

**NORTH CAROLINA SOIL AND WATER CONSERVATION COMMISSION  
RALEIGH, NORTH CAROLINA  
BUSINESS SESSION AGENDA  
TELECONFERENCE  
DRAFT**

**BUSINESS SESSION**

Archdale Building  
Room #425G  
512 N. Salisbury Street  
Raleigh, NC 27604  
August 30, 2017

Adobe Connect Pro Address: <https://ncag.adobeconnect.com/swcommission/>

Meet-Me Conference #: (919) 733-2511  
10:30 a.m.

**I. CALL TO ORDER**

The State Government Ethics Act mandates that at the beginning of any meeting the Chair reminds all the members of their duty to avoid conflicts of interest and inquire as to whether any member knows of any conflict of interest or potential conflict with respect to matters to come before the Commission. If any member knows of a conflict of interest or potential conflict, please state so at this time.

**II. PRELIMINARY – Business Meeting**

Welcome

Chairman John Langdon

**III. BUSINESS**

1. Approval of Agenda

Chairman John Langdon

2. Final Approval of Rules

a. Rule 02 NCAC 59C.0303 Approvals to Exercise the Power of Eminent Domain

Mr. David Williams

b. Rule 02 NCAC 59F.0106 Noncompliance with CREP Agreement

Mr. David Williams

c. Rule 02 NCAC 59E Procedures and Guidelines to Implement the Nondischarge Rule for Animal Waste Management Systems

Mr. Jeff Young

d. Rule 02 NCAC 59G Approval of Technical Specialist and BMPs for Water Quality Protection

Mr. Jeff Young

3. Supervisor Travel Compensation Update

Mr. Vernon Cox

**IV. ADJOURNMENT**



**NORTH CAROLINA  
SOIL & WATER CONSERVATION COMMISSION  
TELECONFERENCE MEETING MINUTES  
August 30, 2017**

512 N. Salisbury Street  
Archdale Building – 4<sup>th</sup> Floor Conference Room 425G  
Raleigh, NC 27604  
Call-in #: 919-733-2511  
<https://ncag.adobeconnect.com/swcommission>

Commission Members	Guests	
John Langdon	Julie Henshaw	Richard Reich
Wayne Collier	Kelly Hedgepeth	Anne Coan
Chris Hogan	Helen Wiklund	Nancy McCormick
Charles Hughes	Tom Hill	Eddie Humphrey
Dietrich Kilpatrick	Lisa Fine	Joe Hudyncia
Ben Knox	Ken Parks	James Massey
Mike Willis	Keith Larick	Mary Parker
Commission Counsel	Jeff Young	Rodney Smith Jr.
Phillip Reynolds	Kristina Fischer	Jeff Parker
Guests	Eric Pare	Eric Galamb
Vernon Cox	Brad Moore	Martin McLawhorn
David Williams	Gary Cox	

Chairman John Langdon called the meeting to order at 10:33 a.m. Chairman Langdon inquired whether any Commission members need to declare any conflict of interest, or appearance of conflict of interest, that may exist for agenda items under consideration, as mandated by the State Ethics Act. None were declared. Chairman Langdon welcomed everyone and asked for the Commission members, the division staff, and the public to introduce themselves.

- 1. Approval of Agenda:** Chairman Langdon asked for a motion on the agenda. Commissioner Collier motioned to approve the agenda and Commissioner Hogan seconded. Motion carried.

Chairman Langdon asked Mr. Reynolds to comment on the voting process for approving the rules. Mr. Reynolds stated the Commissioners can discuss each rule separately and vote on each one independently. It is not necessary to do a roll call, if all Commissioners vote in favor of the motion on the floor. Any Commissioner that objects to not doing a roll call or is against any of the motions on the floor, it will be necessary to do a roll call.

- 2. Final Approval of Rules:** Chairman Langdon recognized Deputy Director David Williams to present Rules 59C and 59F. Chairman Langdon stated these rules were given initial approval by NC Soil & Water Conservation Commission Meeting Minutes, August 30, 2017

the Commission in May and the rules are being presented for final approval after going through a public comment process.

### **2A. Rule 02 NCAC 59C.0303 Approvals to Exercise the Power of Eminent Domain**

This rule was approved for final adoption in May but did not get submitted to the Rules Review Commission (RRC) within the 30-day period and must be readopted. The rule has remained unchanged and has been approved twice. The Division remains in authority to approve local watershed work. It is an important tool that applicants need to have in their toolbox to be able to implement these small watershed projects referred to as PL566.

Chairman Langdon asked for a motion. Commissioner Hughes motioned to approve Rule 02 NCAC 59C.0303 Approvals to Exercise the Power of Eminent Domain and Commissioner Hogan seconded. Motion carried.

### **2B. Rule 02 NCAC 59F.0106 Noncompliance with CREP Agreement**

This rule was approved and went through the public comment period and posted on June 1, 2017, and the comment period closed on July 31, 2017. The Division is submitting this rule for readoption with no changes. No public comments were received and the Division is recommending the Commission approve this rule as presented so that these rules can be sent to the Rules Review Commission (RRC) for final approval.

Chairman Langdon asked for a motion. Commissioner Knox motioned to approve Rule 02 NCAC 59F.0106 Noncompliance with CREP Agreement and Commissioner Kilpatrick seconded. Motion carried.

Chairman Langdon recognized Mr. Jeff Young to present Rules 59E and 59G.

### **2C. Rule 02 NCAC 59E Procedures and Guidelines to Implement the Nondischarge Rule for Animal Waste Management Systems**

This rule deals with Animal Waste Management Systems. On Page 1 of Attachment 2C, there is a summary of changes. The last item on the page, refers to Rule 02 NCAC 59E.0105 which has been omitted and reads "*UNCHANGED from published version (Deleted in their entirety and incorporated.*" The text that should follow it is Rule 02 NCAC 59G.0104. In summary, this rule has made changes to current agency names, rule references, General Statute references, and language that is better defined and now referred to in other rules as Rule 2T and the Division of Water Resources (DWR). In addition, some requirements were removed that are no longer applicable as part of the permitting process for Animal Operations that were not in place when the rules were originally adopted.

Chairman Langdon asked Mr. Reynolds if each item should be discussed individually or as one. Mr. Reynolds suggested to discuss the 59E rules as one item.

Mr. Young added Rule 02 NCAC 59E.0104(e) see line 27, it went out for public comment but the item was struck through and received comments anyway. After discussion with the Division of Water Resources, it is recommended that this language terminology be reinstated. After

consultation with the Rules Review Commission, we were advised that reestablishment of this provision is not a major change and does not require that the rule go back out for public comments.

Chairman Langdon asked for a motion. Commissioner Collier motioned to approve all items for Rule 02 NCAC 59E Procedures and Guidelines to Implement the Nondischarge Rule for Animal Waste Management Systems and Commissioner Hughes seconded. Motion carried.

## **2D. Rule 02 NCAC 59G Approval of Technical Specialist and BMPs for Water Quality Protection**

This rule deals with the Technical Specialist and BMPs for Water Quality Protection. On Page 1 of Attachment 2D, there is one change within the rules that is not noted on the summary sheet for Rule 02 NCAC 59G.0104(i). There is one additional change within Rule 59G.0105 and the note that was omitted is that it is unchanged from the published version. Rule 02 NCAC 59G.0105 refers to technical specialists and their role with the Neuse and Tar-Pam rules and any subsequent rules.

Chairman Langdon asked for a motion. Commissioner Knox motioned to approve all items for Rule 02 NCAC 59G Technical Specialist and BMPs for Water Quality Protection and Commissioner Hogan seconded. Motion carried.

### **3. Supervisor Travel Compensation Update:** Chairman Langdon recognized Director Vernon Cox to present.

Director Cox stated the Rules Review Commission (RRC) indicated the deadline is tomorrow, August 31, 2017 for the Commission to approve all these rules. Mr. Cox expressed his appreciation to the Commission for participating in this conference call so that this business could be taken care of in a timely manner.

Director Cox highlighted a memorandum that was sent to all district supervisors on August 25, 2017, which notified all district supervisors of the new withholding requirements based for supervisor compensation. The Department has been notified that all meals and mileage reimbursement to district supervisors for day travel is subject to withholding for social security and Medicare. In addition, an I-9 Form must be filled out by each district supervisor. Also, the documents required for the I-9 form must be viewed by a department employee or a district employee on our behalf. The Division is asking district staff and regional coordinators for their assistance. This is a change from our previous correspondence to district supervisors. Mr. Cox has asked Deputy Commissioner David Smith to attend the September Commission Meeting and discuss how this issue arose and discuss the implementation.

Chairman Langdon added all district supervisors and staff should attend the September Commission Meeting.

There were no further comments by the Commissioners, the division staff, or the public.

**Adjournment:** Meeting adjourned at 10:56 a.m.



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Vernon N. Cox, Director  
Division of Soil & Water Conservation, Raleigh, N.C.



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Helen Wiklund, Recording Secretary

***These minutes were approved by the North Carolina Soil & Water Conservation Commission on September 20, 2017.***

**FINAL RULE READOPTION OF RULE 02 NCAC 59C.0303  
APPROVALS TO EXERCISE THE POWER OF EMINENT DOMAIN**

Subchapter 59C covers the Small Watershed Program. The Commission determined Rule 02 NCAC 59C.0303, Approvals to Exercise the Power of Eminent Domain, to be necessary with substantive public interest. The Commission initiated rulemaking to readopt rule .0303 with no changes and the proposed rule was published in the North Carolina Register on September 1, 2016. The 60-day comment period closed on October 31, 2016, with no comments received.

The rule is necessary because N.C. General Statute 139-44 gives the Commission the responsibility to determine whether land sought to be acquired by a county by eminent domain for a small watershed project is for a “proper county purpose.” Rule .0303 specifies the information the applicant must submit to enable the Commission to make this determination.

Pasted below is the existing text of rule .0303. **The Division is recommending the Commission approve final readoption of rule .0303 with no changes.** Other than rule .0303 all rules in subchapter 59C do not need to be readopted, since the Commission determined each of those rules to be necessary without substantive public interest, and the Rules Review Commission has concurred with that determination.

**THIS READOPTION IS REQUIRED DUE TO A SUBMISSION ERROR TO RRC. DEPARTMENT STAFF FAILED TO SUBMIT TO RRC WITHIN 30 DAYS OF ADOPTION BY THE COMMISSION.**

**02 NCAC 59C .0303 APPROVALS TO EXERCISE THE POWER OF EMINENT DOMAIN**

A county and a watershed district may apply to the commission for approvals to exercise the power of eminent domain. Before the commission will approve an applicant's request to condemn land for a proper purpose, that applicant shall provide the commission the following information at least 30 days prior to a commission hearing:

- (1) a written statement with copies to the division and to the landowner(s) involved, indicating the applicant's purpose;
- (2) a resolution adopted by the local Soil and Water Conservation District supporting the acquisition, and identifying each parcel by landowner and by specific watershed development site;
- (3) a written statement describing efforts made to secure interest in each parcel and a copy of the appraisal;
- (4) a map of the land needed from each specific landowner, which shows:
  - (a) the location of the needed land in relation to the specific project site;
  - (b) the location of the needed land in relation to the owner's total tract;
  - (c) the location of that portion of the land devoted to:
    - (i) the permanent pool;
    - (ii) the flood pool;
    - (iii) other purposes of water storage; if applicable,
    - (iv) the borrow area;
    - (v) the construction work area; and
    - (vi) recreational facilities, etc.

*History Note: Authority G.S. 106-840; 139-4(d);  
Eff. September 1, 1982;  
Transferred from 15A NCAC 06C .0303 Eff. May 1, 2012.*

**FINAL RULE READOPTION OF RULE 02 NCAC 59F .0106  
NONCOMPLIANCE WITH CREP AGREEMENT**

*This rule describes the procedures that will be followed by the Division when a landowner is found to be out of compliance with their CREP agreement.*

02 NCAC 59F was published in the NC Register with proposed changes on June 1, 2017. The 60-day comment period ended on July 31, 2017. No public comments were received. **The draft rules are recommended for final adoption as published.**

1 02 NCAC 59F .0106 is proposed for readoption with substantive changes as follows:

2

3 **02 NCAC 59F .0106 ~~DISPUTE RESOLUTION~~ NONCOMPLIANCE WITH CREP AGREEMENT**

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~~ to correct the noncompliance; and
- 10 (4) a time frame for repair.

