

15A NCAC 02B .0712 NEUSE NUTRIENT STRATEGY: AGRICULTURE

This Rule sets forth a process by which agricultural operations in the Neuse River Basin will collectively limit their nitrogen loading to the Neuse estuary, as set forth in in Rule .0710 of this Section. Nothing in this Rule preempts the requirements of 15A NCAC 02B .0280 for agricultural operations subject to the Falls Reservoir Nutrient Strategy.

- (1) **PURPOSE.** The purpose of this Rule is to maintain or exceed the percentage reduction goal defined in Rule .0710 of this Section on the collective loss of nitrogen from agricultural operations as defined in Item (2) of this Rule, as estimated by best available accounting practices meeting the criteria set forth in Item (6) of this Rule from its 1991-1995 baseline level.
 - (a) **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.
 - (b) **LIMITATION.** This Rule may not fully address the agricultural nitrogen reduction goal of the Neuse 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.
- (2) **AGRICULTURAL OPERATIONS DEFINED.** 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:
 - (a) 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.
 - (b) Research activities in support of commercial production.
 - (c) The production or management of any of the following number of livestock or poultry at any time, excluding nursing young:
 - (i) 5 or more horses;
 - (ii) 20 or more cattle;
 - (iii) 20 or more swine not kept in a feedlot, or 150 or more swine kept in a feedlot;
 - (iv) 120 or more sheep;
 - (v) 130 or more goats;
 - (vi) 650 or more turkeys;
 - (vii) 3,500 or more chickens; or
 - (viii) 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.
- (3) **APPLICABILITY.** This Rule shall apply to all agricultural producers engaging in agricultural operations in the geographic area subject to the Neuse nutrient strategy as described in Rule .0710 of this Section. This Rule applies to livestock and poultry operations set forth in Sub-Item (2)(c) 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 Item.
- (4) **IMPLEMENTATION PROCESS.** A Basin Oversight Committee, as set forth in Item (5) of this Rule, and county-level Local Advisory Committees, as set forth in Item (7) of this Rule, shall coordinate activities and account for progress. Accounting for nitrogen load-reducing actions on agricultural operations within the basin shall follow requirements set forth in Item (6) 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 nitrogen reductions. Committee activity shall be guided by the following:
 - (a) **OPTIONS FOR INDIVIDUAL OPERATIONS.** Agricultural producers subject to this Rule may elect to implement practices meeting the standards identified in Item (8) of this Rule that contribute to maintenance of collective local compliance with the goal identified in Item (1) of this Rule, but are not required to implement any specific practices provided their basin collectively maintains compliance with the goal.
 - (b) **MAINTENANCE OF GOAL.** Accounting shall annually demonstrate maintenance or exceedence of the nitrogen reduction goal on a basin basis. Where three sequential annual reports show that the basin did not meet its nitrogen reduction goal, 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 noncompliance, 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.

- (5) **BASIN OVERSIGHT COMMITTEE.** The Basin Oversight Committee shall have the following membership, role, and responsibilities:
- (a) **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 Sub-Items (a)(i) through (a)(viii) of this Item. The Director shall confirm nominees in writing or request alternative nominations. The Director may appoint a replacement at any time for an interest in Sub-Items (a)(vi) through (a)(viii) of this Item upon request of representatives of that interest or by the request of the Commissioner of Agriculture for Sub-Item (vii):
- (i) Division of Soil and Water Conservation;
 - (ii) 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);
 - (iii) North Carolina Department of Agriculture and Consumer Services;
 - (iv) North Carolina Cooperative Extension Service;
 - (v) Division of Water Resources;
 - (vi) Up to two environmental interests;
 - (vii) Up to two general farming interest; and
 - (viii) Scientific community with experience related to water quality problems in the Neuse River Basin.
- (b) **ROLE.** The Basin Oversight Committee shall:
- (i) Continue to review, approve, and summarize local nitrogen loss annual reports to ensure ongoing implementation of the accounting method approved by the Commission under the original version of this Rule effective August 1998, as conforming to the requirements of Item (6) of this Rule. The Committee shall submit these reports as initiated in 2002, to the Director;
 - (ii) Take actions set forth in Sub-Item (4)(b) of this Rule to address maintenance of the nitrogen reduction goal; and
 - (iii) Identify and implement refinements to the accounting methodology to reflect advances in scientific understanding, including establishment or refinement of nutrient reduction efficiencies for BMPs.
- (6) **ACCOUNTING METHODOLOGY.** The requirements of Item (1) of this Rule shall be gauged by estimating percentage changes in nitrogen loss from agricultural operations in the Neuse Basin. The Basin Oversight Committee shall develop, maintain, and update as set forth in this Item, 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 Neuse Basin;
 - (b) The nitrogen method 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 Item (8) of this Rule and of evaluating progress toward and maintenance of the nutrient goal from changes in BMP implementation, fertilization, and changes in individual crop acres; and
 - (d) The nitrogen method shall be refined as research and technical advances allow.

- (7) LOCAL ADVISORY COMMITTEES. The Directors of the Division of Water Resources and Division of Soil and Water Conservation shall maintain Local Advisory Committees initially established in February and March, 1999, as follows:
- (a) MEMBERSHIP. For each county or watershed specified by the Basin Oversight Committee within the Neuse River Basin, the Directors shall jointly maintain membership on the Local Advisory Committee from each of the following local entities.
 - (i) Soil and Water Conservation District;
 - (ii) United States Department of Agriculture- Natural Resources Conservation Service;
 - (iii) North Carolina Department of Agriculture;
 - (iv) North Carolina Cooperative Extension Service;
 - (v) North Carolina Division of Soil and Water Conservation; and
 - (vi) At least two agricultural producers that reside in the county.
 - (b) ROLE. Local Advisory Committees shall:
 - (i) 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 Item (8) of this Rule and documentation of any expired contracts for BMPs; and
 - (ii) Take actions called for under Sub-Item (4)(b) of this Rule to address maintenance of the nitrogen reduction goal.
- (8) PRACTICE STANDARDS. To receive nutrient reduction credit, a BMP shall be included in the accounting method set forth in Item (6) of this Rule, or in a subsequent revision to that method identified in annual reporting, and it shall be implemented according to the 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);
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