

1 15A NCAC 02B .0263 is proposed for amendment as follows:

2
3 **15A NCAC 02B .0263 JORDAN WATER SUPPLY NUTRIENT STRATEGY: DEFINITIONS**

4 ~~The following words and phrases, which are not defined in G.S. 143, Article 21, shall be interpreted as follows for the~~
5 ~~purposes of the Jordan nutrient strategy. Unless the context indicates otherwise, the following words and phrases, which are~~
6 ~~not defined in G.S. 143, Article 21, shall be interpreted as follows for the purposes of the Jordan and Falls lake nutrient~~
7 ~~strategies:~~

8 (1) ~~"Allocation" means the mass quantity of nitrogen or phosphorus that a discharger, group of dischargers,~~
9 ~~nonpoint source, or collection of nonpoint sources is assigned as part of a TMDL. For point sources,~~
10 ~~possession of allocation does not authorize the discharge of nutrients but is prerequisite to such~~
11 ~~authorization through a NPDES permit.~~

12 (2)(1) "Applicator" means the same as defined in 15A NCAC 02B .0202(4).

13 (2) Atmospheric nitrogen means total oxidized nitrogen (NO_x) which includes all nitrogen oxides (including
14 NO₂, NO, N₂, nitrogen trioxide [N₂O₃], nitrogen tetroxide [N₂O₄], dinitrogen pentoxide [N₂O₅], nitric
15 acide (HNO₃) peroxyac nitrates (PAN)), the sum of which is referred to as reduced nitrogen (NH_x).

16 (3) "Channel" means a natural water-carrying trough cut vertically into low areas of the land surface by
17 erosive action of concentrated flowing water or a ditch or canal excavated for the flow of water.

18 (4) "DBH" means diameter at breast height of a tree measured at 4.5 feet above ground surface level.

19 (5) ~~"Delivered," as in delivered allocation, load, or limit, means the allocation, load, or limit that is measured~~
20 ~~or predicted at Jordan Reservoir. A delivered value is equivalent to a discharge value multiplied by the~~
21 ~~transport factor for that discharge location.~~

22 (6) ~~"Development" means the same as defined in 15A NCAC 02B .0202(23).~~

23 (7)(5) "Discharge," as in discharge allocation, load, or limit means the allocation, load, or limit that is measured
24 at the point of discharge into surface waters. ~~waters in the Jordan watershed.~~ A discharge value is
25 equivalent to a delivered value divided by the transport factor for that discharge location.

26 (8)(6) "Ditch or canal" means a man-made channel other than a modified natural stream constructed for drainage
27 purposes that is typically dug through inter-stream divide areas. A ditch or canal may have flows that are
28 perennial, intermittent, or ephemeral and may exhibit hydrological and biological characteristics similar to
29 perennial or intermittent streams.

30 (9)(7) "Ephemeral stream" means a feature that carries only stormwater in direct response to precipitation with
31 water flowing only during and shortly after large precipitation events. An ephemeral stream may or may
32 not have a well-defined channel, the aquatic bed is always above the water table, and stormwater runoff is
33 the primary source of water. An ephemeral stream typically lacks the biological, hydrological, and
34 physical characteristics commonly associated with the continuous or intermittent conveyance of water.

35 (10) ~~"Existing development" means development, other than that associated with agricultural or forest~~
36 ~~management activities, that meets one of the following criteria:~~

1 (a) ~~It either is built or has established a vested right based on statutory or common law as~~
2 ~~interpreted by the courts, for projects that do not require a state permit, as of the effective date of~~
3 ~~either local new development stormwater programs implemented under 15A NCAC 02B .0265~~
4 ~~or, for projects requiring a state permit, as of the applicable compliance date established in 15A~~
5 ~~NCAC 02B .0271(5) and (6); or~~

6 (b) ~~It occurs after the compliance date set out in Sub-Item (4)(d) of Rule .0265 but does not result~~
7 ~~in a net increase in built upon area.~~

8 ~~(14)~~(8) "Intermittent stream" means a well-defined channel that contains water for only part of the year, typically
9 during winter and spring when the aquatic bed is below the water table. The flow may be heavily
10 supplemented by stormwater runoff. An intermittent stream often lacks the biological and hydrological
11 characteristics commonly associated with the continuous conveyance of water.