11 Any expense incurred ~~due to~~ correct the noncompliance of a practice will be the responsibility of the landowner.  
12 ~~Landowners are not responsible for repayment of cost share due to a failure of a practice through no fault of their own. If~~  
13 ~~the noncompliance involves a cost-shared practice that is within the state cost share contract maintenance period, then the~~  
14 ~~requirements in 02 NCAC 59D .0107 shall be 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 ~~ease 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.~~ correct the noncompliance, the Division may invoke procedures to achieve resolution to the  
25 noncompliance, including any and all remedies available to it under the easement 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

**FINAL RULE READOPTION OF RULE 02 NCAC 59E  
PROCEDURES AND GUIDELINES TO IMPLEMENT THE NONDISCHARGE RULE  
FOR ANIMAL WASTE MANAGEMENT SYSTEMS**

This Subchapter describes rules to implement the provisions of 15A NCAC 02T Section .1300 - Waste Not Discharged To Surface Waters: Animal Waste Management Systems, hereinafter called the Nondischarge Rule for Animal Waste Management Systems. In agreement with the Environmental Management Commission (EMC) and the Division of Water Resources (DWR), the Soil and Water Conservation Commission sets forth these Rules for certification of animal waste management systems in accordance with 15A NCAC 02T Section .1300.

02 NCAC 59E was published with proposed changes on June 1, 2017. The 60 day comment period ended on July 31, 2017. **The published draft rules, with subsequent proposed edits in yellow, are recommended for final adoption.** The proposed changes by section are summarized below.

02 NCAC 59E .0101 – UNCHANGED from published version.

02 NCAC 59E .0102(4) – Changed “Science” to “Sciences” as a correction (ROW 26)

02 NCAC 59E .0103 – UNCHANGED from published version.

02 NCAC 59E. 0104(d) – Changed “Report,” to “Report)” (ROW 19)

02 NCAC 59E .0104(e) – On the basis of public comment and in consultation with DWR, propose to reinstate this paragraph to allow for existing structures (ex. dairies) to be replaced where no practical alternative exists. Per RRC, this is not considered a Major Change if it reinstates an already existing rule. (ROW 27)

02 NCAC 59E .0105 – UNCHANGED from published version (Deleted in their entirety and incorporated

1 02 NCAC 59E .0101 is proposed for readoption with substantive changes as follows:  
2

3 **SUBCHAPTER 59E - PROCEDURES AND GUIDELINES TO IMPLEMENT THE NONDISCHARGE RULE**  
4 **FOR ANIMAL WASTE MANAGEMENT SYSTEMS**

5  
6 **02 NCAC 59E .0101 PURPOSE**

7 This Subchapter describes rules to implement the provisions of ~~15A NCAC 02H .0200~~ 15A NCAC 02T Section .1300 -  
8 Waste Not Discharged To Surface Waters, Waters: Animal Waste Management Systems, hereinafter called the  
9 Nondischarge Rule for Animal Waste Management Systems. In agreement with the Environmental Management  
10 Commission (EMC) and the Division of ~~Environmental Management (DEM)~~, Water Resources (DWR), the Soil and  
11 Water Conservation Commission sets forth these Rules for certification of animal waste management systems in  
12 accordance with 15A NCAC 02H .0217. 15A NCAC 02T Section .1300. Alternatively, and in lieu of these Rules, the  
13 requirements of 15A NCAC 02H .0200 may be satisfied also by receiving an individual nondischarge permit from the  
14 Division of Environmental Management in accordance with 15A NCAC 02H .0217(d). An owner must either obtain  
15 certification under these Rules or meet DEM requirements for an individual nondischarge permit. The review process of  
16 the District does not abrogate the responsibilities of the owner to either obtain a certification or to meet DEM  
17 requirements for an individual nondischarge permit.

18  
19 *History Note: Authority G.S. 106-840; 139-2; 139-4;*

20 *Temporary Adoption Eff. December 9, 1993 for a Period of 180 Days or Until the Permanent Rule*  
21 *Becomes Effective, Whichever is Sooner;*

22 *Eff. March 1, 1994;*

23 *Transferred from 15A NCAC 06F .0101 Eff. May 1, 2012.*  
24

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

### 02 NCAC 59E .0102 DEFINITIONS

The terms used in this Subchapter shall be as defined in G.S. 139-3; ~~143-215.74; 106-850; 143B-294; 106-840; 15A NCAC 02H-0203; 143-15.10B; 15A NCAC 0T .0103;~~ 02 NCAC 59D .0102; and as follows:

- (1) ~~"Agronomic rates" means those amounts of animal waste or compost to be applied to lands as contained in the nutrient management standard of the USDA Soil Conservation Service Technical Guide Section IV or as recommended by the North Carolina Department of Agriculture and the North Carolina Cooperative Extension Service at the time of certification of the animal waste management plan.~~
- (2)(1) ~~"Certification" means the certification required in the Nondischarge Rule for Animal Waste Management Systems (15A NCAC 02H-0217);~~ for the animal waste management plan in 15A 02T Section .1300 and G.S. 143-215.10C.
- (2) ~~"Certified Crop Advisor" means an individual who has obtained and maintained the Certified Crop Advisor Credential from the American Society of Agronomy.~~
- (3) ~~"DEM" "DWR" means the Division of Environmental Management, Department of Environment, Health, and Natural Resources, and the agency to receive the certification forms and responsible for enforcement of 15A NCAC 02H-0200. Water Resources of the Department of Environmental Quality.~~
- (4) ~~"Design approval authority" means that authority granted by the Commission to designated individuals or groups of individuals to certify that a BMP or the system of BMPs for waste management has been designed to meet the standards and specifications of practices adopted by the Commission.~~
- (5)(4) ~~"Installation approval authority" means that authority granted by the Commission to designated individuals or groups of individuals to certify a BMP or system of BMPs for waste management has been installed to meet the standard of practices adopted by the Commission.~~ "Interagency Nutrient Management Committee" means a committee represented by the Agronomics Division of the NC Department of Agriculture and Consumer Services, the Division of Water Resources of the NC Department of Environmental Quality, the North Carolina Cooperative Extension Service – Department of Soil and Crop ~~Science~~ Sciences, and the Natural Resources Conservation Service (NRCS) of the United States Department of Agriculture to provide uniform nutrient management recommendations based on scientific data and research.
- (6)(5) ~~"Technical Specialist" means individuals or groups of individuals an individual designated by the Commission at 02 NCAC 59E .0105 to certify an entire or portion of an animal waste management plan. that the planning, design, and implementation of BMPs, including all or part of an animal waste management plan, are to the standards and specifications of the Commission or NRCS.~~

*History Note:* Authority G.S. 106-840; 106-850; 139-4;  
 Temporary Adoption Eff. December 9, 1993 for a Period of 180 Days or Until the Permanent Rule  
 Becomes Effective, Whichever is Sooner;  
 Eff. March 1, 1994;

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2

*Transferred from 15A NCAC 06F .0102 Eff. May 1, 2012.*

1 02 NCAC 59E .0103 is proposed for readoption with substantive changes as follows:

2 **02 NCAC 59E .0103 REQUIREMENTS FOR CERTIFICATION OF WASTE MANAGEMENT PLANS**

3 (a) In order for an animal waste management plan to receive the certification required by G.S. 143-215.10C and 15A  
 4 02T .1300, the technical specialist shall certify that the system is designed and installed to properly collect, treat, store, or  
 5 apply animal waste as required in G.S. 143-215.10C. In accordance with 15A NCAC 02H .0217(a)(1), owners of animal  
 6 waste management systems are required to:

7 (1) ~~obtain certification that the system will properly collect, treat, store, or apply animal waste to the land~~  
 8 ~~such that no discharge of pollutants occurs to surface waters of the state by any means except as a~~  
 9 ~~result of a storm event more severe than the 25 year, 24 hour storm as required in 15A NCAC 02H~~  
 10 ~~.0203(3); or~~

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

13 (b) ~~The certification is to shall be made by a Technical Specialist~~ technical specialist ~~designated pursuant to this~~  
 14 ~~Subchapter, and will shall confirm that the best management practices (BMPs) contained in the animal waste~~  
 15 ~~management plan meet applicable minimum standards and specifications.~~ specifications as approved by the Commission  
 16 pursuant to Rule .0104 of this Subchapter. BMPs in an existing system are not shall not be required to meet current  
 17 standards and specifications as established by the Commission as long as the system is certified to be nondischarging as  
 18 required in 15A NCAC 02H .0203(3). G.S. 143-215.10C.

19 (c) ~~More than one Technical Specialist~~ technical specialist ~~may be consulted for the design of BMPs and installation of~~  
 20 ~~BMPs. A Technical Specialist~~ technical specialist ~~must shall certify the entire animal waste management plan as~~  
 21 ~~installed. only parts of the animal waste management plan within their approved designated category pursuant to 02~~  
 22 NCAC 59G .0104 and for which they are technically competent. The technical specialist must provide a copy of the  
 23 certification to the owner or operator of the animal waste management system.

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

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

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

33 (g) ~~If the District does not concur that the certification was signed by a Technical Specialist, or that the waste~~  
 34 ~~management plan is acceptable, and if either the owner or the DEM requests that the District reconsider its decision, the~~  
 35 ~~District shall review its decision and within 45 days of the request, notify the owner, the certifying Technical Specialist,~~  
 36 ~~DEM, and the Division of the District's final decision. The District is encouraged to utilize other technical specialists,~~

1 local agricultural agencies and disinterested agricultural producers in reconsidering its initial decision. If the District fails  
 2 to act within 45 days on a request for reconsideration, the District's initial decision shall become final.

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

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

9 ~~(j)(d) Any proposed modification of an animal waste management plan requires approval by a Technical Specialist. shall~~  
 10 ~~be certified by a technical specialist.~~

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

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

17 ~~(m)(f) The certifying Technical Specialist technical specialist and the District are not shall not be required to spot check~~  
 18 ~~or otherwise assure proper maintenance and operation of an animal waste management system installed to meet the DEM~~  
 19 ~~certification requirements. requirements pursuant to G.S. 143-215.10C. Enforcement of the Nondischarge Rule for~~  
 20 ~~Animal Waste Management Systems (15A NCAC 02H .0217) shall remain the responsibility of DEM.~~

21  
 22 *History Note: Authority G.S. 106-840; 106-850; 139-4;*  
 23 *Temporary Adoption Eff. December 9, 1993 for a Period of 180 Days or Until the Permanent Rule*  
 24 *Becomes Effective, Whichever is Sooner;*  
 25 *Eff. March 1, 1994;*  
 26 *Transferred from 15A NCAC 06F .0103 Eff. May 1, 2012.*  
 27

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. plan. 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 at the time of certification must shall either:

- 9 (1) meet the minimum standards and specifications of the US Department of Agriculture ~~Soil~~  
10 ~~Conservation Service~~ Natural Resources Conservation Service (NRCS) Technical Guide, Section IV  
11 or minimum standards and specifications as otherwise determined by the Commission; or  
12 (2) ~~the owner must receive an approved individual nondischarge permit as required for the animal waste~~  
13 ~~management system.~~ meet the Swine Waste System Performance Standards pursuant to 15A 02T .1307  
14 and follow the approval process as described in 15A NCAC 02T .1308.

15 (c) BMPs approved for use in the Agriculture Cost Share Program for Nonpoint Source Pollution Control ~~are hereby~~  
16 shall be deemed approved for these purposes.

17 (d) Land application BMPs following the nutrient management standard contained in the Section IV of the ~~SCS-NRCS~~  
18 Technical Guide or as recommended by the Agronomic Division of the North Carolina Department of Agriculture and  
19 Consumer Services (Soil (predictive Soil Test Report and predictive Waste Analysis, Form AD-10) ~~Report, Report~~) and  
20 the Cooperative Extension Service (AG-439-4) (AG-439-5) (AG-439-28) are shall be acceptable. In cases where NC  
21 agronomic rates are not specified in the nutrient management standard established for a specific crop or vegetative type,  
22 application rates may be determined using the best judgement of the certifying Technical Specialist after consultation  
23 with NCDA or CES. by the NC Interagency Nutrient Management Committee. A technical specialist may use plant and  
24 tissue analysis to justify additional nitrogen and extend the application period with concurrence from a NCDA&CS  
25 Regional Agronomist, a voting member of the NC Agricultural Consultants Association (NCACA), or a Certified Crop  
26 Advisor (CCA).

