

15A NCAC 02B .0732 TAR-PAMLICO NUTRIENT STRATEGY: AGRICULTURE

(a) **PURPOSE.** The purpose of this Rule is to maintain or exceed the percentage reduction goals defined in Rule .0730 of this Section for the collective agricultural loading of nitrogen and phosphorus from the 1991 baseline levels, to the extent that best available accounting practices will allow, on agricultural operations as defined in Paragraph (b) of this Rule. This Rule requires persons engaging in agricultural operations in the basin to implement land management practices that will collectively, on a basin basis, achieve and maintain strategy nutrient reduction goals of a 30 percent reduction in nitrogen loading from 1991 levels and no increase in phosphorus loading from 1991 levels. Local committees and a Basin Oversight Committee shall coordinate activities and account for progress.

- (1) **PROCESS.** This Rule requires agricultural producers in the basin to implement land management practices that collectively, on a basin-wide basis, will achieve the nutrient goals.
- (2) **LIMITATION.** This Rule may not fully address the agricultural nitrogen reduction goal of the Tar-Pamlico Nutrient Sensitive Waters Strategy in that it does not address atmospheric sources of nitrogen to the Basin, including atmospheric emissions of ammonia from sources located both within and outside of the Basin, and the Commission may undertake separate rule making to address atmospheric sources at a later date.

(b) **APPLICABILITY.** This Rule shall apply to all agricultural producers engaging in agricultural operations in the geographic area subject to the Tar-Pamlico nutrient strategy as described in Rule .0730 of this Section. This Rule applies to livestock and poultry operations set forth in Subparagraph (b)(3) of this Rule in addition to requirements for animal operations set forth in general permits issued pursuant to G.S. 143-215.10C. Nothing in this Rule shall be deemed to allow the violation of any assigned surface water, groundwater, or air quality standard by any agricultural operation, including any livestock or poultry operation below the size thresholds in this Paragraph. For the purposes of this Rule, "agricultural operations," are activities, and "agricultural producers" are persons engaging in those activities, that relate to any of the following pursuits:

- (1) The commercial production of crops or horticultural products other than trees. As used in this Rule, "commercial" shall mean activities conducted primarily for financial profit.
- (2) Research activities in support of commercial production.
- (3) The production or management of any of the following number of livestock or poultry at any time, excluding nursing young:
 - (A) 20 or more horses;
 - (B) 20 or more cattle;
 - (C) 150 or more swine;
 - (D) 120 or more sheep;
 - (E) 130 or more goats;
 - (F) 650 or more turkeys;
 - (G) 3,500 or more chickens; or
 - (H) Any single species of any other livestock or poultry, or any combination of species of livestock or poultry that exceeds 20,000 pounds of live weight at any time.
- (4) Certain tree-harvesting activities described and defined as follows.
 - (A) The one-time harvest of trees on land within a riparian buffer described in Rule .0259 that was open farmland on September 1, 2001. This one-time harvest of trees may be conducted within one tree cropping interval only under a verifiable farm plan that received final approval from a local agricultural agency on or after September 1, 2001 and that expressly allowed the harvest of trees no earlier than 10 years after the trees are established and the return of the land to another agricultural pursuit.
 - (B) The one-time harvest of trees on land within a riparian buffer described in 15A NCAC 02B .0259 that had trees established under an agricultural incentive program as of September 1, 2001.
 - (C) All tree harvesting described in Parts (A) and (B) of this Subparagraph shall comply with 02 NCAC 60C. The nutrient removal functions that were provided by trees prior to their harvest shall be replaced by other measures that are implemented by the owner of the land from which the trees are harvested.
 - (D) The following definitions shall apply to terms used in Parts (A) and (B) of this Subparagraph:
 - (i) "Agricultural incentive program" means any of the following programs and any predecessor program to any of the following programs:

