments, including requiring the perpetual steward to achieve accreditation standards. This approach is consistent with current DWR policy and can be found in mitigation banking instruments. DWR also provided new language allowing for the transfer of responsibilities between perpetual stewards.**

Subsection (g)(3) does not identify the minimum width of the easement that is required for access to the nutrient credit feature to the nearest public right-of-way. In addition, it ends with a sentence which seems at odds with other provisions in the rule. “Structure operation and maintenance shall be the responsibility of the landowner or easement holder unless the Division gives written approval for another person or entity.” The purpose of subsection (g) is to establish that the “perpetual steward” is responsible for the nutrient credit project. See (4) of (g). This sentence fails to meet the clear and unambiguous standard in light of its clear conflict with the immediately succeeding paragraph (4).

**DWR has proposed new language to ensure the width of the easement is sufficient for inspection and maintenance purposes. Adequate width might also depend on the nutrient reduction practice employed. SCM maintenance might require heavy equipment, while a restored forested area might simply require access via a footpath for inspection.**

**Elements of this section were revisited to clarify the relationships between providers and permanent stewards, hopefully resolving any ambiguity concerns.**

Subsection (g)(4)(A) makes the project steward responsible for providing an alternate project achieving equal nutrient load reductions “if the approved project cannot be sustained in perpetuity.” It is unclear how this obligation will be funded. The nonwasting endowment is limited to the amount of money required to “cover the cost of perpetual monitoring, maintenance, repair and renovation of a nutrient reductions project.” It does not include the money necessary to build a substitute project. This

requirement is thus confusing, if not beyond the required financial capacity of the nonwasting endowment.

**DWR expects that if a permanent steward accepts liability to sustain the project in perpetuity and then audits or self-reporting show that it fails, the steward would in fact be required to replace the project. In most cases this would probably occur in-place and be better characterized as a “repair” or “renovation,” but it’s possible an alternate project could be put into place if otherwise allowable. This risk seems appropriately covered by the nonwasting endowment as negotiated between the provider and steward.**

Subsection (g)(5) creates problems for those relying on credits previously purchased when the projects are allowed to be abandoned and not replaced. These issues were set forth earlier.

**DWR is not aware of a scenario where projects are allowed to “be abandoned and not replaced.” However, this language was amended to invoke the concept of restoration through natural processes rather than “abandonment.”**

Subsection (j) GEOGRAPHIC RESTRICTIONS in (1) and (2) allow the use of nutrient offset credits [a term defined at .0703(4) as permanent credits] to meet “regulatory obligations” for the Falls rules. Does this amend the Falls rules so that the nutrient offset credits must be permanent, come from a mitigation bank, and otherwise conform to rule .0703? If that is the effect, then the rule is inconsistent with Session Law 2016-94 as it amends the Falls rules in an untimely manner.

This seems especially problematic as to whether the Falls Existing Development program can move forward except under existing rules.

**Again, compliance credit for the Falls Lake existing development rule will be accounted for as described in that rule and in the existing development model program, which is presently being drafted in consultation with UNRBA, the NSAB, and other interested parties.**

**S.L. 2016-94 required DEQ to enumerate the list of rules that comprise the Jordan and Falls Lake Strategies, and DEQ provided that list to the General Assembly in a brief report. It is that list of rules that may not be amended until called for in 2016-94. This rule was not enumerated in that list. That said, DWR also recognizes that it would be imprudent to make controversial changes to this rule that would substantively disadvantage any party or sector in the Falls or Jordan Lake watershed while those rules are under external evaluation.**

From our perspective the weakest components of the NC nutrient trading program are; 1) the calculation of 2273 lbs of N per acre and 2) ability to currently sell nutrient offset credits from a 50ft buffer generated and paid for by federal compensatory stream mitigation requirements.

- 1) You all are aware of the short comings of the assumed 2273lbs per acre in N reduction, which would be 75.7lbs per acre once the 30yr conversion is removed. If you are concerned about disrupting the “market” for credits, consider the original NRB Model Stormwater Program for nitrogen proposed a \$330/lb (DWQ FinalModel\_Plan, p. 12 attached). You are familiar with the calculation of 2273 and the poor assumptions entailed as evidenced in the attached presentation from 2009. Though it is politically challenging to adjust this number, the draft language appears to be moving the needle in the right direction.

The agricultural buffer restoration practice standard forms the basis for the creation of most nutrient offset credits. Additional studies since the implementation of that standard suggest that the credit may be more generous than warranted. DWR does intend to revisit this practice standard in the future, but not as part of this rulemaking process because the practice standard itself is not contained in rule. DWR will continue to approve nutrient offset banks using the existing methodology until the practice standard is updated. Any future update to the agricultural buffer restoration practice standard will provide opportunities for engagement with the mitigation banking industry and other interested stakeholders.

- 2) This draft includes the language under section d) Quantifying Nutrient Offset Credits (4), “*Reductions shall not include those already implemented to satisfy other requirements under the same nutrient strategy or those resulting from state or federal compensatory mitigation requirements.*” We strongly support the adaptation of this language as it would prohibit generating nutrient credit from USACE required buffers on stream mitigation.

Currently mitigation providers stack nutrient offset credits within the 50ft buffer of stream mitigation credits, but not over wetland mitigation credits. This stacking is justified by a very loose argument that the impactor may be penalized twice by being charged for both impacts concurrently with regard to buffer and stream mitigation. However impacts mitigated with nutrient offset credits are not specifically tied to stream or buffer impacts and therefore credits should not be stacked.