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

30  
31 *History Note: Authority G.S. 106-840; 106-850; 139-4;*

32 *Temporary Adoption Eff. December 9, 1993 for a Period of 180 Days or Until the Permanent Rule*  
33 *Becomes Effective, Whichever is Sooner;*

34 *Eff. March 1, 1994;*

35 *Transferred from 15A NCAC 06F .0104 Eff. May 1, 2012.*

36

1 02 NCAC 59E .0105 is proposed for readoption as a repeal as follows:

2  
3 **02 NCAC 59E .0105 TECHNICAL SPECIALIST DESIGNATION**

- 4 (a) ~~As required in 15A NCAC 02H .0217, the Commission designates the following individuals or groups of~~  
5 ~~individuals as Technical Specialists, to assist owners in animal waste management plan development and certification.~~  
6 ~~No rights are afforded to Technical Specialists by this designation. Technical Specialists are defined as:~~
- 7 (1) ~~Individuals who have been assigned design approval authority or installation approval authority by the~~  
8 ~~USDA, Soil Conservation Service, the NC Cooperative Extension Service or the NC Department of~~  
9 ~~Agriculture;~~
  - 10 (2) ~~Professional engineers subject to "The North Carolina Engineering and Land Surveying Act" as~~  
11 ~~rewritten by Session Laws 1975, c. 681, s. 1, and recodified; and~~
  - 12 (3) ~~Individuals with demonstrated skill and experience in the design or installation of animal waste~~  
13 ~~management system BMPs.~~
- 14 (b) ~~Design approval authority or installation approval authority of Technical Specialists may be for specific BMPs~~  
15 ~~or a system of BMPs to be applied to complete an entire or a portion of an animal waste management plan.~~
- 16 (c) ~~Those individuals not designated in Subparagraphs (a)(1) or (2) of this Rule must:~~
- 17 (1) ~~Meet the minimum qualifications established by the Commission for each BMP or system of BMPs;~~
  - 18 (2) ~~Provide to the NPS Section of the Division an "Application for Designation as a Technical Specialist"~~  
19 ~~and evidence of demonstrated skill and experience required for a BMP or system of BMPs for which~~  
20 ~~they are requesting Technical Specialist designation. This documentation must be received by the~~  
21 ~~second Wednesday of the first month of the quarter in order to have the application reviewed for~~  
22 ~~designation that quarter; and~~
  - 23 (3) ~~The individual may provide additional information and request that their approval authority be~~  
24 ~~updated based on new evidence of skill and experience.~~
- 25 (d) ~~A copy of the minimum requirements for skill and experience will be available at the District field office. The~~  
26 ~~NPS Section of the Division will provide a list of designated Technical Specialists to all Districts, after each~~  
27 ~~Commission meeting where action was taken concerning Technical Specialists. The list will specify the BMPs or~~  
28 ~~system of BMPs which the Technical Specialist has designed or installed. The individual will be notified of the~~  
29 ~~Commission action.~~

30  
31 *History Note: Authority G.S. 106-840; 106-850; 139-4;*  
32 *Temporary Adoption Eff. December 9, 1993 for a Period of 180 Days or Until the Permanent Rule*  
33 *Becomes Effective, Whichever is Sooner;*  
34 *Eff. March 1, 1994;*  
35 *Transferred from 15A NCAC 06F .0105 Eff. May 1, 2012.*  
36

**FINAL READOPTION OF RULE 02 NCAC 59G  
APPROVAL OF TECHNICAL SPECIALISTS AND BMPS FOR WATER QUALITY PROTECTION**

This Subchapter describes criteria and procedures for the Commission to approve water quality technical specialists and to approve BMPs for use in water quality protection programs.

02 NCAC 59G was published with proposed changes on June 1, 2017. The 60-day comment period ended on July 31, 2017. Changes to 02 NCAC 59G .0104 are proposed in response to public comment and to reflect a recent change in state law exempting certain technical specialists from licensing requirements of the NC Board of Professional Engineers for the decommissioning of waste impoundments, other than design or installation of a spillway. Specifically, the law (S.L. 2017-108) states the exemption as follows:

“The decommissioning of waste impoundments for animal waste management systems, as defined by G.S. 143-215.10B(3), by a person who is designated as a Technical Specialist in the Waste Utilization Plan/Nutrient Management Category by the North Carolina Soil and Water Conservation Commission. This subsection shall not apply to the design or installation of a spillway.

**The published draft rules, with subsequent proposed edits in yellow, are recommended for final adoption.** The proposed changes by section are summarized below.

02 NCAC 59G .0101 – UNCHANGED from published version.

02 NCAC 59G .0102 – UNCHANGED from published version.

02 NCAC 59G .0103 – UNCHANGED from published version.

02 NCAC 59G .0104(a)(1) – New sentence clarifies that either a Professional Engineer or someone with appropriate job approval authority must perform the task of design or installation of a spillway in conjunction with the decommissioning of a lagoon or waste storage pond. (Page 1 - ROW 7)

02 NCAC 59G .0104(a)(2)(D) – Corrects a grammatical error. (Page 1 - ROW 19)

02 NCAC 59G .0104(a)(2)(F) – New sentence conforms with S.L. 2017-108 and specifies that a technical specialist with the waste utilization/nutrient management designation is allowed to plan and implement a closure plan other than the design or installation of a spillway. (Page 1 - ROW 23)

02 NCAC 59G .0104(a)(4) – Deletes a comma and inserts the word “and” as an editorial correction - (Page 1 - ROW 30)

02 NCAC 59G .0104(a)(8) – Deletes the reference to the proposed “Waste Facility Closure” designation made unnecessary by S.L. 2017-108. (Page 2 – ROW 5)

02 NCAC 59G .0104(b)(2) - Deletes the reference to the proposed “Waste Facility Closure” designation made unnecessary by S.L. 2017-108. (Page 2 – Row 20)

02 NCAC 59G .0104(c)(1)(D) - Deletes the reference to the proposed “Waste Facility Closure” designation made unnecessary by S.L. 2017-108. Also deletes a comma and inserts the word “and” as an editorial correction. (Page 3 -ROW 1)

02 NCAC 59G .0104(e) – In response to public comment, corrected to allow the SWCC to approve only those technical specialists that meet the requirements of the rule. (Page 3 – ROW 27)

02 NCAC 59G .0104(i) – In response to public comment, additional language added to allow current technical specialist 3 years to meet new training requirements. (Page 4 – ROW2)

1 02 NCAC 59G .0101 is proposed for re adoption with substantive changes as follows:

2

3 **SUBCHAPTER 59G - APPROVAL OF TECHNICAL SPECIALISTS AND BMPS FOR WATER QUALITY**  
4 **PROTECTION**

5

6 **02 NCAC 59G .0101 PURPOSE**

7 This Subchapter describes criteria and procedures for the Soil and Water Conservation Commission to approve water  
8 quality technical specialists and to approve Best Management Practices (BMPs) for use in water quality protection  
9 ~~programs of the Department.~~ programs. These criteria and procedures are intended for use by the Commission where  
10 technical specialists or BMPs are needed in conjunction with actions by the Environmental Management ~~Commission or~~  
11 ~~other commissions in Department water quality protection programs.~~ Commission.

12

13 *History Note: Authority G.S. 106-840; 139-4;*  
14 *Temporary Adoption Eff. October 22, 2001;*  
15 *Eff. April 1, 2003;*  
16 *Transferred from 15A NCAC 06H .0101 Eff. May 1, 2012.*

17

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

2

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

4 When used in this Subchapter:

5 (1) "Best Management Practice" (BMP) means a structural or nonstructural management practice used  
6 singularly or in combination to reduce nonpoint source inputs to receiving waters.

7 (2) "Certified Animal Waste Management Plan" means the animal waste management plan certified by a  
8 technical specialist as required in the ~~EMC Nondischarge Rule for 15A NCAC 02T Section .1300~~  
9 Animal Waste Management Systems (15A NCAC 02H .0217)-Systems.

10 (3) "Commission" means the Soil and Water Conservation Commission.

11 ~~(4) "Department" means the Department of Environment and Natural Resources.~~

12 ~~(5)~~(4) "EMC" means the Environmental Management Commission.

13 ~~(5)~~ "Land application" means providing nutrients to a receiving crop by spraying, spreading, or injecting  
14 inorganic fertilizer or animal waste (including liquid, solid, or sludge) pursuant to a certified nutrient  
15 or animal waste management plan.

16 (6) "NCCES" means the North Carolina Cooperative Extension Service.

17 (7) "NRCS" means the USDA Natural Resources Conservation Service.

18 (8) "Nutrient management" means a BMP for managing the amount, source, placement, form and timing  
19 of nutrients to ensure adequate fertility for plant production and to minimize the potential for water  
20 quality impairment.

21 (9) "Technical Specialist" means an individual designated by the Commission to certify that the planning,  
22 design and implementation of ~~BMPs~~ BMPs, including all or part of an animal waste management plan,  
23 are to the standards and specifications of the Commission or NRCS.

24 (10) "Technical specialist designation category" means a ~~designation specific to any of several individual or~~  
25 ~~groups of BMPs,~~ category specified in rule .0104(a) of this Section.

26 (11) "Water management" means ~~a BMP for~~ control of water levels in the soil profile, including ~~but not~~  
27 ~~limited to,~~ the use of flashboard risers or other similar structures ~~placed in drainage ditches to benefit~~  
28 meet crop water needs and reduce nutrient loss.

29

30 *History Note: Authority G.S. 106-840; 139-4;*

31 *Temporary Adoption Eff. October 22, 2001;*

32 *Eff. April 1, 2003;*

33 *Transferred from 15A NCAC 06H .0102 Eff. May 1, 2012.*

34

1 02 NCAC 59G .0103 is proposed for readoption with substantive changes as follows:

2

3 **02 NCAC 59G .0103 APPROVAL OF BEST MANAGEMENT PRACTICES (BMPS)**

4 (a) The Commission may approve individual BMPs or systems of BMPs in conjunction with water quality protection  
5 programs for agriculture and other nonpoint sources.

6 (b) Approved BMPs shall meet the minimum technical standards of the USDA Natural Resources Conservation Service  
7 Field Office Technical Guide, Section IV, Raleigh, North Carolina, except as specified in Paragraph (c) of this Rule.

8 (c) The Commission shall approve alternative BMPs Practices, ~~Technical~~ Technical, or Performance Specifications, and  
9 Operation and Maintenance requirements where any of the following criteria are met:

10 (1) Where no existing USDA technical standard ~~specifically achieves the desired~~ exists for water quality  
11 protection ~~benefits; benefits equivalent to the benefits achieved by an approved BMP as established in~~  
12 Paragraph (a) of this Rule;

13 (2) Where an existing USDA technical standard includes design or installation requirements for purposes  
14 other than those necessary ~~to achieve the desired~~ for water quality protection ~~benefits; or protection; or~~

15 (3) Where there is a need for additional operator flexibility to reduce the initial cost of installing or  
16 implementing the BMP, while providing ~~equivalent~~ water quality protection ~~benefits. benefits~~  
17 equivalent to the benefits achieved by an approved BMP as established in Paragraph (a) of this Rule.

18 (d) In approving BMPs, the Commission shall consider technical input from persons engaged in agriculture or  
19 experienced in nonpoint source management.

20

21 *History Note: Authority G.S. 106-840; 139-4;*

22 *Temporary Adoption Eff. October 22, 2001;*

23 *Eff. April 1, 2003;*

24 *Transferred from 15A NCAC 06H .0103 Eff. May 1, 2012.*

25

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

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

(a) ~~Technical specialist designation categories and roles are as follows: specialists shall be designated in one or more of the following technical specialist designation categories:~~

- (1) The Structural Animal Waste category provides for the approval of the design and ~~construction inspection~~ installation of lagoons, storage ponds, dry ~~stacks~~ ~~stacks~~, and other similar structures. ~~This category also includes the design and installation of a spillway in conjunction with the decommissioning of a lagoon or storage pond.~~
- (2) The Waste Utilization ~~Plan~~ Plan/Nutrient Management category provides for:
  - (A) ~~The development~~ Development of land application ~~plans~~ plans, including crop acreages available to meet nutrient and hydraulic loading rates, application windows, determination of animal waste nutrient amounts, and other similar determinations such as evaluation of fields for phosphorous loss, and field buffers and related measures; buffers;
  - (B) Confirmation of storage volumes, exterior lots, ~~lagoon closures, and cropping systems; and systems;~~
  - (C) Development and establishment of buffers and ~~setbacks to manage runoff from exterior lots.~~ verification of land application setbacks;
  - (D) ~~Certification that of~~ Certification the land application component of a USDA Comprehensive Nutrient Management Plan; and
  - (E) Authority to approve nutrient management plans to comply with Rule .0105 of this Subchapter.
  - (F) Decommissioning of a lagoon or storage structure other than the design or installation of a spillway.
- (3) The Runoff Control category provides for the approval of the design and ~~implementation of filter strips, diversions, grass channels and related BMPs which manage runoff from exterior lots.~~ installation of erosion control BMPs pursuant to NRCS job approval authority or engineering licensure.
- (4) The Irrigation Equipment category provides for the approval of the design and installation of irrigation systems to include pipe size, pump horsepower, nozzle ~~size, size~~ and system layout, and other system parameters. layout including required land application setbacks.
- (5) The Wettable Acres category provides for the determination of irrigated acreage in accordance with a Certified Animal Waste Management Plan.
- ~~(6) The Waste Utilization Plan/Nutrient Management category provides for the items included in Subparagraph (a)(2) of this Rule and the authority to approve river basin nutrient management plans and to certify the land application component of a USDA Comprehensive Management Plan.~~

1           ~~(7)(6)~~ The Inorganic Fertilizer/Nutrient Management category provides for approval of river basin nutrient  
2 management plans to comply with Rule .0105 of this Subchapter for inorganic fertilizer only.