12 ~~(12)~~ "Jordan nutrient strategy," or "Jordan water supply nutrient strategy" means the set of 15A NCAC 02B
13 .0262 through .0273 and .0311(p).

14 ~~(13)~~ "Jordan Reservoir" means the surface water impoundment operated by the US Army Corps of Engineers
15 and named B. Everett Jordan Reservoir, as further delineated for purposes of the Jordan nutrient strategy
16 in 15A NCAC 02B .0262(4).

17 ~~(14)~~ "Jordan watershed" means all lands and waters draining to B. Everett Jordan Reservoir.

18 ~~(15)~~(9) "Load" means the mass quantity of a nutrient or pollutant released into surface waters over a given time
19 period. Loads may be expressed in terms of pounds per year and may be expressed as "delivered load" or
20 an equivalent "discharge load."

21 ~~(16)~~ "Load allocation" means the same as set forth in federal regulations 40 CFR 130.2(g), which is
22 incorporated herein by reference, including subsequent amendments and editions. These regulations may
23 be obtained at no cost from <http://www.epa.gov/lawsregs/search/40cfr.html> or from the U.S. Government
24 Printing Office, 732 North Capitol St. NW, Washington D.C., 20401.

25 (10) Load allocation means the same as set forth in federal regulations 40 CFR 130.2(g), which is incorporated
26 herein by reference, including subsequent amendments and editions. A copy of the most current version
27 of the regulations is available free of charge on the internet at <http://www.gpo.gov/fdsys/>.

28 ~~(17)~~(11) "Modified natural stream" means an on-site channelization or relocation of a stream channel and
29 subsequent relocation of the intermittent or perennial flow as evidenced by topographic alterations in the
30 immediate watershed. A modified natural stream must have the typical biological, hydrological, and
31 physical characteristics commonly associated with the continuous conveyance of water.

32 ~~(18)~~ "New development" means any development project that does not meet the definition of existing
33 development set out in this Rule.

34 ~~(19)~~(12) "Nitrogen" means total nitrogen unless specified otherwise. "Nitrogen" or "total nitrogen" means the sum
35 of the organic, nitrate, nitrite, and ammonia forms of nitrogen in a water or wastewater.

1 ~~(20)~~(13) "NPDES" means National Pollutant Discharge Elimination System, and connotes the permitting process
2 required for the operation of point source discharges in accordance with the requirements of Section 402
3 of the Federal Water Pollution Control Act, 33 U.S.C. Section 1251 et seq.

4 ~~(21)~~(14) "Nutrients" means the combination of total nitrogen and total phosphorus for the purpose of the nutrient
5 rules of this section. ~~"Nutrients" means total nitrogen and total phosphorus.~~

6 ~~(22)~~(15) "Perennial stream" means a well-defined channel that contains water year round during a year of normal
7 rainfall with the aquatic bed located below the water table for most of the year. Groundwater is the
8 primary source of water for a perennial stream, but it also carries stormwater runoff. A perennial stream
9 exhibits the typical biological, hydrological, and physical characteristics commonly associated with the
10 continuous conveyance of water.

11 ~~(23)~~(16) "Perennial waterbody" means a natural or man-made basin, including lakes, ponds, and reservoirs, that
12 stores surface water permanently at depths sufficient to preclude growth of rooted plants. For the purpose
13 of the State's riparian buffer protection program, the waterbody must be part of a natural drainage way
14 (i.e., connected by surface flow to a stream).

15 ~~(24)~~(17) "Phosphorus" means total phosphorus unless specified otherwise. ~~"Phosphorus" or "total phosphorus"~~
16 ~~means the sum of the orthophosphate, polyphosphate, and organic forms of phosphorus in a water or~~
17 ~~wastewater.~~

18 ~~(25)~~(18) "Stream" means a body of concentrated flowing water in a natural low area or natural channel on the land
19 surface.

