

The following rules are being proposed for readoption with changes as part of the Periodic Review and Expiration of Existing Rules Process.

The comment period for these rules is 9/1/16 – 10/31/16

Requesting a Public Hearing:

Any person may request a public hearing on the proposed rules by submitting a request in writing no later than 9/16/16 to Christina Waggett, Rule-making Coordinator, 1001 Mail Service Center, Raleigh, NC 27699-1001.

Reason for Changes:

These rules have been through the rules review process and are now being readopted. These rules deal with the procedures and guidelines to implement the nondischarge rule for animal waste systems, and the approval of technical specialists and best management practices for water quality protection. The changes in the rules clean up language and makes edits to names and references that have changed or have been updated (like other rules and statutes).

To Submit a Comment:

Written comments may be directed to Christina Waggett, Rule-making Coordinator, 1001 Mail Service Center, Raleigh, NC 27699-1001. Christina.waggett@ncagr.gov

1 02 NCAC 59E .0102 is proposed for readoption with substantive changes as follows:

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3 **02 NCAC 59E .0102 DEFINITIONS**

4 The terms used in this Subchapter shall be as defined in G.S. 139-3; 143-215.74; 143B-294; 15A NCAC 02T 0.103, 15A
5 NCAC 02T .1302, 15A NCAC 02H .0203; 02 NCAC 59D .0102; and as follows:

- 6 (1) "~~Agronomic rates~~" means ~~those amounts of animal waste or compost to be applied to lands as contained in~~
7 ~~the nutrient management standard of the USDA Soil Conservation Service Technical Guide Section IV or~~
8 ~~as recommended by the North Carolina Department of Agriculture and the North Carolina Cooperative~~
9 ~~Extension Service at the time of certification of the animal waste management plan.~~
- 10 (2) "Certification" means the certification required for the animal waste management plan in 15A NCAC 02T
11 Section .1300 and G.S. 143-215.10C. the Nondischarge Rule for Animal Waste Management Systems (15A
12 NCAC 02H .0217).
- 13 (3) "~~DEM~~" "~~DWR~~" means the Division of Water Resources Environmental Management, Department of
14 Environmental Quality Environment, Health, and Natural Resources, and the agency to receive the
15 certification forms and responsible for enforcement of 15A NCAC 02T Section .1300. 15A NCAC 02H
16 .0200.
- 17 (4) "~~Design approval authority~~" means ~~that authority granted by the Commission to designated individuals or~~
18 ~~groups of individuals to certify that a BMP or the system of BMPs for waste management has been~~
19 ~~designed to meet the standards and specifications of practices adopted by the Commission.~~
- 20 (5) "~~Installation approval authority~~" means ~~that authority granted by the Commission to designated individuals~~
21 ~~or groups of individuals to certify a BMP or system of BMPs for waste management has been installed to~~
22 ~~meet the standard of practices adopted by the Commission.~~
- 23 (6) "Technical Specialist" means individuals or groups of individuals designated by the Commission at 02
24 NCAC 59G .0104 ~~02 NCAC 59E .0105~~ to certify an entire or portion of an animal waste management plan.

25
26 *History Note: Authority G.S. 106-840; 106-850; 139-4;*
27 *Temporary Adoption Eff. December 9, 1993 for a Period of 180 Days or Until the Permanent Rule*
28 *Becomes Effective, Whichever is Sooner;*
29 *Eff. March 1, 1994;*
30 *Transferred from 15A NCAC 06F .0102 Eff. May 1, 2012.*

1 02 NCAC 59E is proposed for readoption with substantive changes as follows:

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3 **02 NCAC 59E .0103 REQUIREMENTS FOR CERTIFICATION OF WASTE MANAGEMENT PLANS**

4 (a) In accordance with ~~15A NCAC 02H .0217(a)(1)~~, 15A NCAC 02T Section .1300, owners of animal waste
5 management systems are required to:

6 (1) obtain certification that the system will properly collect, treat, store, or apply animal waste to the land
7 such that no discharge of pollutants occurs to surface waters of the state by any means except as a
8 result of a storm event more severe than the 25-year, 24-hour storm as required in ~~15A NCAC 02H~~
9 ~~.0203(3)~~; or G.S 143-215.10C in order to

10 (2) receive an individual nondischarge permit from the Division of Environmental Management in
11 accordance with ~~15A NCAC 02H .0217(d)~~, 15A NCAC 02T Section .1300.