3           ~~(8)(7)~~ The Water Management category provides for the approval of the design and installation of subsurface  
4 water management systems.

5           ~~(8) — The Waste Facility Closure category provides for the design and oversight of decommissioning waste~~  
6 ~~storage ponds, lagoons, and other similar structures.~~

7 (b) The Commission ~~designates~~ shall designate the following individuals who meet the criteria and training requirements  
8 of this Rule as technical specialists:

9           (1) Individuals ~~who~~ to whom the NRCS has ~~have been~~ assigned approval authority ~~for a designation to~~  
10 ~~conduct the activities specified in a technical specialist category by the USDA NRCS, the North~~  
11 ~~Carolina Department of Agriculture and Consumer Services, the Division of Soil and Water~~  
12 ~~Conservation, or the North Carolina Cooperative Extension Service. Soil and Water Conservation~~  
13 ~~District employees are assigned approval authority by the USDA NRCS. Agency employees who do~~  
14 ~~not have a designation at the time this Rule becomes effective must meet the training requirements~~  
15 ~~included in Subparagraph (c)(2) of this Rule in order to receive a designation; described in Paragraph~~  
16 ~~(a) of this Rule;~~

17           (2) Professional engineers subject to the "The NC Engineering and Land Surveying Act" for the categories  
18 of ~~structural animal waste, Structural Animal Waste, waste utilization plan, Waste Utilization Plan,~~  
19 ~~runoff control, Runoff Control, irrigation equipment Irrigation Equipment and water management~~  
20 ~~designation; Water Management Management; and Waste Facility Closure designation; or~~

21           (3) Individuals not included in Subparagraph (b)(1) and (b)(2) who meet the criteria in Paragraph (c) of  
22 this Rule.

23 (c) ~~Those individuals not designated in Subparagraphs (b)(1) or (b)(2) of this Rule must have an existing designation at~~  
24 ~~the time this Rule becomes effective under 02 NCAC 59E .01025 or must~~ Individuals shall meet the following criteria  
25 and training requirements:

26           (1) ~~Minimum criteria~~ Criteria for each technical specialist designation category ~~are;~~ shall be the following:

27           (A) ~~The Irrigation Equipment designation category~~ requires designation as an irrigation designer  
28 by the National Irrigation Association or three years experience in the design of irrigation  
29 systems for waste application.

30           (B) ~~The Wettable Acres designation category~~ requires holding either the ~~waste utilization plan~~  
31 Waste Utilization Plan/Nutrient Management or ~~irrigation equipment~~ Irrigation Equipment  
32 designation.

33           (C) ~~The Waste Utilization Plan/Nutrient Management and the Inorganic Fertilizer Only/Nutrient~~  
34 Fertilizer/Nutrient Management designations categories require either three years experience  
35 in nutrient management, a four year degree in agronomy or related ~~field~~ field, or a  
36 combination of education and experience totaling four years.

- 1 (D) ~~The Structural Animal Waste, Runoff Control and Control, Water Management and Waste~~  
2 ~~Facility Closure~~ designations categories are reserved only for those individuals included in  
3 Subparagraphs (b)(1) or (b)(2);
- 4 (2) Training requirements ~~are:~~ shall be the following:
- 5 (A) For all categories except Inorganic Fertilizer/Nutrient Management category, NC Rules and  
6 Regulations Governing Animal Waste Management Systems taught by the Division or  
7 Department of Environmental Quality, and advertised through the Division website.
- 8 ~~(A)(B)~~ For the category of Waste Utilization Plan/Nutrient Management, Management and Inorganic  
9 Fertilizer/Nutrient Management, North Carolina Nutrient Management Course taught by the  
10 Division, NCCES, NCCES, or the NRCS and the North Carolina Nutrient Management  
11 Software Course taught by the Division or the NCCES, NCCES, and advertised through the  
12 Division website.
- 13 ~~(B)~~ For the category of Inorganic Fertilizer Only/Nutrient Management, North Carolina Inorganic  
14 Fertilizer Nutrient Management Course taught by the NCCES or the NRCS and the North  
15 Carolina Nutrient Management Software Course taught by the Division or the NCCES.
- 16 (C) For the category of Wettable Acres, the North Carolina Wettable Acres Course taught by the  
17 NCCES, NCCES, and advertised through the Division website.
- 18 ~~(3)~~ Provide to the Division an "Application for Designation for Technical Specialist" and evidence of  
19 experience and training required for each designation category. A list of three references who can  
20 attest to the applicant's technical competence must accompany the application.
- 21 ~~(4)~~ Be determined by the Commission to meet the requirements of this Rule for designation.
- 22 (d) All individuals requesting technical specialist designation shall provide to the Division an "Application for  
23 Designation for Technical Specialist" and evidence of expertise, skills, and training required for each designation  
24 category. A list of three references who can attest to the applicant's technical competence must accompany the  
25 application.
- 26 (e) All individuals requesting technical specialist designation shall be determined by the Commission to meet the  
27 requirements of this Rule and in order to be approved by the Commission for designation. Applicants will be notified of  
28 the Commission's actions.
- 29 ~~(f)~~ Professional Engineers included in Subparagraph (b)(2) who are licensed after the effective date of this Rule must  
30 April 1, 2003 shall attend the North Carolina Nutrient Management Course and the Course, the North Carolina Nutrient  
31 Management Software Course and the NC Rules and Regulations Governing Animal Waste Management Systems in  
32 order to use the waste utilization plan Waste Utilization Plan/Nutrient Management designation.
- 33 ~~(g)~~ All technical specialists must attend training as provided by the Division, NRCS or NCCES when new areas  
34 evolve within their designation in order to maintain their designation. Technical specialist shall perform services only in  
35 areas of the technical specialist's designated category and technical competence.
- 36 (h) The Division shall maintain a database and make available the names of designated technical specialists and their  
37 designated categories on the Division's website.

1 (i) A valid designation as a technical specialist shall be maintained by completion of six hours of training approved by  
2 the Commission during each three-year period following initial designation or each three-year period following the  
3 effective date of this rule.

4 ~~(j)~~ Upon the finding by the Commission that the work of a technical specialist designated ~~under Subparagraph (b)(3)~~  
5 ~~of pursuant to~~ this Rule fails to comply with the requirements of ~~15A NCAC 02H .02017(a), 15A NCAC 06F, 15A~~  
6 ~~NCAC 02T Section .1300, 02 NCAC 59E, the NRCS Technical Guide Guide, or any applicable state or federal laws, or~~  
7 ~~submits false data or is in any other way dishonest,~~ the Commission may withdraw its designation of the technical  
8 specialist in any or all categories. In addition, technical specialist designation shall be rescinded by the Commission for  
9 failure to complete the approved additional training by the end of each three-year period.

10 ~~(k) Upon the finding by the commission that~~ When the Commission makes findings regarding the work of a technical  
11 specialist designated under Subparagraph (b)(1) of this ~~Rule~~ Rule, the Commission shall forward these findings to the  
12 respective agency with the request that the agency provide documentation that their technical specialist has received  
13 training to correct deficiencies in the area of ~~work concern~~ to retain a designation. If the agency fails to provide such  
14 documentation, the Commission may withdraw its designation of the technical specialist for any or all categories.

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

20

1 02 NCAC 59G .0105 is proposed for readoption with substantive changes as follows:

2

3 **02 NCAC 59G .0105 APPLICATION OF BMP APPROVAL AND TECHNICAL SPECIALIST**  
4 **DESIGNATION TO WATER QUALITY PROTECTION PROGRAMS**

5 Approved BMPs or systems of BMPs and technical specialist ~~designation~~ designations by the Commission under this  
6 Subchapter may be used to satisfy the requirements of:

7 (1) The Neuse Basin Rule in 15A NCAC 02B .0238(8)(b)(x) and (c)(i) and 15A NCAC 02B .0239(2)(a)  
8 and (b);

9 (2) The Tar-Pamlico Rule in 15A NCAC 02B .0256 and 15A NCAC 02B .0257(f)(2); and

10 (3) Other applicable water quality protection rules to address agricultural nonpoint source impacts, as  
11 adopted by the EMC or other commissions that include agricultural BMP development or  
12 implementation or technical specialist designation by the Commission.

13

14 *History Note: Authority G.S. 106-840; 139-4;*

15 *Temporary Adoption Eff. October 22, 2001;*

16 *Eff. April 1, 2003;*

17 *Transferred from 15A NCAC 06H .0105 Eff. May 1, 2012.*

18

**02 NCAC 59E Procedures and Guidelines to Implement the Nondischarge Rule for Animal Waste Management Systems**

The following excerpts are representative of comments received. A brief response is provided in italics representing the staff's position on a specific issue.

Criticism           Mandate an animal waste management system cannot become deemed permitted by regulation unless their animal waste management plan is properly certified by a technical specialist.

*"Deemed permitted" status for animal waste management systems is beyond the purview and authority of the Soil and Water Conservation Commission.*

59E .0103(d-i)   Reinstate District Office review and recordkeeping obligations.

*This rule was adopted before the state's permitting process for animal operations. Waste management system information and records for permitted operations are now managed by DWR and subject to public review.*

59E .0103(k)    Reinstate any modifications made in the system as a result of changes in the operation such as types and numbers of animals, equipment, or crops, must be in accordance with the BMP standards and specifications approved by the Commission and in effect at the time of the modification.

*Requirements of the animal waste management system permit make this rule redundant and unnecessary.*

59E .0104(d)    Postpone implementation of the nitrogen loading expansion provisions until the Commission justifies the need for the revision and sufficiently clarifies the rule's limitations.

*The rule change proposes using recognized experts to tailor nutrient application rates to a specific crop, either where no data currently exists or by established methods proven to determine a crop's nutrient needs.*

59E .0104(e)    This section should not be deleted. A mechanism should exist for a waste management structure to be built that does not meet setback requirements, especially when replacing an existing, older structure. A scenario citing an existing dairy is given.

*Staff concurs and 59E.0104(e) is restored in the rule.*

Minor Edits       Discrepancies and grammar edits were noted by commenters.

*Staff concurs and corrected errors.*

**02 NCAC 59G Approval of Technical Specialists and BMPs for Water Quality Protection**

The following excerpts are representative of comments received. A brief response is provided in italics representing the staff's position on a specific issue.

59G .0104(a)(1) Add a new sentence at the end that says, "This category also includes the design and installation of a spillway in conjunction with the decommissioning of a spillway."

*Staff concurs and added language clarifying either a P.E. or individual with proper Job Approval Authority must perform these tasks.*

59G .0104(a)(2) Add a new (F) that says, "Decommissioning of a lagoon or storage structure that does not include the design or installation of a spillway."

*Staff concurs and added language allowing a technical specialist with WUP and/or NMP designation to remove liquid and sludge, and either breach the impoundment or grade site such that no water is retained.*

Minor Edits      Discrepancies and grammar edits were noted by commenters.

*Staff concurs and corrected errors.*



# ENVIRONMENTAL LAW *and* POLICY CLINIC

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July 31, 2017

*Via US and Electronic Mail*

Ms. Christina L. Waggett  
North Carolina Department of Agriculture & Consumer Services  
1001 Mail Service Center  
Raleigh, NC 27699-1001  
[Christina.Waggett@ncagr.gov](mailto:Christina.Waggett@ncagr.gov)

**RE: Proposed Revisions to 02 NCAC 59E and 59G**

Dear Ms. Waggett,

On behalf of Waterkeeper Alliance (“WKA”) and Waterkeepers Carolina (“WKC”), the Duke Environmental Law and Policy Clinic (“Clinic”) respectfully submits comments on the North Carolina Soil and Water Conservation Commission’s (“Commission”) proposed re-adoption with substantive revisions of administrative rules codified in Chapter 02, Subchapters 59E and 59G of the North Carolina Administrative Code. These rules detail the procedures for implementing the nondischarge rule for animal waste management systems (“AWMS”),<sup>1</sup> for the approval of technical specialists who inspect and certify portions of each AWMS’s animal waste management plan (“AWMP”), and for the approval of best management practices (“BMPs”) designed to protect water quality.

