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Applicator Certification & Education Statutes & Regulations

North Carolina

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STATE OF NORTH CAROLINA

- 1) N.C. Gen. Stat. § 143-215.3(a)(1); 15A N.C.A.C. 02B.0239(1)(a)
- 2) N.C. Gen. Stat. § 143-215.3(a)(1); 15A N.C.A.C. 02B.0257
- 3) N.C. Gen. Stat. §§ 143-214.5, .8B, 143B-282(c)—(d); 15 N.C.A.C. 02B.0272 (2)—(4)

The statutes and Constitution are current through the 2018 regular and special legislative sessions. The statutes are subject to changes by the North Carolina Revisor of Statutes.

1) N.C. Gen. Stat. § 143-215.3(a)(1); 15A N.C.A.C. 02B.0239(1)(a)

§ 143-215.3. General powers of Commission and Department; auxiliary powers

(a) Additional Powers. – In addition to the specific powers prescribed elsewhere in this Article, and for the purpose of carrying out its duties, the Commission shall have the power:

- (1) To make rules implementing Articles 21, 21A, 21B, or 38 of this Chapter.

[...]

.0239 NEUSE RIVER BASIN: NUTRIENT SENSITIVE WATERS MANAGEMENT STRATEGY: NUTRIENT MANAGEMENT

The following is the management strategy for nutrient management in the Neuse River Basin:

- (1) The following persons shall obtain a certificate, issued within five years of the effective date of this Rule by the Cooperative Extension Service or the Division of Water Quality, verifying completion of training and continuing education in nutrient management. Within one year from the effective date of this Rule, the Division of Water Quality, in cooperation with the Cooperative Extension Service, shall conduct a sign-up process for persons wishing to take the nutrient management training. If these persons fail to obtain the nutrient management certificate, they are required to develop and properly implement nutrient management plans for the lands where they apply fertilizer within five years of the effective date of this Rule:

(a) Applicators who in a calendar year apply fertilizer to cropland areas, including row and vegetable crops, floriculture areas, ornamental areas and greenhouse production areas, that together comprise at least 50 acres and persons responsible for managing cropland areas, as described in Sub-Item (1)(a) of this Rule, that together comprise at least 50 acres;

[. . .]

2) N.C. Gen. Stat. § 143-215.3(a)(1); 15A N.C.A.C. 02B.0257

§ 143-215.3. General powers of Commission and Department; auxiliary powers

(a) Additional Powers. – In addition to the specific powers prescribed elsewhere in this Article, and for the purpose of carrying out its duties, the Commission shall have the power:

(1) To make rules implementing Articles 21, 21A, 21B, or 38 of this Chapter.

[. . .]

.0257 TAR-PAMLICO RIVER BASIN - NUTRIENT SENSITIVE WATERS MANAGEMENT STRATEGY: NUTRIENT MANAGEMENT

(a) PURPOSE. The purposes of this Rule are as follows, and are to be achieved within five years from the effective date of this Rule.

(1) To contribute to a 30 percent reduction in nitrogen loading to the Pamlico estuary from nutrient application (both inorganic fertilizer and organic nutrients) in the Tar-Pamlico basin, based on 1991 levels.

(2) To contribute to a capping of phosphorus loading to the estuary at 1991 levels from nutrient application (both inorganic fertilizer and organic nutrients) in the basin.

(b) DEFINITIONS. The following definitions shall apply to terms used in this Rule.

(1) Applicator means a person who applies fertilizer to the land or the immediate supervisor of such person.

(2) Consultant means a person who is hired to provide professional advice to another person.

(c) APPLICABILITY. This Rule shall apply as follows.

(1) This Rule shall apply to the following persons:

(A) Persons who own or manage cropland areas in the Tar-Pamlico River Basin for commercial purposes who have not developed a nutrient management plan for their property pursuant to 15A NCAC 02B .0256.

(B) Persons who own or manage commercial ornamental and floriculture areas and greenhouse production areas in the Tar-Pamlico River Basin.

(C) Persons who own or manage golf courses, grassed public recreational lands, grassed road or utility rights-of-way, or other turfgrass areas in the Tar-Pamlico River Basin.