As an example, under current rules, NC DOT is funding the development of numerous stream mitigation banks in the Neuse 01 watershed by purchasing approximately 40,000 SMUs from traditional stream mitigation projects that include a 50 foot buffer on either side of the stream. At a 100 foot width DOT will be paying for approximately 100 acres of buffer restoration that under current rules could be used to generate 227,300 lbs of N offset credits. At a market price of \$15/lb this equates to \$3.4M and 227,300lbs of nutrient offset credit that would be charged and paid, but do absolutely nothing to reduce nutrient loading in the watershed. Specific examples can be provided upon request.

The issue of credit stacking is conceptually challenging but important to ensure that the creation of mitigation or nutrient offset credits is effectively matched to environmental degradation. DWR appreciates this supportive comment but does not necessarily endorse the hypothetical scenarios and conclusions provided therein. If significant differences in interpretation become apparent and further clarifications are needed, DWR will contact the commenter.

### **Buffer Permitting Comments - .0705**

.0705(b)(1). The application should require a statement as to who owns the property and have attached an authorization for the application if the owner is not the applicant.

Added to the rule.

.0705(b)(3). If the Authority determines that the processing period has been suspended for any of the reasons stated in the rule, then written notice of the suspension including the date and the reason should be sent to the applicant.

**That is normal operating practice for DWR**

.0705(b)(4). It seems unlikely that the Rules Review Commission will approve a rule with such broad discretion to impose conditions “that support the purpose, spirit and intent of the riparian buffer protection program.” The term “spirit” is the most problematic.

**Similar language is in the stormwater rules that recently went through RRC review. (see 15A NCAC 02H .1017 (12)). Rules will be amended if RRC objects to the wording in this rule.**

.0705(c)(2). This does not provide for any automatic action if the Authority fails to act in contrast to (b)(3) above. Is this intentional?

**Yes.**

.0705(c)(3). This does not provide for any automatic action if the Division fails to act in contrast to (b)(3) above. Is this intentional?

**Yes.**

**Buffer Forestry Comments - .0706**

Overall comment. It is helpful to consolidate and standardize the forestry harvest rules for the Buffer Rules. It is helpful to allow mechanized harvesting of trees from the Buffer Zone area, in the interest of promoting safe logging practices and taking advantage of modern harvesting equipment that can minimize soil disturbance.

**Thank you for your feedback.**

It is not clear in which river basin or watershed these rules would apply. Please add an explicit statement in the Purpose that spells out where these rules apply, considering there will be a separate set of Buffer Rules for Jordan.

**A statement has been added.**

It is not clear how wide the actual Buffer Zones are. Please add an explicit statement to specify the width of each Zone (Zone 1 and Zone 2).

**Instead of repeating the requirements in the forestry rule we reference the buffer rules which provides the buffer widths for each strategy**

.0706(b)(10) I think you need to add the words “is allowed” to the first sentence, as I suggest below: *“One-time fertilizer application to establish replanted vegetation is allowed.”*

The current sentence structure is not clear on what item (10) is trying to say....is fertilizer allowed, or prohibited?

This has been added.

### **Neuse Purpose & Scope Rule Comments - .0710**

.0710(f). This amendment will effectively block implementation of the riparian buffer rules and related stormwater requirements from the Neuse Estuary rules in Falls Lake. Expressly state relationship to overlapping Falls Rules. Revise the provision to read:

Paragraph (f) was amended to provide clarity of for the geographic applicability of the overall management strategy and states that *“The Neuse nutrient strategy shall apply in all areas draining to waters within the Neuse River Basin unless individual Neuse strategy rules describe other boundaries.”* We do not read this as blocking implementation of the Neuse Riparian Buffer Rule Requirements because the Applicability of that rule is clear in that the requirements apply throughout the Neuse River Basin, which includes the Falls Watershed.

### **Neuse New Development Stormwater Rule Comments - .0711**

.0711(2). This list should be amended to include all Falls Lake jurisdictions implementing stormwater requirements. Creedmoor, Stem, Roxboro, Franklin County, Butner, Hillsborough, Granville County and Person County should all be added to this list. Given the provision in .710(f), this rule is confusing as the Falls Lake strategy presumably would remove Durham, Durham County, and Orange County from coverage by the Neuse Estuary strategy.

The stormwater requirements for Falls Lake local governments are provided in the Falls Lake New Development Stormwater Rule (.0277). The proposed revisions to the Neuse New Development Stormwater Rule are not intended to be applied to areas of local governments within the Falls Watershed subject to the Falls requirements. It is not necessary to list the Falls Local governments in the Neuse Rule other than those who have areas within the Neuse River Basin but outside the Falls Watershed. To clarifying the relationship between the Falls (.0277) and the Neuse (.0711) New Development Stormwater Rules language has been added to the purpose section Item (1) of .0711 stating that *“Nothing in this Rule preempts the requirements of 15A NCAC 02b .0277 for projects subject to the Falls Reservoir Nutrient Strategy or prevents local governments from implementing requirements that are more restrictive than those set forth in this Rule”*

.0711(3). There is no 5% exemption in the Falls rules so this is in conflict with that strategy. When is the “of record” exemption date to qualify for the exemption?

The “lot of record” language previously proposed has been removed from the proposed rule revisions. The proposed exemption would only apply to development within the Neuse Basin that is subject to the Neuse New Development Rule. A similar exemption will be offered for consideration by Falls stakeholders when the Falls Rules undergo revision in the future.