20 ~~(26)~~(19) "Surface waters" means all waters of the state as defined in G.S. 143-212 except underground waters.

21 ~~(27)~~(20) "Technical specialist" means the same as defined in 15A NCAC 06H .0102(9).

22 ~~(28)~~(21) "Total Maximum Daily Load," or "TMDL," means the same as set forth in federal regulations 40 CFR
23 130.2(i) and 130.7(c)(1), which are incorporated herein by reference, including subsequent amendments
24 and editions. These regulations may be obtained at no cost from
25 <http://www.epa.gov/lawsregs/search/40cfr.html> or from the U.S. Government Printing Office, 732 North
26 Capitol St. NW, Washington D.C., 20401.

27 ~~(29)~~(22) "Total nitrogen" or "nitrogen" means the sum of the organic, nitrate, nitrite, and ammonia forms of
28 nitrogen in a water or wastewater.

29 ~~(30)~~(23) "Total phosphorus" or "phosphorus" means the sum of the orthophosphate, polyphosphate, and organic
30 forms of phosphorus in a water or wastewater.

31 ~~(31)~~(24) "Transport factor" means the fraction of a discharged nitrogen or phosphorus load that is delivered from
32 the discharge point to ~~Jordan Reservoir, a waterbody~~ as approved by the Division.

33 ~~(32)~~(25) "Tree" means a woody plant with a DBH equal to or exceeding five inches or a stump diameter exceeding
34 six inches.



1 ~~(33)~~(26) "Wasteload" means the mass quantity of a nutrient or pollutant released into surface waters by a
2 wastewater discharge over a given time period. Wasteloads may be expressed in terms of pounds per year
3 and may be expressed as "delivered wasteload" or an equivalent "discharge wasteload."

4 ~~(34)~~(27) "Wasteload allocation" means the same as set forth in federal regulations 40 CFR 130.2(h), which is
5 incorporated herein by reference, including subsequent amendments and editions. These regulations may
6 be obtained at no cost from <http://www.epa.gov/lawsregs/search/40cfr.html> or from the U.S. Government
7 Printing Office, 732 North Capitol St. NW, Washington D.C., 20401.

8
9 *History Note: Authority G.S. 143-214.1; 143-214.5; 143-214.7; 143-215.3(a)(1); 143-215.6A; 143-215.6B; 143-*
10 *215.6C; 143 215.8B; 143B-282(c); 143B-282(d); S.L. 2001-355; S.L. 2005-190; S.L. 2006-259;*
11 *Eff. August 11, 2009.*
12 *Amended Eff. August 1, 2017.*

1 15A NCAC 02B .0278 is proposed for amendment as follows:

2
3 **15A NCAC 02B .0278 FALLS WATER SUPPLY NUTRIENT STRATEGY: STORMWATER**
4 **MANAGEMENT FOR EXISTING DEVELOPMENT**

5 This Rule establishes a staged, adaptive approach by which municipalities and counties shall contribute to achieving the
6 nonpoint source loading objectives of the Falls Reservoir nutrient strategy by reducing or otherwise offsetting nutrient
7 contributions from existing development. It provides local governments ~~five years~~ ~~three years~~ to develop programs that
8 propose Stage I load reduction actions to the Division and requires local governments to begin and track measures to reduce
9 nutrient loads from existing developed lands within their jurisdiction by ~~January 15, 2014~~, ~~June 2017~~, as specified in Item
10 (7). Local governments shall submit for approval and implement Stage II load reduction programs by January 2021 ~~January~~
11 ~~15, 2021~~ and submit revised load reductions programs every five years thereafter. The following is the watershed
12 stormwater strategy, as prefaced in Rule 15A NCAC 02B .0275, for existing development in the Falls watershed:

13 (1) PURPOSE. The purposes of this Rule are as follows:

14 (a) To achieve and maintain the nonpoint source nitrogen and phosphorus percentage reduction
15 objectives established for Falls Reservoir in Rule 15A NCAC 02B .0275 on nutrient loading
16 from existing development in the Falls watershed relative to the baseline period defined in that
17 ~~rule. Existing development is defined in Rule 15A NCAC 02B .0276; rule;~~ and

18 (b) To protect the water supply, aquatic life, and recreational uses of Falls Reservoir.