WKA is a global network of environmental organizations dedicated to protecting and promoting healthy, diverse, and ecologically sound watersheds throughout the globe. WKC is a collection of state-level riverkeeper organizations licensed by WKA that operate throughout the Carolinas. WKA and WKC members are involved in advocacy programs to monitor and improve water quality around North Carolina’s animal operations<sup>2</sup> and their related AWMS. The

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<sup>1</sup> The nondischarge rule is codified at 15A NCAC 02T *et seq.* Provisions specific to AWMS are located at 15A NCAC 02T .1300 *et seq.* See also G.S. § 143-215.10B(3) (defining “animal waste management system” as “a combination of structures and nonstructural practices serving a feedlot that provide for the collection, treatment, storage, or land application of animal waste.”).

<sup>2</sup> A number of terms are used to describe intensive, concentrated animal farming operations. See NC. GEN. STAT. § 143-215.10B(1) (“‘Animal operation’ means any agricultural feedlot activity involving 250 or more swine, 100 or more confined cattle, 75 or more horses, 1,000 or more sheep, 30,000 or more confined poultry with a liquid animal waste management system, or any agricultural feedlot activity with a liquid animal waste management system that discharges to the surface waters of the State.”). See also 40 C.F.R. § 122.23(b)(1) (“Animal feeding operation

proposed revisions to Subchapters 59E and 59G are of particular import to WKA and WKC because its members live near, recreate on, and fish in the waters that are impacted by pollution from animal operations and their AWMS.

The Clinic is a joint project of Duke University School of Law and Duke Nicholas School of the Environment, where students have the opportunity to work on litigation and policy advocacy under the supervision of clinical faculty. The Clinic assists WKA and WKC efforts to monitor, protect, and improve water quality in areas with high concentrations of animal operations.

While the current set of proposed revisions contains a number of beneficial changes, WKA and WKC are concerned by the fact that the Commission has chosen to retain the majority of detrimental alterations first proposed in September 2016. In particular, both WKA and WKC strongly object to the decision to largely eliminate SWCC District Office oversight of AWMPs, which will significantly impede the Commission's ability to implement its Agricultural Cost Share Program for Nonpoint Source Pollution Control<sup>3</sup> for nutrient impaired watersheds and hinder the proper collaboration between the Commission, the North Carolina Department of Agriculture & Consumer Services, and the Department of Environmental Quality necessary to protect North Carolina's public health and surface water quality. Additionally, both WKA and WKC object to the proposed change that would expand a technical specialist's ability to approve additional land application of nitrogen to waste application fields in excess of the field's Plant Available Nitrogen loading rate.<sup>4</sup>

## **I. Water Quality Impairment Caused by Animal Operations in North Carolina**

Effective animal waste management in North Carolina has been hindered by the livestock industry's shift towards large-scale operations, resulting in massive volumes of waste being stored in relatively small areas, coupled with the industry's retention of outdated waste management technology.<sup>5</sup> North Carolina's swine operations are overwhelmingly located in the

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('AFO') means a lot or facility . . . where . . . (i) Animals (other than aquatic animals) have been, are, or will be stabled or confined and fed or maintained for a total of 45 days or more in any 12-month period, and (ii) Crops, vegetation, forage growth, or post-harvest residues are not sustained in the normal growing season over any portion of the lot or facility.''); *Id.* § 122.23(b)(2), (4), (6). Concentrated animal feeding operations, "CAFOs," are AFOs of a specific size and are classified as either "Large" or "Medium".

<sup>3</sup> G.S. § 139-4(d)(9); G.S. § 106-850; 02 NCAC 59D .0101. The impact of eliminating Commission and SWCC recordkeeping and review obligations on the Agricultural Cost Share Program is discussed in the Clinic's October 31, 2016 public comment, which is on file with the Clinic.

<sup>4</sup> *See* 02 NCAC 59E .0104(d) ("Land application BMPs following the nutrient management standard contained in the Section IV of the NRCS Technical Guide or as recommended by the Agronomic Division of the North Carolina Department of Agriculture and Consumer Services (predictive Soil Test Report and predictive Waste Analysis Report, shall be acceptable. In cases where NC agronomic rates are not established for a specific crop or vegetative type, application rates may be determined by the NC Interagency Nutrient Management Committee. *A technical specialist may use plant and tissue analysis to justify additional nitrogen and extend the application period with concurrence from a NCDA&CS Regional Agronomist, a voting member of the NC Agricultural Consultants Association (NCACA), or a Certified Crop Advisor (CCA).*") (emphasis added).

<sup>5</sup> *See, e.g.,* U.S. GOV'T ACCOUNTABILITY OFFICE, GAO-08-944, CONCENTRATED ANIMAL FEEDING OPERATIONS: EPA NEEDS MORE INFORMATION AND A CLEARLY DEFINED STRATEGY TO PROTECT AIR AND WATER QUALITY FROM POLLUTANTS OF CONCERN 5 (2008) <http://www.gao.gov/assets/290/280229.pdf> ("[A] very large hog farm,

Eastern Coastal Plain, with the highest concentrations in Robeson, Columbus, Bladen, Sampson, Pender, Duplin, Onslow, Wayne, Lenoir, Greene, and Pitt counties.<sup>6</sup> North Carolina’s poultry industry is less regionally concentrated, but is primarily located in the central and western Piedmont and Eastern Coastal Plain.<sup>7</sup>

Livestock excrement contains a wide array of nutrients, such as nitrogen, phosphorus, copper, zinc, and potassium.<sup>8</sup> When animal waste is overused as fertilizer, these nutrients can accumulate in the soil in excessive quantities and contaminate ground and surface water resources.<sup>9</sup> Livestock waste also contains numerous microorganisms and multicellular parasites that can be harmful to human and animal health, such as cyanobacteria, *E. Coli*, *Salmonella*, and *Clostridium botulinum*.<sup>10</sup> Despite these hazards, the waste from industrial-scale animal operations is not processed or treated in wastewater treatment facilities prior to its storage or land application.<sup>11</sup> As of 2013, North Carolina ranks first in the United States for tons of animal manure generated per farmland acre.<sup>12</sup>

AWMS can contaminate surface and groundwater sources through three main channels: seepage from lagoons into groundwater, seepage into groundwater from land application sites, and runoff into surface water from land application sites.<sup>13</sup> Animal waste nutrients can also enter surface

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with as many as 800,000 hogs, generates more than 1.6 million tons of manure annually—more than one and a half times the sanitary waste produced by the about 1.5 million residents of Philadelphia, Pennsylvania in 1 year.”)

<sup>6</sup> See Environmental Working Group & Waterkeeper Alliance, *Exposing Fields of Filth: Locations of Confined Animal Feeding Operations in North Carolina*, ENVTL. WORKING GRP. (June 21, 2016) [http://www.ewg.org/interactive-maps/2016\\_north\\_carolina\\_animal\\_feeding\\_operations.php](http://www.ewg.org/interactive-maps/2016_north_carolina_animal_feeding_operations.php); see also Steve Wing & Jill Johnston, *Industrial Hog Operations in North Carolina Disproportionately Impact African-Americans, Hispanics and American Indians*, UNC CHAPEL HILL DEP’T OF EPIDEMIOLOGY, at 12 fig. 3 (August 29, 2014), [www.ncpolicywatch.com/wp-content/uploads/2014/09/UNC-Report.pdf](http://www.ncpolicywatch.com/wp-content/uploads/2014/09/UNC-Report.pdf) (depicting the high degree of hog farm concentration in Southeastern North Carolina).

<sup>7</sup> See *id.*, Environmental Working Group & Waterkeeper Alliance (showing the locations of North Carolina poultry farms). Notwithstanding, there are heavy concentrations of poultry production in areas of the Coastal Plain. See also N.C. DEP’T OF ENVTL. QUALITY, DIV. OF WATER RES., A COMPARISON OF PAN AND P<sub>2</sub>O<sub>5</sub> PRODUCED FROM POULTRY, SWINE AND CATTLE OPERATIONS IN NORTH CAROLINA, (March 2017) [https://ncdenr.s3.amazonaws.com/s3fs-public/Environmental%20Management%20Commission/Water\\_Quality\\_Committee\\_Meetings/2017/March/Attachments/Basinwide%20Manure%20Production%20Report%20%20Appendices.pdf](https://ncdenr.s3.amazonaws.com/s3fs-public/Environmental%20Management%20Commission/Water_Quality_Committee_Meetings/2017/March/Attachments/Basinwide%20Manure%20Production%20Report%20%20Appendices.pdf), at 5, Figure 2 (Map depicting 2014 poultry inventory by county. Counties with an estimated 2014 poultry inventory of 11,255,000 – 15,790,000 birds were Wilkes, Union, Sampson, and Duplin.).

<sup>8</sup> *Manure & Nutrient Management Programs*, USDA NAT’L INST. FOOD & AGRIC., <https://nifa.usda.gov/program/manure-nutrient-management-programs> (last visited Apr. 18, 2017).

<sup>9</sup> HENNING STEINFELD ET AL., U.N. FOOD & AGRIC. ORG., *LIVESTOCK’S LONG SHADOW: ENVIRONMENTAL ISSUES AND OPTIONS* 136 (2006).

<sup>10</sup> *Id.* at 140–41.

<sup>11</sup> *Id.*; see also Michelle Nowlin, *Sustainable Production of Swine: Putting Lipstick on a Pig?*, 37 VT. L. REV. 1079, 1085 (2013) (“Unlike human biosolids, there is no requirement that hog waste be treated before being applied to land.” (citing Ellen K. Silbergeld, et al., *One Reservoir: Redefining the Community Origins of Antimicrobial-Resistant Infections*, 92 MED. CLINICS N. AM. 1391, 1399 (2008))).

<sup>12</sup> N.C. DEP’T OF ENVTL. QUALITY, DIV. OF WATER RES., A COMPARISON OF PAN AND P<sub>2</sub>O<sub>5</sub> PRODUCED FROM POULTRY, SWINE AND CATTLE OPERATIONS IN NORTH CAROLINA *supra* note 7 at 8–9 (citing U.S. ENVTL. PROT. AGENCY, 820-R-13-002, *LITERATURE REVIEW OF CONTAMINANTS IN LIVESTOCK AND POULTRY MANURE FOR WATER QUALITY* (2013)).

<sup>13</sup> See Steve Wing, Stephanie Freedman & Lawrence Band, *The Potential Impact of Flooding on Confined Animal Feeding Operations in Eastern North Carolina*, 110 ENVTL. HEALTH PERSP. 387, 387 (2002),

waters through atmospheric deposition following manure spraying or spreading.<sup>14</sup> Swine waste lagoons are also prone to flooding or structural collapse during substantial rain events, as occurred during Hurricane Floyd in 1999 and more recently during Hurricane Matthew.<sup>15</sup> Discharges from AWMS have devastating effects on water quality and public health—causing or contributing to river eutrophication, algal blooms, fish kills, and drinking water contamination.<sup>16</sup> More importantly, as the earth’s climate warms due to human-induced fossil fuel emissions, the frequency and magnitude of these storms will tend to increase, leading to more severe damage in low-lying regions like the Eastern Coastal Plain.<sup>17</sup>

A growing body of scientific research demonstrates that animal operations and their AWMS are causing or contributing to surface water quality impairment in North Carolina’s Eastern Coastal Plain.<sup>18</sup> A 2015 study by the U.S. Geological Survey demonstrated that North Carolina watersheds containing at least one active swine or poultry operation had elevated concentrations of several major nutrient ions common in animal waste as compared to watersheds without any animal operations.<sup>19</sup> Studies have also documented fecal bacteria contamination in surface waters adjacent to swine operations.<sup>20</sup>

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<https://www.ncbi.nlm.nih.gov/pmc/articles/PMC1240801/pdf/ehp0110-000387.pdf> (noting that seepage from waste pits and spray areas can contaminate ground water sources over long periods of time).

<sup>14</sup> JoAnn Burkholder et al., *Impacts of Waste from Concentrated Animal Feeding Operations on Water Quality*, 115 ENVTL. HEALTH PERSP. 308, 309 (2007), <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC1817674/pdf/ehp0115-000308.pdf> (“Inorganic N forms are added to the atmosphere during spray practices, and both ammonia and phosphate can also adsorb to fine particles (dust) that can be airborne. . . . [A] significant proportion of the total ammonium from uncovered swine effluent lagoons and effluent spraying . . . reenters surface waters as local precipitation or through dry fallout.”).

<sup>15</sup> Peter T. Kilborn, *Hurricane Reveals Flaws in Farm Law as Animal Waste Threatens N. Carolina Water*, N.Y. TIMES (Oct. 17, 1999), <http://www.nytimes.com/1999/10/17/us/hurricane-reveals-flaws-in-farm-law-as-animal-waste-threatens-n-carolina-water.html>; Christina Cooke, *Drowned Animals, Runaway Waste on North Carolina Farms in Matthew’s Wake*, CIVIL EATS (Oct. 18, 2016), <http://civileats.com/2016/10/18/drowned-animals-runaway-waste-on-north-carolina-farms-in-hurricane-matthews-wake/>.