(D) Persons who own or manage lawn and garden areas in residential, commercial, or industrial developments in the Tar-Pamlico River Basin except for residential landowners who apply fertilizer to their own property.

(2) This Rule, particularly Subparagraphs (d)(1) and (d)(2) of this Rule, shall apply to applicators hired by the persons listed in Subparagraph (c)(1) of this Rule to apply fertilizer to lands in the Tar-Pamlico River Basin.

(3) This Rule, particularly Subparagraph (d)(1) of this Rule, shall apply to applicators hired by residential landowners in the Tar-Pamlico basin.

(4) This Rule, particularly Subparagraph (d)(1) of this Rule, shall apply to nutrient management consultants hired by persons listed in this Paragraph to provide nutrient management advice for lands in the Tar-Pamlico River Basin.

(d) REQUIREMENTS. Subject persons shall meet the following requirements:

(1) Persons responsible for applying nutrients to their own land or land that they manage in the Tar-Pamlico basin, applicators hired by residential landowners in the Tar-Pamlico basin, and consultants who prepare nutrient management plans for persons who own or manage land in the Tar-Pamlico basin shall either:

(A) Attend and complete nutrient management training pursuant to Paragraph (e) of this Rule; or

(B) Complete a nutrient management plan for all lands to which they apply or manage the application of nutrients, or for which they provide nutrient management advice, pursuant to Paragraph (f) of this Rule.

(2) Persons who hire an applicator to apply nutrients to the land that they own or manage shall either:

(A) Ensure that the applicator they hire has attended and completed nutrient management training pursuant to Paragraph (e) of this Rule; or

(B) Ensure that the applicator they hire has completed a nutrient management plan for the land that they own or manage pursuant to Paragraph (f) of this Rule; or

(C) Complete a nutrient management plan for the land that they own or manage pursuant to Paragraph (f) of this Rule and ensure that the applicator they hire follows this plan.

(e) NUTRIENT MANAGEMENT TRAINING. Persons who choose to meet this Rule's requirements by completing nutrient management training shall meet the following requirements.

(1) Persons subject to this Rule as of its effective date shall sign up with the Cooperative Extension Service or the Division within one year of the effective date to take the nutrient management training. Such persons shall obtain a certificate from Extension or the Division within five years from the effective date of this Rule verifying completion of training that addresses, at minimum, proper management of nitrogen and phosphorus.

(2) Persons who become subject to this Rule after its effective date shall obtain a certificate from Extension or the Division within one year from the date that they become subject verifying completion of training that addresses, at minimum, proper management of nitrogen and phosphorus.

(3) Persons who fail to sign up or to obtain the nutrient management certificate within the required timeframes or who are found by the Director to have knowingly failed to follow nutrient management requirements as referenced in Subparagraphs (f)(1)(A) (f)(1)(C) of this Rule shall be required to develop and properly implement nutrient management plans pursuant to Paragraph (f) of this Rule.

(4) Training certificates must be kept on-site or be produced within 24 hours of a request by the Division.

(f) NUTRIENT MANAGEMENT PLANS. Persons who choose to meet this Rule's requirements by completing a nutrient management plan shall meet the following requirements.

(1) Persons who are subject to this Rule as of its effective date and persons who become subject to this Rule after its effective date shall develop a nutrient

management plan that meets the following standards within five years of the effective date or within 6 months from the date that they become subject, whichever is later.

(A) Nutrient management plans for cropland shall meet the standards and specifications adopted by the NC Soil and Water Conservation Commission, including those found in 15A NCAC 06E .0104 and 15A NCAC 06F .0104, which are incorporated herein by reference, including any subsequent amendments and additions to such rules that are in place at the time that plans are approved by a technical specialist as required under Subparagraph (f)(2) of this Rule.

(B) Nutrient management plans for turfgrass shall follow the North Carolina Cooperative Extension Service guidelines in "Water Quality and Professional Lawn Care" (NCCES publication number WQMM-155), "Water Quality and Home Lawn Care" (NCCES publication number WQMM-151), or guidelines distributed by land-grant universities. Copies may be obtained from the Division of Water Quality, 512 North Salisbury Street, Raleigh, North Carolina 27626 at no cost.