19 (2) APPLICABILITY. This Rule shall apply to municipalities and counties in the Falls watershed as
20 identified in Rule 15A NCAC 02B .0275.

21 (3) DEFINITIONS. For the purposes of this Rule, the definitions in 15A NCAC 02B .0275 and the following
22 definition apply:

23 (a) “Existing Development” means structures and other land modifications resulting from
24 development activities, other than those associated with agriculture or forest management
25 activities, that meet the following criteria:

26 (i) For projects that do not require a state permit, they are in place or have established a
27 vested right based on statutory or common law as interpreted by the courts, as of the
28 effective date of local new development stormwater programs implemented under
29 Rule .0277 of this Section; and

30 (ii) For projects that require a state permit, they are in place as of the applicable
31 compliance date established in Rule .0281 of this Section; and

32 (ii) They are not replaced by structures or other land modifications resulting from
33 development activities that occur after the applicable date referenced elsewhere in this
34 sub-paragraph.

35 (b) “New Development” means any development that does not meet the definition of existing
36 development in the Rule.

1 ~~(3)~~(4) STAGED AND ADAPTIVE IMPLEMENTATION REQUIREMENTS. Local governments shall
2 employ the following staged and adaptive implementation program. All local governments subject to this
3 Rule shall develop load-reducing programs for submission to and approval by the Commission that
4 include the following staged elements and meet the associated minimum standards for each stage of
5 implementation:

6 (a) In Stage I, a local government subject to this Rule shall implement a load reduction program that
7 provides estimates of, and plans for offsetting by calendar year 2020, nutrient loading increases
8 from lands developed subsequent to the baseline period and not subject to the requirements of
9 the local government's Falls Lake new development stormwater program. For these post-
10 baseline existing developed lands, the current loading rate shall be compared to the loading rate
11 for these lands prior to development for the acres involved, and the difference shall constitute
12 the load reduction need in annual mass load, in pounds per year. Alternatively, a local
13 government may assume uniform pre-development loading rates of 2.89 pounds/acre/year N and
14 0.63 pounds/acre/year P for these lands. The local government shall achieve this Stage I load
15 reduction by calendar year 2020. This Stage I program shall meet the criteria defined in Item
16 (4) of this Rule;

17 (b) By ~~January 15, 2021~~ January 2021 and every five years thereafter, a local government located in
18 the Upper Falls Watershed shall submit and begin implementing a Stage II load reduction
19 program that meets the following requirements:

20 (i) If a local government achieves the Stage I reduction objectives described in this Item,
21 a local government's initial Stage II load reduction program shall, at the local
22 government's election, either (A) achieve additional annual reductions in nitrogen and
23 phosphorus loads from existing development greater than or equal to the average
24 annual additional reductions achieved ~~in the last seven years of~~ during Stage I or (B)
25 provide for an annual expenditure that equals or exceeds the average annual amount
26 the local government has spent to achieve nutrient reductions from existing
27 development during ~~the last seven years of~~ Stage I. A local government's expenditures
28 shall include all local government funds, including any state and federal grant funds
29 used to achieve nutrient reductions from existing developed lands. The cost of
30 achieving reductions from municipal wastewater treatment plants shall not be included
31 in calculating a local government's expenditures. Notwithstanding this requirement,
32 the EMC may approve an initial Stage II load reduction program based on a lower
33 annual level of reduction or a lower annual level of expenditure if the local government
34 demonstrates that continuing the prior annual level of reduction or annual level of
35 expenditure is not reasonable or cost-effective given the reductions that will be

1 achieved, or the expenditure would cause serious financial hardship to the local
2 government;