<sup>16</sup> See generally Michael Mallin, *Impacts of Industrial Animal Production on Rivers and Estuaries*, 88 AM. SCIENTIST, Jan.–Feb. 2000, at 26, <http://www.americanscientist.org/issues/feature/2000/1/impacts-of-industrial-animal-production-on-rivers-and-estuaries/1>.

<sup>17</sup> See e.g., U.S. EPA, *What Climate Change Means for North Carolina*, EPA 430-F-16-035 (Aug. 2016), <https://19january2017snapshot.epa.gov/sites/production/files/2016-09/documents/climate-change-nc.pdf> (“Since 1958, the amount of precipitation during heavy rainstorms has increased by 27 percent in the Southeast, and the trend toward increasingly heavy rainstorms is likely to continue.”).

<sup>18</sup> See UNC CHAPEL HILL, DEP’T OF CITY & REG’L PLANNING, ECON. DEV. WORKSHOP, IDENTIFYING OPPORTUNITIES AND IMPACTS FOR NEW USES OF HOG WASTE IN EASTERN NORTH CAROLINA, 12-13 (2013) [www.ncgrowth.unc.edu/wp-content/uploads/2014/06/OpportunitiesAndImpactsOfHogWasteInEasternNC.pdf](http://www.ncgrowth.unc.edu/wp-content/uploads/2014/06/OpportunitiesAndImpactsOfHogWasteInEasternNC.pdf); see also Christopher D. Heaney et al., *Source Tracking Swine Fecal Waste in Surface Water Proximal to Swine Concentrated Animal Feeding Operations*, 511 SCI. TOTAL ENV’T, 676–83 (2015), [www.ncbi.nlm.nih.gov/pmc/articles/PMC4514616/](http://www.ncbi.nlm.nih.gov/pmc/articles/PMC4514616/).

<sup>19</sup> Stephen L. Hardin, U.S. GEOLOGICAL SURVEY SCI. INVESTIGATIONS REPORT 2015-5080, SURFACE-WATER QUALITY IN AGRICULTURAL WATERSHEDS OF THE NORTH CAROLINA COASTAL PLAIN ASSOCIATED WITH CONCENTRATED ANIMAL FEEDING OPERATIONS 50 (2015), [www.pubs.usgs.gov/sir/2015/5080/pdf/sir2015-5080.pdf](http://www.pubs.usgs.gov/sir/2015/5080/pdf/sir2015-5080.pdf) (remarking that the higher nutrient ion concentrations in watersheds with CAFOs indicates “the influence of swine-waste manure storage or applications at the SW sites and swine- and (or) poultry-waste manure storage or applications at the SP sites” on surface water quality).

<sup>20</sup> See generally, e.g., Michael A. Mallin et al., *Industrial Swine and Poultry Production Causes Chronic Nutrient and Fecal Microbial Stream Pollution*, 226 WATER, AIR, & SOIL POLLUTION 407 (2015), <http://link.springer.com/article/10.1007/s11270-015-2669-y> (detailing this contamination).

Given the reality of surface water quality impairment caused by the animal waste management practices employed by North Carolina’s concentrated animal operations, it is essential that Subchapters 59E and 59G establish comprehensive and effective Commission oversight of AWMPs and their certifications and ensure uniform applicability of BMP standards so as to ensure that waste or waste nutrients are not discharged into North Carolina’s surface water resources.

## **II. Previous Comment on Commission Revisions to 02 NCAC 59E and 59G**

In October, 2016, the Clinic, on behalf of WKC, submitted comments on the Commission’s first set of proposed revisions to Subchapters 59E and 59G.<sup>21</sup> In those comments, WKC urged the Commission to (1) preserve District Office review and recordkeeping obligations relating AWMPs, (2) continue to require modified AWMS to adhere to BMPs, (3) allow technical specialists to certify entire AWMPs, and (4) require that animal operations receive technical specialist certification prior to being deemed permitted by regulation.<sup>22</sup>

## **III. Retention of Detrimental Components of September 2016 Revisions**

The instant revisions to Subchapters 59E and 59G retain a number of detrimental changes originally proposed in September 2016, including (1) eliminating the definition of “agronomic rates”,<sup>23</sup> (2) restricting technical specialist certification authority to only the portions of AWMPs that fall within the scope of the specialist’s specific designation category,<sup>24</sup> (3) generally eliminating Commission oversight of AWMPs,<sup>25</sup> (4) allowing changes to AWMS that are made due to alterations in either the type, number of animals confined, the equipment used, or crops to which waste is applied to evade compliance with BMPs,<sup>26</sup> and (5) allowing poultry AWMS owners who have not had their AWMPs certified by a technical specialist to nevertheless become deemed permitted by regulation.<sup>27</sup>

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<sup>21</sup> Comments on Proposed Revisions to Soil and Water Conservation Commission Administrative Rules—02 NCAC 59E and 59G (Oct. 31, 2016) (on file with the Clinic).

<sup>22</sup> *Id.*

<sup>23</sup> 02 NCAC 59E .0102(1) (Instead, Chapter 59E incorporates by reference the definition of agronomic rate contained in 15A NCAC 02T .0103. As raised in the Clinic’s October 2016 public comment, the 02T definition of agronomic rate is insufficient as it fails to consider phosphorus loading and plant phosphorus requirements. WKC urges the Commission to adopt a definition of agronomic rates that accounts for phosphorus overapplication.).

<sup>24</sup> 02 NCAC 59E .0103(c); 02 NCAC 59G .0104(g).

<sup>25</sup> 02 NCAC 59E .0103(e) – (h) (Eliminating SWCC District review of AWMPs and related appeal procedures and District obligation to maintain copies of all AWMPs).

<sup>26</sup> 02 NCAC 59E .0103(k) (Deleting the following: “Any modifications made in the [animal waste management] system as a result of changes in the operation such as types and numbers of animals, equipment, or crops, must be made in accordance with the BMP standards and specifications approved by the Commission and in effect at the time of the modification.”).

<sup>27</sup> *See* 02 NCAC 59E .0103(i) (Deleting the following: “An [AWMS] owner who does not obtain a certification is not deemed permitted pursuant to G.S. 143-215.1(d) and must apply for an individual permit from the Division of Environmental Management. Nothing in these Rules prohibits Permit appeal rights pursuant to the rules of the Environmental Management Commission).

Of these, two proposed amendments are especially problematic. First, WKA and WKC object to the proposal to no longer require that modifications to AWMS which are made due to changes in the animal operation adhere to BMP standards and specifications. As addressed in the October 2016 comments, animal operations can change in any number of ways, such as altering the type or number of animals confined at the facility, modifying the type of waste management equipment used, or changing the location of land application or type of crop to which the animal waste is applied. Each of these changes can significantly alter the amount of waste nutrients applied to and absorbed by the waste application fields, which in turn can detrimentally impact soil health and nearby surface and groundwater quality.<sup>28</sup> This loophole incentivizes animal operation owners to alter their operations by changing the number or type of animals confined, equipment, or crops in order to evade compliance with promulgated BMPs designed to safeguard water quality. WKA and WKC implore the Commission to reinstate 02 NCAC 59E .0103(k) in full.<sup>29</sup>

Second, WKA and WKC also question the proposal to allow AWMS whose AWMPs who have not been certified by a technical specialist to become deemed permitted by regulation. A vast majority of North Carolina's poultry operations are deemed permitted by regulation, which prevents regulators at DEQ and NC DA&CS from obtaining critical information about these operations, such as their location and the number of birds they raise.<sup>30</sup> Allowing operations to become permitted by regulation without having their AWMP certified by a technical specialist would further deprive DEQ and NC DA&CS regulators of critical information necessary to more accurately understand the impact North Carolina's rapidly-expanding poultry industry is having on soil and water quality throughout the state.

Further, the current revisions maintain the loophole that exempts BMPs on existing operations from meeting current water quality protection standards and specifications so long as the AWMS is certified to be non-discharging as set forth in G.S. § 143-215.10C.<sup>31</sup> This is particularly problematic since the notion that AWMS are entirely self-contained and are "non-discharging" is largely a legal fiction.<sup>32</sup> It is well documented that animal waste management

<sup>28</sup> L.M. Risse, et al., *Land Application of Manure for Beneficial Use*, NAT'L CTR. FOR MANURE AND ANIMAL WASTE MGMT., at 18 (2001),

<https://www.ars.usda.gov/ARUserFiles/66120900/SoilManagementAndCarbonSequestration/2001ajfB02.pdf> ("The quantity and characteristics of livestock or poultry waste are highly variable and differ significantly from the initial values for manure excreted by the animal to the time of land application... Nutrients applied from animal manure should match the needs of the crop, but the ratios of N, P, K, and the various micro nutrients excreted by animals are generally different from crop requirements. Not only does this present problems for the development of application rate recommendations, but it also produces nutrient imbalances in the soils and crops that receive animal manures...").

<sup>29</sup> Text of deleted provision was originally 02 NCAC 59E .0103(k). If reinstated, it would become 02 NCAC 59E .0103(e).

<sup>30</sup> See discussion *infra*, Section IV.

<sup>31</sup> 02 NCAC 59E .0103(b) ("BMPs in an existing system shall not be required to meet current standards and specifications as established by the Commission as long as the system is certified to be nondischarging as required in G.S. 143-215.10C.").

<sup>32</sup> Under North Carolina's Nondischarge Rule, animal operations are prohibited from discharging into waters of the State except in compliance with their federal NPDES permit, or if the operation is regulated pursuant to state permits, except as may result due to rainfall from a storm event more severe than the 25-year, 24-hour storm. G.S. § 143-215.10C(a1), (b) (respectively). See L.M. Risse, et al., *Land Application of Manure for Beneficial Use*, NAT'L CTR. FOR MANURE AND ANIMAL WASTE MGMT., at iii ("Even under ideal conditions, there is still a significant risk

practices, even when done in compliance with applicable AWMPs, lead to waste and nutrient contamination of ground and surface water resources.<sup>33</sup> Allowing existing AWMS to evade compliance with BMPs designed to safeguard the state’s water quality based on their anticipated compliance with a largely fictional aspirational goal of non-discharge is irresponsible and threatens the public health and wellbeing of North Carolinians. WKA and WKC therefore recommend that the Commission amend this provision to require that all BMPs in existing systems “shall be required to meet current standards and specifications as established by the Commission, *even if* the system is certified to be nondischarging as required in G.S. 143-215.10C.”<sup>34</sup>

#### **IV. The Commission Should Reinstate District Office Review & Recordkeeping Requirements**

The current revisions further erode the Commission’s review and recordkeeping responsibilities with respect to AWMPs. Not only are SWCC District Offices no longer required to maintain copies of all AWMPs and accompanying technical specialist certifications,<sup>35</sup> AWMS operators are now no longer required to even submit copies of their AWMP and accompanying technical specialist certification to the SWCC District Office serving the District in which the AWMS is located.<sup>36</sup>

Further eliminating Commission and SWCC District office oversight and review of AWMPs and their accompanying certifications would substantially hinder the Department of Agriculture & Consumer Services’ ability to effectively keep track of key information necessary to track North Carolina’s growing livestock industry, such as the pounds of nitrogen and phosphorus land applied at each animal operation, and the BMPs in place at each operation to mitigate contamination of ground- and surface water resources.

The lack of proper Commission and District Office oversight also threatens to undermine the Commission’s implementation of its Animal Waste Management Inspection Pilot program, which began in 1997 and was made permanent in 2013.<sup>37</sup> This program now encompasses

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of [waste and nutrient] losses to the environment. Agricultural systems leak and elimination of non-point source impacts is practically impossible. Therefore, secondary treatment or preventative systems should also be incorporated into the design of all land application systems regardless of the choice of nutrient source.”)

<sup>33</sup> See e.g., Burkholder, *supra* note 14; Heaney, et al., *supra* note 18; Elizabeth C. Christenson, Marc L. Serre, *Integrating remoting sensing with nutrient management plans to calculate nitrogen parameters for swine CAFOs at the sprayfield and sub-watershed scales*, SCI. OF THE TOTAL ENV’T. 580, 865 – 872 (2017) (at 866, noting “CAFO effects on water quality include lagoon ruptures and breaks during extreme weather events such as hurricanes, *but also chronic water quality impacts which include nutrients carried offsite from sprayfields or from underground drainage tiles as runoff or as groundwater transport of nutrients.*) (emphasis added, internal citations omitted).

<sup>34</sup> Suggested revisions, in italics, to 02 NCAC 59E .0103(b).

