

AGENDA

Lower Neuse Basin Association, Inc.[®] Neuse River Compliance Association, Inc.[®]

**November 06, 2014
City of Goldsboro, N.C.
10:00 a.m.**

- **Welcome and Introduction of Guests**
- **Approval of Minutes for September, 2014 – Haywood (pages 2 -4)**
- **Member Reports & Board Updates**
 - Dan Sokolovic, River Quest Report**
 - Small Scale Reuse Systems Report – Haywood (power point presentation)**
- **LNBA/NRCA Treasurer’s Report, November, 2014 – Donald (page 5.)**
 - LNBA/NRCA 990 Tax Reports - Haywood**
- **LNBA Sampling Committee Report, November, 2014 – Haywood (page 6.)**
 - Metals Monitoring Workshop Report – Haywood, Jay, Donald, Kathy, Carrie**
 - EMC 303(d) Comments to EPA, Region 4 – Dan, Haywood, Glenn (pages 7 – 11)**
- **Update Project Destiny, Sanderson Farms/Cumberland County Proposed Processing Facility**
 - Meeting with Southern Environmental Law Center – Dan, Glenn, Haywood**
 - Updated Broiler Production and TN & TP Data – Haywood (pages 12 – 14)**
- **HB 74 Rules Process Update - Draft Comments for Proposed Rule Revisions to Neuse Management Strategy – Discussion – Dan, Glenn, Haywood (pages 15 – 19)**
- **Next Meeting and Adjourn – Location: CMSD, Grifton, N.C. January 08, 2015 @ 10:00 a.m.**

**Lower Neuse Basin Association®/Neuse River Compliance Association®
September 04, 2014, Meeting Minutes
City of Wilson, N.C.**

Attending:

Donald Smith	Town of Cary	Jimmy Pridgen	Town of Wilson
Barry Parks	City of Wilson	Emily Elmore	City of Kinston
Kenny Stevens	City of Kinston	T. J. Lynch	City of Raleigh
Fred Dancy	SGWASA	Paul Allen	Town of Benson
Glenn Dunn	Poyner & Spruill	Travis Graves	Lower Neuse River Keeper
Dan McLawhorn	City of Raleigh	Gray Jernigan	Water Keeper Alliance
Larry Baldwin	Water Keeper Alliance	Matthew Starr	Upper Neuse River Keeper
Karen Brashear	City of Goldsboro	Carrie Ruhlman	DENR - DWR
Mike McAllister	Town of Kenly	Chuck Smithwick	Contentnea MSD
Mark Oliveira	Environment I	Danny Lassiter	CWS Systems of NC
Scott Smart	Aqua, North Carolina	James Warren	Town of Clayton
Shannon Langley	Duke Energy Progress	Nora Deamer	DENR – DWR
Colton Janes	Aqua, North Carolina	Chris Parisher	Watershed Process

The Chair, Dan McLawhorn, called the meeting to order and welcomed everyone. The roll was called and there were 10 of 18 members present representing the LNBA and 12 of 22 members present representing the NRCA. There was a quorum present for both associations. Guests were introduced and recognized.

Board Minutes – Minutes for the May 01, 2014 meeting were approved.

Board Updates – Haywood

- Training Workshop Review – Attendees: Raleigh, 43; Kinston 38; total 81. Contact hours have been reported to the State. Raleigh lunch/snack costs: \$772.70; Kinston lunch/snack costs: \$698.97.
- Support letter supporting to grant proposals were written; ModMon funding through the Duke Energy Foundation and WRRRI proposal to study why cyanobacteria blooms are not present in the Neuse River Estuary.
- Comments were submitted on the 2016 303(d) Listing Methodology.
- I would like to thank all members for their time to sign the MOA document.
- NRCA Midyear Report – information presented.
- Future Meeting Dates and Locations:

2015 Approved Schedule -

Contentnea MSD	10:00 a.m.	February 05, 2015
Town of Kenly	10:00 a.m.	May 07, 2015
TBA	10:00 a.m.	September 03, 2015
TBA	10:00 a.m.	November 05, 2015

2015 Proposed Revised Schedule -

Contentnea MSD	10:00 a.m.	January 08, 2015
TBA	10:00 a.m.	March 05, 2015
Town of Kenly	10:00 a.m.	May 07, 2015
TBA	10:00 a.m.	September 03, 2015
TBA	10:00 a.m.	November 05, 2015

Following Board discussion, a motion was made by T.J. to accept the revised meeting schedule, seconded by Donald, and approved by the Board.

NC DENR Resolution – A resolution thanking the Secretary Skvarla and the staff of DENR DWR for the 20th anniversary celebration of the joint accomplishments of the LNBA and the Department was presented to the Board for consideration. Following discussion, Barry made a motion to approve the resolution, seconded by T.J., and approved by the Board.

Treasurer's Report - The Treasurer's Report was presented by Donald. 4 reports were presented for (May, June, July, and August, 2014). Donald noted that the membership dues for FY 2014-15 had been collected. Karen made a motion to approve the reports, seconded by T.J., and approved by the Board.

Sampling Report – Haywood reported that work continues on the LNBA River Monitoring Service Contract No. 5 with Environment I. All sampling was completed by Environment 1 in May, June, July, and August with the following exceptions:

May: J6419000 – 5/13/14, dry stream.

June: J7240000 – unable to access, bridge construction (6/05/14), able to collect sample on 6/19/14.
J4619000 – 6/26/14, dry stream.

Data sets have been received through June, 2014. July sample results are in final review and samples were collected at all 53 sites in August under new MOA. All invoices through July, 2014 have been processed and paid.

