

15A NCAC 02B .0731 TAR-PAMLICO NUTRIENT STRATEGY: STORMWATER

(a) **PURPOSE.** The purpose of this Rule is to achieve and maintain the nitrogen and phosphorus loading reduction goals for the Tar-Pamlico River Estuary set out in Rule .0730 of this Section from an undeveloped condition on lands in the Tar-Pamlico River Basin on which development occurs. Nothing in this Rule preempts local governments from implementing requirements that are more restrictive than those set forth in this Rule.

(b) **APPLICABILITY.** The following local governments shall implement the stormwater management requirements of this Rule, except as noted in Subparagraph (c)(1) of this Rule where the Department shall implement them. Municipalities shall implement this Rule throughout their corporate limits and extraterritorial jurisdictions within the basin, while counties shall implement throughout their territorial jurisdictions within the basin. Counties named in this Paragraph may implement this Rule within municipalities not named in accordance with G.S. 160A-360(d).

(1) Local governments designated under this Rule effective April 2001:

- (A) Greenville;
- (B) Henderson;
- (C) Oxford;
- (D) Rocky Mount;
- (E) Tarboro;
- (F) Washington;
- (G) Beaufort County;
- (H) Edgecombe County;
- (I) Franklin County;
- (J) Nash County; and
- (K) Pitt County.

(2) As of the effective date of this reoption, Wilson County.

(c) **LOCAL PROGRAM IMPLEMENTATION REQUIREMENTS.** All local governments subject to this Rule shall implement stormwater management programs approved by the Commission following the timeframes set out in Paragraph (f) of this Rule, or any subsequent modification to those plans approved by the Director, according to the following requirements and the standards contained in Paragraph (d) of this Rule:

- (1) The requirement for local government approval of a stormwater plan for all proposed development projects not excluded under Paragraph (d) of this Rule. To the extent permitted by federal law, including 33 USC 26, and where pursuant to G.S. 153A-454 and G.S. 160A-459 a local government program does not review a development project proposed by a State or federal entity for the requirements of this Rule, the entity shall obtain Department review and approval.
- (2) A plan to ensure maintenance of SCMs implemented to comply with this Rule for the life of the development;
- (3) A plan to ensure enforcement and compliance with the provisions in Paragraph (e) of this Rule for the life of the development;
- (4) A public education program to inform citizens how to reduce nutrient pollution and to inform developers about the nutrient requirements set forth in Paragraph (e) of this Rule;
- (5) A mapping program that includes major components of the municipal separate storm sewer system, waters of the State, land use types, and location of sanitary sewers; and
- (6) A program to identify and remove illegal discharges.

(d) **DEVELOPMENT EXCLUDED.** The following development activities shall not be subject to this Rule:

- (1) Projects disturbing less than:
 - (A) one acre for single family and duplex residential property and recreational facilities; and
 - (B) one-half acre for commercial, industrial, institutional, multifamily residential, or local government land uses with the following exception: Projects below one-half acre that would replace or expand existing structures on a parcel, resulting in a cumulative built-upon area for the parcel exceeding twenty-four percent, shall be subject to Paragraph (e) of this Rule;
- (2) Development of an individual single-family or duplex residential lot that:
 - (A) Is not part of a larger common plan of development or sale as in 15A NCAC 02H .1002; and
 - (B) Does not result in greater than five percent built upon area on the lot;
- (3) Existing development as defined in rule 15A NCAC 02H .1002;
- (4) Redevelopment as defined in G.S. 143-214.7(a1)(2); and
- (5) Activities subject to requirements of the Tar-Pamlico Agriculture rule, 15A NCAC 02B .0732.

(e) DEVELOPMENT PROJECT REQUIREMENTS. A proposed development project not excluded under Paragraph (d) of this Rule shall be approved by a subject local government for the purpose of this Rule when the applicable requirements of Paragraph (c) of this Rule and the following criteria are met:

- (1) The project, as defined in 15A NCAC 02H .1002, shall meet either a nitrogen loading rate target of 4.0 pounds/acre/year and a phosphorus loading rate target of 0.8 pounds/acre/year, or "runoff volume match" as defined in that Rule. Proposed development projects that would replace or expand existing structures and result in a net increase in built-upon area shall meet one of these options for the project less any existing built-upon area.
- (2) Regarding stormwater treatment and other onsite post-construction elements, projects not subject to more stringent standards under one of the following State stormwater rules or a local ordinance shall meet 15A NCAC 02H .1003, which includes specifications for low- and high-density designs, vegetated setbacks, and stormwater outlets for all projects. Such projects shall use a high-density treatment threshold of 24 percent or greater built-upon area and a storm depth of one inch for SCM design:
 - (A) Water Supply Watershed Protection rules, 15A NCAC 02B .0620 through .0624;
 - (B) Coastal Counties stormwater rule 15A NCAC 02H .1019; or
 - (C) Non-Coastal County HWQs and ORWs rule 15A NCAC 02H .1021.
- (3) The following are exceptions to the onsite requirements of Subparagraph (2) of this Paragraph:
 - (A) Proposed development projects may utilize an offsite SCM that is dedicated to treating an area encompassing the project, provided the SCM is designed to meet all applicable requirements identified in Subparagraph (2) of this Paragraph; and
 - (B) Proposed development undertaken by a local government solely as a public road expansion or public sidewalk project, or proposed development subject to the jurisdiction of the Surface Transportation Board, may meet the loading rate target of this Paragraph entirely through use of permanent nutrient offset credit pursuant to Rule .0703 of this Section.
- (4) Where in satisfying the onsite requirements of Subparagraph (2) of this Paragraph, a project does not meet the loading rate target of this Paragraph, it may do so through use of permanent nutrient offset credit pursuant to Rule .0703 of this Section. Persons doing so shall provide proof of credit acquisition to the permitting authority prior to approval of the development plan.
- (5) Untreated nutrient loading rates from the project area shall be determined through the use of the tool most recently approved by the Division to have met the following criteria, or through an alternative method that meets or exceeds the following criteria, as determined by the Division:
 - (A) Provides site-scale estimates of annual precipitation-driven total nitrogen and total phosphorus load;
 - (B) From all land cover types on a project site at build-out;
 - (C) Based on land-cover-specific nitrogen and phosphorus loading coefficients and annual runoff volume; and
 - (D) Is supported by the weight of evidence from available, current, and applicable research.
- (6) Nutrient loading rate reductions resulting from the use of SCMs shall be determined through the use of the tool most recently approved by the Division to have met the following criteria, or through an alternative method that meets or exceeds the following criteria, as determined by the Division:
 - (A) Provides project site loading reduction estimates from the installation of DEMLR-approved SCMs;
 - (B) Reductions apply to the portion of the project's runoff volume that is directed to the SCMs;
 - (C) The method partitions the runoff volume processed by the SCM among hydrologic fates and assigns nutrient concentrations to each of those fates; and
 - (D) The method is supported by the weight of evidence from available, current, and applicable research.
- (7) Proposed development projects shall demonstrate compliance with the riparian buffer protection requirements set forth in 15A NCAC 02B .0259.

(f) RULE IMPLEMENTATION

- (1) Within eight months of the effective date of this Rule, the Division shall submit a model local stormwater program embodying the elements in Paragraphs (c) through (e) of this Rule to the

Commission for approval. The Division shall work with subject local governments in developing this model program.

- (2) Local governments designated pursuant to Subparagraph (b)(1) of this Rule and additional local governments designated pursuant to Subparagraph (b)(2) of this Rule shall submit a local stormwater program for approval by the Commission within six months and 12 months, respectively, of the Commission's approval of the model local program. These local programs shall meet or exceed the requirements in Paragraphs (c) through (e) of this Rule.
- (3) The Division shall provide recommendations to the Commission regarding proposed local programs. The Commission shall approve programs or require changes based on the standards set out in Paragraphs (c) through (e) of this Rule. Should the Commission require changes, the applicable local government shall have three months to submit revisions, and the Division shall provide follow-up recommendations to the Commission within two months after receiving revisions.
- (4) Within six months after the Commission's approval of a local program, the local government shall complete adoption of and implement its local stormwater program.
- (5) Local governments administering a stormwater program shall submit annual reports in electronic format to the Division documenting their progress regarding each implementation requirement in Paragraph (c) of this Rule and net changes to nitrogen load by October 30th of each year. Annual reports shall also include as appendices all data utilized by nutrient calculation tools for each development stormwater plan approved in accordance with this Rule.
- (6) Any significant modifications to a local government's program shall be submitted to the Director for approval.

(g) COMPLIANCE. A local government's authority to approve development stormwater plans for compliance with this Rule pursuant to Paragraph (e) of this Rule shall be contingent upon maintaining its own compliance with this Rule. A local government that fails to submit an acceptable local stormwater program within the timeframe established in this Rule, fails to implement an approved program, or fails to comply with annual reporting requirements shall be in violation of this Rule.

History Note: Authority G.S. 143-214.1; 143-214.7; 143-214.26; 143-215.1; 143-215.3(a)(1); 143-215.6A; 143-215.6B; 143-215.6C; 143B -282(d); 143-215.8B; S.L. 1997-458; S.L. 2006-246; Eff. April 1, 2001; Recodified from 15A NCAC 02B .0258 Eff. April 1, 2020; Readopted April 1, 2020.