.0711(4). These local government requirements are not consistent with the Falls rules for jurisdictions in that part of the Neuse Basin. The rule fails to include the Falls model program and only directs compliance with the Neuse 2001 approved program.

**As explained above, the stormwater requirements for Falls Lake local governments are provided in the Falls Lake New Development Stormwater Rule (.0277). The proposed revisions to the Neuse New Development Stormwater Rule are not intended to be applied to areas of local governments within the Falls Watershed.**

.0711(5)(a). The allowed loading factors are lower in the Falls. As was done in (b), add language to state that the loading factors in 2B .0277 superseded the requirements of this Item for jurisdictions for projects subject the Falls Reservoir Nutrient Strategy.”

**To clarify that the Falls requirements supersede for those areas subject to the Falls Lake New Development Stormwater Rule (.0277) language has been added to Item (5) of .0711 stating that “For development projects subject to the requirements of 15A NCAC 02B .0277 the requirements of this Item shall not apply.”**

.0711(5)(b). Cross reference to .0751 is not a rule shown for adoption in the 2B rules. The cross reference should be to the 2B .0277, the existing Falls new development rule.

**Thank you for pointing this out. Rule references have been updated and corrected as needed throughout the document.**

.0711(6). This should address separately the requirements for local governments in the Falls Basin. Add to (a) of the rule: “The schedule for Falls Basin local governments to implement a stormwater management program is set out in 2B .0277 for new development and in 2B .0278 for existing development. Those schedules supersede any provisions of this Item otherwise applicable to Falls Lake local governments.”

**As explained in similar comment above, to clarifying the relationship between the Falls (.0277) and the Neuse (.0711) New Development Stormwater Rules language has been added to the purpose section Item (1) of .0711 stating that “Nothing in this Rule preempts the requirements of 15A NCAC 02b .0277 for projects subject to the Falls Reservoir Nutrient Strategy or prevents local governments from implementing requirements that are more restrictive than those set forth in this Rule”**

Why use the nutrient rules to dictate onsite SWM requirements (ie – primary SCMs or low density requirements)?

**The proposed amendments provide a regulatory structure that would serve to prevent duplication for the regulated community between the nutrient stormwater rules and the MS4 stormwater rules. The proposed revisions provide for maintaining routine, statewide stormwater standards that help prevent flooding and reduce sedimentation while also incorporating features that allow enable meeting the strategy nutrient reduction goals as well.**

## **Neuse Agriculture Rule Comments - .0712**

.0712. In the introduction, the Falls Agricultural rule should be declared to supersede this rule in the Falls Basin. These rules are much less strict than 2B .0280.

**Language has been added to the introductory paragraph of .0712 to this effect and states that “Nothing in this rule preempts the requirements of 15A NCAC 02B .2080 for agricultural operations subject to the Falls Reservoir Nutrient Strategy”**

.0712(3)(b). This new rule provision, in conjunction with the repeal of the individual requirements should a basin fail to meet its goal, essentially strips this rule of any function and authority to require individual compliance when Basin Oversight Committee plan fails. Rather than maintain the individual standards at former (8), the new rule simply tells the Oversight Committee to notify the EMC to develop new enforceable requirements. There is no useful purpose, other than complete disabling of the rules, by this circuitous solution. The present standards are designed to define with certainty the standards applicable to each individual should there be a failure in the basin. This is a very bad and destructive policy choice in the rule revision. (8) should be restored.

**Since the Neuse Agriculture Rule went into effect agriculture producers in the Neuse River Basin watershed have complied with the rule requirements using a collective compliance approach. This has made the language in (8) unnecessary as it describes a “Standard BMP” option that is not being used in the basin. Annual reporting by the Basin Oversight Committee has demonstrated continued compliance with the rule requirements for more than a decade. Even so, the proposed rule amendments include language to ensure maintenance of the goal in Sub-Item (3)(b). This provides a clear path for developing corrective actions in the event that agriculture is shown to be no longer meeting the goals of the rule and allows for additional action by the Commission if needed.**

.0712(5)(a) The agriculture community continues to have concerns about the proposed baseline recalculation requirement and how it could practically be implemented.

**The proposed rule language provides flexibility on the approach to how any baseline recalculation would be done so the Division and the Basin Oversight Committees can work together to explore the best approach. That could mean doing an annual data collection and baseline adjustment, or a 5-year calculation and retrospective adjustment for all years in that period, or estimate an average annual loss rate, apply it each year, and revise it at 5 years or some other approach. The language also allows for changing the approach after some time period of gaining experience. Division staff welcome further discussions with the members of the Basin Oversight Committee as we work together in implementation of the Rule to identify an approach that makes the most sense.**

## **Neuse Wastewater Rule Comments - .0713**

.0713(2). This rule should be revised to expressly declare that the Falls Reservoir rules apply to dischargers in that part of the Neuse Basin.

**Item (2) was revised to clarify this point.**

.0713(3). Several definitions are not moved to .0701, but the terms are still used in the rule. The definitions that are not moved are “Nitrogen wasteload allocation,” “Nitrogen estuary allocation,” “Nitrogen discharge allocation,” and “Nitrogen TMDL.”

Nitrogen wasteload allocation and Nitrogen TMDL are both used in (4).

Nitrogen discharge allocation is used in (5).