(C) Nutrient management plans for nursery crops and greenhouse production shall follow the Southern Nurserymen's Association guidelines promulgated in "Best Management Practices Guide For Producing Container-Grown Plants" or guidelines distributed by land-grant universities. Copies may be obtained from the Southern Nurserymen's Association, 1000 Johnson Ferry Road, Suite E-130, Marietta, GA 30068-2100 at a cost of thirty-five dollars (\$35.00). The materials related to nutrient management plans for turfgrass, nursery crops and greenhouse production are hereby incorporated by reference including any subsequent amendments and editions and are available for inspection at the Department of Environment and Natural Resources Library, 512 North Salisbury Street, Raleigh, North Carolina.

(2) The person who writes the nutrient management plan shall have the plan approved in writing by a technical specialist. Appropriate technical specialists shall be as follows.

(A) Nutrient management plans for cropland using either inorganic fertilizer or organic nutrients shall be approved by a technical specialist designated pursuant to the process and criteria specified in Rules adopted by the Soil and Water Conservation Commission for nutrient management planning, including 15A NCAC 06F .0105, excepting Subparagraph (a)(2) of that Rule.

(B) Nutrient management plans for turfgrass and nursery crops and greenhouse production shall be approved by a technical specialist

designated by the Soil and Water Conservation Commission pursuant to the process and criteria specified in 15A NCAC 06F .0105, excepting Subparagraph (a)(2) of that Rule. If the Soil and Water Conservation Commission does not designate such specialists, then the Environmental Management Commission shall do so using the same process and criteria.

(3) Nutrient management plans and supporting documents must be kept on-site or be produced within 24 hours of a request by the Division.

(4) The Division shall develop model nutrient management plans in consultation with the Cooperative Extension Service. The model plans shall address both nitrogen and phosphorus, and shall address the source of nutrients, the amount of nutrient applied, the placement of nutrients, and the timing of nutrient applications.

(g) COMPLIANCE. Persons who fail to comply with this Rule are subject to enforcement measures authorized in G.S. 143-215.6A (civil penalties), G.S. 143-215.6B (criminal penalties), and G.S. 143-215.6C (injunctive relief).

(h) BASINWIDE EDUCATION. The Division shall be responsible for developing and implementing an education program that informs homeowners in the basin on proper residential nutrient management. The program shall be designed to reach as much of the residential population of the basin as practical on an ongoing basis. At a minimum, it shall emphasize fundamental nutrient management principles as well as measures for reducing stormwater runoff from residential properties. The Division shall begin implementation of the program within three years of the effective date of this Rule.

3) N.C. Gen. Stat. §§ 143-214.5, .8B, 143B-282(c)—(d); 15 N.C.A.C. 02B.0272 (2)—(4)

§ 143-214.5. Water supply watershed protection

(a) Policy Statement. – This section provides for a cooperative program of water supply watershed management and protection to be administered by local governments consistent with minimum statewide management requirements established by the Commission. If a local government fails to adopt a water supply watershed protection program or does not adequately carry out its responsibility to enforce the minimum water supply watershed management requirements of its approved program, the Commission shall administer and enforce the minimum statewide requirements. The reduction of agricultural nonpoint source discharges shall be accomplished primarily through the Agriculture Cost Share Program for Nonpoint Source Pollution Control.

(b) Development and Adoption of Water Supply Watershed Classifications and Management Requirements. – The Commission shall adopt rules for the classification of water supply watersheds and that establish minimum statewide water supply watershed protection requirements applicable to each classification to protect surface water supplies by (i) controlling development density, (ii) providing for performance-based alternatives to development density controls that are based on sound engineering principles, or (iii) a combination of both (i) and (ii). The Commission may designate water supply watersheds or portions thereof as critical water supply watersheds and impose management requirements that are more stringent than the minimum statewide water supply watershed management requirements. The Commission may adopt rules that require that any permit issued by a local government for a development or construction activity conducted by that local government within a designated water supply watershed be approved by the Department prior to issuance. Any variance from the minimum statewide water supply watershed management requirements must be approved by the Commission prior to the issuance of a permit by a local government. Except as provided by G.S. 153A-347 and G.S. 160A-392, the power to implement this section with respect to development or construction activities that are conducted by State agencies is vested exclusively in the Commission.