The USGS has provided a renewal agreement to keep the Bear Creek Stream Gage active. The LNBA has funded this gage for many years. The cost for the period October 01, 2014 through September 30, 2015 will be \$8,400. The payment is not due until October 1, 2015. The current amount due for this past year is \$7,800. This gage data is important factor in calculating the nutrient load from Bear Creek. Following discussion and motion by T.J., seconded by Barry, the Board approved the contract renewal.

DWR will hold a metals monitoring workshop on September 25th to review and discuss the protocols necessary to collect samples to be analyzed for dissolved metals. The following members have responded and plan to attend this workshop: Donald Smith, Cary; Kathy Hill, Goldsboro; Tim Woody, Raleigh; & JoEllen Gay, Wilson.

Haywood noted that Jay Sauber completed the approved amount in the agreement between the NRCA and Sauber Water Consulting. Haywood proposed to the Board to extend the agreement due to recent actions by EPA revising the 303(d) listing, triennial review, and the upcoming in stream metals monitoring. A “not to exceed” amount of \$3,000 was proposed.

Following Board discussion, T.J. made a motion to approve the revised agreement, seconded by Shannon, and approved by the Board.

Project Destiny, Sanderson Farms/Cumberland County Proposed Processing Facility – The Board was briefed on the proposed broiler processing facility in Cumberland County which the proposal is to build more growing facilities (farms) near or within 50 miles of the SFI Kinston processing facility. The concern is the additional litter (nitrogen/phosphorous) loading that will be in the Neuse Basin. A table illustrating the current nitrogen generated (based on NCDA data) by existing farms was distributed to the Board for discussion. It was noted that the phosphorous loading could upset the nitrogen to phosphorous ration and lead to blue-green algae blooms. Following discussion the Chair noted work will continue through the executive committee to formula a position for the Board to consider on this issue. No action was taken by the Board.

The next meeting is scheduled for November 06, 2014 at 10:00 hosted by the City of Goldsboro. With no further business the meeting was adjourned.

**Lower Neuse Basin Association, Inc. / Neuse River Compliance Association, Inc.
Treasurer's Report**

11/3/2014

LNBA

Balance Forward: (checking per bank statement -8/26/14)	Checking	\$	185,806.34
Debits:			
Phthisic Consulting, Inc. (Aug & Sept, 14 Inv)		\$	3,015.04
Environment 1 (Aug & Sept, 14 Inv)			14,579.14
USGS (Bear Creek Stream Gage, FY 2014)			7,800.00
Poyner & Spruill (August 14 Invoice)			609.46
Bank Charges (checks & maintenance fees)			2.00
Total Debits		\$	26,005.64
Credits:			
Interest		\$	33.07
Transfer to Savings Account			50,000.00
Checking Account Balance (per bank statement - 10/22/14)		\$	109,833.77
LGCU Share Account Balance (savings account)			50,044.38
Total LNBA Account Balance		\$	<u>159,878.15</u>

NRCA

Balance Forward: (per bank statement - 8/26/14)	Checking	\$	116,050.95
	Savings		172,481.33
Debits:			
Poyner & Spruill (August 14 Invoice)		\$	1,133.00
Phthisic Consulting, Inc. (Aug & Sept, 14 Inv)			5,601.00
Sauber Water Consulting (Sept 14 Inv)			1,120.00
Bank Charges (checks & maintenance fees)			2.00
Total:		\$	7,856.00
Interest (Savings)			73.86
Interest (Checking)			26.32
Account Balance (per bank statement - 10/22/14)	Checking	\$	108,221.27
LGCU Share Account Balance (savings account)	Savings		172,555.19
Total NRCA Account Balance		\$	<u>280,776.46</u>

Lower Neuse Basin Association

TO: Board Members

FROM: Water Sampling Contract Coordinator

SUBJECT: Sampling/Monitoring Report for November 06, 2014 Board Meeting

DATE: November 05, 2014

Work continues on the Lower Neuse River Monitoring Service Contract No. 5 with Environment I. All sampling was completed by Environment 1 in September and October with no exceptions.

Data sets have been received through August, 2014. All invoices through September, 2014 have been processed and paid.

DWR held a workshop on September 25th to review and discuss stream metals monitoring. This process will be important in order to remove a stream segment that is on the 303(d) List for impairment due to metals.



ENVIRONMENTAL MANAGEMENT COMMISSION

NORTH CAROLINA DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES

Benne C. Hutson
Chairman
Kevin Martin
Vice Chairman

Pat McCrory, Governor
John Skvarla, Secretary

David W. Anderson
Gerard P. Carroll
Charles Carter
Tommy Craven
Daniel E. Dawson
Charles B. Elam
E. O. Ferrell

Manning Puette
Dr. Lawrence W. Raymond
Dr. Albert R. Rubin
Clyde E. Smith, Jr.
Steve W. Tedder
Julie A. Wilsey

October 14, 2014

VIA ELECTRONIC AND REGULAR MAIL

Marion Hopkins
U.S. Environmental Protection Agency, Region 4
Water Protection Division
61 Forsyth Street, S.W.
Atlanta, GA 30303-8960

Subject: Comments of North Carolina Environmental Management Commission and North Carolina Department of Environment and Natural Resources, Division of Water Resources on the U.S. Environmental Protection Agency Decision to Add 52 Waterbody-Pollutant Combinations to North Carolina's 2014 Section 303(d) List

Dear Ms. Hopkins:

The North Carolina Environmental Management Commission (EMC) and North Carolina Department of Environment and Natural Resources, Division of Water Resources (DWR) have reviewed your July 31 letter partially approving North Carolina's 2014 303(d) list. We appreciate EPA's approval of the state's list as submitted. However, we disagree with EPA's decision to add 52 waterbody-pollutant combinations to the impaired waters list and ask that EPA fully approve the 303(d) list as submitted based on the following reasons.