3 (ii) If Stage I reduction objectives are not achieved, a local government's initial Stage II
4 load reduction program shall, at the local government's election, either (A) achieve
5 additional annual reductions in nitrogen and phosphorus loads from existing
6 development greater than or equal to the ~~average annual additional~~ annual reductions
7 achieved in the highest ~~three years~~ single year of implementation of Stage I or (B)
8 provide for an annual expenditure that equals or exceeds the ~~average annual~~ amount
9 the local government has spent to achieve nutrient reductions from existing
10 development during the highest ~~three years~~ single year of implementation of Stage I.
11 Annual expenditures shall be calculated in accordance with Sub-Item ~~(3)(b)(i)~~
12 (4)(b)(i) of this Item;

13 (iii) Subsequent five year programs shall be designed to achieve the Stage II percent load
14 reduction goals from existing developed lands in a local government's jurisdiction,
15 shall include timeframes for achieving these goals and shall meet the requirements of
16 Item ~~(4)(5)~~ of this Rule;

17 ~~(4)(5)~~ ELEMENTS OF LOAD REDUCTION PROGRAMS. A local government's Stage I and Stage II load
18 reduction program shall address the following elements:

19 (a) Jurisdictions in the Eno River and Little River subwatersheds shall, as a part of their Stage I load
20 reduction programs, begin and continuously implement a program to reduce loading from
21 discharging sand filters and malfunctioning septic systems discharging into waters of the State
22 within those jurisdictions and subwatersheds;

23 (b) Jurisdictions within any Falls subwatershed in which chlorophyll a levels have exceeded 40
24 micrograms/liter in more than seventy-five percent of the monitoring events in any calendar year
25 shall, as part of their Stage I load reduction programs, begin and continuously implement a
26 program to reduce nutrient loading into the waters of the State within those jurisdictions and that
27 ~~subwatersheds;~~ subwatershed;

28 ~~(c) The total amount of nutrient loading reductions in Stage I is not increased for local jurisdictions~~
29 ~~by the requirements to add specific program components to address loading from~~
30 ~~malfunctioning septic systems and discharging sand filters or high nutrient loading levels~~
31 ~~pursuant to Sub-Items (4)(a) and (b) of this Item;~~

32 ~~(d) In preparation for implementation of their Stage I and Stage II load reduction programs, local~~
33 ~~governments shall develop inventories and characterize load reduction potential to the extent~~
34 ~~that accounting methods allow of the following by January 2013:~~

35 ~~(i) Wastewater collection systems;~~

- ~~(ii)~~ — Discharging sand filter systems, including availability of or potential for central sewer connection;
- ~~(iii)~~ — Properly functioning and malfunctioning septic systems;
- ~~(iv)~~ — Restoration opportunities in utility corridors;
- ~~(v)~~ — Fertilizer management plans for local government owned lands;
- ~~(vi)~~ — Structural stormwater practices, including intended purpose, condition, potential for greater nutrient control; and
- ~~(vii)~~ — Wetlands and riparian buffers including potential for restoration opportunities;

~~(c)~~ A local government's load reduction need shall be based on the developed lands that fall within its general police powers and within the Falls watershed;

~~(d)~~ The load reduction need shall not include lands under state or federal control, and a county shall not include lands within its jurisdictional boundaries that are under municipal police powers;

~~(e)~~ Nitrogen and phosphorus loading from existing development, including loading from onsite wastewater treatment systems to the extent that accounting methods allow, shall be calculated by applying the accounting tool described in Sub-Item ~~(7)(a)~~ (8)(a) and shall quantify baseline loads of nitrogen and phosphorus to surface waters in the local government's jurisdiction as well as loading changes post-baseline. It shall also calculate target nitrogen and phosphorus loads and corresponding load reduction needs;

~~(f)~~ The Commission shall recognize reduction credit for early implementation of policies and practices implemented after January 1, 2007 and before timeframes required by this Rule, to reduce runoff and discharge of nitrogen and phosphorus per Session Law 2009-486. The load reduction program shall identify specific load-reducing practices implemented to date subsequent to the baseline period and for which the local government is seeking credit. It shall estimate load reductions for these practices and their anticipated duration using methods provided for in Sub-Item ~~(5)(a)~~ (6)(a);