(c) Classification of Water Supply Watersheds. – The Commission shall assign to each water supply watershed in the State the appropriate classification with the applicable minimum management requirements. The Commission may reclassify water supply watersheds as necessary to protect future water supplies or improve protection at existing water supplies. A local government shall not be required to submit a revised water supply watershed protection program to the Commission earlier than 270 days after it receives notice of a reclassification from the Commission.

(d) Mandatory Local Programs. – The Department shall assist local governments to develop water supply watershed protection programs that comply with this section. Local government compliance programs shall include an implementing local ordinance and shall provide for maintenance, inspection, and enforcement procedures. As part of its assistance to local governments, the Commission shall approve and make available a model local water supply watershed management and protection ordinance. The model management and protection ordinance adopted by the Commission shall, at a minimum, include as options (i) controlling development density, (ii) providing for performance-based alternatives to development density controls that are based on sound engineering principles, and (iii) a combination of both (i) and (ii). Local governments shall administer and enforce the minimum management requirements. Every local government that has within its jurisdiction all or a portion of a water supply watershed shall submit a local water supply watershed management and protection ordinance to the Commission for approval. Local governments may adopt such ordinances pursuant to their general police power, power to regulate the subdivision of land, zoning power, or any combination of such powers. In adopting a local ordinance that imposes water supply watershed management requirements that are more stringent than those adopted by the Commission, a county must comply with the notice provisions of G.S. 153A-343 and a municipality must comply with the notice provisions of G.S. 160A-384. This section shall not be

construed to affect the validity of any local ordinance adopted for the protection of water supply watersheds prior to completion of the review of the ordinance by the Commission or prior to the assumption by the Commission of responsibility for a local water supply watershed protection program. Local governments may create or designate agencies to administer and enforce such programs. The Commission shall approve a local program only if it determines that the requirements of the program equal or exceed the minimum statewide water supply watershed management requirements adopted pursuant to this section.

(d1) A local ordinance adopted to implement the minimum statewide water supply watershed management requirements applicable to agriculture and silviculture activities shall be no more restrictive than those adopted by the Commission. In adopting minimum statewide water supply watershed management requirements applicable to agriculture activities, the Commission shall consider the policy regarding agricultural nonpoint source discharges set out in subsection (a) of this section. The Commission may by rule designate another State agency to administer the minimum statewide water supply watershed management requirements applicable to agriculture and silviculture activities. If the Commission designates another State agency to administer the minimum statewide water supply watershed management requirements applicable to agriculture and silviculture activities, management requirements adopted by local governments shall not apply to such activities.

(d2) A local government implementing a water supply watershed program shall allow an applicant to average development density on up to two noncontiguous properties for purposes of achieving compliance with the water supply watershed development standards if all of the following circumstances exist:

- (1) The properties are within the same water supply watershed. If one of the properties is located in the critical area of the watershed, the critical area property shall not be developed beyond the applicable density requirements for its classification.
- (2) Overall project density meets applicable density or stormwater control requirements under 15A NCAC 2B .0200.
- (3) Vegetated buffers on both properties meet the minimum statewide water supply watershed protection requirements.
- (4) Built upon areas are designed and located to minimize stormwater runoff impact to the receiving waters, minimize concentrated stormwater flow, maximize the use of sheet flow through vegetated areas, and maximize the flow length through vegetated areas.
- (5) Areas of concentrated density development are located in upland areas and, to the maximum extent practicable, away from surface waters and drainageways.

(6) The property or portions of the properties that are not being developed will remain in a vegetated or natural state and will be managed by a homeowners' association as common area, conveyed to a local government as a park or greenway, or placed under a permanent conservation or farmland preservation easement unless it can be demonstrated that the local government can ensure long-term compliance through deed restrictions and an electronic permitting mechanism. A metes and bounds description of the areas to remain vegetated and limits on use shall be recorded on the subdivision plat, in homeowners' covenants, and on individual deed and shall be irrevocable.

(7) Development permitted under density averaging and meeting applicable low density requirements shall transport stormwater runoff by vegetated conveyances to the maximum extent practicable.