EPA's Decision Improperly Intrudes on Responsibilities Reserved to the States

The Clean Water Act (CWA) carefully and specifically carves out for the states certain responsibilities. Among those are the establishment of water quality standards (33 U.S.C. section 1313(c), 40 C.F.R. section 131.20) and impaired waters listing decisions (33 U.S.C. section 1313(d), 40 C.F.R. 130.7(b)).

As to 303(d) listing decisions, the states are responsible for defining the protocol for determining attainment and non-attainment of water quality standards in individual waters and then identifying impaired and unimpaired waters based on good cause, and accurate data and modeling. EPA has an important role in the process but that role is limited to determining that the states' approaches are consistent with the Clean Water Act.

We respectfully submit that EPA's decision that 52 additional waterbody-pollutant combinations should be listed goes beyond its responsibilities and authority under the Clean Water Act.

EPA's Decision Improperly Rejects North Carolina's Approved Listing Methodology

EPA proposes to add the 52 waterbody-pollutant combinations to North Carolina's 303(d) list on the grounds that "EPA has not determined that the State's methodology is a reasonable method to assess toxic or non-conventional pollutants consistent with the State's currently applicable, EPA-approved water quality standards." All such water quality standards have safety factors and incorporate appropriate levels for aquatic life protections whether pollutants are conventional or toxic.

The "methodology" that EPA refers to is one that was developed by DWR with significant input and ultimate approval by the EMC after months of effort and discussion, including the involvement of interested stakeholders. A fundamental principle underlying this methodology was that there be sufficient quality data to have a 90% confidence level that 10% of samples exceed a water quality standard. As part of the 2014 303(d) list development, DWR staff used this EMC-approved methodology to reclassify the 52 waterbody-pollutant combinations at issue to Category 3a (inconclusive) and remove them from the 303(d) list.

EPA proposes to place the 52 waterbody-pollutant combinations back onto the 303(d) list using a greater than 1 exceedance in 3 years (" >1 -in-3") listing methodology. The EMC and DWR disagree with the use of this listing method and believe that it is inappropriate for assessment of toxic substances on the 2014 303(d) list for a number of reasons.

The >1 -in-3 Listing Method Ignores the Importance of Sample Size

The National Research Council has recommended that EPA endorse statistical approaches, such as the binomial hypothesis test that North Carolina utilizes, "that can more effectively make use of the data collected to determine water quality impairment than does the raw score approach." Such approaches help to manage Type 1 and Type 2 error rates, take into account sample sizes, establish the confidence level associated with the assessment, and address sampling and analytical errors and non-representative sampling bias. These approaches also quantitatively help to inform the public of the level of confidence provided by sampling data based on the number of observations and are superior to making listing decisions on a raw score basis that could have less than a 50 percent confidence level.

Like the raw score method, the >1 -in-3 listing methodology is problematic because it does not take into account the importance of sample size. While the raw score method at least considers the proportion of samples that exceed water quality standards, the >1 -in-3 listing methodology does not. Larger datasets are more likely to include samples collected during brief extremes, such as the "first flush" of stormwater, which are too short-lived to impact the biological community. In determining whether a stream is impaired, DWR and the EMC believe it is essential to take sample size into account.

EPA Lacks Legal Authority to Impose the >1 -in-3 Listing Method

The >1 -in-3 listing method is not mandated by the Clean Water Act. It has not gone through the public safeguards of notice and comment rulemaking and has not been published as an enforceable regulation. In short, the >1 -in-3 listing method is not a binding legal requirement that EPA can impose upon North Carolina or any other state.

North Carolina's 10% Probability Value/90% Confidence Level is Appropriate for Determining Impairment by Toxic Substances and Non-Conventional Pollutants

The 10% Probability Value is Necessary and Appropriate

North Carolina's methodology includes the application of a 10% probability value to toxic pollutants to prevent occasional exceedances from the "first flush" of stormwater and diurnal fluctuations (observed for some toxic substances) from triggering unwarranted 303(d) listings. This is consistent with the accepted statistical approaches and accounts for any sampling and analytical errors to which toxics data might be prone.

Current North Carolina criteria are for total metals and are stated as "not to exceed." The >1-in-3 approach is designed for dissolved metals with chronic and acute criteria and averages over a prescribed time period. Applying this method to current North Carolina data is not appropriate. However, the EMC is in the process of changing metals criteria and will subsequently adopt listing methods to properly assess the metals criteria. Until those standards changes are adopted, the use of North Carolina's current approach is more appropriate.

The 90% Confidence Level is Necessary and Appropriate

A confidence level is the probability that sample data with a given number of criteria exceedances could be drawn from an overall population for the water segment where the overall exceedance probability is the intended 10%. Use of confidence levels helps identify when a sufficient number of exceedances have occurred that indicate a true exceedance rate of > 10%. This helps address concerns about outliers, minimum data sets, borderline impairment background conditions, collection mishandling, calibration errors, potential laboratory errors, etc. Modern statistics strongly recommends the use of confidence values.

Confidence limits used on data for the 2014 303(d) list helped North Carolina ensure data validity. The EMC and DWR believe that using a confidence level strengthens the list substantially. It helps address concerns with outliers, minimum sample size, borderline impairments, background conditions, sample contamination and mishandling, calibration errors and unintended laboratory errors. The EMC and DWR believe that the listing methodology used to generate North Carolina's 2014 303(d) list was properly designed and implemented.

Expedited Sampling of the 52 Waterbodies

DWR commits to expediting sampling at the 52 waterbody locations to provide data sufficient to remove them from Category 3a (inconclusive) into the appropriate category as supported by the data.