<sup>35</sup> 02 NCAC 59E .0103(f) (Originally deleted in September 2016 revisions to Subchapter 59E. Deletion retained in current set of revisions.).

<sup>36</sup> 02 NCAC 59E .0103(d) (Revised in September 2016 to maintain that “Upon receiving certification from a Technical Specialist, the [AWMS] owner must submit a copy of the certification to DWR”, eliminating the requirement for AWMS owners to submit both the certification and AWMP to the relevant SWCC District office. Current revisions to Subchapter 59E eliminate 02 NCAC 59E .0103(d) entirely.).

<sup>37</sup> North Carolina Department of Agriculture & Consumer Services, *Technical Services – Animal Waste Management Inspection Pilot*, NCAGR.GOV, <http://www.ncagr.gov/SWC/tech/animalwasteinspection.html>.

Brunswick, Columbus, Jones and Pender counties and was created in order for the Commission to determine how best to animal waste complaints more quickly and effectively, as well as assist farms achieve compliance with environmental regulations.<sup>38</sup> As a part of this program, NC DA&CS and the SWCC District Offices are required to establish procedures whereby “resources within the local Soil and Water Conservation Districts serving the counties are used for quick response to complaints and reported problems previously referred only to the Division of Water Quality.”<sup>39</sup> It will be difficult, if not impossible, for District Offices to provide adequate or effective responses to animal waste related complaints by if they are no longer obligated to maintain copies of AWMPs and their technical specialist certification.

Additionally, the proposed elimination of District Office oversight of AWMPs and their certification forms will significantly undercut state efforts to monitor and track important developments in North Carolina’s poultry industry. North Carolina’s poultry operations are largely exempted from permitting requirements,<sup>40</sup> and so DEQ regulators are largely in the dark concerning basic facts about the state’s poultry operations, such as their locations and the number of birds raised on each operation.<sup>41</sup> Eliminating the requirement that AWMS operators submit their AWMPs and accompanying technical specialist certification to the District Office in which their operation is located serves only to further impede effective communication between the NC DA&CS and DEQ, thereby hindering the state’s understanding of the scale of nutrient loading generated from North Carolina’s rapidly-expanding poultry industry.<sup>42</sup>

WKA and WKC strongly oppose the proposed elimination Commission and District office oversight, review, and recordkeeping requirements and implores the Commission to reinstate these vital procedural safeguards in Subchapter 59E.

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<sup>38</sup> *Id.* According to DEQ’s List of Permitted Animal Facilities, there are a total of 186 permitted animal facilities in the four county pilot project area (Brunswick – 15; Columbus – 50; Jones – 53; and Pender – 68). North Carolina Department of Environmental Quality, *Animal Facility Map*, DEQ.NC.GOV, <https://deq.nc.gov/cafo-map>.

<sup>39</sup> N.C. Sess. Law 2013-131 §1 (amendment to G.S. § 143-215.10F(b)).

<sup>40</sup> See 15A NCAC 02T .1303(a)(2); *see also id.* .1305(b) (exempting dry litter poultry operations from North Carolina’s NPDES permitting requirements).

<sup>41</sup> N.C. DEP’T OF ENVTL. QUALITY, DIV. OF WATER RES., A COMPARISON OF PAN AND P<sub>2</sub>O<sub>5</sub> PRODUCED FROM POULTRY, SWINE AND CATTLE OPERATIONS IN NORTH CAROLINA at 1 (March 2017) [https://ncdenr.s3.amazonaws.com/s3fs-public/Environmental%20Management%20Commission/Water\\_Quality\\_Committee\\_Meetings/2017/March/Attachments/Basinwide%20Manure%20Production%20Report%20%20Appendices.pdf](https://ncdenr.s3.amazonaws.com/s3fs-public/Environmental%20Management%20Commission/Water_Quality_Committee_Meetings/2017/March/Attachments/Basinwide%20Manure%20Production%20Report%20%20Appendices.pdf) (noting that because dry litter poultry operations are deemed permitted under 15A NCAC 02T .1303, “the locations of dry litter poultry operations and the disposal of their waste are not known to environmental regulators, *making it difficult to form a complete picture of possible non-point source contributions within a specific watershed*” (emphasis added)).

<sup>42</sup> The state’s lack of understanding regarding the poultry industry is not solely due to the fact that poultry operations are largely deemed permitted by regulation. As detailed in correspondence in October 2000 between Kerr T. Stevens, former DENR Division of Water Quality Director, and Dr. David Marshall, former State Veterinarian with NC DA&CS, NC DA&CS refused to share information regarding the ownership, address, number and type of birds, facility location, and date the facility went into operation with DEQ on the grounds of confidentiality, pursuant to G.S. § 106-24.1. The correspondence between Mr. Stevens and Dr. Marshall is on file with the Clinic.

## V. The Commission Should Clarify Its Revision to 02 NCAC 59E .0104(d)

The current revisions expand technical specialist authority with respect to determining nitrogen application rates.<sup>43</sup> The amount of nitrogen per acre that a given crop type can feasibly absorb and utilize is known as that plant's specific Plant Available Nitrogen ("PAN") value.<sup>44</sup> An AWMP must contain "provisions regarding waste utilization plans that assure a balance between nitrogen application rates and nitrogen crop requirements."<sup>45</sup> North Carolina's 2T Rules use the term "agronomic rate" as a synonym for PAN,<sup>46</sup> and compliance with agronomic rates are a necessary requirement for AWMS deemed permitted by regulation, as well as those AWMS covered under State Permits and NPDES permits.<sup>47</sup> As noted above, in both the September 2016 and instant revisions, the Commission proposes to eliminate the definition of "agronomic rates" from Subchapter 59E and instead defer to the definition contained in the 02T rules.<sup>48</sup>

The instant revisions to Subchapter 59E .0104(d) amend waste application rate approval in two significant ways. First, under existing rules, where there is no USDA Natural Resources Conservation Service standard for the appropriate waste application rate for a given crop or vegetative type, the appropriate waste application rate is determined by a technical specialist after consulting with experts at the North Carolina Department of Agriculture or NC Cooperative Extension.<sup>49</sup> Instead, the instant revisions would allow application rates for specific crops or vegetative types without promulgated agronomic rates to be determined by the newly-established NC Interagency Nutrient Management Committee, which is comprised of members of the NC

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<sup>43</sup> See 02 NCAC 59E .0104(d)

<sup>44</sup> See U.S. Department of Agriculture – Natural Resources Conservation Service, *National Agronomy Manual* at 503-56 – 503-57 (Feb. 2011) ("The amount of nitrogen available to crops during the first year following application of manure is referred to as plant-available nitrogen (PAN). PAN is the total of the inorganic nitrogen...and the percentage of the organic nitrogen that will mineralize during the growing season."). See also John A. Lory, Glenn Davis, et al., *Calculating Plant-Available Nitrogen and Residual Nitrogen Fertilizer Value in Manure*, MU EXTENSION, UNIVERSITY OF MISSOURI-COLUMBIA (Dec. 2007), <http://extension.missouri.edu/explorepdf/agguides/soils/g09186.pdf>.

<sup>45</sup> G.S. 143-215.10C(e)(7).

<sup>46</sup> 15A NCAC 02T .0103(1) ("Agronomic rate" is defined as the amount of waste and other materials applied to meet the nitrogen needs of the crop, but does not overload the soil with nutrients and other constituents that cause or contribute to a contravention of surface water or groundwater standards, limit crop growth, or adversely impact soil quality. Nitrogen needs of the crop shall be based on realistic yield expectations (RYE) established for a soil series through published Cooperative Extension Service bulletins, Natural Resources Conservation Service publications, county soil surveys, or site specific agronomist reports.')

<sup>47</sup> 15A NCAC 02T .1303(a)(1), (a)(2)(B), (a)(3)(A) (Permitting by Regulation); 15A NCAC 02T .1304(b)(5) (State Permitting Requirements); 15A NCAC 02T .1305(b)(5), (c)(4) (NPDES Permitting Requirements). Compliance with agronomic rates is also required for manure haulers deemed permitted by regulation. See 15A NCAC 02T .1403(a)(1)(A) (for manure haulers that land apply a total of 100 tons or less of animal waste per calendar year), (a)(2)(A) (for manure haulers that land apply a total of more than 100 tons of animal waste per calendar year).

<sup>48</sup> See 02 NCAC 59E .0102 ("The terms used in this Subchapter shall be as defined in G.S. 139-3, G.S. 106-850, G.S. 106-840, G.S. 143-215.10B, 15A NCAC 02T .0103...'); 15A NCAC 02T .0103(1) (defining agronomic rate).

<sup>49</sup> 02 NCAC 59E .0104(d) ("In cases where agronomic rates are not specified in the nutrient management standard for a specific crop or vegetative type, application rates may be determined using the best judgment of the certifying Technical Specialist after consultation with NCDA or CES") (original text of 02 NCAC 59E .0104(d), revisions omitted).

Department of Agriculture and Consumer Services, DWR, NC Cooperative Extension, and USDA NRCS.<sup>50</sup>

Further, the Commission proposes to allow technical specialists to use “plant and tissue analysis” to justify additional nitrogen loading and extend the application period for a given crop or vegetative type, so long as the decision receives concurrence from a NC Department of Agriculture Regional Agronomist, a voting member of the NC Agricultural Consultants Association (“NCACA”), or a Certified Crop Advisor (“CCA”).<sup>51</sup> The NCACA is a professional organization that “promotes and upgrades the agricultural consulting profession” by providing its member consultants with information, promoting research, and by “shaping long-term agricultural production and philosophies from a local to a federal level,”<sup>52</sup> whereas CAAs are people who have received a CCA certification from the American Society of Agronomy.<sup>53</sup>

This proposed change raises a number of red flags, including: (1) why is the Commission establishing procedures through which PAN can be exceeded in first place?; (2) why attempt to circumvent an important governmental role in approving departure from normal PAN by vesting approval authority in NCACA or CCA members?; and (3) why approve a process by which nitrogen land application rates approved in CAWMPs may be altered significantly based on differences in professional opinion and upon an applicant’s access to “plant and tissue analysis”?

In order to address these pressing threshold questions, WKA and WKC urge the Commission to eliminate this proposed change until the Commission can comprehensively justify the need for provisions allowing departure from PAN and until the Commission further clarifies the contours of the nitrogen loading alterations. Namely, what must the plant and tissue analysis say in order to justify a contemplated change in application rates? Are there any constraints that limit how much application rates can change, or is the degree to which the nitrogen loading rates change subject to the discretion of the technical specialist as concurred to by a NCACA or CCA member?

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<sup>50</sup> *Id.* See also 02 NCAC 59E .0102(4) (defining “interagency Nutrient Management Committee” as a “committee represented by the Agronomics Division of the NC Department of Agriculture and Consumer Services, the Division of Water Resources of the NC Department of Environmental Quality, the North Carolina Cooperative Extension Service – Department of Soil and Crop Science, and the Natural Resources Conservation Service (NRCS) of the United States Department of Agriculture to provide uniform nutrient management recommendations based on scientific data and research.”).

<sup>51</sup> 02 NCAC 59E .0104(d).

<sup>52</sup> North Carolina Agricultural Consultants Association, NCACA.ORG, <http://ncaca.org/>. In order to become a full voting NCACA member, one must be engaged in independent agricultural consulting or contract research in North Carolina and: (1) provide agricultural consulting services for a fee in North Carolina; (2) have the appropriate license for their business activities from the NC DA&CS; (3) have a minimum of two years of experience in agricultural consulting or four years of non-consulting experience, one year of which can be substituted for a Master’s or Ph.D degree; and (4) not be engaged in the sale or application of agricultural chemicals, fertilizers, or other agricultural equipment to grower clients for personal or associated business profit. See NCACA Membership Information, NCACA.ORG, [http://ncaca.org/?page\\_id=14](http://ncaca.org/?page_id=14).

<sup>53</sup> American Society of Agronomy, *About the Program*, CERTIFIEDCROPADVISOR.ORG, <https://www.certifiedcropadviser.org/about-program>. In order to obtain a CCA certification, applicants must pass two comprehensive exams, have at least two years of experience with at least a Bachelor of Science degree in an agronomy related field or at least three years of experience with an Associates degree in an agronomy related field, and apply for the CCA credential.

These are all serious considerations that the proposed revision to 02 NCAC 59E .0104(d) leaves wholly unresolved. If the Commission does not eliminate or further clarify this proposed amendment, it must further develop a uniform and standardized procedure for any proposed extension of nitrogen loading, which should require, at a minimum, that all “plant and tissue analysis” information be submitted on Division-approved forms.<sup>54</sup> It is essential that the Commission establish appropriate bounds and limitations on the expansion of nitrogen loading rates envisioned under this proposed revision, since it is well documented that calculating nutrient application rates based on plant nitrogen needs generally leads to an over-application of other nutrients, most notably phosphorus.<sup>55</sup> Allowing technical specialists to expand nitrogen loading rates without sufficient limitations, oversight, or other procedural safeguards only threatens to further exacerbate excessive nutrient loading in soils, groundwater, and surface water throughout North Carolina.