- (I) Agriculture Cost Share Program for Nonpoint Source Pollution Control established by G.S. 106-850.
 - (II) Conservation Reserve Enhancement Program established by 7 C.F.R. Part 1410 (January 1, 2001 Edition) and 15A NCAC 06G .0101 through 15A NCAC 06G .0106.
 - (III) Conservation Reserve Program established by 7 C.F.R. Part 1410 (January 1, 2001 Edition).
 - (IV) Environmental Quality Incentives Program established by 7 C.F.R. Part 1466 (January 1, 2001 Edition).
 - (V) Wetlands Reserve Program established by 7 C.F.R. Part 1467 (January 1, 2001 Edition).
 - (VI) Wildlife Habitat Incentives Program established by 7 C.F.R. Part 636 (January 1, 2001 Edition).
 - (VII) The CFRs in this Subparagraph are incorporated by reference, including subsequent amendments and editions, and may be accessed free of charge at www.gpo.gov.
- (ii) "Local agricultural agency" means the North Carolina Cooperative Extension Service, the Farm Services Agency of the United States Department of Agriculture, the Natural Resources Conservation Service of the United States Department of Agriculture, a Soil and Water Conservation District created pursuant to G.S. 139-5, or their successor agencies.
 - (iii) "Open farmland" means the footprint of land used for pasture or for crops or horticultural products other than trees. Open farmland may contain scattered trees if an open canopy existed on September 1, 2001 as determined from the most recent aerial photographs taken prior to September 1, 2001 for the Farm Services Agency of the United States Department of Agriculture.
 - (iv) "Tree" means a woody plant with a diameter equal to or greater than five inches when measured at a height of four and one-half feet above the ground.
 - (v) "Tree cropping interval" means the time required to establish and grow trees that are suitable for harvesting. The tree-cropping interval shall be set out in the farm plan and shall be no less than 10 years after the trees are established.

(c) **IMPLEMENTATION PROCESS.** A Basin Oversight Committee, as set forth in Paragraph (d) of this Rule, and county-level Local Advisory Committees, as set forth in Paragraph (e) of this Rule, shall coordinate activities and account for progress. Accounting for nutrient-reducing actions on agricultural operations within the basin shall follow requirements set forth in Subparagraph (d)(3) of this Rule. Agricultural producers may be eligible to obtain cost share and technical assistance from the NC Agriculture Cost Share Program and similar federal programs to contribute to their counties' ongoing nutrient reductions. Committee activity shall be guided by the following:

- (1) **OPTIONS FOR INDIVIDUAL OPERATIONS.** Agricultural producers subject to this Rule may elect to implement practices meeting the standards identified in Paragraph (f) of this Rule that contribute to maintenance of collective local compliance with the goal identified in Paragraph (a) of this Rule, but are not required to implement any specific practices provided their basin collectively maintains compliance with the goal.
- (2) **MAINTENANCE OF GOAL.** Accounting shall annually demonstrate maintenance or exceedence of the nitrogen reduction goal for the basin. Where three sequential annual reports show that the basin did not meet its nitrogen and phosphorus reduction goals, the Basin Oversight Committee shall work with the Division of Soil and Water Conservation and Local Advisory Committees, particularly those representing counties not meeting the goals, to seek reduction actions by operations to bring agriculture collectively back into compliance, and shall report on their efforts in subsequent annual reports. Should subsequent annual reports not reverse the trend of non-compliance, the Commission may conduct additional rulemaking to require a more specific implementation plan from the Basin Oversight Committee, which may include an assessment of need for specific action by the Commission.

(d) **BASIN OVERSIGHT COMMITTEE.** The Basin Oversight Committee shall have the following membership, role, and responsibilities:

- (1) **MEMBERSHIP.** The Director of the Division of Water Resources shall be responsible for maintaining the following membership composition. Until such time as the Commission

determines that long-term compliance with this Rule is assured, the Director shall solicit one nomination for membership on this Committee from each agency or interest in Parts (A) through (J) of this Subparagraph. The Director shall confirm nominees in writing or request alternative nominations. The Director may appoint a replacement at any time for an interest in Parts (F) through (J) of this Subparagraph upon request of representatives of that interest or by the request of the Commissioner of Agriculture for Part (G):

- (A) Division of Soil and Water Conservation;
- (B) United States Department of Agriculture-Natural Resources Conservation Service (shall serve in an "ex-officio" non-voting capacity and shall function as a technical program advisor to the Committee);
- (C) North Carolina Department of Agriculture and Consumer Services;
- (D) North Carolina Cooperative Extension Service;
- (E) Division of Water Resources;
- (F) Up to two environmental interests;
- (G) Basinwide farming interests;
- (H) Pasture-based livestock interests;
- (I) General farming interests; and
- (J) The scientific community with experience related to water quality problems in the Tar-Pamlico River Basin.

(2) **ROLE.** The Basin Oversight Committee shall:

- (A) Continue to review, approve, and summarize local nitrogen and phosphorus reduction annual reports to ensure ongoing implementation of the accounting methods approved by the Commission under the original version of this Rule in October 2002 for nitrogen and November 2005 for phosphorus as conforming to the requirements of Subparagraph (3) of this Paragraph. The Committee shall present these reports as initiated in 2002, to the Director;
- (B) Take actions set forth in Subparagraph (c)(2) of this Rule to address maintenance of the nitrogen and phosphorus reductions goals;
- (C) Identify and implement future refinements to the accounting methodology to reflect advances in scientific understanding, including establishment of nutrient reduction efficiencies for BMPS;
- (D) Reassemble as needed a phosphorus technical advisory committee to update the qualitative phosphorus method approved by the Commission in October 2005, titled Accounting Method for Tracking Relative Changes in Agricultural Phosphorus Loading to the Tar-Pamlico River, in order to revise phosphorus baseline values and annual changes in factors affecting agricultural phosphorus loss.