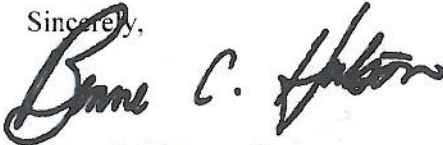
Conclusion

Listing a waterbody-pollutant combination as impaired has significant consequences. It can raise concerns among the public as to whether it is safe to swim or fish. It can hinder efforts by local and State governments to attract people or businesses to move to an area.

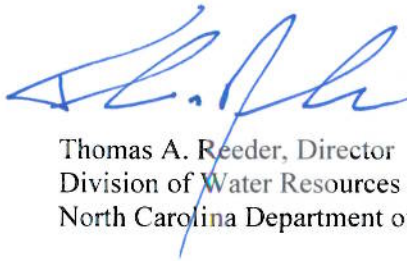
EPA's proposed >1-in-3 approach is an inappropriate methodology for North Carolina's 2014 assessment as it ignores critical factors such as size of the data set, confidence levels, and management of Type 1 and Type 2 error rates.

The EMC and DWR believe that the listing methodology used to generate North Carolina's 2014 303(d) list was properly designed and implemented. Furthermore, that design and implementation is specifically a state responsibility which EPA must respect and honor. For the reasons stated in this letter, the EMC and DWR request that EPA not add the 52 waterbody-pollutant combinations to the 2014 303(d) list.

Sincerely,



Benne C. Hutson, Chair
North Carolina Environmental Management Commission



Thomas A. Reeder, Director
Division of Water Resources
North Carolina Department of Environment and Natural Resources

cc: James Giattina, Director,
Water Protection Division,
EPA Region 4

Mitch Gillespie, Assistant Secretary,
NCDENR

Haywood Phthisic

From: Haywood Phthisic <exec.director@lnba.net>
Sent: Friday, September 26, 2014 10:33 AM
To: T J Lynch (tj.lync@raleighnc.gov); Dan McLawhorn (dan.mclawhorn@raleighnc.gov); Jordan Hughes (hughesj@newbern-nc.org); Chandra Coats (chandra.coats@johnstonnc.com); Dan Wall (dan.wall@johnstonnc.com); Bill Ebron (BEbron@havelocknc.us)
Subject: 303d relisting
Attachments: EPA Relistings Neuse Basin 92614.docx

All,

Listed below are the water bodies EPA added back to the 303(d) list for water quality violations for metals.

1. Neuse River from Crabtree Creek to Auburn Knightdale Road for copper
2. Neuse River from Beddingfield Creek to a point 0.2 miles Downstream of Johnston County SR 1700 (Covered Bridge Road) for copper and zinc
3. Neuse River from 0.2 mile downstream of Johnston County SR 1700 to 1.4 mile downstream of Johnston County SR 1908 for copper
4. Neuse River from 0.5 miles upstream of Richardson Bridge Road SR1201 to Johnston County intake at Richardson Bridge Road SR 1201 for Copper
5. Neuse River estuary from Trent River to a line across Neuse from Johnson Point to McCotter Point for copper
6. Walnut Creek from UT 0.6 miles west of I440 to Neuse River for Copper

The attached document is from Appendix D of EPA's response to DWR.

Haywood

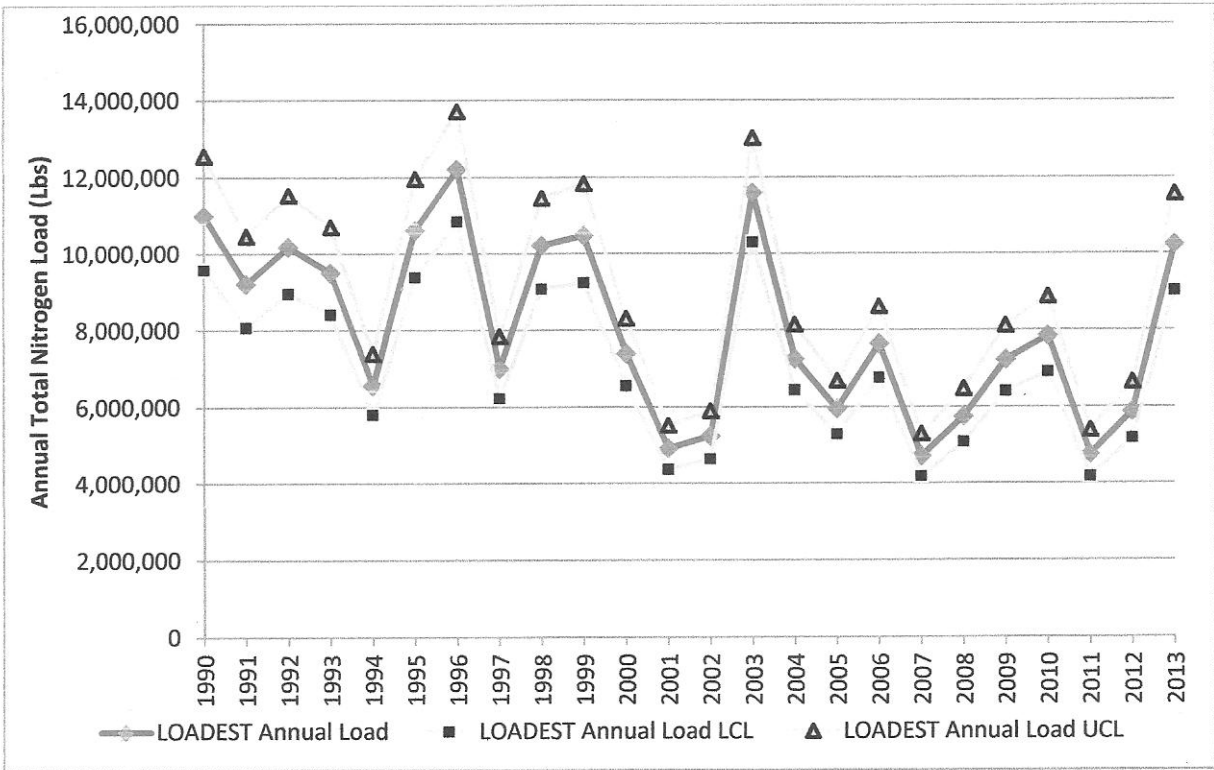


Figure 5 - Total Nitrogen Loading at Station J7850000 (Ft. Barnwell)