Estuary allocation is used in (5)(a).

**These definitions have been restored in this rule due to their use here.**

.0713(4). This rule should be expanded to allow individual permit holders to achieve credits from nonpoint source flow reductions achieved by the installation of retrofit BMPs within their individual jurisdiction so long as the permit holder retains responsibility for the maintenance and operation of the BMPs and certifies their performance. Proposed language to achieve that change is provided below:

- (7) This Item specifies nutrient controls for new facilities.
- (a) New facilities proposing to discharge wastewater shall evaluate all practical alternatives to surface water discharge, pursuant to 15A NCAC 02H .0105(c)(2), prior to submitting an application to discharge.
  - (b) New facilities submitting an application shall make every reasonable effort to obtain estuary allocation for the proposed wastewater discharge from existing dischargers. If estuary allocation cannot be obtained from the existing facilities, new facilities may purchase a portion of the nonpoint source load allocation for ~~a period of 30 years at a rate of 200 percent of~~ the cost as set in 15A NCAC 02B .0240 to implement practices designed to offset the loading created by the new facility. If the purchased allocation is not for a permanent allocation, then payment Payment for each 30-year at least a 10-year portion of the nonpoint source load allocation shall be made prior to the ensuing permit issuance. In addition, local governments have the option of using credits created from the retrofit of existing development with stormwater controls to meet their reduction needs from NPDES dischargers. At the time of application, the local government must provide, as a part of the application, a copy of contract(s) for the construction of the stormwater controls and the credits from the stormwater controls must be approved before the authorization to construct can be issued. The authorization to construct will be limited to the nitrogen loading capacity available from all sources including the stormwater controls. The local governments must show annually the value of the reductions from the stormwater controls to meet the nutrient controls applicable to the new facilities.
  - (c) No application for a new discharge shall be made or accepted without written documentation demonstrating that the requirements of Sub-Items (a) and (b) of this Item have been met.
  - (d) The nitrogen discharge allocation for a new facility treating municipal or domestic wastewaters shall not exceed the mass equivalent to a concentration of 3.5 mg/L at the maximum monthly average flow limit in the facility's NPDES permit.

- (e) The nitrogen discharge allocation for a new facility treating industrial wastewaters shall not exceed the mass equivalent of either the best available technology economically achievable or a discharge concentration of 3.2 mg/L at the maximum monthly average flow limit in the facility's NPDES permit, whichever is less.
  - (f) New dischargers must meet a monthly average total phosphorous limit of 1 mg/L.
  - (g) The director shall establish more stringent limits for nitrogen or phosphorus upon finding that such limits are necessary to protect water quality standards in localized areas.
- (8) This Item specifies nutrient controls for expanding facilities.
- (a) Expanding facilities shall evaluate all practical alternatives to surface water discharge, pursuant to 15A NCAC 02H .0105(c)(2), prior to submitting an application to discharge.
  - (b) Facilities submitting an application for increased discharge shall make every reasonable effort to minimize increases in their nitrogen discharges, such as reducing sources of nitrogen to the facility or increasing the nitrogen treatment capacity of the facility; or to obtain estuary allocation from existing dischargers. Facilities which have been allowed to increase discharge since the permitted flow was established for the facility may make application for an increased nitrogen discharge limit when the need for an additional discharge limit arises.
  - (c) No application for an expanding facility shall be made or accepted without written documentation demonstrating that the requirements of Sub-Items (a) and (b) of this Item have been met.
  - (d) If these measures do not produce adequate estuary allocation for the expanded flows, facilities may purchase a portion of the nonpoint source load allocation for a period of 30 years at a rate of 200 percent of the cost as set in 15A NCAC 02B .0240 to implement practices designed to offset the loading created by the new facility. If the purchased allocation is not for a permanent allocation, then payment Payment for each 30-year at least a 10-year portion of the nonpoint source load allocation shall be made prior to the ensuing permit issuance. In addition, local governments have the option of using credits created from the retrofit of existing development with stormwater controls to meet their reduction needs from NPDES dischargers. At the time of application, the local government must provide, as a part of the application, a copy of contract(s) for the construction of the stormwater controls and the credits from the stormwater controls must be approved before the authorization to construct can be issued. The authorization to construct will be limited to the nitrogen loading capacity available from all sources including the stormwater controls. The local governments must show annually the value of the reductions from the stormwater controls to meet the nutrient controls applicable to the new facilities.
  - (e) The nitrogen discharge allocation for an expanded facility treating municipal or domestic wastewaters shall not exceed the mass equivalent to a concentration of 3.5 mg/L at the maximum monthly average flow limit in the NPDES permit, or its existing allocation, whichever is greater.
  - (f) The nitrogen discharge allocation for expanding facilities of an industrial nature shall not exceed the mass equivalent to the best available technology economically achievable or a concentration of 3.2 mg/L at the maximum monthly average flow limit in the facility's modified NPDES permit, whichever is less. If the resulting mass is less than the facility's existing discharge allocation, the existing discharge allocation shall not be reduced.
  - (g) Expanding facilities must meet a monthly average total phosphorous limit of 1 mg/L unless they are a member in good standing of a group compliance association described in Item (9) of this Rule, in which case they must meet a quarterly average total phosphorus limit of 2 mg/L.