~~(g)~~ The program shall include a proposed implementation schedule that includes annual implementation expectations. The load reduction program shall identify the types of activities the local government intends to implement and types of existing development affected, a prioritization of practices, magnitude of reductions it expects to achieve from each, and the costs and efficiencies of each activity to the extent information is available. The program shall identify the duration of anticipated loading reductions, and may seek activities that provide long-term reductions;

~~(h)~~ The load reduction program shall identify anticipated funding mechanisms or sources and discuss steps take or planned to secure such funding;

~~(i)~~ The program shall address the extent of load reduction opportunities intended from the following types of lands:

- (i) Lands owned or otherwise controlled by the local government;
- (ii) Each land use type of privately owned existing development including projected redevelopment, on which the local government's load reduction need is based as described in this Item; and
- (iii) Lands other than those on which the local government's load reduction need is based as described in this Item, including lands both within and outside its jurisdiction and including the use of interlocal agreements and public or private third party sellers;
- (j) The program shall address the extent of load reduction opportunities from the following types of practices either included in the model program or subsequently approved by the Director according to Sub-Item (8)(b):
 - (i) Stormwater and ecosystem practices;
 - (ii) Onsite and municipal wastewater practices; and
 - (iii) Other practices, measures, and activities for which accounting methods acceptable to the Division can be provided.
- ~~(l) The program shall address the extent of load reduction proposed from the following from stormwater and ecosystem restoration activities:~~
 - ~~(i) Bioretention;~~
 - ~~(ii) Constructed wetland;~~
 - ~~(iii) Sand filter;~~
 - ~~(iv) Filter strip;~~
 - ~~(v) Grassed swale;~~
 - ~~(vi) Infiltration device;~~
 - ~~(vii) Extended dry detention;~~
 - ~~(viii) Rainwater harvesting system;~~
 - ~~(ix) Treatment of redevelopment;~~
 - ~~(x) Overtreatment of new development;~~
 - ~~(xi) Removal of impervious surface;~~
 - ~~(xii) Retrofitting treatment into existing stormwater ponds;~~
 - ~~(xiii) Off line regional treatment systems;~~
 - ~~(xiv) Wetland or riparian buffer restoration; and~~
 - ~~(xv) Reforestation with conservation easement or other protective covenant;~~
- ~~(m) The program shall evaluate the load reduction potential from the following wastewater activities:~~
 - ~~(i) Creation of surplus relative to an allocation established in Rule 15A NCAC 02B .0279;~~
 - ~~(ii) Expansion of surplus allocation through regionalization;~~

1 ~~(iii) — Connection of discharging sand filters and malfunctioning septic systems to central~~
2 ~~sewer or replacement with permitted non-discharge alternatives;~~

3 ~~(iv) — Removal of illegal discharges; and~~

4 ~~(v) — Improvement of wastewater collection systems;~~

5 ~~(n) — A local government may propose in its load reduction program the use of the following~~
6 ~~measures in addition to items listed (l) and (m), or may propose other measures for which it can~~
7 ~~provide accounting methods acceptable to the Division:~~

8 ~~(i) — Redirecting runoff away from impervious surfaces;~~

9 ~~(ii) — Soil amendments;~~

10 ~~(iii) — Stream restoration;~~

11 ~~(iv) — Improved street sweeping; and~~

12 ~~(v) — Source control, such as pet waste and fertilizer ordinances;~~

13 ~~(k)~~ (k) The program shall include evaluation of load reduction potential relative to the following
14 factors:

15 (i) Extent of physical opportunities for installation;

16 (ii) Landowner acceptance;

17 (iii) Incentive and education options for improving landowner acceptance;

18 (iv) Existing and potential funding sources and magnitudes;

19 (v) Practice cost-effectiveness (e.g., cost per pound of nutrient removed);

20 (vi) Increase in per capita cost of a local government's stormwater management program to
21 implement the program;

22 (vii) Implementation rate without the use of eminent domain; and

23 (viii) Need for and projected role of eminent domain;