(8) A special use permit or other such permit or certificate shall be obtained from the local Watershed Review Board or Board of Adjustment to ensure that both properties considered together meet the standards of the watershed ordinance and that potential owners have record of how the watershed regulations were applied to the properties.

(e) Assumption of Local Programs. – The Commission shall assume responsibility for water supply watershed protection, within all or the affected portion of a water supply watershed, if a local government fails to adopt a program that meets the requirements of this section or whenever a local government fails to adequately administer and enforce the provisions of its program. The Commission shall not assume responsibility for an approved local water supply watershed protection program until it or its designee notifies the local government in writing by certified mail, return receipt requested, of local program deficiencies, recommendations for changes and improvements in the local program, and the deadline for compliance. The Commission shall allow a local government a minimum of 120 days to bring its program into compliance. The Commission shall order assumption of an approved local program if it finds that the local government has made no substantial progress toward compliance. The Commission may make such finding at any time between 120 days and 365 days after receipt of notice under this subsection by the local government, with no further notice. Proceedings to review such orders by the Commission shall be conducted by the superior court pursuant to Article 4 of Chapter 150B of the General Statutes based on the agency record submitted to the Commission by the Secretary.

(f) State Enforcement Authority. – The Commission may take any appropriate preventive or remedial enforcement action authorized by this Part against any person who violates any minimum statewide water supply watershed management requirement.

(g) Civil Penalties. – A local government that fails to adopt a local water supply watershed protection program as required by this section or willfully fails to administer

or enforce the provisions of its program in substantial compliance with the minimum statewide water supply watershed management requirements shall be subject to a civil penalty pursuant to G.S. 143-215.6A(e). In any area of the State that is not covered by an approved local water supply watershed protection program, any person who violates or fails to act in accordance with any minimum statewide water supply watershed management requirement or more stringent management requirement adopted by the Commission for a critical water supply watershed established pursuant to this section shall be subject to a civil penalty as specified in G.S. 143-215.6A(a)(7). The clear proceeds of civil penalties provided for in this section shall be remitted to the Civil Penalty and Forfeiture Fund in accordance with G.S. 115C-457.2.

(h) Planning Grants to Local Governments. – The Secretary may make annual grants to local governments for the purpose of assisting in the development of local water supply watershed protection programs. The Secretary shall develop and administer generally applicable criteria under which local governments may qualify for such assistance. Such criteria shall give priority to local governments that are not then administering zoning ordinances in affected water supply watershed areas.

(i) Every State agency shall act in a manner consistent with the policies and purposes of this section, and shall comply with the minimum statewide water supply watershed management requirements adopted by the Commission and with all water supply watershed management and protection ordinances adopted by local governments.

§ 143-215.8B. Basinwide water quality management plans

(a) The Commission shall develop and implement a basinwide water quality management plan for each of the 17 major river basins in the State. In developing and implementing each plan, the Commission shall consider the cumulative impacts of all of the following:

(1) All activities across a river basin and all point sources and nonpoint sources of pollutants, including municipal wastewater facilities, industrial wastewater systems, septic tank systems, stormwater management systems, golf courses, farms that use fertilizers and pesticides for crops, public and commercial lawns and gardens, atmospheric deposition, and animal operations.

(2) All transfers into and from a river basin that are required to be registered under G.S. 143-215.22H.

(b) Each basinwide water quality management plan shall:

(1) Provide that all point sources and nonpoint sources of pollutants jointly share the responsibility of reducing the pollutants in the State's waters in a fair, reasonable, and proportionate manner, using computer modeling and the best science and technology reasonably available and considering future anticipated population growth and economic development.

(2) If any of the waters located within the river basin are designated as nutrient sensitive waters, then the basinwide water quality management plan shall establish a goal to reduce the average annual mass load of nutrients that are delivered to surface waters within the river basin from point and nonpoint sources. The Commission shall establish a nutrient reduction goal for the nutrient or nutrients of concern that will result in improvements to water quality such that the designated uses of the water, as provided in the classification of the water under G.S. 143-214.1(d), are not impaired. The plan shall require incremental progress toward achieving the goal. In developing the plan, the Commission shall determine and allow appropriate credit toward achieving the goal for reductions of water pollution by point and nonpoint sources through voluntary measures.