DWR is open to providing the nutrient trading option described. The proposed language would need refinement and more thorough consideration by various programs within DEMLR and DEQ. This trading option potentially invokes NPDES wastewater permits, wastewater permitting rules and legislation, new development stormwater rules and legislation, the nutrient offset rule, MS4 permits, and NSW local stormwater programs. Unfortunately, limited staff resources and competing priorities prevented thorough consideration of this approach before the January EMC deadline, but DWR intends to study the issue further in consultation with NRCA prior to the beginning of the public comment phase of the rulemaking process.

The proposed edits also remove the 200% credit multiplier for credits acquired pursuant to the nutrient offset rule. The 200% safety factor is a feature of the original Neuse wastewater rule. It was likely included then, and it is retained now, to account for the significantly greater set of uncertainties associated with achieving nonpoint source reductions than those tied to point source load increases they would be offsetting. Such uncertainty, or safety, factors are a nearly universal feature in point-to-nonpoint trading frameworks nationwide, and the credit ratio is consistent with analogous trading programs throughout the country. In addition to the general uncertainties in crediting nonpoint source practices, DWR staff has become aware of specific uncertainties contained in its crediting methodology for agricultural buffer restoration, the practice that to date has provided nearly all nutrient offset credits. While revision of that credit method is planned, it illustrates the challenges of estimating nonpoint source reductions, the advancing nature of this technical field, and it argues for some caution in contemplating point-to-nonpoint offsets. We recognize that sources and magnitudes of uncertainty are practice-specific and can vary significantly, hence staff is open to further evaluation of options on this issue.

Procedurally, we considered it reasonable to begin the process by retaining the 200% value. A commenter has questioned the uncertainty explanation, noting that the more recent Jordan and Falls wastewater rules do not include this value. The approach used in those rules was to rely instead on an approval criterion embodying the uncertainty concept rather than a fixed uncertainty value. Specifically, the approval standard calls for proposed offsets to “quantify and account for the relative uncertainties in reduction need estimates and excess loading reduction estimates”. The standard is set out in the offset rule for each watershed (15A NCAC 2B .0282 for Falls), the requirements of which the offset provision in each wastewater rule calls for proposals to meet. Such a criterion-based approach could be an option for the Neuse as well. A key advantage would be its practice-specific nature. Probably its key disadvantage would be the relative lack of predictability or transparency this approach provides on the longer-term timescales typically required for wastewater management planning.

A commenter has further questioned the uncertainty logic based on the observation that developers’ offsets do not involve an uncertainty multiplier. As described above, the multiplier for wastewater offsets would address the greater uncertainties tied to nonpoint source reductions relative to point source load increases they would offset. Development offsets trade among two types of nonpoint source load, which involve many similar sources of uncertainty that importantly do not exist for point sources.

We also note that the purchase of allocation from other NRCA members, a point-to-point exchange that does not require a safety factor, remains an option for new and expanding facilities. Preliminary evaluations of NRCA allocation trading activity by DWR staff suggest this is a more cost-effective approach to acquiring allocation for expanding facilities in the Neuse River basin, even without the safety factors.

The purpose of the 30-year requirement is to ensure that, before a new or expanding discharge is allowed in the Neuse basin, the discharger holds enough allocation or credits for that discharge for the foreseeable future (30 years). The Division recognizes that this can present a significant burden on the discharger in that it requires the discharger to acquire sufficient allocation or credits today that will not be needed until the end of the 30 years. Along with the nutrient trading options and the 200% factor discussed above, the Division is also reviewing the 30-year requirement to allow greater flexibility in a discharger's demonstration that it has the necessary allocations or credits.

.0713(5)(a)(ii). Should the allocation to the Falls Lake less than .05 MGD dischargers be reduced in light of the Fall Lake budget? Will this trigger a need for the Commission to revise the load and make allocations among existing dischargers per (b) of this rule?

This sub-item specifies the discharge allocation for the large dischargers in the Falls Lake subbasin, as established in the Neuse estuary TMDL. It is not necessary to replace this with the more stringent allocation from the Falls Lake rules as the Falls Lake allocation (and individual TN limits) will be the controlling values for these dischargers.

.0713(6)(d). Should the TP limit be changed to be consistent with the Falls rules? "All existing facilities above Falls Lake Dam with permitted flows greater than or equal to ~~0.05~~ 0.01 MGD shall meet a quarterly average total phosphorous limit of ~~2 mg/l~~ as set by 2B .0279."

Phosphorus requirements in the Falls Lake wastewater rule are, in all cases, more stringent than those in this estuary rule. The Division has revised this draft rule to propose that sub-item (c)(i) (formerly (b)(i)) be repealed. (This differs from the response to the previous comment. The estuary TMDL is primarily concerned with controlling TN loads, and it is appropriate that the rule continue to reflect the allocations set in the TMDL. TP limits in the estuary rule are technology-based and are an added measure to reduce nutrient impacts. Because they are over-ridden by the more stringent, water quality-based limits set in the Falls Lake rule, they can be removed without effect.)

Comment on Note following .0713(6)(d). The NRCA strongly supports this proposal. In addition, the NRCA observes that under the existing rule, those same dischargers had individual discharge allocations assigned under (5)(a)(v) of the rule for the past twenty years. With those known discharge limits and no bubble permit for those smaller WWTPs, why isn't enforcement already occurring based on the individual limits?