12 (b) The certification is to be made by a Technical Specialist designated pursuant to this Subchapter, and will confirm that
13 the best management practices (BMPs) contained in the animal waste management plan meet applicable minimum
14 standards and specifications. BMPs in an existing system are not required to meet current standards and specifications as
15 established by the Commission as long as the system is certified to be nondischarging as required in ~~15A NCAC 02H~~
16 ~~.0203(3)~~. G.S. 143-215.10C.

17 (c) More than one Technical Specialist may be consulted for the design of BMPs and installation of BMPs. A Technical
18 Specialist must certify ~~the entire animal waste management plan as installed~~, only parts of the animal waste management
19 plan for which they are assigned designation and are technically competent.

20 (d) Upon receiving a certification from a Technical Specialist, the owner must submit a copy of the certification to DEM
21 DWR and a copy of both the certification and the waste management plan to the District in which the system is or is to
22 be located.

23 ~~(e) The District shall review the waste management plan and, within 30 days of receipt of the plan, notify the owner, the~~
24 ~~certifying Technical Specialist, DEM and the Division if the District does not concur that the certification was signed by~~
25 ~~an approved Technical Specialist and that the waste management plan satisfies the purpose of proper conservation and~~
26 ~~utilization of farm generated animal by-products. If the District, upon review, concurs with the certification, no further~~
27 ~~action is required.~~

28 ~~(f) The District shall maintain a copy of all animal waste management plans and the accompanying certification form.~~

29 ~~(g) If the District does not concur that the certification was signed by a Technical Specialist, or that the waste~~
30 ~~management plan is acceptable, and if either the owner or the DEM requests that the District reconsider its decision, the~~
31 ~~District shall review its decision and within 45 days of the request, notify the owner, the certifying Technical Specialist,~~
32 ~~DEM, and the Division of the District's final decision. The District is encouraged to utilize other technical specialists,~~
33 ~~local agricultural agencies and disinterested agricultural producers in reconsidering its initial decision. If the District fails~~
34 ~~to act within 45 days on a request for reconsideration, the District's initial decision shall become final.~~

35 ~~(h) An owner not receiving concurrence from the District may request that the Commission mediate a dispute over~~
36 ~~concurrence. Nothing in this Rule creates an administrative remedy which must be exhausted prior to exercising permit~~
37 ~~appeal rights pursuant to the rules of the Environmental Management Commission.~~

38 ~~(i) An owner who does not obtain a certification is not deemed permitted pursuant to G.S. 143-215.1(d) and must apply~~
39 ~~for an individual permit from the Division of Environmental Management. Nothing in these Rules prohibits permit~~
40 ~~appeal rights pursuant to the rules of the Environmental Management Commission.~~

41 ~~(j) Any proposed modification of an animal waste management plan requires approval by a Technical Specialist.~~

42 ~~(k) Any modifications made in the system as a result of changes in the operation such as types and numbers of animals,~~
43 ~~equipment, or crops, must be in accordance with the BMP standards and specifications approved by the Commission and~~
44 ~~in effect at the time of the modification.~~

45 ~~(l)(e) A change in the cropping pattern as a result of weather-caused delays after application of animal waste shall not~~
46 ~~require the owner to obtain a new certification as long as the owner followed the certified waste management plan~~
47 ~~application rates and no discharge occurs to surface waters.~~

48 ~~(m)(f) The certifying Technical Specialist and the District are not required to spot check or otherwise assure proper~~
49 ~~maintenance and operation of an animal waste management system installed to meet the DEM certification requirements.~~