24 ~~(5)(6)~~ (6) The Commission shall approve a Stage I load reduction program if it is consistent with Items ~~(3)(4)~~ and
25 ~~(4)(5)~~ of this Rule. The Commission shall Approve a Stage II load reduction program if it is consistent
26 with Items ~~(3)(4)~~ and ~~(4)(5)~~ of this Rule unless the Commission finds that the local governments can,
27 through the implementation of reasonable and cost-effective measures not included in the proposed
28 program, meet the Stage II nutrient load reductions required by this Rule by a date earlier than that
29 proposed by the local government. If the Commission finds that there are additional or alternative
30 reasonable and cost-effective measures, the Commission may require the local government to modify its
31 proposed program to include such measures to achieve the required reductions by the earlier date. If the
32 Commission requires such modifications, the local government shall submit a modified program within
33 two months. The Division shall recommend that the Commission approve or disapprove the modified
34 program within three months after receiving the modified program. In determining whether additional or
35 alternative load reduction measures are reasonable and cost effective, the Commission shall consider

1 factors identified in Sub-Item ~~(4)(e)~~ (5)(k) of this Rule. The Commission shall not require additional or
2 alternative measures that would require a local government to:

- 3 (a) Install or require installation of a new stormwater collection system in an area of existing
4 development unless the area is being redeveloped;
- 5 (b) Acquire developed private property; or
- 6 (c) Reduce or require the reduction of impervious surfaces within an area of existing development
7 unless the area is being redeveloped.

8 ~~(6) A municipality shall have the option of working with the county or counties in which it falls, or with
9 another municipality or municipalities within the same subwatershed, to jointly meet the loading targets
10 from all lands within their combined jurisdictions within a subwatershed. A local government may utilize
11 private or third party sellers. All reductions involving trading with other parties shall meet the
12 requirements of Rule 15A NCAC 02B .0282.~~

13 (7) A local government may obtain reductions through other means in accordance with the watershed-specific
14 geographic constraints described in Part 3 of 15A NCAC 02B .0273 in addition to its implementation of
15 practices on lands within its jurisdiction. Other means include:

- 16 (a) A municipality or county may work with other municipalities or counties to jointly meet the
17 loading targets from all lands within their combined jurisdiction;
- 18 (b) A local government may combine nutrient load allocations established for its NPDES discharges
19 in Rule .0279 of this Section with those assigned to it for existing developed lands in this Rule
20 into one set of allocations and meet them jointly;
- 21 (c) Purchase of nutrient offset credits pursuant to G.S. 143-214.26 and Rules .0240 of this Section;
22 and
- 23 (d) Other forms of trading pursuant to Rule .0273 of this Section.

24 ~~(7)(8)~~ RULE IMPLEMENTATION. This Rule shall be implemented as follows:

- 25 (a) By ~~July 2013~~ March 2017 the Division shall submit a Stage I model local program to the
26 Commission for approval that embodies the criteria described in Items ~~(3)(a)~~ (4)(a) and ~~(4)(5)~~ of
27 this Rule. The Division shall work in cooperation with subject local governments and other
28 watershed interests in developing this model program, which shall include the following:
 - 29 (i) Model local ordinances as applicable;
 - 30 (ii) Methods to quantify load reduction requirements and resulting load reduction
31 assignments for individual local governments;
 - 32 (iii) Methods to account for discharging sand filters, malfunctioning septic systems, and
33 leaking collection systems; ~~and systems.~~
 - 34 ~~(iv) Methods to account for load reduction credits from various activities;~~
- 35 (b) The Division shall include with the model program supporting information for local
36 governments, which shall include:

1 (i) Identification of the set of nutrient-reducing practices currently approved by the
2 division for use toward compliance with this rule, along with identification of relevant
3 documents establishing design standards and credit methods; and

4 (ii) Explanation of the process to be used for adjusting load allocations and reduction
5 needs to account for existing practices and changes in jurisdictional limits since
6 baseline and into the future, as well as the process used by the Division for approving
7 additional measures for use under this Rule.