The rule set a TN allocation for the small dischargers as a group (in effect, a bubble limit) but did not specify that these dischargers be subject to individual TN limits. This was intentional. At the time the rule was developed, the main concern was with the large dischargers, which accounted for 95% of the point source TN load to the Neuse estuary and had greater resources (and economies of scale) for

**treatment system improvements. The intent was to address the large dischargers' impacts first and then address the small dischargers' impacts, if necessary.**

.0713(7). Revise to read: "This Item specifies nutrient controls for new facilities with discharges below the Falls Lake Dam. Nutrient controls for new facilities above the Falls Lake Dam shall comply with the requirements of the Falls Reservoir Nutrient Strategy rules."

.0713(8). Revise to read: "This item specifies nutrient controls for expanding facilities facilities with discharges below the Falls Lake Dam. Nutrient controls for new facilities above the Falls Lake Dam shall comply with the requirements of the Falls Reservoir Nutrient Strategy rules."

**Item (2) has been modified to note the applicability of the Falls Lake WW rule.**

.0713(8). Revise (d) to read: "If these measures do not produce adequate estuary allocation for the expanded flows, facilities may use either of the following alternatives or a combination of the alternatives:

"(1) Purchase a portion of the nonpoint source load allocation for a period of 30 years at a rate of 200 percent of the cost as set in 15A NCAC 2B .0240 to implement practices designed to offset the loading created by the new facility. Payment for each 30 year portion of the nonpoint source load allocation shall be made prior to the ensuring permit issuance.

"(2) Establish nonpoint source best management practices for existing development within the individual permit holder's service territory which result in nutrient reduction credits to be used as a part of the permit compliance by the facility. The permit holder shall annually establish and verify the value of the nutrient credits from such best management practices and demonstrate that the best management practices remain under the operational control and maintenance responsibility of the facility."

**See response to similar comments on Items (4), (7), and (8), above.**

.0713(9). Revise to read: ~~Beginning in calendar year 2003, if~~ Beginning in calendar year 2003, if an association does not meet its estuary allocation limit from the total pounds of nitrogen released from its member facilities after application of any offsets created pursuant to 8(d)(2), it shall make offset payments for nonpoint source controls no later than May 1 of the following year at the rate set in 15A NCAC 2B .0240."

**Sub-item (9)(e) is modified to refer to credits obtained through the Nutrient Offset Trading rule, 2B .0703, which replaces 2B .0240 in the proposed rule. The intent is to provide for any additional options and the greater flexibility allowed under the trading rule.**

## **Neuse Buffer Protection Rule Comments - .0714**

.0714(2). Revise to read: “APPLICABILITY. This rule applies to all landowners and other persons including local governments, state and federal entities conducting activities within the riparian buffers as described in Item (3) of this Rule in the Neuse River Basin, including the Falls Reservoir Basin.”

### **Added to the Rule.**

.0714(b). The proposed rule adds as a key term “activities.” That term is not defined. The term “development” is defined, but limited to the GS 214.7 definition for purposes of the stormwater program implemented by DEQ. Does this term include more than “development”? The rule, as written, does not reflect the implementation by DWR. It only applies the riparian buffer protections to blue line streams and not to other surface waters, in particular intermittent streams.

**If a term is not defined in rule then you defer to the dictionary definition. “Activity” is defined as a thing a person or group does or has done. The dictionary definition sufficiently explains what is meant by the term “activities” for the purpose of this rule.**

.0714(b) The rule, as written, does not reflect the implementation by DWR. It only applies the riparian buffer protections to blue line streams and not to other surface waters, in particular intermittent streams.

**This is not proposed as a change. Current rules require a buffer on both intermittent and perennial stream and does not require it to be a “blue line”. Those requirements are in the water supply program, not riparian buffer protection.**

.0714(3)(g). The term “clearing” is not defined. It apparently means something other than “grading.”

**Clearing refers to removal of vegetation while grading refers to earthwork. Clearing could occur without grading.**

.0714(5). The onsite determination makes no reference to a blue line stream, yet that is the key means of implementation by DWR.

**Same comment as above – that is relevant in water supply but not riparian buffer protection rules.**

.0714(6). The new last sentence of the introductory paragraph is confusing. It reads as if each of the criteria listed in the rule must be met for the situation to be an exemption. Some of the criteria are contradictory. This is particularly true for sewer lines in Zone 1 that were installed prior to July 22, 1997 and require maintenance or replacement. (b) reads as if it should be a part of (a). No sewer line in Zone 1 is “a deemed allowable activity as listed in Item (10) of this Rule.” That criterion should not be universally applied. Is (c) a new requirement? Has there historically been an Authorization Certificate or Exception issued by the Authority for exemptions including sewer lines in Zone 1? If not, this new criteria should only be applied to those sites for which such a certificate was issued. (d) is unclear in its last clause. What is “displacement of vegetation by structures or regular activity”? Does it include the

replacement of a sewer line in Zone 1? (e) is too limited in its scope and has been a persistent item for which municipalities have sought more clarity. The footprint of a sewer line is not wide enough to allow for its replacement or repair. The footprint of the easement might be adequate, and that concept is used in Item 10 for vegetation maintenance, but it is Allowable Upon Authorization and not Deemed Allowable. (g) provides for maintenance, but it forbids no built upon area being added within the riparian buffer. It is impossible to maintain a sewer by use of excavation equipment without more built upon area, even though it is temporary and will be restored as vegetated area. In Item 10, replacement of a sewer line that pre-existed in Zone 1 apparently will require mitigation if more than 2500 square feet are disturbed. This is objectionable and inconsistent with the permits for maintenance of sewer lines. It is impossible to move them from the pre-existing Zone 1 locations.