(c) The Commission shall review and revise its 17 basinwide water quality management plans at least every 10 years to reflect changes in water quality, improvements in modeling methods, improvements in wastewater treatment technology, and advances in scientific knowledge and, as need to support designated uses of water, modifications to management strategies.

(d) As a part of the report required pursuant to G.S. 143-355(p), the Commission and the Department shall each report on or before November 1 of each year on an annual basis to the Environmental Review Commission on the progress in developing and implementing basinwide water quality management plans and on increasing public involvement and public education in connection with basinwide water quality management planning. The report to the Environmental Review Commission by the Department shall include a written statement as to all concentrations of heavy metals and other pollutants in the surface waters of the State that are identified in the course of preparing or revising the basinwide water quality management plans.

(e) A basinwide water quality management plan is not a rule and Article 2A of Chapter 150B of the General Statutes does not apply to the development of basinwide water quality management plans. Any water quality standard or classification and any requirement or limitation of general applicability that implements a basinwide water quality management plan is a rule and must be adopted as provided in Article 2A of Chapter 150B of the General Statutes.

§ 143B-282. Environmental Management Commission – creation; powers and duties.

[. . .]

(c) The Environmental Management Commission shall implement the provisions of subsections (d) and (e) of 33 U.S.C. § 1313 by identifying and prioritizing impaired waters and by developing appropriate total maximum daily loads of pollutants for those impaired waters. The Commission shall incorporate those total maximum daily loads approved by the United States Environmental Protection Agency into its continuing basinwide water quality planning process.

(d) The Environmental Management Commission may adopt rules setting out strategies necessary for assuring that water quality standards are met by any point or nonpoint source or by any category of point or nonpoint sources that is determined by the Commission to be contributing to the water quality impairment. These strategies may include, but are not limited to, additional monitoring, effluent limitations, supplemental standards or classifications, best management practices, protective buffers, schedules of compliance, and the establishment of and delegations to intergovernmental basinwide groups.

.0272 JORDAN WATER SUPPLY NUTRIENT STRATEGY: FERTILIZER MANAGEMENT

The following is the management strategy for controlling land-applied nutrients in the Jordan watershed, as prefaced in Rule .0262 of this Section.

[. . .]

(2) **APPLICABILITY.** This Rule shall apply to the application of nutrients on:

(a) Cropland areas in the Jordan watershed for commercial purposes;

(b) Commercial ornamental and floriculture areas and greenhouse production areas in the Jordan watershed;

(c) Golf courses, public recreational lands, road or utility rights-of-way, or other commercial or institutional lands where any such land, or combination of such lands, under common management in the watershed totals at least five acres; and

(d) Any lands in the Jordan watershed where a hired applicator, as defined in 15A NCAC 02B .0202(4), who does not own or lease the lands applies nutrients to a total of at least five acres per year.

(3) **REQUIREMENTS.** Application of nutrients to lands subject to this Rule shall be in accordance with the following requirements:

(a) Application shall be made either:

(i) By an applicator who has completed nutrient management training pursuant to Item (4) of this Rule; or

(ii) Pursuant to a nutrient management plan that meets the requirements of Item (5) of this Rule.

(b) With the exception of residential homeowners, a person who hires an applicator to apply nutrients to the land that they own or manage in the Jordan watershed shall either:

(i) Ensure that the applicator they hire has attended and completed nutrient management training pursuant to Item (4) of this Rule; or

(ii) Ensure that the applicator they hire follows a nutrient management plan that has been developed for the land that they own or manage pursuant to Item (5) of this Rule.

(4) NUTRIENT MANAGEMENT TRAINING. To demonstrate compliance with this Rule through the nutrient management training option, the applicator shall have a certificate indicating completion of training provided by either the Cooperative Extension Service or the Division. Training certificates shall be kept on-site or be produced within 24 hours of a request by the Division. Training shall be sufficient to provide participants with an understanding of the value and importance of proper management of nitrogen and phosphorus, and the water quality impacts of poor nutrient management, and the ability to understand and properly carry out a nutrient management plan.

[. . .]