50 ~~Enforcement of the 15A NCAC 02T Section .1300 – Animal Waste Management Systems Nondischarge Rule for~~
51 ~~Animal Waste Management Systems (15A NCAC 02H .0217) shall remain the responsibility of DEM. DWR.~~

52

53 *History Note: Authority G.S. 106-840; 106-850; 139-4;*
54 *Temporary Adoption Eff. December 9, 1993 for a Period of 180 Days or Until the Permanent Rule*
55 *Becomes Effective, Whichever is Sooner;*
56 *Eff. March 1, 1994;*
57 *Transferred from 15A NCAC 06F .0103 Eff. May 1, 2012.*
58

1 02 NCAC 59E .0104 is proposed for readoption with substantive changes as follows:

2
3 **02 NCAC 59E .0104 APPROVED BEST MANAGEMENT PRACTICES (BMPS)**

4 (a) The Commission will approve a list of BMPs that are acceptable as part of an approved animal waste management
5 system. The list of BMPs will be ~~approved annually (by August 1)~~ and revised as needed ~~during the year~~ by the
6 Commission.

7 (b) As required by ~~DEM in 15A NCAC 02H .0217, 15A NCAC 02T Section .1300~~, a BMP or system of BMPs designed
8 and installed for an animal waste management plan must ~~either:~~

9 (1) meet the minimum standards and specifications of the US Department of Agriculture ~~Soil-Natural~~
10 Resource Conservation Service (NRCS) Technical Guide, Section IV or minimum standards and
11 specifications as otherwise determined by the ~~Commission; Commission.~~ ~~or~~

12 (2) ~~the owner must receive an approved individual nondischarge permit as required for the animal waste~~
13 ~~management system.~~

14 (c) BMPs approved for use in the Agriculture Cost Share Program for Nonpoint Source Pollution Control are hereby
15 approved for these purposes.

16 (d) Land application BMPs following the nutrient management standard contained in the Section IV of the SCS-NRCS
17 Technical Guide or as recommended by the Agronomic Division- North Carolina Department of Agriculture and
18 Consumer Services (predictive Soil Test Report and predictive Waste Analysis, Form AD-10) Report) ~~and the~~
19 ~~Cooperative Extension Service (AG-439-4)(AG-439-5)(AG-439-28)~~ are acceptable. In cases where agronomic rates are
20 not specified in the nutrient management standard for a specific crop or vegetative type, application rates may be
21 determined using the best judgement of the certifying Technical Specialist after consultation with ~~NCDA or CES~~: a
22 NCDA&CS agronomist, an agronomist with a full NC Agricultural Consultants Association (NCACA) membership or a
23 NC Certified Crop Advisor (CCA).

24 (e) Exemptions from the minimum buffer requirements for animal waste storage and treatment facilities and animal
25 concentration areas are acceptable if no practical alternative exists and the BMP installed as an equivalent control meets
26 the nondischarge requirements ~~for Nondischarge~~ except as a result of a storm event more severe than the 25-year,
27 24-hour storm.

28
29 *History Note: Authority G.S. 106-840; 106-850; 139-4;*
30 *Temporary Adoption Eff. December 9, 1993 for a Period of 180 Days or Until the Permanent Rule*
31 *Becomes Effective, Whichever is Sooner;*
32 *Eff. March 1, 1994;*
33 *Transferred from 15A NCAC 06F .0104 Eff. May 1, 2012.*
34

1 02 NCAC 59F is proposed for readoption with substantive changes as follows:

2
3 **02 NCAC 59F .0106 DISPUTE RESOLUTION**

4 (a) If noncompliance with any CREP agreement is determined, the landowner must return the enrolled area to the
5 condition that meets the guidelines of the CREP upon receiving written notification to do so. The notice, from the
6 ~~appropriate CREP agency~~ Division, will contain:

- 7 (1) a detailed description of the enrolled area;
8 (2) a description of the area in noncompliance;
9 (3) recommended measures for repair of the practice; and
10 (4) a time frame for repair.