**This section was edited in the rule.**

.0714(9)(a)(2). This standard is ambiguous. In what context does it refer to “new flow [that] does not result in the need to alter the conveyance,” especially as it relates to flooding events?

**New regular flow**

.0714(9)(b)(ii). The 3.6 pounds of nutrient loading reflects the Neuse Estuary standard, but not the Falls Lake standard. The rule should be revised to include both standards.

**Added to Rule.**

.0714(9)(b)(iii)-(viii). These are all indicated to be new uses allowable upon authorization. Is that correct for each new use per the Falls Lake rules as well as the Neuse Estuary rules?

**Yes**

.0714(10)(b). The rule uses the term “potential new uses.” How does that apply to replacement sewer lines or major maintenance of existing sewer lines within the riparian buffer?

**“Potential” is just to reflect that an authorization certificate is needed.**

.0714(10)(b) Greenways, trails, sidewalks or linear pedestrian/bicycle transportation system. The deemed allowable use does not include construction of such facilities which comply with the American Disabilities Act. Paved trails within Zone 2 should be added to deemed allowable category with appropriate stormwater runoff protection.

**Unpaved trails are deemed allowable, any with built upon area added are allowable.**

.0714(10)(b) Pedestrian access trail and associated steps leading to a surface water, dock, canoe or kayak access, fishing pier, boat ramp or other water dependent structure. Such access features should be made deemed allowable when the built upon area is added to comply with the American Disabilities Act.

**Unpaved access trails are deemed allowable.**

.0714(10)(b) Protection of existing structure and facilities when this requires additional disturbance of the riparian buffer. The term “facilities” is not defined. It should be defined to include protection of existing sewer lines and left as deemed allowable.

**Sewer lines are addressed separately in the table; the term “facilities” is meant to be broad and would include existing utility lines. There is no change proposed in the category of this use.**

.0714(10)(b) Stormwater Control Measure. Not a defined term in .0702.

**Added citation to 02H rules.**

.0714(10)(b) Temporary roads. Does this include roads used for the pathway to replace or maintain a sewer line in Zone 1? If so, then the requirement for restoration of a wooded buffer should exclude the maintenance easement area for the sewer line so the permit holder can comply with collection system permit requirements.

**The entire sewer has been section reworked.**

.0714(10)(b) Temporary sediment and erosion control devices. Does this include such devices deployed to control erosion and sedimentation in the replacement or substantial maintenance of existing sewer lines in Zone 1? If so, the restoration of a wooded buffer should exclude the maintenance easement area for the sewer line so the permit holder can comply with collection system permit requirements. Does this requirement apply if the devices are deployed in conjunction with an exemption involving maintenance or repair?

**The entire sewer section has been reworked.**

.0714(10)(b) Utility Sewer Lines. Construction activities is not a defined term in .0702. It appears that it includes the replacement or repair of sewer lines which disturb more than 150 linear feet. In addition, the part labeled “Impacts other than perpendicular crossings” forbid the disturbance of the area within 10 feet of the adjacent water. The utility installed many of these lines before any buffer requirement existed. In addition, it is impossible to know where the stream will meander in the long time between installation and the need to replace or upgrade a sewer line. These same lines are subject to needs for emergency repairs, yet any disturbance in the 20 foot zone (10 feet per side) of the stream and the stream bed results in the application of “Allowable with Mitigation upon Authorization.” It is mandatory that such lines be both immediately repaired when they fail and that they be kept in good repair under the NPDES permit for the treatment facility and under the collection system permit issued by the State. Complying with those legal requirements for pre-existing sewer lines in the riparian buffer should not include a requirement for mitigation, in particular as an obstacle to emergency repair needs. This is covered by the catch all “Impacts to Zone 1 other than noted above.” Per the comment, mitigation will be required if the impact in Zone 1 is above 2500 sq ft. Since the easement for the utility line is 20 feet wide at minimum, especially during construction, this results in a requirement for mitigation to repair or replace a pre-existing line that is longer than 125 feet. That is an unreasonable burden when the utility is confronted with the high cost of replacement and repair of such lines. The damage can be restored and restoration should be the only requirement, not mitigation. Why are sewer lines limited to a vegetation maintenance area 20 feet wide when other non-sewer utility lines can maintain a vegetation maintenance area of 30 feet? Sewer lines should also be allowed up to 30 feet.

**The entire sewer section has been reworked.**

.0714(10)(b) Vegetation Maintenance. In the removal of individual trees provision, the term structures is used, but not defined at .0703. It should include sewer lines when an individual tree is at risk of causing the sewer line to be damaged.

**Utility lines added.**

.0714. Prior (8) Determination of No Practical Alternatives shows a comment saying it was moved into (10) above. Where is it in (10)? Was it moved to .0705 per (11)(a)?

**Reference has been updated.**

We request that you take a look at the sewer line stuff, particularly replacement of existing lines within a maintained easement. The guidance table provided in the clarification memo (attached) listed replacement within an existing maintained easement as Exempt, and did not distinguish between Z1 and Z2. Since pre and post conditions would be identical, it seems this should be Exempt, but the proposed Table of Uses lists this as AA.

**Added language to the existing uses part of the rule to incorporate this.**

I agree that the other two impacts in that category (tying into an existing line and reclaiming a corridor) should require written authorization.