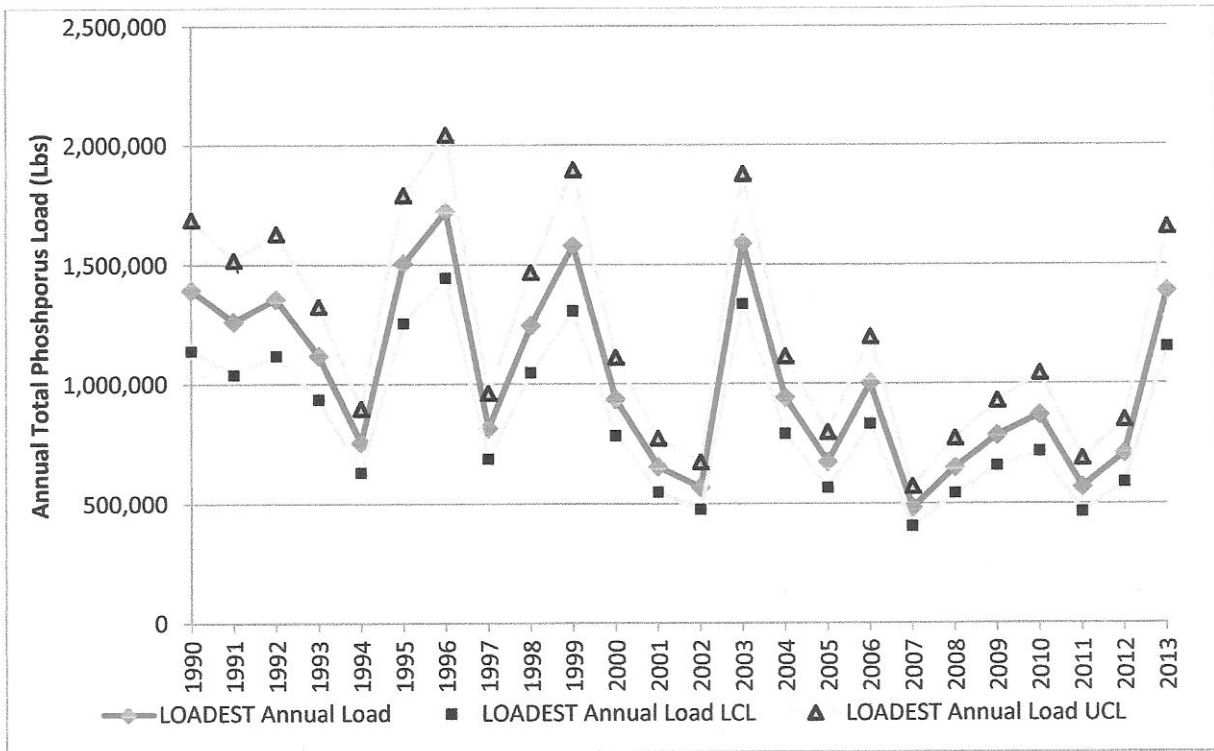


Figure 6 - Total Phosphorus Loading at Station J7850000 (Ft. Barnwell)

Broiler Production in the Lower Neuse Basin by County

Date: 9/17/14 (revised)

County	1997 (# of Broilers)	2012 (# of Broilers)	2012 EH *	2012 Tons of Litter	Total Nitrogen (Lbs.)	Total Phosphorous (Lbs.)	Feed Requirements (Tons)
Craven	0	0	0	0	0	0	0
Greene	891,600	5,600,000	224	62,720	3,625,216	2,508,800	32,200
Johnston	1,003,555	9,500,000	380	106,400	6,149,920	4,256,000	54,625
Jones	0	6,050,000	242	67,760	3,916,528	2,710,400	34,788
Lenoir	251,082	10,400,000	416	116,480	6,732,544	4,659,200	59,800
Pamlico	0	0	0	0	0	0	0
Wake	0	0	0	0	0	0	0
Wayne	2,443,200	14,400,000	576	161,280	9,321,984	6,451,200	82,800
Wilson	472,000	0	0	0	0	0	0
Totals	5,061,437	45,950,000	1,838	514,640	29,746,192	20,585,600	264,213

* EH - Equivalent House: 25,000 birds/house

Broilers County Estimates



USDA, NASS
North Carolina Field Office
 PO Box 27767
 Raleigh, NC 27611
 Phone (919) 856-4394
 E-mail: ncagstat@ncagr.gov
www.nass.usda.gov