The Commission should rescind the proposed revision to 02 NCAC 59E .0104(d) until these ambiguities are fully resolved and until the Commission has detailed to the public the necessity for allowing the expansion nitrogen loading rates.

## **VI. Beneficial Changes to Subchapters 59E and 59G**

While the current set of revisions to Subchapters 59E and 59G largely retain a number of the detrimental revisions initially proposed in September 2016, the instant revisions also contain a number of changes which WKA and WKC applaud.

First, the current revisions clarify that technical specialists have the authority to certify that “the planning, design, and implementation of BMPs, including all or part of an animal waste management plan” are in accordance with the standards and specifications set forth by the Commission or the US Department of Agriculture’s Natural Resource Conservation Service.<sup>56</sup> WKA and WKC commend the Commission for clarifying the precise roles of technical specialists with respect to BMPs, and for amending the definition of technical specialist in Subchapter 59G so that it accords with the definition in Subchapter 59E.

WKA and WKC also applaud the Commission for clarifying that technical specialists can certify an entire AWMP. Given the rules’ explicit restriction of technical specialist certification authority to “only parts of the animal waste management plan within their approved designated category,”<sup>57</sup> WKC had remarked in its October 2016 comment letter whether this narrowing of

<sup>54</sup> See North Carolina Department of Agriculture & Consumer Services – Agronomic Division Plant/Waste/Solution/Media Section, *Understanding the NCDA&CS Plant Tissue Report* (July 2012), <http://www.ncagr.gov/agronomi/pdf/files/2012plantreport.pdf>.

<sup>55</sup> See e.g., Andrew N. Sharpley, *Agriculture and Phosphorus Management: The Chesapeake Bay* at 3 (2000) (“...spreading sufficient litter to provide the level of nitrogen to support crops generally over-applies phosphorus by a factor of 3 to 4. This has raised the need to consider shifting the basis of nutrient management plans from nitrogen to phosphorus in such [nutrient overloaded] areas, as has been done in several southern states and is part of legislation pending in Maryland.”); E.T. Kornegay, *Nutrient Management of Food Animals to Enhance and Protect the Environment* at 32 (1996) (“Operation of nutrient management systems based on nitrogen-removal requirements may result in a buildup of soil phosphorus over time.”).

<sup>56</sup> 02 NCAC 59E .0102(5); 02 NCAC 59G .0102(9).

<sup>57</sup> 02 NCAC 59E .0103(c). See also 02 NCAC 59G .0104(g) (“Technical specialist shall perform services only in areas of the technical specialist’s designated category and technical competence.”).

technical specialist certification authority would necessitate multiple technical specialists to certify any given AWMP. The current revisions therefore make clear that if a technical specialist has certification in all relevant designation categories at issue in an AWMP, that technical specialist has the authority to certify the entire plan.<sup>58</sup>

Other proposed changes in the current set of revisions that WKA and WKC support include: (1) amending the requirements for approved BMPs to incorporate compliance with the Swine Waste System Performance Standards;<sup>59</sup> (2) amending the approval process for alternative BMPs to ensure that alternative BMPs provide water quality protection benefits equivalent to those achieved by standard BMPs;<sup>60</sup> (3) eliminating any exemptions from minimum buffer requirements for animal waste storage, treatment facilities, and concentration areas;<sup>61</sup> and (4) establishing that any modification of an AWMP must be certified by a technical specialist.<sup>62</sup> Each of these proposed changes improves the water quality protections in Subchapters 59E and 59G and accord with the Commission’s aim of protecting the state’s soil and water resources as well as to “protect and promote the health, safety and general welfare of the people of this State”.<sup>63</sup>

Finally, WKA and WKC strongly approve of the proposed revision to Subchapter 59G that would require the Division of Soil and Water Conservation to “maintain a database and make available the names of designated technical specialists and their designated categories on the Division’s website.”<sup>64</sup> This proposed change serves to increase the public’s access to information relating to AWMS and AWMPs, and WKA and WKC have long called for improving the transparency of the regulatory processes surrounding animal waste management and CAFO regulation in North Carolina. However, this step towards transparency is largely

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<sup>58</sup> See 02 NCAC 59G .0104(a) (noting that technical specialists can be designated in “one or more” of the enumerated designation categories. Thus, even though technical specialists can only certify aspects of AWMPs that fall within their designation category, a qualified technical specialist could presumably obtain designation certification for all relevant aspects of a given AWMP and therefore have the authority to certify the entire AWMP.).

<sup>59</sup> 02 NCAC 59E .0104(b)(2) (an approved BMP for an AWMS shall either meet the minimum standards of USDA’s NRCS Technical Guide, Section IV or the minimum standards and specifications otherwise determined by the Commission or, “meet the Swine Waste System Performance Standards pursuant to 15A NCAC 02T .1307 and follow the approval process as described in 15A NCAC 02T .1308.”).

<sup>60</sup> 02 NCAC 59G .0103(c) (“The Commission shall approve alternative BMPs Practices, Technical, or Performance Specifications and Operation and Maintenance requirements where any of the following criteria are met: (1) Where no existing USDA technical standard exists for water quality protection; benefits equivalent to benefits achieved by an approved BMP as established in Paragraph (a) of this Rule; (2) Where an existing USDA technical standard includes design or installation requirements for purposes other than those necessary for water quality protection; or (3) Where there is a need for additional operator flexibility to reduce the initial cost of installing or implementing the BMP, while providing water quality protection benefits equivalent to those achieved by an approved BMP as established in Paragraph (a) of this Rule.”).

<sup>61</sup> 02 NCAC 59E .0104(e) (deleting the following: “Exemptions from the minimum buffer requirements for animal waste storage and treatment facilities and animal concentration areas are acceptable if no practical alternative exists and the BMP installed as an equivalent control meets the requirements for Nondischarge except as a result of a storm event more severe than the 25 year, 24-hour storm.”).

<sup>62</sup> 02 NCAC 59E .0103(d) (“Any modification of an animal waste management plan shall be certified by a technical specialist.” Amending the language from “Any proposed modification of an animal waste management plan requires approval by a Technical Specialist.”).

<sup>63</sup> G.S. § 139-2(b).

<sup>64</sup> 02 NCAC 59G .0104(h).

undercut by the revisions to Subchapter 59E eliminating Commission and District Office review, recordkeeping, and oversight obligations relating to AWMS and their AWMPs.

If it is in the public's interest to have ready access to the names and designation categories of the technical specialists who certify all or parts of AWMPs, it is also squarely in the public interest for the Commission and SWCC District Offices to maintain copies of all AWMPs and related technical specialist certifications, and to provide a review process for AWMS owners whose AWMPs are rejected by SWCC District Offices. It makes little sense for the Commission to expand recordkeeping requirements in order to let the public or AWMS owners and operators know the names and designation categories of all technical specialists if the Commission plans on abdicating its responsibility to simply maintain the relevant documents produced and certified by those technical specialists. As proposed, these changes are clearly designed to benefit the AWMS operator and not the general public—the publication of technical specialists and their designation categories assists AWMS operators in selecting the appropriate specialist(s) to certify his/her AWMP, while eliminating the obligation of AWMS operators to submit their certified AWMPs serves to shield the operator from potential complaints of noncompliance.

## **VII. Conclusion**

WKA and WKC urge the Commission to: (1) reinstate District Office review and recordkeeping obligations in Subchapter 59E; (2) require that any changes in an AWMS made due to changes in the animal operation be made in accordance with BMPs; (3) mandate that AWMS cannot become deemed permitted by regulation unless their AWMPs are properly certified by a technical specialist; (4) postpone implementation of the nitrogen loading expansion provisions until the Commission justifies the need for the revision and sufficiently clarifies the rule's limitations.

WKA and WKC greatly appreciate the opportunity for public comment, and hopes the Commission will heed its recommendations in finalizing the revisions to Subchapters 59E and 59G and looks forward to working alongside the Commission, District Offices and the North Carolina Department of Agriculture & Consumer Services on the important issues of animal waste management and protecting surface water quality.

Sincerely,



David Schwartz  
Law Fellow  
Duke Environmental Law & Policy Clinic



**NORTH CAROLINA  
FARM BUREAU FEDERATION, INC.**

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July 31, 2017

Ms. Christina Waggett  
NC Department of Agriculture and Consumer Services  
1001 Mail Service Center  
Raleigh, NC 27699-1001

delivered via email to: [christina.waggett@ncagr.gov](mailto:christina.waggett@ncagr.gov)

Dear Ms. Waggett,

The North Carolina Farm Bureau Federation (NCFB) is North Carolina's largest general farm organization, representing the interests of farm and rural people in our State. This letter is to comment on the draft proposed re-adoption of the Soil and Water Conservation Commission rules that govern Technical Specialists. We have several comments related to the proposed changes to the rules published in the June 1, 2017 NC Register.

The first issue is related to the recent change in state law that allows a technical specialist to do a lagoon closure that does not involve the design/installation of a spillway (See Session Law 2017-108). There are a couple of ways this could be addressed in the rule. NCFB feels that the best thing to do is remove the proposed Waste Facility Closure category altogether. This will require edits to remove the Waste Facility Closure language, and also to clarify who is able to close lagoons/storage ponds. Here are our proposed revisions:

- 59G.0104(a)(1) – Add a new sentence at the end that says, “This category also includes the design and installation of a spillway in conjunction with the decommissioning of a lagoon or storage pond.” This change would make it clear that either a PE or someone with job approval authority must perform these tasks.
- 59G.0104(a)(2) – Add a new (F) that says, “Decommissioning of a lagoon or storage structure that does not include the design or installation of a spillway.” This change would allow a tech specialist with the waste utilization/nutrient management designation to remove the liquid and sludge, and then either breach the dike wall or grade the site so that no water is retained.
- Delete 59G.0104(a)(8), which would have established the Waste Facility Closure designation.
- Remove the references to Waste Facility Closure in (b)(2) and (c)(1)(D).

*Farm Bureau and Agriculture...  
We keep North Carolina growing!*

The second issue is related to 59E.0104(e), which is proposed to be deleted. The Division has looked at this issue previously, but we still have concerns with the deletion of this paragraph. The way this rule will read if deleted, a technical specialist will not be able to certify an animal waste structure or concentration area that needs an exception from the minimum buffer requirements. If it cannot be certified, then will DWR be able to issue the permit? We feel that a method for certifying structures or concentration areas in these cases needs to be maintained.

NCFB wants to be sure that a mechanism exists for a structure to be built, for instance at a dairy, that does not meet setbacks, especially if it is replacing an older existing structure. In this case, replacement of the older structure would result in a net benefit to the environment. It could be that a system is already in place within DWR to address this issue; we just want to be sure before these rules become final.

NCFB has also identified a series of minor editorial issues that should be corrected:

- 59E.0102(4) – The “North Carolina Cooperative Extension Service – Department of Soil and Crop Science” should be changed to “North Carolina Cooperative Extension Service – Department of Crop and Soil Sciences”
- 59E.0104(a) – The sentence that starts on the 3<sup>rd</sup> line of this item should read: “The list of BMPs will be revised as needed by the Commission.”
- 59E.0104(d) – “(predictive Soil Test Report and predictive Waste Analysis Report,) The “,” should be replaced with a “)”
- 59G.0102(10) – Should this definition refer to “Subchapter 59G” instead of “this Section”?
- 59G.0104(a)(2)(D) – The first line of this item should read, “Certification ~~that~~of the land application component...”
- 59G.0104(a)(3) – does “job approval authority” need to be defined in Rule .0102?
- 59G.0104(e) – 3<sup>rd</sup> line of this item should read, “...of this Rule ~~and~~ in order to be approved by the Commission for designation...”

The way this item currently reads, it seems that the SWCC will be required to approve all applicants, regardless of qualifications. The change would allow the SWCC to approve only those applicants that meet the requirements.

- 59G.0104(i) – add “or each three-year period following the effective date of this Rule.” to the end of this item. Otherwise a tech specialist designated several years ago would need to have their six hours on the day the rule became effective.

Thank you for the opportunity to provide comments on the proposed readoption of the SWCC rules for Technical Specialists. If you have any questions or comments you can reach me at (919) 987-1257 or [keith.larick@ncfb.org](mailto:keith.larick@ncfb.org).

Sincerely,



Keith Larick  
Natural Resources Director

cc: Vernon Cox  
Jeff Young