11 Any expense incurred due to the noncompliance of a practice will be the responsibility of the landowner. ~~Landowners~~
12 ~~are not responsible for repayment of cost share due to a failure of a practice through no fault of their own. If the practice~~
13 ~~is within the state cost share contract maintenance period, then the requirements in .02 NCAC 59D.0107 shall be~~
14 ~~followed.~~

15 (b) From the date of the notice of noncompliance, the landowner will be given 30 days to reply in writing to the Division
16 with a plan for repairing the easement area. The Division will work with the landowner to ensure that the plan of repair
17 meets the CREP objectives. Once a plan is approved in writing by the Division, the landowner has 90 days from the date
18 of said approval to complete restoration of the easement area. For vegetative practices, applicants are given one calendar
19 year to re-establish the vegetation. An extension may be granted by the Division if it is determined that compliance
20 cannot be met due to circumstances beyond the landowner's control.

21 (c) In the event that an easement has been found to be noncompliant and the landowner does not agree to repair or re-
22 ~~implement the cost shared practice, the landowner and the Division may jointly request the Commission to mediate the~~
23 ~~case as set forth in the NC-CREP contract between the parties. To invoke this method, both parties must stipulate that~~
24 ~~said mediation is binding.~~ practice(s), the Division may invoke procedures to achieve resolution to the noncompliance,
25 including any and all remedies available to it under the easement and/or applicable law.

26
27 *History Note: Authority G.S. 106-840; 106-850(a); 139-4;*
28 *Temporary Adoption Eff. October 1, 2000;*
29 *Eff. August 1, 2002;*
30 *Transferred from 15A NCAC 06G .0106 Eff. May 1, 2012.*

31

02 NCAC 59G .0102 is proposed for readoption with substantive changes as follows:

02 NCAC 59G .0102 DEFINITIONS

When used in this Subchapter:

- (1) "Best Management Practice" (BMP) means a structural or nonstructural management practice used singularly or in combination to reduce nonpoint source inputs to receiving waters.
- (2) "Certified Animal Waste Management Plan" means the animal waste management plan certified by a technical specialist as required in 15A NCAC 02T Section .1300 ~~the EMC Nondischarge Rule for Animal Waste Management Systems. (15A NCAC 02H .0217).~~
- (3) "Commission" means the Soil and Water Conservation Commission.
- (4) "Department" means the Department of Agriculture and Consumer Services ~~Environment and Natural Resources.~~
- (5) "EMC" means the Environmental Management Commission.
- (6) "NCCES" means the North Carolina Cooperative Extension Service.
- (7) "NRCS" means the USDA Natural Resources Conservation Service.
- (8) "Nutrient management" means a BMP for managing the amount, source, placement, form and timing of nutrients to ensure adequate fertility for plant production and to minimize the potential for water quality impairment.
- (9) "Technical Specialist" means an individual designated by the Commission to certify that the planning, design and implementation of BMPs are to the standards and specifications of the Commission or NRCS.
- (10) "Technical specialist designation category" means a designation specific to any of several individual or groups of BMPs.
- (11) "Water management" means a BMP for control of water levels in the soil profile, including but not limited to, the use of flashboard risers or other similar structures placed in drainage ditches to benefit crop water needs and reduce nutrient loss.