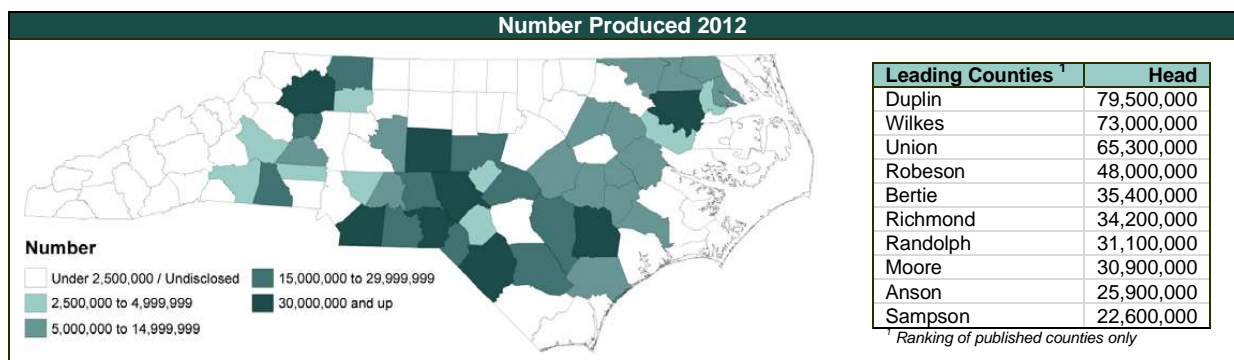
Dee Webb, State Statistician

In Cooperation with the North Carolina Department of Agriculture
 & Consumer Services

Steve Troxler, Commissioner

Number Produced			
Counties	2011	2012	
	(Head)		
Alamance	1,700,000	1,700,000	
Alexander	18,000,000	18,300,000	
Alleghany	*	*	
Anson	25,500,000	25,900,000	
Ashe	*	*	
Avery	*	*	
Beaufort	(D)	(D)	
Bertie	34,800,000	35,400,000	
Bladen	16,300,000	16,600,000	
Brunswick	*	*	
Buncombe	*	*	
Burke	3,900,000	4,000,000	
Cabarrus	3,300,000	3,400,000	
Caldwell	850,000	860,000	
Camden	*	*	
Carteret	*	*	
Caswell	*	*	
Catawba	7,000,000	7,100,000	
Chatham	22,100,000	22,500,000	
Cherokee	*	*	
Chowan	2,900,000	2,900,000	
Clay	*	*	
Cleveland	16,600,000	16,900,000	
Columbus	2,200,000	2,200,000	
Craven	*	*	
Cumberland	1,850,000	1,900,000	
Currituck	*	*	
Dare	*	*	
Davidson	6,700,000	6,800,000	
Davie	*	*	
Duplin	78,200,000	79,500,000	
Durham	*	*	
Edgecombe	13,000,000	13,200,000	
Forsyth	*	*	
Franklin	1,200,000	1,200,000	
Gaston	2,200,000	2,200,000	
Gates	8,650,000	8,800,000	
Graham	*	*	
Granville	*	*	
Greene	5,550,000	5,600,000	
Guilford	360,000	370,000	
Halifax	1,700,000	1,700,000	
Harnett	21,600,000	22,000,000	
Haywood	*	*	
Henderson	*	*	
Hertford	9,200,000	9,300,000	
Hoke	3,700,000	3,800,000	
Hyde	*	*	
Iredell	1,700,000	1,700,000	
Jackson	*	*	
Johnston	9,350,000	9,500,000	
Jones	5,950,000	6,050,000	
Lee	4,250,000	4,300,000	
Lenoir	10,200,000	10,400,000	
Lincoln	4,650,000	4,700,000	
McDowell	1,100,000	1,100,000	
Macon	*	*	
Madison	*	*	
Martin	4,750,000	4,800,000	
Mecklenburg	*	*	
Mitchell	*	*	
Montgomery	21,600,000	22,000,000	
Moore	30,400,000	30,900,000	
Nash	10,200,000	10,400,000	
New Hanover	(D)	(D)	
Northampton	8,350,000	8,500,000	
Onslow	(D)	(D)	
Orange	*	*	
Pamlico	*	*	
Pasquotank	*	*	
Pender	5,600,000	5,700,000	
Perquimans	6,500,000	6,600,000	
Person	*	*	
Pitt	9,650,000	9,800,000	
Polk	*	*	
Randolph	30,600,000	31,100,000	
Richmond	33,600,000	34,200,000	
Robeson	47,200,000	48,000,000	
Rockingham	*	*	
Rowan	690,000	700,000	
Rutherford	4,200,000	4,300,000	
Sampson	22,200,000	22,600,000	
Scotland	18,600,000	19,000,000	
Stanly	8,100,000	8,200,000	
Stokes	*	*	
Surry	19,700,000	20,000,000	
Swain	*	*	
Transylvania	*	*	
Tyrrell	*	*	
Union	64,300,000	65,300,000	
Vance	*	*	
Wake	(D)	(D)	
Warren	*	*	
Washington	(D)	(D)	
Watauga	*	*	
Wayne	14,200,000	14,400,000	
Wilkes	72,000,000	73,000,000	
Wilson	*	*	
Yadkin	4,600,000	4,700,000	
Yancey	*	*	
Other Counties	3,600,000	3,620,000	
State Total	786,900,000	799,700,000	

* Less than 100 Head. (D) Withheld to avoid disclosing data for individual farms.



**15A NCAC 02B .0233 NEUSE RIVER BASIN: NUTRIENT SENSITIVE WATERS
MANAGEMENT STRATEGY: PROTECTION AND MAINTENANCE OF EXISTING
RIPARIAN BUFFERS**

(9) VARIANCES. Persons who wish to undertake uses designated as prohibited may pursue a variance. The Division or the appropriate delegated local authority may grant minor variances. The variance request procedure shall be as follows:

(a) For any variance request, the Division or the delegated local authority shall make a finding of fact as to whether the following requirements have been met:

(i) There are practical difficulties or unnecessary hardships that prevent compliance with the strict letter of the riparian buffer protection requirements. Practical difficulties or unnecessary hardships shall be evaluated in accordance with the following:

(A) If the applicant complies with the provisions of this Rule, he/she can secure no reasonable return from, nor make reasonable use of, his/her property. Merely proving that the variance would permit a greater profit from the property shall not be considered adequate justification for a variance. Moreover, the Division or delegated local authority shall consider whether the variance is the minimum possible deviation from the terms of this Rule that shall make reasonable use of the property possible.

