




City Of Raleigh
NORTH CAROLINA

To: Path Forward Committee

From: Kenny Waldroup
Dan McLawhorn
Carolyn Bachl 

Date: September 14, 2015

Subject: Recommendations by Raleigh on UNRBA Joint Comments on Falls Rules and Strategy

Raleigh staff remains concerned that major changes may occur in the strength of the rules based on legislative action. We have already seen that through last year's bill on redevelopment with the result that a major opportunity to move forward with Existing Development improvements has been set back. While the uncertainty factor remains as the Legislature still is considering important proposals to the Falls strategy and its potential, it now seems important to share with our partners in the UNRBA some concept that we are willing to recommend our City Council if they emerge as part of joint comments by the UNBRA members.

The broad concepts reflect a number of comments by other members and some of the questions appended to Raleigh's comment on May 18th. The overview of the concepts includes:

1. Reconciling the disconnect created in the rules when the EMC moved the conclusion of the relook process to 4 years after the start of the Stage II rules. To address that issue, move the start date for Stage II rules from 2021 to the effective date of the relook rule changes, or 2025, whichever is sooner. This start date would also involve a potential Stage 1B for Existing Development so that it extends to 2031 and a 10-year variance for WWTPs if Stage II goals are too difficult with available technology similar to that in use in the State.
2. Revise the nutrient strategy to abandon the single point of compliance for the whole lake to a compliance determination process similar to that used in other piedmont impoundments. We generally believe this should include some form of averaging of the various monitoring stations.
3. Consider a means to bridge the transition from Stage I Existing Development to Stage II Existing Development with a more specific plan by each jurisdiction to accomplish reductions *equal to* the 2000 year load before the Stage II rules become effective in 2013.

4. Amend the rules to allow the Creedmoor concept of urbanized cores served by a large local government-owned BMP that serves both new development and existing development in the urban core with no requirement for onsite reductions for the new development areas.
5. Enlarge the minimum lot size that triggers the New Development rule to conform to that in the Jordan Basin, i.e. one acre of disturbed land.
6. Allow the WWTPs to seek by rule a 10-year variance from the Stage II reduction levels so long as the plant improvements will achieve reductions equal to the top levels of performance by other plants in the Neuse Basin if the financial cost and the technical ability make it too onerous in the opinion of the DWR staff.
7. Expressly allow local governments to receive credit for removal of illegal discharges as nutrient credits against their Existing Development load.
8. Provide double credits for Existing Development reductions that are achieved before the start date of the Stage I Existing Development program for the duration of the Stage I Existing Development program. The double credits will expire when Stage II rules go into effect.
9. Remove the proposal to eliminate the phosphorous reduction requirement for agriculture unless and until a substitute source of reductions is added to the rules.
10. Remove the proposal to exempt farmers from registration unless local governments are provided an alternative means to identify farms not included in their Existing Development jurisdictional load.

The following specific suggestions are directed at particular rules.

- **.0263. Definitions.** Retain a definition for “development.” Change the term “discharge” to “discharge allocation”. Discharge is already defined in GS 143-213 and this different definition will confuse the rules and application of the permits. Revise the definition of “transport factor” so that it applies to NSW such as Falls Lake as well to TMDL waters.
- **.0275(4) and (5). Falls Water Supply Nutrient Strategy.** Fix the disconnect between start of Stage II and end of relook. Move start of Stage II to date that relook rule changes are effective, or 2025, whichever is sooner.
- **.0275(4). Falls Water Supply Nutrient Strategy.** Restore allowable loads for Stage II as they are necessary to permit limits and the establishments of jurisdictional loads
- **.0276. Definitions.** Do not delete the definitions rule. If nothing else, use it for a cross reference to the new definitions rule in .0263 so there is a cross reference to Jordan definitions instead of no definitions in Falls rules. Add definitions to .0263 for “development”, “ new development product”, “discharge allocation”, and “nutrient.” Amend definition of “transport factor” so it is applicable in Falls instead of limited to TMDL situations.
- **.0277(c)(3). New Development.** Change the minimum square footage of disturbed lands as a trigger for this rule to one acre from 12,00 square feet.
- **.0277(4)(d) in proposed rewrite. New Development.** Change the duration of offsetting reductions from perpetual to the duration of purchased credits eligible for use on a project.
- **.0277(4). New Development.** Remove the requirement for onsite reductions for dense urbanized areas when combined with existing development retrofits to cover a defined area so

long as the new BMPs are owned and maintained by the local government as part of its stormwater utility.

- .0278 (introductory paragraph). **Existing Development.** Extend the end date for Stage I Ex Development rules from 2021 to date that relook rule changes are effective, or 2025, whichever is sooner. In the alternative, create a Stage 1B for existing development. It would extend Stage 1 to 2031 with a higher set of reductions required by 2031, for example reductions equal to all existing development in the jurisdiction as of 2000.
- .0278(3). **Existing Development.** Provide more flexibility on how the first set of Stage II reductions will be established so the local governments can meet the general objective of increasing effort from the prior cycle but be allowed to revise and adjust their plan for the next cycle once the relook revisions to the rules are in place.
- .0278(3) and (4) as well as (5)(m) in proposed rewrite. **Existing Development.** Expressly provide local government with credits for every improvement irrespective of whether it was illegal under other requirements.
- .0278(7)(a) in proposed rewrite. **Existing Development.** Remove the subwatershed limitation for jurisdictions which contain more than one subwatershed and allow actions in the collective group of subwatersheds for the respective jurisdiction.
- .0278(8)(d). **Existing Development.** Provide more time for local governments to adopt ordinances to implement as two months is not feasible in light of other statutory restrictions on land use and development ordinance adoption
- .0279(2). **WWTPs.** Repeal the general permit exception for compliance with the rule. Make it expire when the general permit is renewed.
- .0279(4). **WWTPs.** Allow WWTPs to show economic limitations and seek a variance from the initial requirements of Stage II so long as the WWTP achieves the same level of treatment removal as average removals by the 10 ten WWTPs in the Neuse River basin.
- .0280(5). **Agriculture.** Do not remove the phosphorous requirement for agriculture without compensating reductions from other sectors or a reduction in the goal as set in .0275.
- .0280(6). **Agriculture.** Retain the registration requirement or create a substitute means to identify farms within the scope of the agricultural rule's coverage.
- .0281(3) in proposed rewrite. **State and Federal Entities.** Remove unlawful restriction on power of local governments to regulate stormwater programs by state and federal agencies.
- .0273(1). **Nutrient Trading.** Expand the definition of "trading" from sales only.
- .0273(4)(b)(ii). **Nutrient Trading.** Apply the maintenance requirement to all trades, not just those that are perpetual.
- .0240(b). **Nutrient Offset.** Expand the scope of rules to which the definitions are applied.
- .0240. **Nutrient Offset.** Expressly allow local governments to obtain and use credits when illegal sources are stopped that were part of the baseline.