*History Note: Authority G.S. 106-840; 139-4;
Temporary Adoption Eff. October 22, 2001;
Eff. April 1, 2003;
Transferred from 15A NCAC 06H .0102 Eff. May 1, 2012.*

1 02 NCAC 59G .0104 is proposed for readoption with substantive changes as follows:

3 **02 NCAC 59G .0104 APPROVAL OF WATER QUALITY TECHNICAL SPECIALISTS**

4 (a) Technical specialist designation categories and roles are as follows:

- 5 (1) The Structural Animal Waste category provides for the approval of the design and installation
6 ~~construction inspection~~ of lagoons, storage ponds, dry stacks and other similar structures.
- 7 (2) The Waste Utilization Plan/Nutrient Management category provides for:
- 8 (A) The development of land application plans including crop acreages available to meet nutrient
9 and hydraulic loading rates, application windows, determination of animal waste nutrient
10 amounts, evaluation of fields for phosphorous loss, field buffers and related measures;
- 11 (B) Confirmation of storage volumes, exterior lots, ~~lagoon closures~~, and cropping systems; and
12 systems
- 13 (C) Development and establishment of buffers and setbacks to manage runoff from exterior
14 ~~lots:~~ lots;
- 15 (D) Certify the land application component of a USDA Comprehensive Nutrient Management
16 Plan; and
- 17 (E) Authority to approve nutrient management plans for river basins as identified in 02 NCAC
18 59G .0105.
- 19 (3) The Runoff Control category provides for the approval of the design and installation ~~implementation~~
20 of filter strips, diversions, grass channels and related BMPs which manage runoff from exterior lots.
- 21 (4) The Irrigation Equipment category provides for the approval of the design and installation of irrigation
22 systems to include pipe size, pump horsepower, nozzle size, system layout, and other system
23 parameters.
- 24 (5) The Wettable Acres category provides for the determination of irrigated acreage in accordance with a
25 Certified Animal Waste Management Plan.
- 26 ~~(6) The Waste Utilization Plan/Nutrient Management category provides for the items included in~~
27 ~~Subparagraph (a)(2) of this Rule and the authority to approve river basin nutrient management plans~~
28 ~~and to certify the land application component of a USDA Comprehensive Management Plan.~~
- 29 ~~(7)~~ (6) The Inorganic Fertilizer/Nutrient Management category provides for approval of river basin nutrient
30 management plans for inorganic fertilizer only.
- 31 ~~(8)~~ (7) The Water Management category provides for the approval of the design and installation of
32 subsurface water management systems.
- 33 (8) The Waste Facility Closure category provides for the design and oversight of decommissioning
34 waste storage ponds, lagoons and other similar structures.

- 35 (b) The Commission designates the following as technical specialists:
- 36 (1) Individuals who have been assigned approval authority for a designation category by the USDA
- 37 NRCS, ~~the North Carolina Department of Agriculture and Consumer Services, the Division of Soil~~
- 38 ~~and Water Conservation, or the North Carolina Cooperative Extension Service.~~ Soil and Water
- 39 ~~Conservation District employees are assigned approval authority by the USDA NRCS. Agency~~
- 40 ~~employees who do not have a designation at the time this Rule becomes effective must meet the~~
- 41 ~~training requirements included in Subparagraph (e)(2) of this Rule in order to receive a designation;~~
- 42 (2) Professional engineers subject to the "The NC Engineering and Land Surveying Act" for the categories
- 43 of structural animal waste, waste utilization plan, runoff control, irrigation equipment and water
- 44 management designation; and or
- 45 (3) Individuals not included in Subparagraph (b)(1) and (b)(2) who meet the criteria in Paragraph (c) of
- 46 this Rule.
- 47 (c) Those individuals not designated in Subparagraphs (b)(1) or (b)(2) of this Rule must have an existing
- 48 designation at the time this Rule becomes effective under 02 NCAC 59E .01025 .0105 or must meet the following
- 49 criteria and training requirements:
- 50 (1) Minimum criteria for each designation category are:
- 51 (A) The Irrigation Equipment designation requires designation as an irrigation designer by the
- 52 National Irrigation Association or three years experience in the design of irrigation systems
- 53 for waste application.
- 54 (B) The Wettable Acres designation requires holding either the waste utilization plan or irrigation
- 55 equipment designation.
- 56 (C) The Waste Utilization Plan/Nutrient Management and the Inorganic Fertilizer Only/Nutrient
- 57 Management designations require either three years experience in nutrient management, a
- 58 four year degree in agronomy or related field or a combination of education and experience
- 59 totaling four years.
- 60 (D) The Structural Animal Waste, Runoff Control, ~~and Water Management and Waste Facility~~
- 61 Closure designations are reserved only for those individuals included in Subparagraphs
- 62 (b)(1) or (b)(2);
- 63 (2) Training requirements are:
- 64 (A) For all categories, NC Rules and Regulations Governing Animal Waste Management Systems
- 65 taught by the Division or Department of Environmental Quality.
- 66 (B) For the category of Waste Utilization Plan/Nutrient Management and Inorganic Fertilizer
- 67 Only/Nutrient Management, North Carolina Nutrient Management Course taught by the