(3) **ACCOUNTING METHODOLOGY.** The requirements of Paragraph (a) of this Rule shall be gauged by estimating percentage changes in nitrogen loss from agricultural operations in the Tar-Pamlico Basin and by evaluating broader trends in indicators of phosphorus loss from agricultural lands in the Tar-Pamlico Basin. The Basin Oversight Committee shall develop, maintain, and update as set forth in this Paragraph, accounting methods that meet the following requirements:

- (A) The nitrogen method shall estimate baseline and annual total nitrogen losses from agricultural operations in each county and for the entire Tar-Pamlico Basin;
- (B) The nitrogen and phosphorus methods shall include a means of tracking implementation of BMPs, including number, type, and area affected;
- (C) The nitrogen method shall include a means of estimating incremental nitrogen loss reductions from implementation of BMPs that conform to requirements of Paragraph (f) of this Rule and of evaluating progress toward and maintenance of the nutrient goals from changes in BMP implementation, fertilization, and changes in individual crop acres;
- (D) The nitrogen and phosphorus methods shall be refined as research and technical advances allow; and
- (E) The phosphorus method shall quantify baseline values for and annual changes in factors affecting agricultural phosphorus loss as identified in the report by the phosphorus technical advisory committee described in Part (d)(2)(D).

(e) **LOCAL ADVISORY COMMITTEES.** The Local Advisory Committees shall have the following membership, roles, and responsibilities:

- (1) MEMBERSHIP. Per S.L. 2001-355, a Local Advisory Committee shall be maintained as provided in this Paragraph in each county or watershed as specified by the Basin Oversight Committee, within the Tar-Pamlico River Basin. The Committee shall terminate upon a finding by the Commission that the long-term maintenance of nutrient loads in the Tar-Pamlico River Basin is assured. Each Local Advisory Committee shall consist of:
 - (A) One representative of the local Soil and Water Conservation District;
 - (B) One local representative of the United States Department of Agriculture- Natural Resources Conservation Service;
 - (C) One local representative of the North Carolina Department of Agriculture and Consumer Services;
 - (D) One local representative of the North Carolina Cooperative Extension Service;
 - (E) One local representative of the North Carolina Division of Soil and Water Conservation; and
 - (F) At least two agricultural producers that reside in the county.
 - (2) APPOINTMENT OF MEMBERS. Per S.L. 2001-355, the Director of the Division of Water Resources and the Director of the Division of Soil and Water Conservation of the Department of Agriculture and Consumer Services shall jointly appoint members described in Parts (1)(A), (1)(B), (1)(D), and (1)(E) of this Subparagraph. As directed by S.L. 2001-355, the Commissioner of Agriculture shall appoint the members described in Part (1)(F) of this Subparagraph from persons nominated by nongovernmental organizations whose members produce or manage significant agricultural commodities in each county or watershed.
 - (3) ROLE. The Local Advisory Committees shall:
 - (A) Continue to submit annual reports to the Basin Oversight Committee estimating total crop production on agricultural operations for the preceding calendar year, summarizing land use changes in the county, and making recommendations to the Basin Oversight Committee on the need for updates to the accounting methodology. Reports shall include documentation on the BMPs implemented, including type and location, that satisfy the requirements in Paragraph (f) of this Rule and documentation of any expired contracts for BMPs; and
 - (B) Take actions called for under Subparagraph (c)(2) of this Rule as needed to address maintenance of the nitrogen and phosphorus reduction goals.
- (f) PRACTICE STANDARDS. To receive nutrient reduction credit, a BMP shall be included in the accounting method set forth in Subparagraph (d)(3) of this Rule, or in a subsequent revision to that method identified in annual reporting, and it shall be implemented according to applicable nutrient-related standards identified by the Basin Oversight Committee and established by the NC Soil and Water Conservation Commission or the USDA-Natural Resources Conservation Service in North Carolina.

History Note: Authority G.S. 143-214.1; 143-214.7; 143-215.3(a)(1); Eff. September 1, 2001; Temporary Amendment Eff. January 1, 2002 (exempt from 270 day requirement-S.L. 2001-355); Recodified from 15A NCAC 02B .0256 Eff. April 1, 2020; Readopted Eff. April 1, 2020.