(B) The hardship results from application of this Rule to the property rather than from other factors such as deed restrictions or other hardship.

(C) The hardship is due to the physical nature of the applicant's property, such as its size, shape, or topography, which is different from that of neighboring property.

(D) The applicant did not cause the hardship by knowingly or unknowingly violating this Rule.

(E) The applicant did not purchase the property after the effective date of this Rule, and then requesting an appeal.

(F) The hardship is unique to the applicant's property, rather than the result of conditions that are widespread. If other properties are equally subject to the hardship created in the restriction, then granting a variance would be a special privilege denied to others, and would not promote equal justice;

(ii) The variance is in harmony with the general purpose and intent of the State's riparian buffer protection requirements and preserves its spirit; and

(iii) In granting the variance, the public safety and welfare have been assured water quality has been protected, and substantial justice has been done.

(b) MINOR VARIANCES. A minor variance request pertains to activities that are proposed only to impact any portion of Zone 2 of the riparian buffer. Minor variance requests shall be reviewed and approved based on the criteria in Sub-Item (9)(a) of this Rule by the either the Division or the delegated local authority pursuant to G.S. 153A Article 18, or G.S. 160A-Article 19. The Division or the delegated local authority may attach conditions to the variance approval that support the purpose, spirit and intent of the riparian buffer protection program. Requests for appeals of decisions made by the Division shall be made to the Office of Administrative Hearings. Request for appeals made by the delegated local authority shall be made to the appropriate Board of Adjustment under G.S. 160A-388 or G.S. 153A-345.

(c) MAJOR VARIANCES. A major variance request pertains to activities that are proposed to impact any portion of Zone 1 or any portion of both Zones 1 and 2 of the riparian buffer. If the

Division or the delegated local authority has determined that a major variance request meets the requirements in Sub-Item (9)(a) of this Rule, then it shall prepare a preliminary finding and submit it to the ~~Commission~~ Secretary. Preliminary findings on major variance requests shall be reviewed by the ~~Commission~~ Secretary within 90 days after receipt by the Director. Requests for appeals of determinations that the requirements of Sub-Item (9)(a) of this Rule have not been met shall be made to the Office of Administrative Hearings for determinations made by the Division or the appropriate Board of Adjustments under G.S. 160A-388 or G.S. 153A-345 for determinations made by the delegated local authority. The purpose of the ~~Commission's~~ Secretary's review is to determine if it agrees that the requirements in Sub-Item (9)(a) of this Rule have been met. Requests for appeals of decisions made by the ~~Commission~~ Secretary shall be made to the Office of Administrative Hearings. The following actions shall be taken depending on the Commission's decision on the major variance request:

- (i) Upon the ~~Commission's~~ Secretary's approval, the Division or the delegated local authority shall issue a final decision granting the major variance.
- (ii) Upon the ~~Commission's~~ Secretary's approval with conditions or stipulations, the Division or the delegated local authority shall issue a final decision, which includes these conditions or stipulations.
- (iii) Upon the ~~Commission's~~ Secretary's denial, the Division or the delegated local authority shall issue a final decision denying the major variance.

(12) REQUIREMENTS SPECIFIC TO LOCAL GOVERNMENTS WITH STORMWATER PROGRAMS FOR NITROGEN CONTROL. Local governments ~~that are required to have local stormwater programs pursuant to 15A-NCAC 2B-.0235~~ shall have two options for ensuring protection of riparian buffers on new developments within their jurisdictions as follows.

- (a) Obtain authority to implement a local riparian buffer protection program pursuant to 15A-NCAC 2B .0241.
- (b) Refrain from issuing local approvals for new development projects unless either:
 - (i) The person requesting the approval does not propose to impact the riparian buffer of a surface water that appears on either the most recent versions of the soil survey maps prepared by the Natural Resources Conservation Service of the United States Department of Agriculture or the most recent versions of the 1:24,000 scale (7.5 minute quadrangle) topographic maps prepared by the United States Geologic Survey (USGS).
 - (ii) The person requesting the approval proposes to impact the riparian buffer of a surface water that appears on the maps described in Sub-Item (12)(b)(i) of this Rule and either:
 - (A) Has received an on-site determination from the Division pursuant to Sub-Item (3)(a) of this Rule that surface waters are not present;
 - (B) Has received an Authorization Certificate from the Division pursuant to Item (8) of this Rule for uses designated as Allowable under this Rule;
 - (C) Has received an Authorization Certificate from the Division pursuant to Item (8) of this Rule and obtained the Division's approval on a mitigation plan pursuant to Item (10) of this Rule for uses designated as Allowable with Mitigation under this Rule; or
 - (D) Has received a variance from the Commission pursuant to Item (9) of this Rule.

**15A NCAC 02B .0234 NEUSE RIVER BASIN - NUTRIENT SENSITIVE WATERS
MANAGEMENT STRATEGY: WASTEWATER DISCHARGE REQUIREMENTS**

The following is the National Pollutant Discharge Elimination System (NPDES) wastewater discharge management strategy for the Neuse River Basin:

(1) Purpose. The purpose of this Rule is to establish minimum nutrient control requirements for point source discharges in the Neuse River Basin in order to maintain or restore the water quality in the Neuse River Estuary and protect its designated uses.

(2) Applicability. This Rule applies to all wastewater treatment facilities in the Neuse River Basin that receive nitrogen-bearing wastewater and are required to obtain individual NPDES permits.

(4) This Item specifies the nitrogen wasteload allocation for point sources.

(a) Beginning with the calendar year 2003, the nitrogen wasteload allocation for point sources shall not exceed 1.64 million pounds per calendar year plus any portion of the nonpoint source load allocation purchased in accordance with the provisions in Items (7) and (8) of this Rule and 15A NCAC 02B .0240.