68 NCCES or the NRCS and the North Carolina Nutrient Management Software Course taught
69 by the Division or the NCCES.

70 (B) ~~For the category of Inorganic Fertilizer Only/Nutrient Management, North Carolina~~
71 ~~Inorganic Fertilizer Nutrient Management Course taught by the NCCES or the NRCS and~~
72 ~~the North Carolina Nutrient Management Software Course taught by the Division or the~~
73 ~~NCCES.~~

74 (C) For the category of Wettable Acres, the North Carolina Wettable Acres Course taught by the
75 NCCES.

76 (3) Provide to the Division an "Application for Designation for Technical Specialist" and evidence of
77 experience, skills and training required for each designation category. A list of three references who
78 can attest to the applicant's technical competence must accompany the application.

79 (4) Be determined by the Commission to meet the requirements of this Rule for designation.

80 (d) Professional Engineers included in Subparagraph (b)(2) who are licensed after the effective date of this Rule must
81 attend the North Carolina Nutrient Management Course, the North Carolina Nutrient Management Software Course
82 and the NC Rules and Regulations Governing Animal Waste Management Systems in order to use the waste
83 utilization plan designation.

84 (e) Technical Specialist shall perform services only in areas of the technical specialist's designated category and
85 technical competence.

86 (f) Applicants will be notified of the Commission actions. The Division will maintain and make available a list of
87 designated Technical Specialists and their designated categories.

88 (g) A valid designation as a technical specialist shall be maintained by completion of a minimum of six hours of
89 additional training approved by the Commission during each three-year period following initial designation.

90 (h) All technical specialists must attend training as provided by the Division, NRCS or NCCES when new areas evolve
91 within their designation in order to maintain their designation. Such training may be used towards the requirement
92 referenced in 02 NCAC 59G .0104(g).

93 (i) ~~Upon the finding by the Commission that the work of a technical specialist designated under Subparagraph (b)(3) of~~
94 ~~this Rule fails to comply with the requirements of 15A NCAC 02H .02017(a), 15A NCAC 02T Section .1300 02~~
95 ~~NCAC 59E 06F, the NRCS Technical Guide or any applicable state or federal laws, or submits false data or is in~~
96 ~~any other way dishonest, the Commission may withdraw its designation of the technical specialist in any or all~~
97 ~~categories. In addition, technical specialist designation may be rescinded by the Commission for good cause,~~
98 ~~including but not limited to failure to complete the approved additional training by the end of each three-year~~
99 ~~period or failure to maintain current contact information with the Division.~~

100 (j) ~~Upon the finding by the commission that~~ When the Commission makes findings regarding the work of a technical
101 specialist designated under Subparagraph (b)(1) of this Rule, the Commission shall forward these findings to the

102 respective agency with the request that the agency provide documentation that their technical specialist has
103 received training to correct deficiencies in the area of concern work to retain a designation. If the agency fails to
104 provide such documentation, the Commission may withdraw its designation of the technical specialist for any or all
105 categories.

106

107 *History Note: Authority G.S. 106-840; 139-4;*
108 *Temporary Adoption Eff. October 22, 2001;*
109 *Eff. April 1, 2003;*
110 *Transferred from 15A NCAC 06H .0104 Eff. May 1, 2012.*

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