8 ~~(b)~~(c) Within six months after the Commission's approval of the Stage I model local program, subject
9 local governments shall submit load reduction programs that meet or exceed the requirements of
10 Items ~~(3)~~(4) and ~~(4)~~(5) of this Rule to the Division for review and preliminary approval and
11 shall begin implementation and tracking of measures to reduce nutrient loads from existing
12 developed lands within their jurisdictions;

13 ~~(c)~~(d) Within ~~20~~-12 months of the Commission's approval of the Stage I model local program, the
14 Division shall provide recommendations to the Commission on existing development load
15 reduction programs. The Commission shall either approve the programs or require changes
16 based on the standards set out in Item ~~(4)~~(5) of this Rule. Should the Commission require
17 changes, the applicable local government shall have two months to submit revisions, and the
18 Division shall provide follow-up recommendations to the Commission within two months after
19 receiving revisions;

20 ~~(d)~~(e) Within three months after the Commission's approval of a Stage I local existing development
21 load reduction program, the local government shall complete adoption of and begin
22 implementation of its approved existing development Stage I load reduction program;

23 ~~(e)~~(f) Upon implementation of the programs required under Item ~~(4)~~(5) of this Rule, local
24 governments shall provide annual reports to the Division documenting their progress in
25 implementing those requirements within three months following each anniversary of program
26 implementation date until such time the Commission determines they are no longer needed to
27 ensure maintenance of reductions or that standards are protected. Annual reports shall include
28 accounting of total annual expenditures, including local government funds and any state and
29 federal grants used toward load reductions achieved from existing developed lands. Local
30 governments shall indefinitely maintain and ensure performance of implemented load-reducing
31 measures;

32
33 **Note:** The Division seeks public comment concerning alternative timelines for implementation of a local government
34 Stage II load reduction programs per Sub-Item (8)(g) considering the proposed timeline revision for the Stage I Model
35 Program in Sub-Item (8)(a) of this rule.

1 ~~(f)~~(g) By ~~January 15, 2021~~January 2021 and every five years thereafter until accounting determines
2 that assigned load reductions have been achieved, standards are met in the lake, or the
3 Commission takes other actions per Rule 15A NCAC 02B .0275, local governments located in
4 the upper Falls watershed as defined in Item ~~(3)~~(4) of Rule 15A NCAC 02B .0275 shall submit
5 and begin implementation of a Stage II load reduction program or program revision to the
6 Division. Within nine months after submittal, the Division shall make recommendations to the
7 Commission on approval of these programs. The Commission shall either approve the
8 programs or require changes based on the standards set out in this Rule. If the Commission
9 require changes, the applicable local governments shall submit revisions within two months, and
10 the Division shall provide follow-up recommendations to the Commission within three months
11 after receiving revisions. Upon program approval, local governments shall revise
12 implementation as necessary based on the approved program;

13 ~~(g)~~(h) A local government may, at any time after commencing implementation of its load reduction
14 program, submit program revisions to the Division for approval based on identification of more
15 cost-effective strategies or other factors not originally recognized;

16 ~~(h)~~(i) Once either load reductions are achieved per annual reporting or water quality standards are met
17 in the lake per Rule 15A NCAC 02B .0275, local governments shall submit programs to ensure
18 no load increases and shall report annually per Sub-Item ~~(e)~~ (f) on compliance with no increases
19 and take additional actions as necessary;

20 ~~(i)~~(j) At least every five years after the effective date, the Division shall review the accounting
21 methods stipulated under Sub-Item ~~(7)(a)~~(8)(a) to determine the need for revisions to those
22 methods and to loading reductions assigned using those methods. Its review shall include values
23 subject to change over time independent of changes resulting from implementation of this Rule,
24 such as untreated export rates that may change with changes in atmospheric deposition. It shall
25 also review values subject to refinement, such as nutrient removal efficiencies.

27 *History Note:* *Authority G.S. 143-214.1; 143-214.5; 143-214.7; 143-214.12; 143-214.21; 143-215.3(a)(1); 143-*
28 *215.6A; 143-215.6B; 143-215.6C; 143-215.8B; 143B-282(c); 143B-282(d); S.L. 2005-190; S.L. 2006-*
29 *259; S.L. 2009-337;*

30 *Eff. January 15, 2011 (this permanent rule replaces the temporary rule approved by the RRC on*
31 *December 16, 2010).*

32 *Amended Eff. August 1, 2017.*