(b) Beginning with the calendar year 2015, the ~~The Commission~~ Division shall order future revisions in the nitrogen wasteload allocation whenever necessary to ensure that water quality in the estuary meets all standards in 15A NCAC 02B .0200 or to conform with applicable state or federal requirements.

(5) This Item specifies nitrogen discharge allocations for point sources.

(a) Upon adoption of this Rule ~~and until revised as provided elsewhere in this Rule~~, the following group and individual discharge allocations for total nitrogen shall apply in order to comply with the nitrogen wasteload allocation for point sources in Item (4) of this Rule:

(i) Dischargers with permitted flows less than ~~0.5~~ 0.1 MGD shall be assigned collectively an annual discharge allocation of ~~138,000~~ ????? pounds of total nitrogen.

(ii) Dischargers upstream of Falls Lake Dam and with permitted flows greater than or equal to ~~0.5~~ 0.1 MGD shall be assigned collectively an annual discharge allocation of ~~443,700~~ ????? pounds of total nitrogen.

(iii) Municipal dischargers downstream of Falls Lake Dam and with permitted flows greater than or equal to ~~0.5~~ 0.1 MGD shall be assigned collectively an annual discharge allocation of ~~2,021,400~~ ????? pounds of total nitrogen.

(iv) Industrial dischargers downstream of Falls Lake Dam and with permitted flows greater than or equal to 0.5 MGD shall be assigned collectively an annual discharge allocation of 396,900 pounds of total nitrogen.

(v) Within each group in Sub-Items (i) - (iv) of this Item, each individual discharger shall be assigned an individual discharge allocation and the equivalent estuary allocation. Each discharger's discharge allocation shall be calculated as its permitted flow divided by the total permitted flow of the group, multiplied by the group discharge allocation.

(6) This Item specifies nutrient controls for existing facilities.

(a) Beginning with calendar year ~~2003~~ 2018, each discharger with a permitted flow equal to or greater than ~~0.5~~ 0.1 MGD shall be subject to a total nitrogen permit limit equal to its individual discharge allocation, pursuant to Item (5) of this Rule.

(b) Effective January 1, 2003, dischargers shall be subject to the following limits for total phosphorus:

(i) All existing facilities above Falls Lake Dam with permitted flows greater than or equal to 0.05 MGD shall meet a quarterly average total phosphorus limit of 2 mg/L.

(ii) All existing facilities below Falls Lake Dam with permitted flows greater than or equal to 0.5 MGD shall meet a quarterly average total phosphorus limit of 2 mg/L.

(c) The director shall establish more stringent limits for nitrogen or phosphorus upon finding that such limits are necessary to protect water quality standards in localized areas.

15A NCAC 02B .0235 NEUSE RIVER BASIN-NUTRIENT SENSITIVE WATERS MANAGEMENT STRATEGY: BASINWIDE STORMWATER REQUIREMENTS

The following is the urban stormwater management strategy for the Neuse River Basin:

~~(1) The following Beginning in 2018, all local governments below Falls Dam are designated, based on population and other factors, as parties responsible for implementing stormwater management requirements as part of the Neuse River Nutrient Sensitive Waters stormwater management strategy:~~

~~(a) Cary,~~

~~(b) Durham,~~

~~(c) Garner,~~

~~(d) Goldsboro,~~

~~(e) Havelock,~~

~~(f) Kinston,~~

~~(g) New Bern,~~

~~(h) Raleigh,~~

~~(i) Smithfield,~~

~~(j) Wilson,~~

~~(k) Durham County,~~

~~(l) Johnston County,~~

~~(m) Orange County,~~

~~(n) Wake County, and~~

~~(o) Wayne County.~~

~~(2) Other incorporated areas and other counties, not listed under Item (1) of this Rule, may seek to implement their own local stormwater management plan by complying with the requirements specified in Items (5) and (6) of this Rule.~~

~~(3) The Environmental Management Commission may designate additional local governments by amending this Rule based on their potential to contribute significant nutrient loads to the Neuse River. At a minimum, the Commission shall review the need for additional designations to the stormwater management program as part of the basinwide planning process for the Neuse River Basin. Any local governments that are designated at a later date under the Neuse Nutrient Sensitive Waters Stormwater Program shall meet the requirements under Items (5) and (6) of this Rule.~~

(5) Local governments shall implement stormwater management programs according to their plans approved by the Commission ~~as of March 2004~~. Local governments administering a stormwater management program shall submit annual reports to the Division documenting their progress and net changes to nitrogen load by October 30 of each year.

15A NCAC 02B .0237 BEST MANAGEMENT PRACTICE COST-EFFECTIVENESS RATE

The Best Management Practice cost-effectiveness rate (BMPc) represents the cost to achieve a reduction of one kilogram of total nitrogen through the use of BMPs. ~~This rate shall be used for determining cost of nutrient controls and shall be twenty-nine dollars per kilogram (\$29/kg).~~

15A NCAC 02B .0241 NEUSE RIVER BASIN: NUTRIENT SENSITIVE WATERS MANAGEMENT STRATEGY: DELEGATION OF AUTHORITY FOR THE PROTECTION AND MAINTENANCE OF EXISTING RIPARIAN BUFFERS

(f) LIMITS OF DELEGATED LOCAL AUTHORITY. The ~~Commission~~ Department shall have jurisdiction to the exclusion of local governments to implement the State's riparian buffer protection requirements for the following types of activities:

- (1) Activities conducted under the authority of the State;
- (2) Activities conducted under the authority of the United States;
- (3) Activities conducted under the authority of multiple jurisdictions; and
- (4) Activities conducted under the authority of local units of government.