**Thank you for your comment.**

Local governments will have some thoughts about reviewing and approving impacts, but I wondered if SCMs that are installed solely for buffer compliance fall under the maintenance program of NCDENR or the local jurisdiction. We had a couple redevelopment projects in Raleigh recently where we did not need SCMs to comply with City regulations, but did need them for “diffuse flow” – so when these get built in the future, do the SCMs roll into the City’s maintenance program, which also requires sureties, escrow, and contributions to maintenance funds, or are they exempt from those local government fees? Sometimes those payments can be tens of thousands of dollars.

**This use was edited to incorporate these comments.**

In **each** of the Table of Uses for **all of the Buffer Rules**, under Vegetation Management: *“Emergency fire control measures provided that topography and hydrology is restored.”*

Remove the proposed addition of “and hydrology” from this statement. It would be rare that hydrology is impacted during fire control within a Riparian Buffer. If debris is pushed into the stream during fire control, that debris/soil would need to be removed in keeping with FPG standard .0202 and G.S. 77-13 or G.S. 77-14. The state’s 401 WQC permit already includes the statement “and hydrology”, if fire control occurs in wetland, thus this statement is not necessary in the Buffer Rules.

**Removed proposed addition of “and hydrology”**

## **Tar-Pam New Development Stormwater Rule Comments - .0731**

The Granville County Board of Commissioners is opposed to including the unincorporated portions of Granville County in the Tar-Pamlico watershed in the area subject to the proposed state stormwater regulations for the Tar-Pamlico Nutrient Strategy. As Stated in the enclosed resolution, conditions in the Tar River and the unincorporated portions of Granville County do not justify further stormwater regulation. Such additional regulation will pose an unreasonable cost to landowners. No reasonable nexus exists between the burden landowners will be forced to bear and protection of the Tar-Pamlico watershed. We appreciate your careful consideration of this issue. We will be happy to answer and questions you may have.

**The Criteria used for adding communities focused on area within the basin, population of jurisdiction (assuming a population of a certain size would be able to support implementation of a stormwater program) in addition to annual population growth rate. We also looked at whether they were already implementing a stormwater program like phase II or other post construction stormwater requirements already in whole or in part of their jurisdiction.**

### **Criteria Evaluated:**

- 1) Area: Is 20% or more of the jurisdiction is located within the Tar-Pamlico River Basin?**
- 2) Population: > 20,000 people in County and > 5,000 people in the municipality**
- 3) Annual population growth of 200 or more people per year**
- 4) Is the jurisdiction implementing post-construction requirements in part of their jurisdiction already? (Phase II, Neuse, Falls)**

**We used GIS data layers to determine area within the watershed which showed 43% of Granville County to be in the Tar-Pamlico. For comparison Person County has only 8% within the Tar-Pam.**

**State Census Data for 2000 and 2010 population estimates from the State Demographers Office for 2015 were used to determine overall population and annual population growth. These sources showed Granville County had a growth rate of 528 people/year over the past 15 years.**

**To address how much growth has occurred specifically in the Tar-Pam portion of Granville County we isolated the census block data block data for 2000 and 2010 (next census is not until 2020) and looked at the growth over those ten years. The 2000-2010 growth in the Tar-Pam portion of Granville County was determined to be 23% population growth compared to 40% growth in the Neuse/Falls Portion. So while growth in Tar-Pam side was smaller it still appears to be significant and well within the criteria we were using.**

**The Division welcomes the opportunity to discuss this matter further with Granville County. If staff at Granville County has local population growth data or other information they would like us to consider in this evaluation, we would be happy to do so and welcome their input.**

## **Tar-Pam Agriculture Rule Comments - .0732**

.0732(3)(A) The agriculture community continues to have concerns about the proposed baseline recalculation requirement and how it could practically be implemented.

The proposed rule language provides flexibility on the approach to how any baseline recalculation would be done so the Division and the Basin Oversight Committees can work together to explore the best approach. That could mean doing an annual data collection and baseline adjustment, or a 5-year calculation and retrospective adjustment for all years in that period, or estimate an average annual loss rate, apply it each year, and revise it at 5 years or some other approach. The language also allows for changing the approach after some time period of gaining experience. Division staff welcome further discussions with the members of the Basin Oversight Committee as we work together in implementation of the Rule to identify an approach that makes the most sense.

Item 4(C). Need to revise the Forest Practice Guidelines rule code reference: Delete 15A NCAC 011 and replace it with 02 NCAC 60C.

This reference has been updated

## **Surface WQ Standards: Chlorophyll-a Standard Comments - .0211**

*(Note: While NCAC 02B .0211 is not part of the Nutrient rules package, this comment about the Chl-a standard was provided along with comments on the nutrient rules.)*

.0211(4) The UNRBA believes the issues identified need to be addressed in the chlorophyll a standard language and in the application of the standard in making use support decisions. These are significant issues and many of them reflect a high degree of complexity. However, these factors and more need careful consideration in developing an updated standard. The Association provides these comments to promote a comprehensive updating of the standard. The UNRBA would welcome the opportunity to discuss these issues further with the agency and would support a collaborative process for reworking the chlorophyll a standard.”

As recognized in your comments the chlorophyll a standard is currently being reviewed through the Division’s Nutrient Criteria Development Plan process is proceeding through its Scientific Advisory Council (SAC). Additional information about this process can be found on the Division website here: <https://deq.nc.gov/about/divisions/water-resources/water-resources-data/water-sciences-home-page/nutrient-criteria-development-plan/scientific-advisory-council>